ADMINISTRACIÓN DE VIVIENDA PÚBLICA

ÁREA DE DESARROLLO Y CONSTRUCCIÓN DE PROYECTOS
NEGOCIADO DE GERENCIA DE CONSTRUCCIÓN
NEGOCIADO PLANIFICACIÓN Y GERENCIA DE DISEÑO
NEGOCIADO DE ASUNTOS TÉCNICOS Y AMBIENTALES

MANUAL DE ADQUISICIÓN - REG. 6405

HUD HANDBOOK NO. 7460.8 – PROCUREMENT MANUAL

DEPARTAMENTO DE LA VIVIENDA
Estado Libre Asociado de Puerto Rico

ESTADO LIBRE ASOCIADO DE PUERTO RICO
DEPARTAMENTO DE LA VIVIENDA
ADMINISTRACIÓN DE VIVIENDA PÚBLICA

DEPARTAMENTO DE ESTADO

Núm. Reglamento **6405**
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Secretario de Estado

Por: _____
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MANUAL DE ADQUISICIONES

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TRADUCCIÓN

ADMINISTRACIÓN DE VIVIENDA PÚBLICA DE PUERTO RICO
MANUAL DE ADQUISICIONES

SECCIÓN I. BASE LEGAL

A tenor con la autoridad conferida a la Administración de Vivienda Pública de Puerto Rico (AVPPR) en la Ley Núm. 66 de 17 de agosto de 1989, según enmendada (la "Ley Núm. 66") y la autoridad delegada a la AVPPR mediante la Orden Administrativa Núm. Hd00.19 emitida por el Secretario (el "Secretario") del Departamento de la Vivienda del Estado Libre Asociado de Puerto Rico (el "Departamento") el 13 de marzo de 2000 a tenor con la Ley Núm. 97 de 10 de junio de 1972, según enmendada (la "Ley Orgánica del Departamento"), y a tenor con (i) la Ley Núm. 170 de 12 de agosto de 1988, según enmendada, conocida como la Ley de Procedimientos Administrativos Uniformes de Puerto Rico (LPAUPR), (ii) la Sección 85.36 del Título 24 del Código de Reglamentos Federales ("24 CFR § 85.36"), según en vigor a la fecha de este documento y según pueda enmendarse en el futuro, (iii) el Contrato de Aportaciones Anuales otorgado por y entre el Departamento de la Vivienda y Desarrollo Urbano de los Estados Unidos de Norteamérica (HUD), el Departamento y la AVPPR, y (iv) las disposiciones del Manual de Adquisiciones de HUD 7460.8 REV-1 (Manual de Adquisiciones para Agencias de Vivienda Pública y Autoridades Indígenas de Vivienda)

(el "Manual de Adquisiciones de HUD") emitido en enero de 1993 por la Oficina de HUD de Vivienda Pública e Indígena adscrita a HUD, según en vigor a la fecha de este documento y según el mismo pueda enmendarse en el futuro, la AVPPR, con la previa aprobación oficial por escrito del Secretario, POR LA PRESENTE adopta este Manual de Adquisiciones (el "Manual") para regir todos y cada uno de los procedimientos de adquisición de la AVPPR financiados total o parcialmente con fondos federales. El Reglamento Núm. 6106 de 25 de febrero de 2000 sobre la Junta de Subastas del Departamento (el "Reglamento Núm. 6106") y el Reglamento Núm. 5258 de 1 de junio de 1995, según enmendado, sobre la Junta de Apelaciones del Departamento (el "Reglamento Núm. 5258") complementarán este Manual; en el caso de que surja algún conflicto entre las disposiciones del Reglamento Núm. 6106 y este Manual o entre las disposiciones del Reglamento Núm. 5258 y este Manual, las disposiciones de este Manual regirán.

SECCIÓN II. DISPOSICIONES GENERALES

A. Propósito

El propósito de este Manual es proveer para el trato justo de todas las personas o entidades envueltas en todos y cada uno de los procedimientos de adquisición de la AVPPR financiados total o parcialmente con fondos federales; asegurar que los bienes,

servicios y obras de construcción se adquieran en forma eficiente, sin demoras injustificadas, y al más bajo costo disponible a la AVPPR; promover la competencia en la contratación con la AVPPR; proveer salvaguardas para mantener un sistema de adquisición de calidad e integridad; y asegurar que dichos procesos de adquisición cumplan cabalmente con las leyes, reglas y reglamentos federales aplicables, incluyendo, pero sin limitarse a, 24 CFR § 85.36, y las leyes, reglas y reglamentos estatales aplicables.

B. Alcance

Las políticas y procedimientos de adquisición contenidas en este Manual aplican a todos y cada uno de los procesos de adquisición requeridos bajo los programas y actividades de la AVPPR que son financiados total o parcialmente con fondos federales (en adelante denominados "proceso de adquisición" o "procesos de adquisición").

SECCIÓN III. EXPEDIENTES OFICIALES

La AVPPR mantendrá un expediente (el "Expediente de Adquisición") de cada proceso de adquisición, el cual será el expediente oficial de la AVPPR sobre dicho proceso de adquisición y documentará en detalle el historial significativo del mismo, según requerido por 24 CFR § 85.36(b)(9).

TRADUCCIÓN

Cada Expediente de Adquisición incluirá, sin limitarse a, la siguiente información y documentos relacionados con cada proceso de adquisición:

1. Un memorando explicativo sobre el razonamiento utilizado para seleccionar el método de adquisición del tipo de contrato;
2. Un memorando explicativo sobre el razonamiento utilizado para seleccionar o rechazar el contratista;
3. La base para el precio del contrato;
4. Todas y cada una de las notificaciones relacionadas con las acciones tomadas por la AVPPR y/o cualquier procedimiento;
5. Todas y cada una de las determinaciones, interlocutorias o finales, tomadas por la AVPPR, cualquier Usuario, Agente Administrativo o Consejo de Administración de Residentes, el Director de Adquisiciones, el personal del Área de Adquisiciones, el Comité Evaluador, el Administrador, el Secretario, el Departamento, la Junta de Subastas, y/o la Junta de Apelaciones;
6. Todas y cada una de las mociones, alegaciones, preguntas, comentarios, peticiones o requerimientos radicados ante

la AVPPR o el Departamento por cualquier Persona o Entidad;

7. Todos y cada uno de los documentos o información solicitada, recibida y/o considerada por la AVPPR, sus agentes y/o el Departamento; y,

8. Todos y cada uno de los memorandos redactados por cualquier oficial de la AVPPR o del Departamento.

El Expediente de Adquisición constituirá la base exclusiva para las acciones de la AVPPR en la adjudicación de cualquier Contrato u Orden de Compra, según aplique, y para cualquier procedimiento administrativo y/o revisión judicial subsiguiente relacionada con el mismo.

El Expediente de Adquisición será un expediente público, salvo por aquellos documentos y/o información que el Administrador determine, por escrito, que son privilegiados y/o confidenciales a tenor con las leyes aplicables. Con excepción de lo que se dispone aquí, el Expediente de Adquisición estará disponible para su inspección por el público después de adjudicarse cada Contrato u Orden de Compra. La AVPPR mantendrá el Expediente de Adquisición por un período de tres (3) años después de la fecha en que se efectúen los pagos finales y/o se liquide el Contrato o la Orden de Compra (24 CFR § 85.36(i)(11)), o por un término más largo según

puedan requerir las disposiciones estatales aplicables relacionadas con el acceso a documentos gubernamentales.

El Administrador establecerá una unidad administrativa dentro de la División de Adquisiciones para la radicación de todos y cada uno de los Expedientes de Adquisición al liquidarse cada Contrato u Orden de Compra, según sea el caso.

SECCIÓN IV. DEFINICIONES

1. Servicios A/I - Servicios profesionales de arquitecto y/o ingeniero.
2. Adjudicación - Declaración escrita mediante la cual la AVPPR, con la aprobación de la Junta de Subastas en los casos apropiados, determina los derechos, obligaciones y privilegios que corresponden a cualquier Persona o Entidad con relación a un proceso de adquisición en particular.
3. Orden Administrativa - La autorización escrita del Secretario requerida para todos y cada uno de los procesos de adquisición que sobrepasan los $100,000.00.
4. Administrador - El ejecutivo de más alto rango en la AVPPR que tiene la responsabilidad de organizar, dirigir y ejecutar todas las funciones y deberes de la AVPPR.

5. Contrato Anual de Aportaciones (CAA) - Acuerdo contractual consolidado otorgado por y entre HUD y la AVPPR, ésta última con la aprobación del Departamento, que establece los requisitos aplicables a aquellos proyectos de la AVPPR que son financiados, total o parcialmente, con fondos federales, y a tenor con el cual HUD ayuda a la AVPPR a proveer vivienda decente, segura y sanitaria para familias de bajos ingresos. El CAA será en la forma prescrita por HUD y bajo el mismo, HUD se compromete a proveer ayuda en el desarrollo, la modernización y/u operación de cualquier proyecto(s) de vivienda de bajos ingresos bajo la Ley de Vivienda de los Estados Unidos de Norteamérica de 1937, según enmendada (a veces designado en adelante como la "Ley") (42 U.S.C. § 1437, *et seq.*), y la AVPPR se compromete a desarrollar, modernizar y operar dichos proyectos a tenor con todas las disposiciones del CAA y todos los reglamentos aplicables de HUD así como sus requisitos y procedimientos de implantación (24 C.F.R. § 968.105).

6. Junta de Subastas - Cuerpo administrativo dentro del Departamento que aprueba la recomendación de adjudicación hecha por el Administrador para cada proceso de

adquisición que sobrepasa los $100,000.00 llevado a cabo bajo el presente Manual.

7. Junta de Apelaciones - Cuerpo administrativo dentro del Departamento que tiene la jurisdicción primaria de evaluar y resolver las apelaciones, reclamaciones y/o mociones de reconsideración radicadas con respecto a cualquier proceso de adquisición de la AVPPR.

8. Licitación - En el Método de Licitación Sellada, es la Oferta sometida por cada Licitador.

9. Licitador - Es la Persona o Entidad que responde a una solicitud emitida por la AVPPR en un proceso de adquisición bajo el Método de Licitación Sellada, sometiendo una Licitación.

10. Bonos y Garantías - Obligaciones a favor de la AVPPR donde la Persona o Entidad garantiza el cumplimiento del Contratista con el Contrato.

11. Orden de Cambio - Un documento escrito que evidencia y contiene todos los términos y condiciones de una Modificación unilateral hecha por la AVPPR a un Contrato u Orden de Compra, a tenor con la Cláusula de Cambios contenida en cualquiera de dichos documentos. Toda Orden

de Cambio deberá estar autorizada y firmada por el Administrador.

12. Método de Propuestas Competitivas - El método competitivo de propuestas utilizado cuando no son factibles el Método de Compras Pequeñas ni el Método de Licitación Sellada. Bajo este método, la AVPPR emitirá una SDP o SBC, según aplique.

13. Rango Competitivo - En el Método de Propuesta Competitivas, se trata de las Propuestas que, luego de ser evaluadas por el Comité Evaluador y el Director de Adquisiciones, se determinan que tienen una oportunidad razonable de recibir la adjudicación.

14. Contrato - El compromiso escrito otorgado por y entre la AVPPR y el Licitador o Proponente seleccionado, que de ahí en adelante es denominado el Contratista, mediante el cual la AVPPR grava asignaciones de fondos a cambio del suministro por el Contratista de: (i) bienes, (ii) trabajo, incluyendo, pero sin limitarse a, trabajo de construcción, y/o (iii) servicios, incluyendo Servicios No Personales; para el beneficio directo de la AVPPR bajo los términos y condiciones que puedan estar incluidos en dicho compromiso escrito, que pueden incluir, pero sin

limitarse a, disposiciones sobre cambios, incumplimiento, remedios y cancelación.

15. Contratista - Un vendedor, Licitador o Proponente, según aplique, a quien se le adjudica y que otorga un Contrato o una Orden de Compra con la AVPPR.

16. Aviso de Saneamiento - Una aviso escrito emitido a un Contratista a los efectos de que el Contrato podrá ser cancelado por razón de incumplimiento si la condición que pone en riesgo la ejecución del Contrato no se corrige dentro del número de días especificado en dicho aviso.

17. Orden de Entrega - Es una orden para bienes emitida por la AVPPR bajo un Contrato de EICI o un Contrato de Requerimientos.

18. Emergencia - Una situación que causa necesidades públicas inesperadas e imprevistas y que requiere acción inmediata por parte de la AVPPR debido al peligro que representa a la vida, salud o seguridad pública de los residentes de los proyectos de vivienda de la AVPPR, incluyendo, pero sin limitarse a, una situación que pudiera causar daño a la AVPPR que pudiera surgir a causa de una inundación, terremoto, epidemia, motín, fallo de equipo u otro evento similar. La emergencia podrá ser declarada únicamente

por el Administrador, el Secretario y/o el Gobernador de Puerto Rico.

19. Entidad - Una persona jurídica, ya sea organizada con fines pecuniarios o sin fines pecuniarios, incluyendo, pero sin limitarse a, una sociedad, asociación, firma, institución, entidad, consorcio, fundación, corporación, cooperativa, o grupo de personas.

20. Comité Evaluador - Cuerpo administrativo dentro de la AVPPR que consiste de por lo menos tres (3) empleados de la AVPPR designados por el Secretario y al cual se le asignan las siguientes responsabilidades, entre otras: (i) evaluar las Propuestas; (ii) ayudar al Director de Adquisiciones a llevar a cabo las Negociaciones, y (iii) hacer recomendaciones escritas al Administrador para la adjudicación de Contratos u Ordenes de Compra, según aplique. Los integrantes del Comité Evaluador están sujetos a remoción, por justa causa, por el Administrador. Podrá existir más de un Comité Evaluador.

21. Negociado de Finanzas - El Negociado de Finanzas de la AVPPR.

22. Contrato de Entrega Indefinida-Cantidad Indefinida (Contrato EICI) - Contrato que provee para una cantidad

mínima y una máxima de bienes y/o servicios específicos que pueden ser adquiridos por la AVPPR durante cualquier año fiscal u otro período de tiempo mayor que no exceda el Plan de Mejoras Capitales a Cinco Años de la AVPPR (el "Plan de 5 años"), con entregas o ejecutorias a ser pautadas mediante la emisión por la AVPPR de Ordenes de Tarea u Ordenes de Entrega, según aplique, con el Contratista cuya Oferta es la más ventajosa para la AVPPR, considerando el precio y/o los demás factores de evaluación. Un Contrato EICI podrá adjudicarse bajo los Métodos de Compras Pequeñas, Licitación Sellada o Propuestas Competitivas, según se provee en este Manual, y podrán adjudicarse a uno o más Contratistas, dependiendo de la complejidad del proyecto o los proyectos para los cuales la AVPPR ha dispuesto adquisiciones mediante Contratos EICI.

23. División de Seguros - La División de Seguros de la AVPPR.

24. Invitación a Subastas (IAS) - Bajo el Método de Licitación Sellada, la solicitud escrita para Licitaciones, públicamente notificada a los Licitadores potenciales, para la adquisición de bienes, trabajo y/o servicios, excluyendo los Servicios A/I, para la AVPPR.

25. Agente Administrativo (AA) - El Contratista a cargo de administrar y/o mantener cualesquiera proyectos de vivienda de la AVPPR.

26. Negocio de Minoría - Entidad cuya administración y operaciones diarias son controladas por, y donde por lo menos el 51% de las acciones con derecho al voto son propiedad de, una Persona o Personas que son o (i) Negros Americanos; (ii) Hispanos Americanos; (iii) Nativos Americanos; (iv) Americanos Asiáticos del Pacífico; (v) Americanos Asiáticos Indios; o (vi) Americanos Judíos Jasidistas.

27. Modificación - Incluye las formas en mayúscula del verbo Modificar; se refiere a la revisión o cambio unilateral o bilateral, por escrito, a un Contrato u Orden de Compra dentro del alcance original del mismo, realizada después de la adjudicación y el otorgamiento, o durante el cumplimiento, de dicho Contrato u Orden de Compra. La Modificación a un Contrato u Orden de Compra podrá ser iniciada únicamente por la AVPPR. Sólo la AVPPR podrá hacer Modificaciones unilaterales a tenor con la Cláusula de Cambios contenida en el Contrato u Orden de Compra original y deberán constar en una Orden de Cambio. Toda

Modificación deberá tener la aprobación escrita del Administrador.

28. Negociación - Incluye la formas en mayúscula del verbo Negociar; se refiere a aquella fase durante cualquier proceso de adquisición mediante el Método de Propuestas Competitivas, en la cual el Director de Adquisiciones, con la ayuda del Comité Evaluador, discute con un Proponente que está dentro del Rango Competitivo los términos de su Propuesta con la intención de permitir que dicho Proponente revise su Propuesta.

29. Método de Propuestas No Competitivas - El método de adquisición que aplica cuando la AVPPR se enfrenta con una o más de las siguientes situaciones: (i) el artículo o servicio requerido está disponible únicamente de una sola fuente, (ii) una Emergencia o exigencia pública no permite tiempo suficiente para llevar a cabo una adquisición competitiva, (iii) se recibe una respuesta inadecuada a una solicitud de propuestas competitivas, y/o (iv) HUD autoriza el uso de propuestas no competitivas. En cualquiera de las situaciones indicadas arriba, la AVPPR podrá solicitar una Propuesta de una (1) sola fuente, según sea justificado por escrito.

30. Servicios No Personales - Todo servicio donde el personal que rinde el mismo no está sujeto, ya sea por los términos del contrato o por la forma de administrar el mismo, a la supervisión y el control que normalmente prevalece en las relaciones entre el gobierno y sus empleados, o sea, todo servicio que no constituye un puesto gubernamental. Para propósitos de esta definición, se considera que existe un puesto gubernamental cuando el conjunto de responsabilidades y deberes requiere el empleo de una personal natural en forma regular, contínua y estable, cuya persona, por razón de dicho empleo gubernamental, adquiere derechos y prerrogativas, tales como licencia de vacaciones, licencia por enfermedad, cubierta del Fondo del Seguro del Estado y participación en cualquier plan de retiro gubernamental, entre otros derechos y privilegios establecidos por ley para el personal gubernamental. Los Servicios No Personales pueden incluir servicios profesionales, pero no incluyen los Servicios A/I.

31. Oferta - Este es un término genérico que se usa para referirse a la respuesta sometida por un vendedor,

Proponente o Licitador a una solicitud emitida por la AVPPR en un proceso de adquisición.

32. Proponente - Es aquella Persona o Entidad que responde a una solicitud emitida por la AVPPR en cualquier Método de Propuestas Competitivas, incluyendo los procesos de adquisición mediante Propuestas SBC o Propuestas No Competitivas, sometiendo una Propuesta.

33. Área de Operaciones - El Área de Operaciones de la AVPPR.

34. Persona - Una personal natural, un individuo.

35. Área de Adquisiciones - La unidad administrativa dentro de la AVPPR a cargo de coordinar, supervisar y monitorear todos y cada uno de los procesos dentro de la AVPPR bajo la dirección y supervisión del Director de Adquisiciones.

36. Director de Adquisiciones - El oficial de más alto rango nombrado por el Administrador para dirigir el Área de Adquisiciones con las siguientes responsabilidades, entre otras: (i) aprobar las especificaciones, incluyendo los estimados de costos, preparados por cualesquiera Usuarios para cualquier solicitud de adquisición; (ii) recibir todas las Ofertas; (iii) llevar a cabo las Negociaciones con la ayuda del Comité Evaluador, y/o el Usuario, según sea necesario; (iv) supervisar directamente el proceso de

análisis de costos/precios llevado a cabo por el personal del Área de Adquisiciones; (v) determinar la Responsabilidad del Licitador que de otro modo fuere recomendado para la adjudicación; y (vi) determinar la Responsabilidad del Proponente que de otro modo fuere recomendado para la adjudicación.

37. Formularios del Manual de Adquisiciones (FMA) - Formularios que deberán ser completados por cualesquiera Usuarios, los Agentes Administrativos y/o Consejos de Administración de Residentes para poder iniciar un proceso de adquisición en el Área de Adquisiciones.

38. Propuesta - En los Métodos de Propuesta Competitiva, SBC, y Propuesta No Competitiva, es la Oferta que somete cada Proponente; si no es una SBC, deberá incluir un desglose de los costos.

39. Orden de Compra - Un Contrato de precio fijo utilizado para formalizar la compra de bienes, trabajo y/o servicios por una suma agregada equivalente a o por debajo de la cantidad umbral de $100,000.00.

40. Selección a Base de Calificaciones (SBC) - Bajo el Método de Propuestas Competitivas, es la forma de adquirir los Servicios A/I mediante solicitud escrita emitida por la

AVPPR donde no se solicita ni se usa el precio como un factor de evaluación; en lugar de ello, se somete y se revisa una Propuesta que incluye únicamente las calificaciones técnicas y se negocia un precio razonable con el Proponente mejor calificado, quien deberá estar debidamente licenciado en Puerto Rico.

41. Solicitud de Propuestas (SDP) - Bajo el Método de Propuestas Competitivas, la solicitud escrita que se anuncia públicamente a los Proponentes potenciales para que sometan Propuestas a base de las especificaciones, los términos y las condiciones establecidas en la misma. La SDP también incluirá los factores y criterios de evaluación para la evaluación de Propuestas y la adjudicación del Contrato.

42. Contrato de Requerimientos - Contrato que provee para la satisfacción de todos los requerimientos que tenga la AVPPR para la adquisición de bienes y/o servicios específicos durante un año fiscal o período más corto, con entregas o cumplimiento a pautarse mediante Ordenes de Tarea u Ordenes de Entrega, según apliquen, emitidas por la AVPPR al Contratista hasta una cantidad determinada, que no exceda la cantidad fijada en el

contrato, de bienes y/o servicios específicos, a precios fijos. Se podrá adjudicar un Contrato de Requerimientos bajo cualesquiera Métodos de Compras Pequeñas, de Licitación Sellada o Propuestas Competitivas, según dispuesto en este Manual.

43. Consejo de Administración de Residentes (CAR) - En cualquier proyecto de vivienda de la AVPPR en particular, es la Entidad, compuesta por residentes de dicho proyecto, que está a cargo de la administración y/o mantenimiento de dicho proyecto bajo los términos y condiciones de un Contrato otorgado con la AVPPR.

44. Negocio de Residente (NDR) - Una Entidad que es propiedad de y controlada por los residentes de cualquier proyecto de vivienda de la AVPPR según se dispone en este Manual y en la Parte 963 del Título 24 CFR. El término Negocio de Residente puede incluir negocios propiedad de y controlados por un sólo residente de proyecto de la AVPPR, según se dispone en este Manual y en la Parte 963 del Título 24 CFR.

45. Responsabilidad - Incluye el adjetivo Responsable; es una determinación escrita hecha por el Director de Adquisiciones con respecto al Licitador o Proponente que

de otro modo fuere recomendado para la adjudicación y que, además de tener la capacidad técnica y financiera para entregar los bienes, el trabajo y/o los servicios a ser adquiridos en cualquier proceso de adquisición, también se ha determinado que es de integridad probada y que tiene un historial satisfactorio de ejecución y cumplimiento con las políticas públicas gubernamentales.

46. Licitación Responsiva - Una Licitación que se conforma exactamente a los requisitos establecidos en la Invitación a Subasta (IAS).

47. Método de Licitación Sellada - El método de adquisición competitiva donde la AVPPR mediante una IAS solicita Licitaciones selladas para el suministro de bienes, servicios y/o trabajo de construcción. En este método de adquisición el Director de Adquisiciones o la persona designada por éste lleva a cabo la apertura pública de las Licitaciones, y la evaluación de las Licitaciones y la adjudicación del Contrato está basada en la Licitación Responsiva con el precio más bajo sometida por un Licitador Responsable.

48. Secretario/a - El ejecutivo de más alto rango en el Departamento.

49. Contratos bajo la Sección 963 - Los contratos adjudicados a los Negocios de Residentes según se dispone en este Manual y en cumplimiento con la Parte 963 del Título 24 CFR.

50. Método de Compra Pequeña - Método competitivo para la adquisición de bienes, trabajo y/o servicios por una cantidad agregada igual o menor a $100,000.00.

51. Orden de Tarea - Es una orden de trabajo y/o servicios emitida por la AVPPR bajo un Contrato EICI o un Contrato de Requerimientos.

52. Usuario - Departamento, negociado, unidad o área dentro de la AVPPR que solicita bienes, trabajo y/o servicios a través del Área de Adquisiciones mediante la radicación de un FMA debidamente completado.

SECCIÓN V. ADMINISTRACIÓN DE ADQUISICIONES

A tenor con la autoridad conferida a la AVPPR en la Orden Administrativa Núm. Hd 00.19 y en el Contrato de Aportaciones Anuales, el Administrador es el Oficial Contratante para propósito de administrar el sistema de adquisiciones de la AVPPR. Todo proceso de adquisición será responsabilidad del Administrador. La adjudicación de los Contratos y Ordenes de Compra las hará el

Administrador, con la aprobación de la Junta de Subastas en los casos apropiados.

El Administrador:

1. Tendrá la autoridad para adjudicar, sin la intervención de la Junta de Subastas, todos los procesos de adquisición por cantidades iguales a o menores de $100,000.00, y todas las adquisiciones No Competitivas o de Emergencia por cantidades iguales a o menores de $100,000.00;
2. Previo la aprobación de la Junta de Subastas, tendrá la autoridad para adjudicar y otorgar a nombre de la AVPPR todos los Contratos en exceso de $100,000.00;
3. Emitirá todos o cualesquiera boletines administrativos que sean necesarios para aclarar e implantar este Manual;
4. Tomará todas aquellas acciones disciplinarias que sean necesarias para corregir cualquier violación a las normas éticas establecidas en este Manual y en las leyes, reglas y reglamentos federales y estatales aplicables;
5. Se asegurará de que todos los procesos de adquisición de la AVPPR son consistentes con el Contrato de Aportaciones Anuales y el Plan Anual de Adquisiciones para poder asegurar la adquisición más eficiente y económica;

6. Se asegurará de que todo proceso de adquisición tendrá un Expediente de Adquisición completo con toda la información requerida por este Manual y por las leyes y los reglamentos federales y estatales aplicables;
7. Se asegurará de que la AVPPR observa los requisitos de adquisición y de programa establecidos en la Sección 85.36 del Título 24 CFR y el Manual de Adquisiciones de HUD para todas y cada una de las adquisiciones financiadas total o parcialmente con fondos federales;
8. Se asegurará de que la AVPPR cumple con los requisitos de revisión aplicables de HUD al establecer los procedimientos operacionales bajo este Manual;
9. Se asegurará de que las recomendaciones a la Junta de Subastas para la adjudicación de Contratos que exceden $100,000.00 son hechas para el Licitador Responsable con la Licitación Responsiva que ofrece el precio más bajo, o al Proponente Responsable cuya Propuesta es la más ventajosa a la AVPPR, precio y demás factores de evaluación considerados;
10. Se asegurará de que todos los Contratos, Ordenes de Compra, Ordenes de Tarea, Ordenes de Entrega, Modificaciones y/u Ordenes de Cambio se emitan por

escrito y estén sustentados por toda la documentación requerida.

SECCIÓN VI. DELEGACIÓN LA AUTORIDAD PARA EFECTUAR ADQUISICIONES

El Administrador podrá delegar por escrito el desarrollo, la implantación y la administración de las metas y los objetivos de adquisición al Sub-Administrador de la AVPPR.

En caso de muerte, remoción, renuncia, enfermedad u otra incapacidad o ausencia del Administrador, el Sub-Administrador de la AVPPR será y actuará como el Oficial Contratante de la AVPPR.

SECCIÓN VII. PLANIFICACIÓN DE LAS ADQUISICIONES

A. En General

Las metas y los objetivos de adquisición de la AVPPR se manejarán a través del desarrollo e implantación de un Plan Anual de Adquisiciones. Todos y cada uno de los Usuarios, Agentes Administrativos y Consejos de Administración de Residentes desarrollarán sus respectivos planes anuales de adquisiciones para reflejar sus respectivas necesidades y someterán copias de dicho plan al Área de Operaciones, al Negociado de Finanzas y al Administrador. A base de dicha información, y en consulta con el Negociado de Finanzas, el Área de Operaciones desarrollará un plan de adquisiciones comprensivo (el "Plan Anual de Adquisiciones"), el cual será aprobado por el Administrador y permitirá que la AVPPR

evite la duplicidad en las adquisiciones y/o adquisiciones contradictorias y constituirá un plan maestro para adquisiciones.

El Plan Anual de Adquisiciones se dividirá en secciones por todos y cada uno de los Usuarios, los Agentes Administrativos y los Consejos de Administración de Residentes, y copias de las secciones relevantes se distribuirán a cada uno de los Usuarios, los Agentes Administrativos y los Consejos de Administración de Residentes. El Plan Anual de Adquisiciones no constituye una pre-autorización para adquisiciones, sino una guía sobre las adquisiciones para cada Usuario, Agente Administrativo y Consejo de Administración de Residentes, y se implantará hasta donde sea factible y de acuerdo con las buenas prácticas administrativas y el sano juicio comercial.

B. En Específico

Será responsabilidad de todos y cada uno de los Usuarios, los Agentes Administrativos y los Consejos de Administración de Residentes desarrollar un plan anual de adquisiciones para el próximo año fiscal y someter una copia del mismo al Área de Operaciones, al Negociado de Finanzas y al Administrador en o antes del 30 de diciembre del año fiscal en curso. Estos planes de adquisición deberán: (i) describir el alcance de los bienes, trabajos y/o servicios que razonablemente se espera sean adquiridos

durante el próximo año fiscal a base de la experiencia de las adquisiciones del previo año fiscal y las necesidades proyectadas; (ii) incluir los estimados de costos individuales para cada proyecto de adquisición; y, (iii) especificar las fechas en que se espera que los bienes, trabajos y/o servicios serán requeridos por el Usuario, Agente Administrativo o Consejo de Administración de Residentes, según sea el caso. Esta planificación anual de adquisiciones no releva a los Usuarios, Agentes Administrativos o Consejos de Administración de Residentes de cumplir con el Plan Anual de Adquisiciones final y las disposiciones de este Manual, incluyendo, pero sin limitarse a, el uso de los FMAs.

El Área de Operaciones, en consulta con el Negociado de Finanzas, desarrollará un Plan Anual de Adquisiciones para el próximo año fiscal el cual será un resumen agregado y comprensivo de los procesos de adquisición proyectados por los Usuarios, los Agentes Administrativos y los Consejos de Administración de Residentes, los cuales han sido determinados por el Área de Operaciones como apropiados y realistas de acuerdo con una visión global de la misión de la AVPPR, las necesidades de adquisiciones y el presupuesto para dicho período. El Área de Operaciones someterá un Plan Anual de Adquisiciones para el próximo año fiscal al Administrador en o antes del 15 de marzo del año fiscal en

curso. El Administrador aprobará el Plan Anual de Adquisiciones, en conjunto con el presupuesto operacional de la AVPPR para el próximo año fiscal, en o antes del 15 de abril del año fiscal en curso.

El Plan Anual de Adquisiciones identificará las necesidades agregadas de la AVPPR y sus agentes usando los siguientes datos:

1. Descripción de las necesidades proyectadas (bienes, trabajos y/o servicios) de los Usuarios, los Agentes Administrativos y los Consejos de Administración de Residentes para el próximo año fiscal;
2. El estimado de costos para todos y cada uno de los proyectos de adquisición planificados y el total de dichos costos estimados para todos los proyectos de adquisición planificados;
3. Las fechas aproximadas de entrega y las fechas en que las solicitudes de adquisiciones deben ser radicadas en el Área de Adquisiciones;
4. El método de adquisición a usarse, tales como Compras Pequeñas, IAS, SDP, SBC, y, hasta donde sea factible, el tipo de Contrato a usarse, tales como Contratos de Requerimientos y/o Contratos Bajo la Sección 963; y,

5. La justificación para la necesidad de, y la meta de, todos y cada uno de los proyectos de adquisición planificados.

SECCIÓN VIII. Formularios del Manual de Adquisiciones

A. En General

Todos los Usuarios, los Consejos de Administración de Residentes y los Agentes Administrativos usarán los Formularios del Manual de Adquisiciones (FMA) cada vez que se vaya a llevar a cabo un proceso de adquisición.

B. En Específico

Los FMAs se usarán de acuerdo a este Manual y las instrucciones escritas que contiene cada formulario. Los formularios se incluyen con este Manual como Apéndices e incluyen el FMA-01 (Compras Pequeñas), el FMA-02 (Propuestas Competitivas), el FMA-03 (Lista de Cotejo para Control Interno de Expedientes de Adquisiciones) y el FMA-04 (Lista de Cotejo para Auditorías de CAR y de AA). Cada Expediente de Adquisición deberá contener los FMAs correspondientes.

SECCIÓN IX. MÉTODOS DE ADQUISICIÓN

En general, la AVPPR usará los siguientes métodos para adquirir bienes, trabajos y/o servicios: (i) Compras Pequeñas, (ii) Licitación Sellada, (iii) Propuestas Competitivas, incluyendo

Selección a Base de Calificaciones (para los Servicios A/I únicamente), (iv) Propuestas No Competitivas, y (v) Adquisiciones de Emergencia. Las adquisiciones bajo el método identificado en el inciso (i) anterior se adjudicarán mediante Comprobantes de Caja Chica u Ordenes de Compra, dependiendo de la cantidad de la adquisición según se dispone más adelante. Las adquisiciones bajo los métodos identificados en los incisos (ii), (iii), (iv) y (v) anteriores se adjudicarán mediante un Contrato, a menos que se disponga de otro modo en este Manual. La AVPPR incluirá en cada Expediente de Adquisición un memorando que indique la razón por la cual se seleccionó un método de adquisición en particular para el proceso de adquisición en particular y el tipo de contrato que se adjudicará en el proceso de adquisición en particular.

Todos los procesos de adquisición radicados con el Área de Adquisiciones serán compatibles con el Plan Anual de Adquisiciones o tener como anejo al FMA correspondiente una justificación escrita para la adquisición no planificada.

Para poder comenzar un proceso de adquisición, el Usuario solicitará una certificación de disponibilidad de fondos del Negociado de Finanzas. El Negociado de Finanzas revisará dicha solicitud y, si se han asignado fondos al presupuesto de la AVPPR para ese proceso de adquisición en particular, el Negociado de

Finanzas certificará la disponibilidad de los fondos y el código del proceso de adquisición.

La AVPPR podrá cobrar a cada Licitador o Proponente prospectivo que solicite una copia de algún IAS o SDP, SBC o cualquier otro material de licitación, el costo real de reproducir dichos materiales y un cargo administrativo de hasta un diez porciento (10%).

La AVPPR llevará a cabo todos los procesos de adquisición en forma tal que se prevea para una competencia total y abierta y evitará toda condición que pueda restringir dicha competencia. Ejemplos de dichas restricciones incluyen, pero no se limitan a, lo siguiente:

1. Imponer requisitos irrazonables (i.e., requisitos que no son relevantes al alcance de la licitación) a los Proponentes y Licitadores, que podrían reducir su capacidad para cualificar para hacer negocios con la AVPPR;
2. Requerir experiencia innecesaria o fianzas excesivas;
3. Permitir prácticas de imposición de precios no competitivos (colusión) entre Proponentes o entre Licitadores, o entre los Proponentes o Licitadores afiliados;

4. Permitir conflictos de intereses individuales y/u organizacionales;
5. Especificar únicamente productos "de marca", en lugar de permitir que se proponga un producto "equivalente" y describir el rendimiento esperado u otros requisitos relevantes para la adquisición; o
6. Tolerar cualquier acción caprichosa o arbitraria por parte del personal de la AVPPR en cualquier proceso de adquisición.

La AVPPR se reserva el derecho a Negociar con más de un Proponente a la misma vez y/o a adjudicar un proceso de adquisición en particular a más de un Proponente. Estas reservas tendrán que indicarse en forma conspicua en los materiales de licitación de cada proceso de adquisición.

En todos y cada uno de los casos donde la suma total del Contrato, Orden de Tarea, Orden de Entrega, Modificación u Orden de Cambio a ser adjudicada excede de $100,000.00, el Área de Adquisición preparará una Orden Administrativa para la aprobación del Secretario, la cual se remitirá en primer lugar al Administrador para su revisión y aprobación. Al Administrador aprobar la Orden Administrativa, dicha Orden, y una copia de la aprobación de la Junta de Subastas a la adjudicación en los casos

pertinentes, se remitirá entonces al Secretario para su revisión y aprobación. Al otorgar el Secretario la Orden Administrativa, la misma se devolverá al Área de Adquisiciones y se incluirá en el Expediente de Adquisición.

A. Método de Compras Pequeñas

1. Resumen de la Política

Todo proceso de adquisición que sea igual o menor de $100,000.00 en total podrá efectuarse de acuerdo al Método de Compras Pequeñas autorizado en este Manual. La licitación no debe dividirse artificialmente para cualificar como una Compra Pequeña bajo este sub-inciso A. La AVPPR analizará artículos, trabajo o servicios ordenados en forma repetida para precisar oportunidades de economías de escala bajo Contratos de Requerimientos o Contratos EICI, según aplique. De haber una necesidad recurrente de bienes, trabajo y/o servicios, la AVPPR podrá iniciar el proceso de adquisición correspondiente y adjudicar uno o más Contrato(s) de Requerimientos o Contrato(s) EICI contra los cuales la AVPPR podrá hacer sus órdenes a base de necesidad ("as needed"), según se disponga en dicho(s) contrato(s).

El Área de Adquisiciones efectuará las Compras Pequeñas, con la autorización del Administrador, mediante uno de los métodos descritos más adelante. Los factores de selección se divulgarán a

aquellas personas o entidades que fueron invitadas a licitar y se invitará a un número adecuado de fuentes cualificadas para obtener precios competitivos o cotizaciones de precios. Toda licitación, cotización y determinación será por escrito.

Las Compras Pequeñas tendrán que estár debidamente documentadas, utilizando para ello el FMA-01 debidamente cumplimentado. El Área de Adquisiciones no procesará ninguna solicitud de Compra Pequeña que no cumpla con los requisitos contenidos en este Manual.

a. Caja Chica

Compras hechas con fondos de la Caja Chica se limitarán al mínimo que sea absolutamente necesario, ya que hacer compras en cantidades limitadas no es un método económico.

Los Usuarios pueden usar comprobantes de Caja Chica para hacer compras pequeñas de $50.00 o menos que puedan ser satisfechas por fuentes locales. El Usuario preparará una solicitud escrita donde se describan los bienes, trabajo y/o servicios requeridos, todas las especificaciones requeridas, e indicando que se determinará la razonabilidad del precio mediante una comparación entre las cotizaciones competitivas, catálogos o precios en el mercado. El Usuario solicitará por lo menos una (1) cotización y la selección podrá hacerse a base de una (1) sola cotización siempre y cuando el

precio recibido sea razonable y las compras hechas con fondos de la Caja Chica se alternen entre vendedores cualificados. Sólo la referida solicitud escrita junto con el recibo de venta del vendedor justificarán un Comprobante de Caja Chica para cada una de dichas compras.

El Administrador se asegurará que se establezca por lo menos una (1) Cuenta de Caja Chica con fondos suficientes para cubrir las compras que se estima que todos los Usuarios harán durante cualquier período de treinta (30) días. Se mantendrá un sistema de seguridad para que sólo los individuos autorizados (cada uno de ellos un "Oficial de Compras con Fondos de Caja Chica") para cada Usuario tengan acceso a la(s) Cuenta(s) de Fondos de Caja Chica. La(s) Cuenta(s) de Fondos de Caja Chica será(n) auditada(s) periódicamente (por lo menos cada seis (6) meses) por la Oficina de Auditoría Interna de la AVPPR para validar el uso adecuado y verificar que el total de la Cuenta equivale a los Fondos de Caja Chica a la mano más el total acumulado de los Comprobantes de Caja Chica.

b. Compras Pequeñas de entre $50.01 y $2,000.00

Para las Compras Pequeñas de entre $50.01 y $2,000.00, el Usuario llenará un FMA-01, describiendo los bienes, trabajo y/o

servicios requeridos, todas las especificaciones requeridas e indicando que se determinará la razonabilidad del precio mediante una comparación entre las cotizaciones competitivas, catálogos o precios en el mercado. El Director del Usuario tiene que firmar el FMA-01.

Una vez firmado el FMA-01, el Usuario someterá el mismo al Área de Adquisiciones, la cual solicitará por lo menos una (1) cotización de Contratistas potenciales. La cotización podrá obtenerse mediante telefax, correo electrónico (Internet) u otro medio escrito y estará firmada por el Contratista potencial de acuerdo a las leyes aplicables. Se podrá hacer una selección a base de una (1) sola cotización siempre y cuando el precio recibido sea razonable y las Compras Pequeñas hechas bajo este sub-inciso se alternen entre Contratistas cualificados.

El Director de Adquisiciones aprobará, por escrito, la cotización que se determina justa y razonable para los bienes, trabajo o servicios adquiridos y creará una Orden de Compra, con su correspondiente Número de Orden de Compra. El Administrador ratificará la Orden de Compra con su firma.

c. Compras Pequeñas de entre $2,000.01 y $100,000.00

Para todas las Compras Pequeñas entre $2,000.01 y $100,000.00, el Usuario completará un FMA-01 describiendo los bienes, trabajo

y/o servicios requeridos, todas las especificaciones requeridas e indicando que se determinará la razonabilidad del precio mediante una comparación entre las cotizaciones competitivas, catálogos o precios en el mercado. El Director del Usuario tiene que firmar el FMA-01.

Una vez firmado el FMA-01, el Usuario someterá el mismo al Área de Adquisiciones, la cual solicitará por lo menos tres (3) cotizaciones de Contratistas potenciales. Las cotizaciones podrán obtenerse mediante telefax, correo electrónico (Internet) u otro medio escrito y tendrán que estar firmadas por los Contratistas potenciales de acuerdo a las leyes aplicables.

El Administrador hará las adjudicaciones, basado en la recomendación escrita del Director de Adquisiciones, al Contratista que cumpla con las especificaciones, el alcance del trabajo y las fechas de entrega requeridas en la licitación de la Orden de Compra y que provea la cotización de precios más baja aceptable.

Si se usan factores distintos al precio al hacer la determinación de la adjudicación, estos factores se divulgarán en la licitación escrita o en un aviso escrito por separado a las fuentes de quienes se solicitaron cotizaciones y se concederá un período de tiempo adecuado que no excederá de cinco (5) días calendarios, para someter cotizaciones revisadas. El Administrador

adjudicará el Contrato, basado en la recomendación escrita del Director de Adquisiciones, al Contratista que cumpla con las especificaciones, el alcance del trabajo y las fechas de entrega requeridas en la licitación de la Orden de Compra y que mejor satisface el precio y los demás factores especificados por la AVPPR distintos al precio.

b. Procedimientos

Los siguientes procedimientos aplicarán a todas las Compras Pequeñas de $50.01 en adelante:

a. El Usuario completará en su totalidad y en detalle el formulario FMA-01 y anejará al mismo todos los documentos y/o la información requerida, incluyendo la información de la solicitación, un estimado de costos y una certificación de fondos del Negociado de Finanzas. El Director del Usuario firmará el FMA-01 cumplimentado y lo someterá al Área de Adquisiciones.

b. El Área de Adquisiciones revisará el FMA-01 dentro de diez (10) días laborables de la fecha de su recibo.

c. Una vez se apruebe el FMA-01 y se seleccione el Contratista, se emitirá una Orden de Compra escrita, copia de la cual se enviará al Negociado de Finanzas y al Usuario

solicitante, donde se informa el Número de Orden de Compra y la fecha de entrega proyectada. El personal del Área de Adquisiciones entrará la información de la Orden de Compra en el sistema de "Fundware" para procesarlo dentro de los diez (10) días laborables de la fecha de dicha Orden de Compra. Cada Compra Pequeña hará referencia al Número de Orden de Compra.

d. Cada Compra Pequeña tendrá un Expediente de Adquisición por separado que contendrá toda la información y/o documentación relevante, tales como el FMA-01, la certificación del Negociado de Finanzas, la determinación de la razonabilidad del precio, una copia de la Orden de Compra firmada por el Administrador y cualquier folleto u hoja de especificaciones.

e. Cada FMA-01 solicitará únicamente artículos similares, artículos dentro del mismo grupo de mercaderías, o artículos agrupados a base de su uso (i.e., martillos, clavos, tornillos, etc.) y que pudieran considerarse una categoría específica de artículos (i.e., "artículos de carpintería"). De tener alguna duda, el Usuario consultará con el Área de Adquisiciones sobre la mejor forma de identificar la Compra Pequeña.

f. El Usuario se asegurará que el estimado de costos, la certificación del Negociado de Finanzas y el código correspondiente de la cuenta "Fundware" están incluidos en el FMA-01. No se procesará el FMA-01 sin esta información.

g. Los artículos que están cubiertos por un Contrato de Requerimientos o un Contrato EICI deberán indicar un Número de Contrato o de Orden de Compra en el sistema de contabilidad Fundware. Esto indica que el artículo fue aprobado previamente bajo un Contrato de Requerimientos o un Contrato EICI, y que sólo el FMA-01 y la certificación del Negociado de Finanzas serán requeridos para su adquisición. Las compras donde todos lo artículos están cubiertos por un Contrato de Requerimientos o un Contrato EICI serán gestionadas por el personal del Área de Adquisiciones. Los Usuarios consultarán con el Área de Adquisiciones y podrán someter FMA-01's por separado para bienes, trabajos y/o servicios previamente aprobados bajo Contratos de Requerimientos o Contratos EICI separados.

h. Los Usuarios son responsables de monitorear el status de sus Compras Pequeñas. Cuando el Área de Adquisiciones determina que un FMA-01 tiene que ser detenido, notificará de inmediato al Usuario e indicará, por escrito, su(s) razón(es)

para dicha determinación. Será responsabilidad del Usuario resolver cualquier problema identificado en dicha determinación escrita. El Área de Adquisiciones no procesará un FMA-01 hasta que se resuelvan todos los problemas identificados en la determinación de detención.

i. El Área de Adquisiciones, a través de uno de sus oficiales, será responsable por revisar con regularidad los FMA-01's sometidos para procesamiento, para poder determinar si las adquisiciones pueden consolidarse prospectivamente o si se pueden desglosar para obtener compras más económicas bajo los Contratos de Requerimientos. El Director de Adquisiciones es responsable de procesar adecuadamente cada Compra Pequeña y de que dicha compra se efectúe a tenor con los criterios establecidos en cada licitación. El Administrador se asegurará que las Compras Pequeñas se alternen entre los Contratistas cualificados.

A. Método de Licitación Sellada

1. Resumen de la Política

Para los procesos de adquisición que se espera sobrepasen el límite de $100,000.00 establecido para Compras Pequeñas, las adquisiciones competitivas se llevarán a cabo por los Métodos de Licitaciones Selladas o de Propuestas Competitivas.

TRADUCCIÓN

Los Contratos se adjudicarán a base del Método de Licitación Sellada si las siguientes condiciones están presentes:

a. Hay disponible especificaciones completas, adecuadas y realistas o una descripción completa, adecuada y realista de la compra;

b. Dos o más Licitadores están dispuestos y capacitados para competir efectivamente por la transacción licitada;

c. La adquisición se presta para un Contrato de precio fijo y firme; y,

d. La selección del Licitador Responsable puede hacerse a base del precio.

Se anunciará públicamente la Invitación a Subasta ("IAS") y se adjudicará un Contrato de precio fijo al Licitador Responsable con la Licitación Responsiva de menor precio. La IAS tiene que incluir todos los términos y condiciones del proceso de adquisición a ser licitado e indicará la forma en que se evaluará el precio.

El Método de Licitación Sellada podrá usarse para adquirir Contratos de Servicios No Personales, excluyendo los contratos de servicios profesionales y los contratos para suministrar Servicios A/I. Para obtener éstos, se llevará a cabo un proceso de SDP o de SBC, según aplique, de acuerdo con este Manual.

2. Procedimientos

TRADUCCIÓN

a. Solicitud y Recibo de Licitaciones

El Usuario preparará el FMA-02, describiendo el alcance del trabajo, los bienes y/o servicios necesitados y todas y cada una de las especificaciones requeridas. El FMA-02 incluirá un estimado de costos y una certificación del Negociado de Finanzas y tiene que estar firmada por el Director del Usuario.

El Usuario enviará el FMA-02 firmado al Área de Adquisiciones para ser procesado. Todos los documentos requeridos en el FMA-02 tendrán que estar anejados al formulario, de lo contrario el Área de Adquisiciones no procesará la solicitud. El Área de Adquisiciones podrá solicitar documentos y/o información adicionales, según lo estime razonablemente necesario.

Al recibir el FMA-02 y todos los documentos requeridos, el Área de Adquisiciones evaluará los mismos y preparará una IAS y el anuncio. El FMA-02 se enviará entonces al Área de Seguros para su revisión y determinar por escrito los requisitos de seguro y fianza correspondientes. El Director de Adquisiciones evaluará la documentación indicada arriba e indicará su aprobación con su firma en el FMA-02 y enviará el mismo al Administrador, con su recomendación y las razones para dicha recomendación.

El Administrador, previo la recomendación del Director de Adquisiciones, firmará el anuncio para la IAS, la cual se publicará

por un período de diez (10) días laborables previo a la fecha límite para someter las Licitaciones, excluyendo los sábados, domingos y días feriados locales, o por aquel período de tiempo que se determine adecuado a base de la complejidad del proceso de adquisición licitado. El anuncio indicará la fecha, hora y lugar para someter las Licitaciones, la conferencia con antelación a la apertura, si alguna, y la apertura pública de las Licitaciones.

La IAS incluirá las especificaciones y todos los términos y condiciones contractuales, y los anejos, aplicables al proceso de adquisición. La IAS describirá claramente el alcance del trabajo, los bienes y/o servicios a ser contratados por la AVPPR e incluirá una declaración a los efectos de que la adjudicación se hará al Licitador Responsable cuya Licitación Responsiva cumple con los requisitos de la IAS y que ofrece el precio más bajo.

Todas las Licitaciones se dirigirán al Director de Adquisiciones y al ser recibidas, se poncharán con un sello con la fecha y hora de recibo, pero no se abrirán y se guardarán en un lugar seguro, hasta la fecha, hora y lugar anunciados para la apertura pública de las Licitaciones. Ningún oficial, agente o empleado de la AVPPR podrá abrir una Licitación con anterioridad a la fecha, hora y lugar anunciada para la apertura de las

Licitaciones. Cualquier Licitador podrá retirar una Licitación en cualquier momento antes de la apertura pública de las Licitaciones.

b. Conferencia Con Antelación a la Apertura

Después de publicar la IAS, y antes de la fecha límite para someter las Licitaciones, el Director de Adquisiciones podrá convocar una conferencia con antelación a la apertura pública de las Licitaciones, a celebrarse con los Licitadores prospectivos para propósitos de discutir la IAS. El Director de Adquisiciones, o la persona designada por éste, se hará cargo de esta conferencia. La IAS notificará de cualquier conferencia pre-apertura de Licitaciones que esté pautada. La fecha de la conferencia permitirá que los Licitadores tengan tiempo adecuado para revisar la IAS y tiempo adecuado para revisar sus Licitaciones antes de la fecha límite para someter las Licitaciones. Nada en la conferencia cambiará los términos de la IAS a menos y hasta tanto el Director de Adquisiciones emita una enmienda a la IAS por escrito. Se preparará un registro de los Licitadores prospectivos que asistan a la conferencia y minutas de la conferencia, por escrito, los cuales formarán parte del Expediente de Adquisición. Un resumen de la conferencia estará disponible para los Licitadores prospectivos. La Asistencia a la conferencia pre-apertura no es compulsoria.

Los Licitadores prospectivos podrán someter preguntas escritas al Área de Adquisiciones con relación a la IAS, las cuales serán contestadas, por escrito, por el personal del Área de Adquisiciones. Las respuestas a dichas preguntas estarán disponibles para todos los Licitadores prospectivos y formarán parte del Expediente de Adquisición.

c. Apertura de las Licitaciones y Adjudicación

La apertura de las Licitaciones estará a cargo del Director de Adquisiciones, o la persona designada por éste (el "Oficial de Apertura de Licitaciones"), en la fecha, hora y lugar publicado en la IAS. Cualesquiera partes con interés podrán asistir a la apertura de las Licitaciones. El Oficial de Apertura de Licitaciones abrirá todas las Licitaciones sometidas y leerá en voz alta los nombres de los Licitadores y los precios licitados. Esta información se incluirá en las minutas de la apertura de las Licitaciones, las cuales formarán parte del Expediente de Adquisición. No se adjudicará Contrato alguno ni se hará compromiso alguno con ninguno de los Licitadores en la apertura de las Licitaciones. Cualesquiera preguntas o desacuerdos que surjan por parte de los Licitadores en la apertura de las Licitaciones se tomarán bajo consideración y el Director de Adquisiciones los resolverá tras una revisión de todos los hechos relevantes.

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El Oficial de Apertura de Licitaciones preparará un resumen escrito de todas y cada una de las Licitaciones, indicando los nombres de los Licitadores y los precios, incluyendo los alternos, si alguno. Este resumen formará parte del Expediente de Adquisición.

Si se reciben Licitaciones Responsivas de Licitadores Responsables con los mismos bajos precios, la adjudicación se hará mediante lotería a ser llevada a cabo por la Junta de Subastas. Si se recibe sólo una Licitación y es una Licitación Responsiva de un Licitador Responsable, entonces, con anterioridad a cualquier adjudicación: (i) el Área de Adquisiciones tendrá que llevar a cabo un análisis de costo o de precios para verificar la razonabilidad del precio, y (ii) la AVPPR tendrá que obtener la aprobación previa por escrito de HUD.

El Director de Adquisiciones certificará al Administrador la Licitación Responsiva del Licitador Responsable que ofrece el precio más bajo e incluirá sus razones para dicha determinación.

El Administrador revisará la certificación escrita del Director de Adquisiciones y someterá su recomendación de adjudicación por escrito a la Junta de Subastas.

La Junta de Subastas aprobará la recomendación de adjudicación del Contrato al Licitador Responsable con la

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Licitación Responsiva con el precio más bajo y someterá dicha aprobación al Administrador para la adjudicación del Contrato. La Junta de Subastas podrá solicitar el Expediente de Adquisición Global para su revisión y el Director de Adquisiciones y/o el Administrador tienen que estar disponibles para contestar las preguntas o los comentarios de la Junta de Subastas con relación al proceso de adquisición. En el caso de que la Junta de Subastas no esté de acuerdo con la recomendación hecha por el Administrador, la Junta de Subastas devolverá la misma al Administrador y al Director de Adquisiciones para su revisión de acuerdo con los comentarios escritos de la Junta de Subastas. Las razones de la Junta de Subastas para devolver la recomendación tienen que constar en un memorando dirigido al Director de Adquisiciones, al Administrador y al Secretario. La Junta de Subastas realizará una determinación sobre la recomendación del Administrador dentro de quince (15) días laborables a partir de la fecha de recibo de la recomendación escrita del Administrador. Si no se ha tomado una determinación dentro de dicho término, la Junta de Subastas perderá jurisdicción sobre el proceso de adquisición en particular, en cuyo caso, y sujeto a la aprobación escrita del Administrador, la Licitación Responsiva del Licitador Responsable que ofrezca el precio más bajo

será aprobada automáticamente y adjudicada según fuera recomendado previamente por el Administrador.

Al aprobar la Junta de Subastas la recomendación del Administrador, éste entonces adjudicará el Contrato según aprobado y notificará por escrito (i) a cada Licitador no agraciado, y (ii) al Licitador Responsable agraciado. El Administrador incluirá en cada una de dichas notificaciones las razones para dicha determinación.

Si la suma total del Contrato a adjudicarse excede de $100,000.00, el Área de Adquisiciones preparará y obtendrá una Orden Administrativa a tenor con las disposiciones establecidas en este Manual.

La notificación escrita entregada al Licitador Responsable agraciado (la "Notificación del Contrato") indicará la fecha, hora y lugar del otorgamiento del Contrato, y la obligación de someter la Documentación Post-Adjudicación (según se describirá más adelante). El Contrato no será obligatorio para la AVPPR a menos que esté firmado por el Administrador.

Al otorgarse el Contrato, el Director de Adquisiciones retendrá el original para el Expediente de Adquisición y distribuirá copias del Contrato al Director del Usuario que

solicitó el proceso de adquisición, al Negociado de Finanzas y al Contratista.

d. Errores en Subastas

Los Licitadores están obligados por sus Licitaciones, sin embargo, se podrá permitir que la Licitación sea corregida o retirada de acuerdo con las siguientes reglas: (i) antes de la apertura de las Licitaciones, se podrá permitir a un Licitador que corrija o retire la Licitación tras cursar solicitud escrita a tales efectos al Director de Adquisiciones y ésta ser recibida por éste; y (ii) luego de la apertura de las licitaciones se podrán permitir correcciones a la licitaciones sólo si el Licitador puede demostrar mediante prueba clara y convincente, fechada con anterioridad a la entrega de la Licitación, que se cometió un error obvio de hechos, cálculo aritmético u otro concepto distinto de un elemento de juicio y/o se puede discernir claramente el precio de la Licitación que realmente se proponía someter.

Toda decisión para permitir la corrección o el retiro de Licitaciones, ya sea antes o después de la apertura de las Licitaciones, estará sustentada con información fáctica sometida por escrito por el Licitador y determinaciones de hechos establecidos en una determinación escrita preparada y otorgada por el Director de Adquisiciones. Después de la apertura de las

Licitaciones, no se permitirán cambios a las Licitaciones, salvo según establecido arriba.

e. Fianzas

A tenor con la Sección 85.36(n) del Título 24 C.F.R., en todos y cada uno de los procesos de adquisición para trabajos de construcción o mejoras a facilidades donde el Contrato exceda el límite de Compras Pequeñas de $100,000.00, se requerirán las siguientes fianzas y garantías: (i) una garantía de licitación para garantizar que, de serle adjudicado el Contrato, el Licitador o Proponente aceptará y cumplirá el Contrato; (ii) una fianza de cumplimiento para garantizar que el Contrato se llevará a cabo y se completará cabalmente; y (iii) una fianza de pago para garantizar que el Contratista pagará a sus subcontratistas. Dejar de cumplir con los requisitos indicados arriba en los porcentajes especificados más adelante resultará en el rechazo de la Oferta o la cancelación del Contrato.

(1) Para contratos de construcción, los Licitadores o Proponentes, según sea el caso, someterán las siguientes garantías:

a. Una garantía de licitación de cada Licitador o Proponente, según sea el caso, equivalente al 5% del precio del Contrato;

b. Una fianza de pago equivalente al 100% del precio del Contrato; y,

c. Una fianza de cumplimiento equivalente al 100% del precio del Contrato.

(2) Para contratos de construcción financiados con Fondos de Capital de Vivienda Pública o fondos de sus programas predecesores, cada Licitador o Proponente, según sea el caso, someterá lo siguiente:

(a) Una garantía de licitación de cada Licitador o Proponente, según sea el caso, equivalente al 5% del precio del Contrato; y

(b) Una de las siguientes:

(i) Una fianza de pago y de cumplimiento equivalente al 100% del precio del Contrato; o

(ii) Fianzas de cumplimiento y de pago separadas, cada una equivalente al 50% o más del precio del Contrato; o

(iii) Una cuenta de plica con efectivo en depósito equivalente al 20% del precio del Contrato; o

(iv) Una carta de crédito irrevocable equivalente al 25% del precio del Contrato.

(3) Para los proyectos de desarrollo convencionales financiados a tenor con la Ley de Vivienda de los Estados Unidos de 1937("United States Housing Act of 1937"), según enmendada, cada Licitador o Proponente, según sea el caso, someterá lo siguiente:

(a) Una garantía de licitación de cada Licitador o Proponente, según sea el caso, equivalente al 5% del precio del Contrato; y

(b) Una de las siguientes:

(i) Una fianza de pago y cumplimiento equivalente a 100% del precio del Contrato; o

(ii) Una cuenta de plica con efectivo en depósito equivalente al 20% del precio del Contrato; o

(iii) Una carta de crédito irrevocable equivalente al 25% del precio del Contrato.

Todas las fianzas requeridas aquí tienen que cumplir con todos los requisitos aplicables de HUD. Todas las fianzas serán emitidas por un fiador o compañía de seguros debidamente autorizada para hacer negocios en el Estado Libre Asociado de Puerto Rico, aceptada por HUD y registrada con el Departamento del Tesorero de los Estados Unidos de América ("Treasury Listed"). La fianza no excederá el límite de suscripción del fiador y será otorgada

debidamente. La AVPPR rechazará toda oferta que no incluya la garantía de licitación correspondiente o que sea sometida con una fianza que no cumple con los requisitos establecidos aquí.

f. Documentación Post-Adjudicación

Dentro de los diez (10) días laborables, excluyendo sábados, domingos, y días feriados, de la fecha de otorgamiento del Contrato, el Contratista tiene que suministrar los siguientes documentos al Área de Adquisiciones, según aplique (la "Documentación Post-Adjudicación"):

1. Certificados de Seguro (seguro General y de Automóvil) aprobados por el Área de Seguros y emitidos por compañías de seguro autorizadas para hacer negocios en Puerto Rico y con un rating de *Best* de *B+*; y los originales de las pólizas de seguro, con copias enviadas al Área de Seguros para su revisión y aprobación;
2. Fianzas de Pago y de Cumplimiento, según se dispone arriba; y
3. Todos los documentos requeridos en el Apéndice 5 de este Manual.

Si el Contratista no provee la Documentación Post-Adjudicación requerida dentro del período de tiempo especificado aquí, se le podrá conceder una prórroga de cinco (5) días laborables cuando el

Contratista someta prueba de justa causa para la demora y el Administrador así lo apruebe por escrito. Si el Contratista no provee la Documentación Post-Adjudicación, la AVPPR podría cancelar el Contrato por incumplimiento del Contratista y la Junta de Subastas y el Administrador procederán a aprobar y adjudicar el Contrato al Licitador Responsable cuya Licitación Responsiva ofrecía el siguiente precio más bajo.

Una vez se haya sometido la Documentación Post-Adjudicación de acuerdo con la Notificación del Contratista y el Área de Seguro haya aprobado los certificados de seguro, según aplique, y el Contratista esté en cumplimiento con los requisitos aplicables del Manual de Adquisición de HUD, el Área de Adquisiciones emitirá un aviso para proceder al Contratista con una copia al Usuario que solicitó la adquisición.

Será responsabilidad de dicho Usuario monitorear el cumplimiento del Contratista bajo el Contrato de acuerdo con las disposiciones de la Sección XVII de este Manual.

C. Método de Propuestas Competitivas

1. Resumen de la Política

El Método de Propuestas Competitivas se usará cuando la AVPPR necesite iniciar un proceso de adquisición que se espera excederá el límite de $100,000.00 establecido para Compras Pequeñas y: (i)

además del precio, se evaluarán múltiples factores técnicos; (ii) el precio no será el factor determinante para seleccionar el Contratista; (iii) existe un método adecuado de evaluar las propuestas técnicas; y (iv) no se cumplen con las condiciones para usar el Método de Licitaciones Selladas. Los servicios profesionales donde no existe una relación de supervisión de patrono-empleado, pero excluyendo los Servicios A/I, tienen que ser adquiridos usando el Método de Propuestas Competitivas. Se tienen que adquirir los Servicios A/I usando el Método de Selección a Base de Calificaciones (SBC) según se dispone más adelante.

Cuando se usa el Método de Propuestas Competitivas se publicará una Solicitud de Propuestas ("SDP") y el Contrato se adjudicará al Proponente Responsable cuya Propuesta es más ventajosa para la AVPPR, el precio y demás factores de evaluación considerados. La SDP incluirá una tabla de contenido y una declaración detallada del alcance del trabajo, los bienes y/o servicios a contratarse, además de las metas y objetivos deseados por la AVPPR para el proceso de adquisición en particular. La SDP también identificará el precio y todos los demás criterios de evaluación y su importancia relativa, y si se llevarán a cabo o no Negociaciones.

2. Procedimientos

a. Solicitación, Conferencia Pre-Entrega y Recibo de Propuestas

El Usuario someterá el FMA-02 al Área de Adquisiciones, describiendo el alcance del trabajo, los bienes y/o servicios requeridos incluyendo las especificaciones, criterios de evaluación, estimado de costos, certificación del Negociado de Finanzas y cualquier otra documentación complementaria requerida. El Usuario desarrollará un plan de evaluación, el cual incluirá los criterios de evaluación y una hoja de Evaluación (en adelante denominada la "Hoja de Evaluación"), la cual especificará los criterios de evaluación y el peso dado a cada factor de evaluación, tomando en consideración todos y cada uno de los criterios de evaluación aplicables incluidos en los reglamentos de HUD.

Se asignará un valor máximo a cada factor de evaluación y se establecerá una descripción clara de dicho valor. Por ejemplo: "el valor de 'Excelente', o 20 de los 20 puntos disponibles para un factor de evaluación en particular, significa: (poseer...[descripción clara])" o "el valor de 'Bueno' o 15 de los 20 puntos disponibles para un factor de evaluación en particular, significa: (poseer ... [descripción clara])" y así sucesivamente.

TRADUCCIÓN

El plan de evaluación permitirá una evaluación cabal y justa de las propuestas técnicas y de costo a solicitarse en la SDP, tomando en consideración todos y cualesquiera reglamentos de HUD aplicables al proceso de adquisición en particular.

Una vez el FMA-02 esté completado, el Director del Usuario tiene que firmarlo y entregarlo al Área de Adquisiciones. El Área de Adquisiciones evaluará el FMA-02 y toda la información y documentación relacionada provista por el Usuario y preparará la SDP, incluyendo los referidos criterios de evaluación, y el anuncio. El FMA-02 se enviará entonces al Área de Seguros para su revisión y para determinar los requisitos de seguro correspondientes, por escrito. El Director de Adquisiciones evaluará la documentación indicada arriba e indicará su aprobación firmando el FMA-02 y enviando el mismo al Administrador, con su recomendación e incluyendo sus razones para la misma.

El Administrador, basado en la recomendación del Director de Adquisiciones, firmará el anuncio de la SDP, que se publicará durante diez (10) días laborables antes de la fecha límite para someter las Propuestas, excluyendo sábados, domingos y días feriados locales, o cualquier otro período de tiempo que se determine adecuado a base de la complejidad del proceso de adquisición en cuestión. El anuncio indicará la fecha, hora y

lugar para someter las Propuestas, la conferencia pre-entrega, si alguna, y la apertura de las Propuestas.

La SDP incluirá las especificaciones y todos los términos y condiciones contractuales, y los anejos, aplicables al proceso de adquisición. La SDP describirá claramente las necesidades de la AVPPR y/o el alcance del trabajo, los bienes y/o servicios a ser contratados por la AVPPR y identificará la relativa importancia del precio y demás factores de evaluación.

Todas las Propuestas se dirigirán al Director de Adquisiciones y a su recibo, se poncharán las mismas con la fecha y hora de recibo, se almacenarán en un lugar seguro hasta la fecha límite para las entregas. Ningún oficial, agente, o empleado de la AVPPR podrá abrir una Propuesta antes de la fecha anunciada para someter las mismas. Cualquier Proponente puede retirar una Propuesta en cualquier momento antes de la fecha límite para someter las mismas.

Después de anunciar la SDP, y antes de la fecha de límite para entregar las propuestas, el Director de Adquisiciones podrá llevar a cabo una conferencia con antelación a la entrega de las Propuestas (en adelante denominada la "Conferencia Pre-Entrega") con los Proponentes Prospectivos para discutir la SDP. La Conferencia Pre-Entrega será presidida por el Director de Adquisiciones o la persona designada por éste. Se incluirá en la

SDP un aviso de cualquier Conferencia Pre-Entrega que esté pautada. La fecha de la Conferencia permitirá que los Proponentes tengan tiempo adecuado para revisar la SDP y tiempo adecuado para revisar sus Propuestas antes de la fecha límite para someter las mismas. Nada en dicha Conferencia cambiará los términos de la SDP a menos y hasta tanto el Director de Adquisiciones emita una enmienda a la SDP por escrito. En la Conferencia Pre-Entrega, el Director de Adquisiciones contestará las preguntas de los Proponentes con relación a la SDP. Se preparará un registro de los Proponentes prospectivos que asistan a la Conferencia y minutas, por escrito, de la Conferencia Pre-Entrega, todo lo cual formará parte del Expediente de Adquisición. Un resumen de dicha Conferencia estará disponible para los Proponentes prospectivos. No será obligatorio asistir a la Conferencia Pre-Entrega.

Los Proponentes prospectivos podrán someter al Área de Adquisiciones preguntas escritas con relación a la SDP, las cuales serán contestadas, por escrito, por el personal del Área de Adquisiciones. Las respuestas a dichas preguntas estarán disponibles a todos los Proponentes prospectivos, y formarán parte del Expediente de Adquisición.

El Área de Adquisiciones mantendrá un expediente de todas las Propuestas recibidas. No se aceptarán Propuestas que se envíen por

telefax a la AVPPR en respuesta a una SDP. Dentro de los cinco (5) días laborables después de la fecha límite para entregar las Propuestas, el Área de Adquisiciones abrirá las Propuestas y: (i) revisará su contenido para verificar que estén completas; (ii) separará la parte de la Propuesta que se refiere a costo, para que sea analizado por el Área de Adquisiciones según se dispone más adelante; (iii) separará la parte financiera de la Propuesta para su evaluación por el Área de Adquisiciones en caso de que se tenga que hacer una determinación de Responsabilidad (según se dispone más adelante); y (iv) separará la parte técnica de la Propuesta para remitirla dentro de los próximos cinco (5) días laborables al Comité Evaluador para su evaluación.

Las Propuestas no se abrirán en público ya que las mismas pueden contener secretos comerciales u otra información privilegiada o confidencial. Ningún oficial, agente o empleado de la AVPPR revelará a Persona o Entidad alguna, incluyendo, pero sin limitarse a, otros oficiales, agentes, o empleados de la AVPPR, ninguna información relacionada con las Propuestas, incluyendo, sin limitarse a, (i) el número de Proponentes; (ii) la identidad de el/los Proponente(s); y (iii) el contenido de la(s) Propuesta(s).

b. Apertura, Evaluación, Negociación y Adjudicación de las Propuestas

TRADUCCIÓN

El Comité Evaluador evaluará todas las Propuestas recibidas del Director de Adquisiciones desde el punto de vista técnico, usando los criterios de evaluación anunciados en la SDP y detallados en el plan de evaluación preparado por el Usuario.

Para poder preparar por escrito su Informe de Evaluación, el Comité Evaluador evaluará cada Propuesta usando una Hoja de Evaluación separada para cada Propuesta, y se explicará y se justificará, por escrito, la puntuación dada a cada Propuesta con respecto a cada factor de evaluación indicado en la Hoja de Evaluación.

El Comité Evaluador podrá solicitar el Expediente de Adquisición para revisarlo, y el Director del Usuario que solicita la adquisición y/o el Director de Adquisiciones tiene que estar disponible para contestar preguntas o comentarios del Comité Evaluador con respecto al proceso de adquisición en particular.

Después que se haya preparado el Informe de Evaluación, el Director de Adquisiciones, con la ayuda del Comité Evaluador, determinará los Proponentes cuyas Propuestas caen dentro del Margen Competitivo. Esta determinación se hará por escrito y se incluirá en el Expediente de Adquisición.

TRADUCCIÓN

El Área de Adquisiciones llevará a cabo entonces un análisis de costo para todas y cada una de las Propuestas dentro del Margen Competitivo.

Si se contemplaron Negociaciones en la SDP, el Director de Adquisiciones podrá llevar a cabo dichas Negociaciones con la ayuda del Comité Evaluador y sólo con los Proponentes que caen dentro del Margen Competitivo, con la intención de permitir que dicho Proponente revise su propuesta y facilitar el llegar a un Contrato que sea el más ventajoso para la AVPPR, el precio y demás factores de evaluación considerados. Los Usuarios que solicitan una adquisición en particular podrán estar representados en la Negociación, según lo estime necesario el Director de Adquisiciones.

El personal del Área de Adquisiciones podrá preparar un Memorando Pre-Negociación, con la ayuda del Comité Evaluador, estableciendo: (i) cualesquiera controversias que surgen bajo cada Propuesta, y (ii) los objetivos de costo/precio y los objetivos técnicos de la Negociación en particular, a base del análisis de costo hecho por el Área de Adquisiciones y el Informe de Evaluación preparado por el Comité Evaluador.

Las Negociaciones se llevarán a cabo en forma equitativa y justa entre todos los Proponentes dentro del Margen Competitivo.

TRADUCCIÓN

El personal del Área de Adquisiciones llevará a cabo Negociaciones con cada Proponente individualmente bajo la supervisión del Director de Adquisiciones. Para coordinar las Negociaciones, el personal del Área de Adquisiciones tomará, por adelantado, aquellas medidas de precaución que sean necesarias para evitar la consulta, confrontación y/o colusión entre los Proponentes con quienes está negociando el Director de Adquisiciones.

Como parte de la Negociación, el Director de Adquisiciones y/o el Comité Evaluador a través del Director de Adquisiciones podrá someter preguntas por escrito a los Proponentes que están dentro del Margen Competitivo y dichos Proponentes radicarán con prontitud sus contestaciones escritas con el Director de Adquisiciones, y las mismas formarán parte del Expediente de Adquisición.

El Director de Adquisiciones preparará un Memorando de Negociación documentando los resultados de las Negociaciones. Todas las aclaraciones y/o revisiones a las Propuestas que resulten de la Negociación será sometidas por los Proponentes, por escrito, como parte de sus Propuestas Mejores y Finales y antes de la fecha límite establecida con anticipación por el Director de Adquisiciones para la entrega de estas Propuestas Mejores y Finales.

TRADUCCIÓN

Después de recibir las Propuestas Mejores y Finales, el Comité Evaluador llevará a cabo su evaluación final desde el punto de vista técnico, tomando en consideración las Propuestas originales y las Propuestas Mejores y Finales, y entonces someterá su Informe de Evaluación final al Director de Adquisiciones. El Director de Adquisiciones, con la ayuda del Comité Evaluador, de ser necesario, llevará a cabo un trueque costo-técnico ("cost-technical trade-off") para determinar la Propuesta que es más ventajosa para la AVPPR, el precio y demás factores de evaluación considerados, y entonces preparará su recomendación de adjudicación, por escrito, al Administrador, incluyendo las razones para dicha recomendación.

El Administrador revisará el Informe de Evaluación final del Comité Evaluador y la recomendación de adjudicación hecha por el Director de Adquisiciones y someterá su recomendación de adjudicación por escrito, a la Junta de Subastas.

La Junta de Subastas aprobará la recomendación de adjudicación del Contrato al Proponente Responsable cuya Propuesta es la más ventajosa para la AVPPR, el precio y demás factores de evaluación considerados y someterá dicha aprobación al Administrador para la adjudicación del Contrato. La Junta de Subastas podrá solicitar el Expediente de Adquisición Global para su revisión y el Director de Adquisiciones, el Comité Evaluador y/o el Administrador tienen que

estar disponibles para contestar preguntas o comentarios de la Junta de Subastas con relación al proceso de adquisición. En el caso de que la Junta de Subastas no esté de acuerdo con la recomendación hecha por el Administrador, la Junta de Subastas devolverá la misma al Administrador y al Director de Adquisiciones para su revisión de acuerdo con los comentarios escritos de la Junta de Subastas. Las razones de la Junta de Subastas para devolver la recomendación tienen que constar en un memorando dirigido al Director de Adquisiciones, al Administrador, y al Secretario. La Junta de Subastas hará una determinación sobre la recomendación del Administrador dentro de quince (15) días laborables a partir de la fecha de recibo de la recomendación escrita del Administrador. Si no se ha tomado una determinación dentro de dicho término, la Junta de Subastas perderá jurisdicción sobre el proceso de adquisición en particular, en cuyo caso, y sujeto a la aprobación escrita del Administrador, el Contrato será automáticamente aprobado y adjudicado según fuera recomendado previamente por el Administrador.

Al notificar la Junta de Subastas su aprobación, el Administrador entonces adjudicará el Contrato según aprobado y notificará, por escrito, a: (i) cada Proponente no agraciado y (ii) al Proponente Responsable agraciado cuya Propuesta fue la más

ventajosa para la AVPPR, el precio y demás factores de evaluación considerados. En cada una de dichas notificaciones, el Administrador incluirá las razones para dichas determinaciones.

Si la suma total del Contrato a adjudicarse excede $100,000.00, el Área de Adquisiciones preparará y obtendrá una Orden Administrativa a tenor con las disposiciones de este Manual.

La notificación escrita que se entrega al Proponente Responsable agraciado (la "Notificación al Contratista") indicará la fecha, hora y lugar de otorgamiento del Contrato y la obligación de someter la Documentación Post-Adjudicación (según se define más adelante). El Contrato no es vinculante para la AVPPR a menos que esté firmado por el Administrador.

Después de otorgar el Contrato, el Director de Adquisiciones retendrá el original para el Expediente de Adquisición y distribuirá copias del mismo al Director del Usuario que solicitó la adquisición, al Negociado de Finanzas y al Contratista.

c. Documentación Post-Adjudicación

Dentro de los diez (10) días laborables, excluyendo sábados, domingos, y días feriados locales, de la fecha de otorgamiento del Contrato, el Contratista suministrará los siguientes documentos al

Área de Adquisiciones, según aplique (la "Documentación Post-Adjudicación"):

1. Certificados de Seguro (seguro General y de Automóvil) aprobados por el Área de Seguros y emitidos por compañías de seguro autorizadas para hacer negocios en Puerto Rico y con un rango de *Best B+*; los originales de las pólizas de seguro, con copias enviadas al Área de Seguros para su revisión y aprobación;
2. Fianzas de Pago y de Cumplimiento, según se dispone anteriormente; y
3. Todos los documentos requeridos en el Apéndice 5 de este Manual.

Si el Contratista no provee la Documentación Post-Adjudicación requerida dentro del tiempo límite aquí especificado, se le podrá conceder una prórroga de cinco (5) días cuando el Contratista someta evidencia de justa causa para la demora y la aprobación escrita del Administrador para ello. Si el Contratista no provee la Documentación Post-Adjudicación, la AVPPR podría cancelar el Contrato por incumplimiento del Contratista, y la Junta de Subastas y el Administrador procederán a aprobar y adjudicar el Contrato al siguiente Licitante Responsable cuya Propuesta Responsiva ofrece

los mejores términos para la AVPPR, precio y otros factores considerados.

Una vez se haya sometido la Documentación Post-Adjudicación de acuerdo con la Notificación del Contratista y el Área de Seguro haya aprobado los certificados de seguro, de ser aplicables, y el Contratista esté en cumplimiento con los requisitos aplicables del Manual de Adquisición de HUD, el Área de Adquisiciones emitirá un aviso para proceder al Contratista con una copia al Usuario que solicitó la adquisición.

Será responsabilidad de dicho Usuario monitorear el desempeño del Contratista bajo el Contrato de acuerdo con las disposiciones de la Sección XVII de este Manual.

d. Selección a Base de Calificaciones

Según dispuesto en los reglamentos federales aplicables sobre adquisiciones, todo Contrato cuya suma agregada excede el límite de $100,000.00 para Compras Pequeñas y para los Servicios A/I podrá adjudicarse mediante la Selección a Base de Calificaciones (SBC).

Bajo el método SBC, el Usuario llena un PMF-02 donde describe los Servicios A/I requeridos e incluye los criterios de evaluación, el estimado de costos, la certificación del Negociado de Finanzas, el plan de evaluación, y otros documentos de apoyo que son

requeridos para cualquier proceso de adquisición mediante Propuestas Competitivas, sin embargo, el precio no será un factor de evaluación esencial en un proceso de adquisición SBC. El PMF-02 tendrá que ser firmado por el Director del Usuario.

Una vez se haya llenado y firmado el PMF-02, se enviará al Área de Adquisiciones. El Área de Adquisiciones evaluará el PMF-02 y toda la información y documentación relacionada suministrada por el Usuario y preparará los materiales de solicitación, incluyendo los criterios de evaluación y los anuncios antes indicados para el proceso de adquisición SBC. El PMF-02 se enviará entonces al Área de Seguros para su revisión y la determinación de los requisitos de seguros correspondientes, por escrito. El Director de Adquisiciones evaluará la documentación indicada arriba y firmará su aprobación en el PMF-02 y enviará el mismo al Administrador, con su recomendación y las razones para su recomendación.

El Administrador, con la recomendación del Director de Adquisiciones, firmará el anuncio para los SBC, el cual se publicará por diez (10) días laborables antes de la fecha límite para someter las Propuestas, excluyendo sábados, domingos y días feriados locales, u otro período de tiempo que se determina es adecuado a base de la complejidad de la adquisición. El anuncio especificará la fecha, hora y lugar para someter las Propuestas, y

la Conferencia con Antelación a la Entrega de las Propuestas, si alguna.

El SBC incluirá las especificaciones, y todos los términos y condiciones contractuales, y los anejos que apliquen al proceso de adquisición. El SBC describirá claramente las necesidades de la AVPPR y el alcance de los Servicios A/I a ser contratados por la AVPPR, y identificará la importancia relativa de cada uno de los factores de evaluación, y especificará que el Director de Adquisiciones será el que llevará a cabo las Negociaciones con la ayuda del Comité Evaluador.

Todas las Propuestas se dirigirán al Director de Adquisiciones y al recibirse se poncharán con la fecha y hora de recibo, y se guardarán en un lugar seguro hasta la fecha límite para someter las mismas.

Después de anunciarse el SBC, y antes de la fecha límite para someter las Propuestas, el Director de Adquisiciones podrá llevar a cabo una Conferencia Pre-Entrega con los Proponentes Prospectivos, según se dispone arriba para el método de adquisiciones mediante Propuestas Competitivas.

El Área de Adquisiciones mantendrá un registro de todas las Propuestas recibidas. No se aceptarán Propuestas que se envíen por telefax a la AVPPR en respuesta a una SDP. Dentro de los cinco (5)

días laborables después de la fecha límite para entregar las Propuestas, el Área de Adquisiciones abrirá las Propuestas, revisará su contenido para verificar que estén completas, y enviará las Propuestas dentro de los próximos cinco (5) días laborables al Comité Evaluador para evaluación.

Las Propuestas no se abrirán en público ya que las mismas pueden contener secretos comerciales u otra información privilegiada o confidencial. Ningún oficial, agente o empleado de la AVPPR podrá revelar a Persona o Entidad alguna, incluyendo, pero sin limitarse a, otros oficiales, agentes, o empleados de la AVPPR, ninguna información relacionada con las Propuestas, incluyendo, sin limitarse a, (i) el número de Proponentes; (ii) la identidad de el/los Proponente(s); y (iii) el contenido de la(s) Propuesta(s).

El Comité Evaluador evaluará todas las Propuestas recibidas del Director de Adquisiciones, usando los criterios de evaluación anunciados para la SBC y descritos en el plan de evaluación preparado por el Usuario.

Para poder preparar por escrito su Informe de Evaluación, el Comité Evaluador evaluará cada Propuesta usando una Hoja de Evaluación separada para cada Propuesta, y se explicará y se justificará, por escrito, la puntuación dada a cada Propuesta con

respecto a cada factor de evaluación indicado en la Hoja de Evaluación.

El Comité Evaluador podrá solicitar el Expediente de Adquisición para revisarlo, y el Director del Usuario que solicita la adquisición y/o el Director de Adquisiciones estará disponible para contestar las preguntas o comentarios del Comité Evaluador con relación al proceso de adquisición en particular.

El Comité Evaluador valorará a los Proponentes en orden descendiente a base de sus calificaciones, y el Director de Adquisiciones, con la ayuda del Comité Evaluador, Negociará con el Proponente mejor calificado una compensación económica justa y razonable hasta que se logre un acuerdo o hasta que la lista de los Proponentes calificados se haya agotado.

Luego de la Negociación, el Director de Adquisiciones preparará una determinación de Responsabilidad y someterá su recomendación escrita para la adjudicación, incluyendo sus razones para ello, al Administrador.

El Administrador revisará la recomendación escrita del Director de Adquisiciones para la adjudicación y someterá dicha recomendación escrita para la adjudicación a la Junta de Subastas.

La Junta de Subastas aprobará la recomendación para la adjudicación del Contrato al Proponente Responsable más calificado

con quien se ha negòciado una compensación económica justa y razonable, y someterá dicha aprobación al Administrador para la adjudicación del Contrato. La Junta de Subastas podrá solicitar el Expediente de Adquisición para su revisión y el Director de Adquisiciones, el Comité Evaluador y/o el Administrador estarán disponibles para contestar preguntas o comentarios de la Junta de Subastas con relación al proceso de adquisición. En el caso de que la Junta de Subastas no esté de acuerdo con la recomendación hecha por el Administrador, la Junta de Subastas devolverá la recomendación al Administrador y al Director de Adquisiciones para su revisión de acuerdo con los comentarios escritos de la Junta de Subastas. Las razones que tenga la Junta de Subastas para devolver la recomendación constarán en un memorando dirigido al Director de Adquisiciones, al Administrador, y al Secretario. La Junta de Subastas hará una determinación sobre la recomendación del Administrador dentro de quince (15) días laborables después del recibo de la recomendación escrita del Administrador para la adjudicación. Si no se ha hecho una determinación dentro del término especificado, la Junta de Subastas perderá jurisdicción sobre el proceso de adquisición en particular, en cuyo caso, y sujeto a la aprobación por escrito del Administrador, el Contrato

será aprobado y adjudicado automáticamente según fuera recomendado anteriormente.

Al notificar la Junta de Subastas su aprobación, el Administrador entonces adjudicará el Contrato según aprobado y notificará, por escrito, a: (i) cada Proponente no agraciado y (ii) al Proponente Responsable mejor calificado agraciado. En cada una de tales notificación, el Administrador incluirá las razones para dichas determinaciones.

Si la suma total del Contrato a adjudicarse excede $100,000.00, el Área de Adquisiciones preparará y obtendrá una Orden Administrativa a tenor con las disposiciones de este Manual.

La notificación escrita que se entrega al Proponente Responsable mejor calificado agraciado (la "Notificación al Contratista") indicará la fecha, hora y lugar de otorgamiento del Contrato. El Contrato no es obligatorio para la AVPPR a menos que esté firmado por el Administrador.

Después de otorgar el Contrato, el Director de Adquisiciones retendrá el original para el Expediente de Adquisición y distribuirá copias del mismo al Director del Usuario que solicitó la adquisición, al Negociado de Finanzas, y al Contratista.

d. Post-Adjudicación

Dentro de los diez (10) días laborables, excluyendo sábados, domingos, y días feriados locales, de la fecha de otorgamiento del Contrato, el Contratista suministrará los siguientes documentos al Área de Adquisiciones, según aplique (la "Documentación Post-Adjudicación"):

1. Certificados de Seguro (seguro General y de Automóvil) aprobados por el Área de Seguros y emitidos por compañías de seguro autorizadas para hacer negocios en Puerto Rico y con un rango de *Best B+*; los originales de las pólizas de seguro, con copias enviadas al Área de Seguros para su revisión y aprobación;
2. Fianzas de Pago y de Cumplimiento, según se dispone anteriormente; y
3. Todos los documentos requeridos en el Apéndice 5 de este Manual.

Si el Contratista no provee la Documentación Post-Adjudicación requerida dentro del tiempo límite aquí especificado, se le podrá conceder una prórroga de cinco (5) días cuando el Contratista someta evidencia de justa causa para la demora y la aprobación escrita del Administrador para ello. Si el Contratista no provee la Documentación Post-Adjudicación, la AVPPR podría cancelar el

Contrato por incumplimiento del Contratista, y la Junta de Subastas y el Administrador procederán a aprobar y adjudicar el Contrato al siguiente Licitante Responsable mejor calificado con quien se Negocia una compensación económica justa y razonable.

Una vez se haya sometido la Documentación Post-Adjudicación de acuerdo con la Notificación del Contratista y el Área de Seguro haya aprobado los certificados de seguro, de ser aplicables, y el Contratista esté en cumplimiento con los requisitos aplicables del Manual de Adquisición de HUD, el Área de Adquisiciones emitirá un aviso para proceder al Contratista con una copia al Usuario que solicitó la adquisición.

Será responsabilidad de dicho Usuario monitorear el desempeño del Contratista bajo el Contrato de acuerdo con las disposiciones de la Sección XVII de este Manual.

Cada uno de los Contratos otorgados bajo el método SBC contener una cláusula que prohíba al Contratista competir para la adjudicación de otros Contratos relacionados con los Servicios A/I y solicitados por la AVPPR si la adjudicación de dichos Contratos de Servicios A/I resultarían en un conflicto de intereses organizacional, como por ejemplo una desventaja competitiva o el impedimento de la objetividad del Contratista, entre otros conflictos.

D. Contratos de Requerimientos

1. Resumen de la Política

Un proceso de adquisición para la concesión de un Contrato de Requerimientos puede ser iniciado por cualquier Usuario o por el Área de Adquisiciones, quienquiera que sea el primero que identifique los requisitos para la compra reiterada de bienes, servicios y/o trabajo de construcción. Dependiendo de la suma agregada del Contrato de Requerimientos propuesto se usará una IAS, SDP, o el método de adquisición de Compras Pequeñas para la adjudicación del Contrato de Requerimientos. El Área de Adquisiciones, junto con el Usuario, tiene la discreción de determinar si algunos de los productos, trabajos de construcción y/o servicios se adquirirán usando un Contrato de Requerimientos, a base del Plan Anual de Adquisiciones o el uso frecuente de los bienes, trabajos y/o servicios que aún no están cubiertos por un Contrato de Requerimientos.

2. Procedimientos

La AVPPR emitirá una IAS, SDP, o usará el método de adquisición para Compras Pequeñas, según aplique, y establecerá un Contrato de Requerimientos para cada categoría de bienes, trabajos, y/o servicios adquiridos reiteradamente requeridos por la AVPPR. El Área de Adquisiciones asignará un Número de Contrato de

Requerimientos y cada Orden de Tarea y/u Orden de Entrega aprobada bajo el mismo hará referencia a dicho Número de Contrato de Requerimientos.

El Usuario que solicita cualquiera de los bienes, trabajos y/o servicios cubiertos por el Contrato de Requerimientos someterá una solicitud de Orden de Tarea o de Orden de Entrega, según aplique, al Área de Adquisiciones, quien evaluará la solicitud y el Director de Adquisiciones emitirá la Orden de Tarea o la Orden de Entrega, según aplique, firmando la misma haciendo referencia al Número del Contrato de Requerimientos. Copias de la Orden de Tarea o la Orden de Entrega, según aplique, se enviarán al Negociado de Finanzas y al Usuario que solicita la misma. El Área de Adquisiciones, el Negociado de Finanzas, y cada Usuario será responsable de monitorear las sumas totales en dólares de los Contratos de Requerimientos para asegurarse que ni el Contratista ni los Usuarios excedan la cantidad que aparece en la faz de cada Contrato de Requerimientos en particular, a menos que y hasta tanto se Modifique la suma que aparece en la faz de dichos Contrato de Requerimientos.

E. Contratos EICI

1. Resumen de la Política

Un proceso de adquisición para la adjudicación de un Contrato de Entrega Indefinida-Cantidad Indefinida puede ser iniciado por cualquier Usuario o el Área de Adquisiciones, quienquiera sea el primero en identificar la necesidad para dicho contrato y su cumplimiento con los requisitos aplicables. Dependiendo de la suma agregada del Contrato EICI propuesto, se usará una IAS, SDP o el Método de Adquisición de Compras Pequeñas para la adjudicación del mismo. El Director de Adquisiciones, junto con el Director del Usuario, tiene la discreción de determinar si alguno de los productos y/o servicios deben ser comprados usando un Contrato EICI, a base del Plan Anual de Adquisiciones o el uso frecuente de los bienes, trabajos y/o servicios aún no cubiertos por un Contrato EICI o un Contrato de Requerimientos.

2. Procedimientos

La AVPPR emitirá una IAS, SDP o usará el Método de Adquisición de Compras Pequeñas, según aplique, dependiendo de la complejidad de el/los proyecto(s) a ser adquiridos. La adquisición requerirá que la orden de AVPPR y el Contratista suministren por lo menos una cantidad mínima de suministros o servicios, y, de ser ordenado por la AVPPR, el Contratista suministrará cantidades adicionales, que

no excedan la cantidad máxima indicada. El Área de Adquisiciones o el Usuario que solicita el Contrato EICI, según aplique, establecerá una cantidad máxima razonable y una cantidad mínima, las cuales deben ser más de una cantidad nominal, pero no más que una cantidad que la AVPPR está razonablemente segura ordenará.

El Usuario que solicita bienes, trabajos y/o servicios cubiertos por un Contrato de Entrega de Cantidad-Indefinida, someterá una solicitud de Orden de Tarea o de Orden de Entrega, según aplique, al Área de Adquisiciones, quien evaluará la solicitud y el Director de Adquisiciones emitirá la Orden de Tarea u Orden de Entrega, según aplique, firmando la misma haciendo referencia al Número del Contrato EICI. Las copias de la Orden de Tarea u Orden de Entrega, según aplique, se enviarán al Negociado de Finanzas y al Usuario que solicitó la misma. El Área de Adquisiciones, el Negociado de Finanzas y cada Usuarios será responsable de monitorear la suma total en dólares de los Contratos EICI para asegurarse que ni el Contrato ni los Usuarios exceden la suma máxima. El Negociado de Finanzas no autorizará pagos que excedan la cantidad máxima para cada Contrato EICI, a menos que y hasta que se Modifique la cantidad máxima de dicho contrato.

SECCION X. CONTRATACION CON NEGOCIOS DE RESIDENTES

A tenor con la Parte 963 del Título 24 C.F.R., la AVPPR podrá solicitar y contratar con Negocios de Residentes (NDR) para la adquisición de bienes, servicios y/o trabajos de construcción siguiendo el método de adquisición aplicable según se establece aquí y en la Sección 85.36(d) del Título 24 C.F.R., con solicitación limitada a los NDRs. No se adjudicará un contrato a un NDR si el Contrato o la orden de Compra excede el precio que se paga normalmente por bienes, servicios y/o trabajo de construcción comparable en el área del residencial del NDR. Los requisitos de elegibilidad establecidos en la Sección 963.10 del Título 24 C.F.R. aplicarán a todos y cada uno de los procesos de adquisición bajo esta Sección e incluirán, pero no se limitarán a, lo siguiente:

A. Calificaciones

1. El NDR someterá una Certificación de que es un NDR y todos los documentos requeridos en el Apéndice 5 de este Manual;
2. La divulgación de los intereses de titularidad del NDR indicará que la gerencia del negocio y las decisiones de las operaciones diarias del negocio están controladas por, y por lo menos el 51% de las acciones con derecho al voto son propiedad de, una o más Personas, o Entidades

que consistèn de Personas, que son residentes de un residencial de la AVPPR;

3. La AVPPR verificará y los dueños mostrarán evidencia de que son actualmente residentes de un residencial de la AVPPR sometiendo copias de los contratos de arrendamiento en vigor, debidamente firmados;

4. El NDR deberá estar registrado con el Área de Desarrollo Económico de la AVPPR como un NDR.

B. Capacidad para Completar el Trabajo

1. El Administrador, el Director de Adquisiciones, el Comité Evaluador y/o la Junta de Subastas, según aplique, evaluará la integridad del Proponente, el expediente de su ejecutoria y cumplimiento con la política pública en el pasado, y sus recursos financieros y técnicos para entregar los bienes, trabajos de construcción y/o servicios solicitados en un proceso de adquisición en particular;

2. Se aconseja que se tomen y completen cursos en Administración Comercial o Manejo de Finanzas, se suministre prueba de adiestramiento o de aprendiz en un oficio, negocio o profesión en particular;

3. El NDR tendrá los seguros requeridos, y las fianzas de pago y cumplimiento (hasta donde sean requeridas). Sin embargo, la AVPPR, a su discreción, podrá re-estructurar cualquiera de dichos requisitos sobre seguros en el proceso de adquisición en cuestión para permitir la participación del NDR.

C. Procedimientos

La AVPPR seguirá los Métodos de Compras Pequeñas, Licitaciones Selladas, Propuestas Competitivas o el Método de Adquisición No-Competitivo, dependiendo de la naturaleza del proceso de adquisición, pero limitará la solicitud entre los NPR's. Las empresas en común ("joint ventures") entre un NPR y una Persona o Entidad privada están permitidas, pero la Persona o Entidad privada deberán cumplir, individualmente, los requisitos de la AVPPR para un Proponente Responsable.

La AVPPR creará un registro de los NPR's que reúnan los requisitos de la AVPPR según establecidos en la Parte B de esta Sección. Después que el registro haya sido creado, la AVPPR podrá emitir licitaciones solamente a NPR's para cualquier proceso de adquisición en particular. Los NPR's también pueden entrar en empresa común ("joint venture") con otros NPR's para cumplir con

los requisitos de adquïsición de la AVPPR. En todo momento, el NPR seleccionado tiene que poseer y controlar por lo menos 51% de la1 empresa común ("joint venture")y recibir por lo menos 51% de las ganancias de todas y cualesquiera operaciones de la empresa común ("joint venture"). El NPR someterá una certificación sobre el número de Contratos y/u Ordenes de Compra adjudicada a él y/o a cualquiera de dichas empresas común ("joint venture") bajo esta Sección, especificando la cantidad total en dólares de cada uno de dichos Contratos y/u Ordenes de Compra adjudicadas. Un NPR no es elegible para participar en un proceso de adquisición bajo esta Sección si al NPP se le han adjudïcado Contratos, Ordenes de Compra, Ordenes de Tareas u Ordenes de Entrega con un valor total combinado en dólares de $1,000,000.00 o más bajo esta Sección. Véase 24 C.F.R. §963.10(d).

SECCIÓN XI. ADQUISICIÓN NO-COMPETITIVA Y CONTRATOS DE EMERGENCIA

A. Método de Propuestas No-Competitivas

1. Condiciones para Usarse

Los procesos de adquisición se llevarán a cabo competitivamente a la extensión máxima posible. Sin embargo, según 24 C.F.R. §85.36(d)(4), el Método de Propuesta No-Competitiva podrá usarse solamente cuando (i) no es factible el adjudicar un Contrato u Orden de Compra usando los Métodos de Compras Pequeñas,

Licitación Sellada o el Método de Propuestas Competitivas, y (ii) una de las siguientes aplica:

A. El artículo está disponible solamente de una fuente luego de una revisión detallada de las fuentes disponibles;

B. Existe una Emergencia o exigencia pública que requiere la adquisición de bienes, trabajo y/o servicios, y es tal que no permite el atraso resultante de una licitación competitiva. La adquisición de Emergencia estará limitada a aquellos productos, servicios o trabajo de construcción estrictamente necesarios para atender la Emergencia;

C. Luego de la licitación a un número adecuado de fuentes, se determina que la competencia es inadecuada; o

D. HUD ha autorizado el uso del Método de Propuestas No-Competitivas.

Cada uno de los procesos de adquisición No-Competitivos que excedan $100,000.00 requerirá la aprobación escrita de HUD.

2. Documentos Complementarios

El Usuario utilizará un FMA para cada proceso de adquisición No-Competitivo. El FMA específico a ser usado dependerá de la cantidad de la adquisición (FMA-01 para cantidades iguales a, o menores de, $100,000.00 y FMA-02 para cantidades iguales o mayores de *$100,000.01)*. El FMA describirá los productos, trabajo y/o

servicios solicitados e incluirá, según sea aplicable, los factores de selección o evaluación, estimado de costos, certificación del Negociado de Finanzas, plan de evaluación y otros documentos complementarios requeridos en el FMA utilizado. El Usuario justificará, por escrito, la necesidad del uso del Método de Propuestas No-Competitivas en cada caso. El FMA específico tiene que ser firmado por el Director del Usuario.

Una vez el FMA ha sido completado y firmado, será enviado al Área de Adquisiciones, la cual evaluará el FMA y la documentación provista por el Usuario y preparará un documento de solicitud describiendo los bienes, trabajo y/o servicios solicitados, incluyendo los factores de selección o evaluación preparados por el Usuario y solicitando una cotización o Propuesta, según sea el caso. El Director de Adquisiciones evaluará la documentación anterior e indicará su aprobación con su firma en el FMA y enviará el mismo al Administrador, con su recomendación y las razones para la misma.

El Administrador aprobará el uso del Método de Propuestas No-Competitivas, por escrito, y para aquellas adquisiciones que se espere excedan de $100,000.00 obtendrá la aprobación de HUD para el proceso de adquisición No-Competitivo, por escrito, antes de que el ***Área de Adjudicación*** emita el documento de solicitud.

Si se espera que la adquisición exceda de $100,000.00, el documento de solicitud informará al Proponente que su Propuesta tiene que incluir un desglose de los costos propuestos.

3. Análisis de Costo/Precio y Adjudicación

El Área de Adquisiciones usará los análisis de costo o de precio, según aplicable, para verificar los datos sobre los costos propuestos, las proyecciones de los datos y los elementos específicos de costo y ganancia especificados en la cotización o Propuesta recibida. El Director de Adquisiciones hará una determinación escrita de Responsabilidad del vendedor o el Proponente, según aplicable, de quien una cotización o Propuesta es recibida y luego hará su recomendación de adjudicación por escrito al Administrador, incluyendo las razones para la misma y especificando la razonabilidad del costo o del precio.

El Administrador revisará la recomendación escrita del Director de Adquisiciones y si el proceso de adquisición No-Competitivo no excede el límite de $100,000.00 establecido para las Compras Pequeñas, el Administrador adjudicará la Orden de Compra al vendedor Responsable cuya cotización ofrece un precio razonable a la AVPPR. Si el proceso de adquisición No-Competitivo excede el límite de $100,000.00 establecido para las Compras Pequeñas, el

Administrador someterá su recomendación de aprobación por escrito a la Junta de Subastas.

En el caso anterior, la Junta de Subastas aprobará la recomendación de adjudicación del Contrato al Proponente Responsable cuya Propuesta es razonable para la AVPPR, el precio y otros factores de evaluación considerados, y someterá dicha aprobación al Administrador para la adjudicación del Contrato. La Junta de Subastas podrá solicitar el Expediente de Adquisición para su revisión y el Director de Adquisiciones y/o el Administrador estarán disponible para contestar preguntas o comentarios de la Junta de Subastas relacionadas con el proceso de adquisición. En caso de que la Junta de Subastas no esté de acuerdo con la recomendación hecha por el Administrador, la Junta de Subastas devolverá la recomendación al Administrador y al Director de Adquisiciones para su revisión de acuerdo con los comentarios escritos de la Junta de Subastas. Las razones de la Junta de Subastas para devolver la recomendación se especificarán en un memorando dirigido al Director de Adquisiciones, al Administrador y al Secretario. La Junta de Subastas tomará una determinación sobre la recomendación del Administrador dentro de quince (15) días laborables del recibo de la recomendación escrita del Administrador. Si no se hace una determinación dentro de dicho

término, la Junta de Subastas perderá jurisdicción sobre dicho proceso de adquisición, en cuyo caso, sujeto a la aprobación escrita del Administrador, el Contrato será automáticamente aprobado y adjudicado según la recomendación anterior.

Luego de la notificación de la aprobación de la Junta de Subastas, y/o de la adjudicación por parte del Administrador, según sea aplicable, el Administrador notificará al Contratista o vendedor seleccionado, según sea aplicable, incluyendo las razones para dicha determinación.

Si la suma total del Contrato excede $100,000.00, el Área de Adquisiciones preparará y obtendrá una Orden Administrativa, según establecido en este Manual, y también someterá el Contrato a HUD para su aprobación.

En el caso de Contratos, la notificación escrita entregada al Proponente Agraciado (la "Notificación del Contrato") indicará la fecha, hora y lugar para el otorgamiento del Contrato. Un Contrato no es vinculante para la AVPPR a menos que esté firmado por el Administrador.

Luego de otorgado el Contrato, el Director de Adquisiciones retendrá el original para el Expediente de Adquisición y distribuirá copias del mismo al Director del Usuario que solicitó

el proceso de adquisición, al Negociado de Finanzas, y al Contratista.

B. Adquisiciones de Emergencia

1. Grave

Situaciones de emergencia que requieren la adquisición de bienes, trabajo y/o servicios a ser entregados y/o el trabajo bajo el Contrato comenzado dentro de doce (12) horas (en adelante, una "Adquisición de Emergencia Grave"), serán atendidas y evaluadas por el Director de Adquisiciones y aprobadas por escrito por el Administrador, en la manera más expedita factible.

2. Urgente

Situaciones de emergencia que requieran la adquisición de bienes, servicios y/o trabajo a ser entregado y/o el trabajo bajo el Contrato comenzado dentro de setenta y dos (72) horas (en adelante, una "Adquisición Urgente"), serán atendidas y evaluadas por el Director de Adquisiciones y serán aprobada por escrito por el Administrador, en la manera más expedita factible.

Las Adquisiciones de Emergencia Grave y las Adquisiciones Urgentes serán llevadas a cabo por el personal del Área de Adquisiciones a base de su prioridad.

3. Reglas Especiales para Adquisiciones de Emergencia

a. El Usuario someterá al Área de Adquisiciones el FMA apropiado incluyendo una justificación escrita de la situación de Emergencia la cual no permite un proceso de adquisición competitivo; dicho FMA tiene que ser firmado por el Director del Usuario.

b. El Usuario someterá un estimado de costos.

c. El Usuario someterá una certificación de fondos del Negociado de Finanzas.

d. El Usuario someterá una fuente recomendada y cualesquiera otros documentos y/o información según sea solicitada por el Área de Adquisiciones.

e. Una vez el Usuario haya sometido todos los documentos requeridos al Área de Adquisiciones, el Director de Adquisiciones obtendrá, de una fuente recomendada, una cotización de precio o una Propuesta, dependiendo de la complejidad de la adquisición, y evaluará y revisará toda la documentación anterior para poder determinar (i) la razonabilidad del precio, basado en experiencia pasada y en el estimado de costos, y (ii) conformidad con el Plan de Emergencia de la AVPPR.

f. En caso de Adquisiciones de Emergencia Grave, el Director de Adquisiciones someterá la documentación anterior, con

su recomendación, al Administrador. En caso de Adquisiciones Urgentes, el Director de Adquisiciones someterá la documentación anterior, con su recomendación escrita, al Administrador.

g. El Administrador, basado en la recomendación del Director de Adquisiciones, adjudicará una Orden de Compra, pero si la cantidad de la Adquisición de Emergencia excede los $100,000.00, el Administrador someterá su recomendación para la adjudicación de un Contrato, a la Junta de Subastas para su aprobación.

h. El Área de Adquisiciones realizará un análisis de costo/precio de la adquisición de Emergencia antes de la adjudicación de la Orden de Compra o el Contrato, o después de dicha adjudicación a la mayor brevedad posible.

SECCIÓN XII. CANCELACIÓN DE LICITACIONES

A. Una Compra Pequeña, una IAS, SOP, SBC, o cualquier otra licitación puede ser cancelada antes que las Ofertas deban ser recibidas en la AVPPR si:

1. La AVPPR ya no requiere los bienes, servicios o trabajo de construcción licitado; o

2. La AVPPR ya no puede razonablemente esperar tener los fondos necesarios para sufragar el proceso de adquisición hasta el cumplimiento total ("close out") del Contrato o la Orden de Compra; o

3. Enmiendas propuestas a la licitación original son materiales y la AVPPR determine que una nueva solicitud sería más ventajosa para la AVPPR.

B. **Una Compra Pequeña, una IAS, SOP, SBC, o cualquier otra licitación puede ser cancelada después de la fecha de vencimiento publicada para someter las Ofertas y todas las Ofertas recibidas pueden ser devueltas si:**

1. La AVPPR ya no requiere los bienes, servicios o trabajo de construcción licitado; o

2. Las especificaciones incluidas en la licitación son ambiguas o de otro modo inadecuadas; o

3. La solicitud no incluyó todos los factores de selección o de evaluación que son significativos para la AVPPR; o

4. El costo proyectado excede los fondos disponibles y no es apropiado ajustar las cantidades licitadas para parearlas con los fondos disponibles; o

5. Hay razón para creer que las Ofertas no son bona fide, o que no hayan sido preparadas por separado a través de la competencia abierta o pueden ser colusiva; o

6. Por justa causa, cuando sea en el mejor interés de la AVPPR.

C. La razón para la cancelación constará mediante escrito del Administrador y se incluirá en el Expediente de Adquisición y notificada por escrito a todos los vendedores, Proponentes y Licitadores que participaron en el proceso.

D. En caso de una IAS, si todas las Licitaciones Responsivas recibidas en respuesta a las IAS contienen precios irrazonables o solamente una Licitación Responsiva ha sido recibida y el precio es irrazonable, la AVPPR puede cancelar la IAS y/o completar el proceso de adquisición usando otros métodos de adquisición Competitivos o No-Competitivos establecidos en este Manual, sujeto a todo lo siguiente:

1. El Administrador emite una determinación por escrito a tales efectos;

2. Todos los Licitadores son informados de la intención de la AVPPR de negociar; y

3. Cada Licitador tiene una oportunidad razonable para negociar.

SECCIÓN XIII. TIPOS DE CONTRATOS Y CLAUSULAS

A. Tipos de Contrato

La AVPPR utilizará el tipo de Contrato que le sirva a sus mejores intereses en el proceso de adquisición en particular. Los tipos de contratos preferidos son los Contratos de precio fijo y firme y los Contratos de Requerimientos. Sin embargo, otros tipos de Contratos pueden ser usados si los mismos están permitidos en el Manual de Adquisición de HUD.

B. Cláusulas del Contrato

Todos los Contratos contendrán, entre otras, una cláusula identificando el tipo de Contrato y todas las cláusulas mandatorias contenidas en la Forma 5370 de HUD (o Forma 5370(A), 5370(C), o Forma 51915-A dependiendo del tipo de Contrato). Cada Contrato incluirá además todas las otras cláusulas requeridas por las leyes y reglamentos federales y estatales aplicables, incluyendo, sin limitación:

1. Todas las disposiciones requeridas por 24 C.F.R § 85.36(i);

2. Terminación por Conveniencia;
3. Terminación por Causa y/o Terminación por Incumplimiento;
4. Cumplimiento con la Orden Ejecutiva Núm. 11246 del 24 de septiembre de 1965 titulada "Igual Oportunidad de Empleo", según enmendada;
5. Los estándares éticos de HUD y de Puerto Rico;
6. Cumplimiento con la ley "Anti-Kickback", y la ley Davis-Bacon;
7. Cumplimiento con los requisitos de informe bajo la ley de Estándares de Seguridad y Horas de Trabajo;
8. Los requisitos de HUD relacionados con los derechos de patentes;
9. Los requisitos de HUD relacionadas con derechos de autor y derechos en la data;
10. Retención de expedientes por un mínimo de tres (3) años después del cumplimiento total ("close-outs");
11. Examen de expedientes por el Contralor General de los Estados Unidos y de HUD;
12. Cumplimiento con las leyes de Aire y Agua Limpios;
13. Cumplimiento con los Estándares de Eficiencia Energética emitidos por la Administración de Asuntos de Energía de Puerto Rico;

14. Manejo de Protestas de Adjudicaciones y Reclamaciones de Contratos;

15. "Value Engineering";

16. Pago de Fondos para Influenciar Ciertas Transacciones Federales;

17. Requisitos de MBE/WBE y de la Sección 3; y

18. Ley del Lugar del Trabajo Libre de Drogas.

SECCIÓN XIV. MODIFICACIONES A CONTRATOS Y ORDENES DE CAMBIO

A. Resumen de la Política

Excepcionalmente, podría ser necesario que la AVPPR Modifique un Contrato adjudicado y otorgado u Orden de Compra durante el cumplimiento del Contrato o de la Orden de Compra, con miras a atender (i) cambios imprevistos o no prevenibles requeridos por la AVPPR o (ii) revisar el cumplimiento por parte del Contratista.

Antes de iniciarse cualquier Modificación, el Usuario tiene que determinar, por escrito, que el cambio propuesto está dentro del alcance del Contrato u Orden de Compra original. Las Modificaciones unilaterales tienen que ser autorizadas según la Cláusula de Cambios contenida en el Contrato u Orden de Compra original. Las Modificaciones Bilaterales tienen que ser acordadas mutuamente por y entre la AVPPR y el Contratista. Cualquier Modificación fuera del alcance general del Contrato u Orden de

Compra original tiene que ser considerada para un nuevo proceso de adquisición, y se llevará a cabo como un proceso de adquisición separado.

En caso de Modificaciones unilaterales, la AVPPR emitirá una Orden de Cambio describiendo la Modificación requerida y formalizando dicha Modificación unilateral al Contrato o a la Orden de Compra. Las Ordenes de Cambio tienen que ser firmadas por el Administrador en todos los casos. En el caso de Modificaciones bilaterales, una Modificación Contractual será preparada por escrito por la AVPPR y firmada por el Contratista y el Administrador y describirá la Modificación y establecerá el costo según acordado, itinerario u otras revisiones al Contrato u Orden de Compra original.

B. Formas

Las Modificaciones unilaterales a un Contrato u Orden de Compra deberá ser en forma de una Orden de Cambio, la cual deberá ser firmada por el Administrador. Las Modificaciones bilaterales a un Contrato u Orden de Compra deberán ser en forma de una Modificación Contractual escrita, la cual establecerá cualesquiera revisiones al costo e itinerario y deberá ser firmada por el Administrador y por el Contratista o vendedor.

C. Procedimientos

TRADUCCIÓN

Dependiendo de si se trata de una Modificación unilateral o bilateral, se preparara preparará una solicitud escrita de Orden de Cambio o Modificación Contractual por el Usuario, en consulta con el Área de Adquisiciones, la cual incluirá lo siguiente:

a. Una descripción detallada de la Modificación propuesta, incluyendo la nueva fecha proyectada de entrega;

b. Una referencia a las especificaciones aplicables, dibujos o cualificaciones bajo las cuales el Contrato u Orden de Compra fue originalmente desarrollado y adjudicado, según aplicable;

c. Dibujos arquitectónicos Modificados, según aplicable;

d. Un estimado de costos detallado, incluyendo el precio fijo para, o el precio máximo de, la Modificación;

e. Un desglose de los costos de la Modificación propuesta por el Contratista (y subcontratistas, según aplique) de estar disponible;

f. Certificación del Negociado de Finanzas sobre la disponibilidad de fondos;

g. Una justificación escrita para la Modificación;

h. Una certificación de que la Modificación está dentro del alcance original del Contrato o la Orden de Compra original; y

i. En el caso de Modificaciones unilaterales, una certificación de que dicha Modificación ha sido efectuada según la Cláusula de Cambios contenida en el Contrato o u Orden de Compra original.

Modificaciones extraordinarias, esto es, Modificaciones donde el Usuario está solicitando un cambio en el Contrato o en la Orden de Compra que aumenta la cantidad total de dólares de dicho Contrato u Orden de Compra en un siete porciento (7%) o más, o que aumenta el tiempo de entrega por treinta (30) días o más, requerirá, además de los documentos mencionados anteriormente, una Certificación de Ética firmada por el Director del Usuario. La Certificación de Ética: (i) describirá las circunstancias que hacen necesaria la Modificación, (ii) expondrá que dichas circunstancias no eran razonablemente previsibles al momento en que el Contrato u Orden de Compra fue licitado, adjudicado y otorgado; (iii) citará la disposición federal, estatal, legal administrativa, o la cláusula contractual conforme a la cual la Modificación está siendo solicitada, y (iv) certificará que la Modificación es en los mejores intereses de la AVPPR.

Dependiendo de si se trata de una Modificación unilateral o bilateral, para cada caso será preparada una Orden de Cambio o solicitud de Modificación Contractual escrita. Una vez el

correspondiente documento esté completo, será firmado por el Director del Usuario y enviado al Área de Adquisiciones, la cual evaluará el mismo y aprobará las especificaciones, todos los términos y condiciones contractuales, y cualquier anejo, aplicables a la Modificación. En el caso de Modificaciones bilaterales, el Director de Adquisiciones o la persona designada por éste, llevará a cabo cualquier negociación necesaria para llegar a un acuerdo con el Contratista, que mejor sirva la misión de la AVPPR de proveer vivienda decente, segura a los residentes de los proyectos públicos de vivienda de la AVPPR. El Área de Adquisiciones preparará un borrador del documento formalizando la Modificación, el cual claramente describirá el alcance de la Modificación al Contrato u Orden de Compra, e identificará el precio y los otros componentes de la misma.

El Director de Adquisiciones evaluará la documentación anterior e indicará su aprobación mediante su firma en dicho borrador, y enviará el mismo al Administrador, con su recomendación, incluyendo las razones para la misma.

El Administrador, basado en la recomendación escrita del Director de Adquisiciones, aprobará la Modificación.

Después que el Administrador haya aprobado la Modificación: (i) en el caso de Modificaciones unilaterales, una copia de la

Orden de Cambio será entregada al Contratista quien a su recibo tiene que comenzar a trabajar en el cambio requerido; o (ii) en el caso de Modificaciones bilaterales, el Contratista recibirá una notificación especificando la fecha, hora y lugar para el otorgamiento de la Modificación Contractual escrita conteniendo la Modificación que mutuamente ha sido acordada por y entre la AVPPR y el Contratista. Una Modificación Contractual no es vinculante para la AVPPR a menos que esté firmada por el Administrador.

D. Expedientes

El Expediente de Adquisición incluirá todos los documentos relacionados con cada una de las Modificaciones a la adquisición original, incluyendo lo siguiente:

1. Cualquier requisito adicional de Contrato u Orden de Compra resultante de la Modificación;
2. Código de capitalización y autorización del Negociado de Finanzas;
3. Prueba de cubierta de seguro en vigor para la Modificación y aceptación de la misma por el Área de Seguros;

4. En la medida aplicable, aprobación de la Modificación por escrito de la Oficina de Campo de HUD ("HUD Field Office");

5. Número y descripción de todas y cada una de las Modificaciones al Contrato u Orden de Compra; y

6. Costo agregado y detallado de todas las Modificaciones al Contrato u Orden de Compra.

SECCIÓN XV. ANÁLISIS DE COSTO O PRECIO

A. Resumen de la Política

Según lo dispuesto en la Sección 85.36 del Título 24 C.F.R. y el Manual de Adquisiciones de HUD, se realizará un análisis de costo o precio por cada proceso de adquisición, incluyendo para todas y cada una de las Modificaciones. El método y grado de análisis de costo o precio dependerá en los hechos envueltos en cada proceso de adquisición.

Si el proceso de adquisición en particular es de Subasta Cerrada donde solamente se recibe una Licitación Responsiva, o si se refiere a una adquisición SBC de Servicios de A/I, o si es una adquisición de Propuesta No-Competitiva, o si es una Modificación, o convenio de Terminación, el Licitador particular, Proponente, o Contratista, según aplique, someterá al Área de Adquisiciones lo siguiente:

1. Un desglose detallado de costos y ganancias proyectadas; e

2. Información de precios comerciales y ventas, suficiente para permitir a la AVPPR verificar la razonabilidad de los costos y precios propuestos, tales como, entre otros, un catálogo u otra evidencia del precio de mercado de un producto comercial vendido en cantidades sustanciales al público en general, o documentación que muestre que el precio ofrecido está fijado por ley o reglamento.

B. Análisis de Costo

El Usuario es responsable por la preparación y entrega de un estimado de costos al Área de Adquisiciones para poder comenzar cualquier proceso de adquisición. Ningún IAS, SDP, SBC u otro proceso de adquisición podrá comenzar a menos que se aneje un estimado de costos al correspondiente FMA. El Área de Adquisiciones devolverá cualquier FMA u otra solicitud de adquisición al Usuario a menos que se haya anejado un estimado de costos a la misma.

Cuando un análisis de costo sea requerido, el mismo será realizado por el personal del Área de Adquisiciones con la ayuda del Usuario que solicita la adquisición, y enfocará en los elementos de costo individuales de la Oferta en particular. La

AVPPR tendrá el derecho a auditar los libros y expedientes del Proponente o Licitador relacionados con dichos costos, y se analizarán las ganancias por separado. Se permitirán los Costos sólo en la medida en que sean consistentes con los principios de costo federales aplicables.

Para establecer las ganancias, el Área de Adquisiciones considerará factores como la complejidad y riesgo del trabajo envuelto, la inversión y productividad del Proponente o Licitador, la cantidad de subcontratación, la calidad del cumplimiento en el pasado, y el margen de ganancia en la industria en el área de Puerto Rico para trabajo similar.

Para la preparación de un análisis de costos, el Área de Adquisiciones deberá contestar las siguientes preguntas:

1. Indicar el costo total del proceso de adquisición o Modificación o Terminación, incluyendo una copia del desglose de costo sometido por el Proponente, Licitador o Contratista, según aplique;
2. ¿Cuál fue el costo estimado del Usuario para el proceso de adquisición antes de la licitación o acción de único recurso? De ser este un Contrato de Emergencia, ¿preparó el Director de Adquisiciones un análisis de costos? De contestar en la afirmativa, aneje copia del mismo.

3. Si el proceso de adquisición es de único recurso o un Contrato de Emergencia, ya sea antes o después de la adjudicación, a base del estimado de costos preparado por el Usuario, indique la diferencia entre el costo propuesto y el actual y cuánto hubiera costado si se hubiera usado un método de adquisición competitivo. Si el costo propuesto o actual excede en diez porciento (10%) el costo estimado, el Director del Usuario deberá explicar la diferencia, por escrito.

4. El costo estimado, ¿está: (i) establecido por ley, reglas o reglamentos, (ii) basado en Contratos anteriores, (iii) basado en listas de precio/catálogos actuales, (iv) basado en un estimado de costos independiente preparado por el Usuarió o para su beneficio? Aneje copia, si aplica.

Se recomienda que el Área de Adquisiciones consulte el Manual de Adquisiciones de HUD al llevar a cabo un análisis de costo.

C. Análisis de Precio

Un análisis de precio es la revisión y evaluación del precio propuesto por un vendedor, Proponente, Licitador o Contratista, según aplique, para determinar su razonabilidad, sin evaluar los elementos de costo separados, o sea, sin hacer un análisis de

costos. En el caso de Compras Pequeñas y en la mayoría de los procedimientos de Licitaciones Selladas, excepto según se dispone arriba, la AVPPR hará una comparación entre los precios recibidos y el estimado de costos independiente preparado por el Usuario, para asegurar que el precio seleccionado es razonable.

El Área de Adquisiciones llevará a cabo un análisis de precio usando uno o más de los siguientes procedimientos:

1. Comprar los precios propuestos recibidos en respuesta a la solicitación.
2. Comparar los precios propuestos con los precios actuales en Contratos otorgados durante los últimos dos (2) años fiscales y con otros precios propuestos actuales para bienes, trabajos o servicios iguales o similares.
3. Aplicar medidas simples (tales como dólares por libra, por pie cuadrado, u otras unidades) para enfatizar inconsistencias significativas que ameritan una investigación adicional sobre los precios.
4. Comparar las listas de precios competitivos, los precios publicados del mercado de artículos de comercio e índices similares, e inquirir sobre planes de descuentos o reembolsos.

5. Comparar los precios propuestos con el estimado de costos independiente preparado por el Usuario.

SECCIÓN XVI. CALIFICACIONES Y DEBERES DEL CONTRATISTA

Los Contratos y/u Ordenes de Compra se adjudicarán a y se otorgarán únicamente con Contratistas Responsables, eso es, aquellos que (i) tienen la experiencia técnica y capacidad financiera para cumplir por lo menos en forma satisfactoria; y (ii) tienen un expediente de integridad probado, de cumplimiento satisfactorio en el pasado, y de cumplimiento con política pública bien sea con la AVPPR o con alguna otra agencia gubernamental estatal.

La AVPPR se reserva el derecho a no otorgar un Contrato u Orden de Compra con una Persona o Entidad contra quien se haya hecho previamente una determinación de no-Responsabilidad por la AVPPR o por otra agencia gubernamental estatal. Antes de adjudicar un Contrato u Orden de Compra, la AVPPR revisará la capacidad del vendedor, Proponente o Licitador, según aplique, para cumplir afin de hacer una determinación de Responsabilidad de acuerdo con los parámetros indicados anteriormente, y considerando, pero sin limitarse a, los siguientes factores:

1. Capacidades técnicas y financieras;

2. Récord de cumplimiento en el pasado con la AVPPR u otras agencias gubernamentales estatales;
3. Récord de cumplimiento en el pasado con clientes privados;
4. Cumplimiento con la política pública en el pasado y el presente; y
5. Reputación de integridad en el negocio.

A base de la evaluación anterior, el Área de Adquisiciones preparará por escrito una determinación de Responsabilidad o no-Responsabilidad, según aplique, incluyendo las razones para la misma, y se incluirá dicha determinación en el Expediente de Adquisición y en la notificación escrita al vendedor, Proponente o Licitador relevante.

SECCIÓN XVII. ADMINISTRACIÓN Y MONITOREO DE CONTRATOS

A. Resumen de la Política

Administración de contratos significa las actividades llevadas a cabo para garantizar que tanto el Contratista cono la AVPPR cumplen con el Contrato de acuerdo con los términos y condiciones del Contrato según adjudicado y otorgado por escrito. Monitoreo del Contrato significa aquellas actividades que se llevan a cabo para evaluar el cumplimiento del Contratista y garantizar que los resultados del Contrato, incluyendo cualquier Modificación, logra

los objetivos de la AVPPR con respecto a la adquisición en particular y siguen siendo para los mejores intereses de la AVPPR y su misión de proveer vivienda decente, segura y sanitaria a los residentes de proyectos de vivienda pública de la AVPPR.

Aunque el Área de Adquisiciones tiene la responsabilidad primaria de administrar el Contrato y de cerciorarse que el Contratista cumple con todos los términos y condiciones, el Usuario solicitante tiene la responsabilidad crucial de monitorear el cumplimiento del Contratista bajo el Contrato y de hacer cumplir las fianzas y/o garantías aplicables con la ayuda del Área de Adquisiciones hasta que se liquide el Contrato.

Si el Contratista no está cumpliendo satisfactoriamente bajo el Contrato, el Usuario notificará al Área de Adquisiciones, por escrito, y el Área de Adquisiciones evaluará la situación y decidirá si cancela el Contrato debido a incumplimiento, envia un Aviso de Saneamiento, exige el cumplimiento de las fianzas y/o garantías aplicables, o cualquier otra alternativa factible.

Al cumplirse satisfactoriamente el Contrato, el Área de Adquisiciones en conjunto con el Usuario liquidarán el Contrato. Todos los expedientes del Contrato serán retenidos por cada Contratista y la AVPPR por un mínimo de tres (3) años desde el pago final y/o la liquidación del Contrato.

B. Responsabilidades del Usuario

1. El Usuario no podrá autorizar o emitir ninguna Orden de Cambio.

2. El Usuario es responsable de monitorear el cumplimiento de cada Contratista y de informar, por escrito si es posible, al Área de Adquisiciones cualquier y todo incidente de incumplimiento con los términos y condiciones del Contrato. Si hay alguna duda en cuanto a si un incidente constituye incumplimiento, el Usuario tendrá que comunicarse con el Área de Adquisiciones.

3. El Usuario es responsable de diligentemente inspeccionar, aceptar, rechazar o tomar todas y cada una de las acciones necesarias con respecto a la entrega en conformidad o inconformidad de bienes, trabajos de construcción y/o servicios, y es responsable de supervisar el cumplimiento de los mismos. La AVPPR no está obligada a aceptar o pagar por los bienes o servicios hasta que el Usuario haya tenido la oportunidad de inspeccionarlos. La inspección debe ocurrir dentro de un tiempo razonable después de la entrega de los bienes, el trabajo de construcción y/o los servicios. Si el Área de Adquisiciones deja de especificar un defecto en

particular debido a que el Usuario no llevó a cabo la inspección dentro de un tiempo razonable, o debido a que el Usuario dejó de inspeccionar adecuadamente cuando dicho(s) defecto(s) pudo haberse encontrado mediante una inspección razonable, se considerará que la AVPPR renunció a su derecho a rechazar a base de dicho(s) defecto en particular.

4. Después de finalizado el Contrato, el Usuario someterá al Área de Adquisiciones una evaluación del cumplimiento del Contratista con el Contrato, la cual formará parte del Expediente de Adquisición.

C. Aceptación o Rechazo de Bienes/Servicios

La aceptación ocurrirá simultáneamente por el Usuario con el Área de Adquisiciones. Al recibir prueba de la aceptación, el Negociado de Finanzas pagará al Contratista de acuerdo a lo dispuesto en el Contrato por todos los bienes, servicios y/o trabajos de construcción aceptados, dentro del tiempo asignado por el Negociado de Finanzas para el pago de dichas facturas.

Cuando los bienes, trabajos y/o servicios no son de conformidad con lo establecido en el Contrato, el Usuario informará al Área de Adquisiciones, la cual:

1. Rechazará los bienes, trabajos de construcción y/o servicios defectuosos, en cuyo caso se podrá declarar al Contratista en incumplimiento, a menos que pueda someter artículos de conformidad dentro del itinerario de entrega del Contrato; o
2. Emitir un Aviso de Saneamiento que requiere del Contratista el saneamiento de los bienes, trabajos de construcción y/o servicios defectuosos dentro de un itinerario de entrega especial.

Si el Contratista deja de sanear los defectos, el Área de Adquisiciones podrá aceptar los bienes, trabajos de construcción y/o servicios y negociar una reducción en el precio del Contrato, o cancelar el Contrato debido a incumplimiento.

D. Suspensión y Exclusión

No se adjudicarán Ordenes de Compra o Contratos a Contratistas excluidos, suspendidos, no-Responsables o inelegibles. Los Contratistas pueden ser suspendidos o excluidos por HUD de conformidad con los procedimientos de exclusión determinados por HUD a tenor con las disposiciones sobre descalificación de la Parte 24 del Título 24 C.F.R. en vigor a la fecha de este Contrato, y según pueda enmendarse de tiempo en tiempo.

SECCIÓN XVIII. APELACIONES Y REMEDIOS

TRADUCCIÓN

A. Resumen de la Política

La política de la AVPPR es resolver informalmente todo asunto que surja bajo o con respecto a un Contrato u Orden de Compra a nivel de la AVPPR sin recurrir a litigio. Las disputas, protestas y otras reclamaciones se manejarán conforme a las disposiciones aplicables del Reglamento Núm. 5258 y el Reglamento Núm. 6106 según modificadas por este Manual. HUD revisará las reclamaciones por violación a las leyes o reglamentos federales después que se hayan agotado todos los remedios administrativos a nivel local.

B. Procedimientos

Toda Persona o Entidad que haya sido afectada adversamente por una determinación de adjudicación hecha según las disposiciones de este Manual podrá radicar una reclamación ante la Junta de Apelaciones dentro de los diez (10) días naturales siguientes a la fecha de recibo de la notificación de dicha adjudicación. Las reclamaciones que se reciban fuera de dicho período de tiempo no se considerarán radicadas oportunamente. La Junta de Apelaciones procesará una reclamación contra la adjudicación de un Contrato u Orden de Compra a tenor con el Reglamento Núm. 5258, según modificado por este Manual.

SECCIÓN XIX. PARTICIPACIÓN DE PEQUEÑOS NEGOCIOS

A. Resumen de la Política

La AVPPR tomará acción afirmativa apropiada para cerciorarse de que los pequeños negocios, Negocios de Dueños Minoritarios, negocios de empresas femeninas, Negocios de Residentes, y negocios de área con exceso de labor tienen suficiente oportunidad de participar en todos los procesos de adquisición financiados total o parcialmente con fondos de la AVPPR o fondos administrados por la AVPPR.

A tenor con las leyes y los reglamentos federales y estatales aplicables, la AVPPR establecerá las metas para la participación de los negocios arriba mencionados en los procesos de adquisición de la AVPPR.

SECCIÓN XX. Ética EN LA ADQUISICIÓN

A. Resumen de la Política

En vista de que la adjudicación de un Contrato u Orden de Compra conlleva el desembolso de fondos de los contribuyentes, aquellos oficiales, agentes, y empleados de la AVPPR envueltos en cada proceso de adquisición y los Contratistas tienen un deber fiduciario con la AVPPR. Por lo tanto, ningún oficial, agente o empleado de la AVPPR podrá participar directa o indirectamente en la selección, adjudicación, administración o monitoreo de ningún Contrato u Orden de Compra si resultare un conflicto de intereses, real o aparente. Por consiguiente, todos los oficiales, agentes,

empleados y Contratistas de la AVPPR mantendrán un grado ejemplar de honestidad, integridad e imparcialidad en la adquisición, directa o indirecta, de productos, trabajos y/o servicios, y en la ejecución y/o el cumplimiento bajo Contratos u Ordenes de Compra para la AVPPR. Es obligatorio que cada oficial, empleado y agente observe estrictamente las normas de ética en la contratación pública a tenor con la Sección 85.36(b)(3) del Título 24 C.F.R., el Manual de Adquisiciones de HUD, este Manual, y todas las leyes y reglamentos federales y estatales aplicables en vigor actualmente o según puedan enmendarse en el futuro.

B. Cumplimiento

1. Ningún oficial, agentes o empleados de la AVPPR podrá abrir ninguna Oferta en una fecha, hora o lugar que no sean los indicados en el aviso público de la adquisición. Si una Oferta fuese abierta por error o accidentalmente, entonces el sobre que contiene la Oferta será firmado por la persona que lo abrió, e incluirá una referencia al puesto de dicha persona en la AVPPR, y dicha persona llevará entonces el sobre a la persona del personal del Área de Adquisiciones designada para atender este tipo de situación, quien, a su vez, escribirá inmediatamente en el sobre: (1) una explicación de por qué se abrió; (2) la

fecha y la hora cuando se abrió; y (3) el número de identificación de la adquisición. Dicha persona del personal del Área de Adquisiciones entonces firmará y volverá a sellar el sobre y lo entregará a la persona o personas del Área de Adquisiciones a cargo de su custodia hasta el momento establecido para la apertura.

2. Ningún oficial, agentes o empleados de la AVPPR divulgará información alguna con relación a cualquier Oferta de cualquier Persona o Entidad (incluyendo otro Licitador o Proponente).

3. Ningún oficial, agente o empleado de la AVPPR divulgará información alguna a ninguna Persona o Entidad relacionada directa o indirectamente con una IAS, SDP, o SBC o cualquier otro proceso de adquisición antes de su divulgación pública.

4. Ningún oficial, agente o empleado de la AVPPR podrá adjudicar un Contrato u Orden de Compra a base de los criterios o especificaciones que no sean los anunciados públicamente a través de una IAS, SDP, SBC o los materiales relevantes de solicitación.

5. Ningún oficial, agente o empleado de la AVPPR solicitará, demandará, aceptará, recibirá o tratará de

solicitar, demandar, aceptar, o recibir un soborno, beneficio o comisión confidencial ("*kickback*"), directa o indirectamente, por alguna acción favorable o desfavorable relacionado con algún proceso de adquisición, incluyendo, pero sin limitarse a, la adjudicación de un Contrato u Orden de Compra, o la determinación del precio a ser pagado por la AVPPR bajo algún Contrato u Orden de Compra.

6. Ningún oficial, agente o empleado de la AVPPR podrá Modificar o intentar Modificar un Contrato excepto de acuerdo con las disposiciones aplicables de este Manual.

7. Todos los oficiales, agentes y empleados de la AVPPR reportarán al Administrador, HUD, y los oficiales del orden público cualquier soborno, beneficio o comisión confidencial hecho a dicho oficial, agente o empleado de la AVPPR.

8. Ningún oficial, agente o empleado de la AVPPR solicitará, demandará, aceptará, recibirá o intentará solicitar, demandar, aceptar, o recibir para su propio beneficio o el beneficios de cualquier otra Persona o Entidad alguna cosa de valor de alguna Persona, Entidad, Contratista, vendedor, Licitador o Proponente, con la intención de

influenciar o recompensar dicho oficial, agente, o empleado con relación a la adjudicación de algún Contrato, Orden de Compra, proceso de adquisición, negocio, transacción o serie de transacciones que envuelven a la AVPPR.

C. **Incentivos para Adjudicar Contratos**

Ningún Contratista o sus oficiales, empleados, agentes o subcontratistas hará pago alguno, ni ofrecerá algún obsequio, beneficio, oferta de empleo para el presente o futuro, o cosa de valor a ningún oficial, agente o empleado de la AVPPR con relación a ningún Contrato, Orden de Compra, proceso de adquisición, u otro negocio que envuelva la AVPPR.

Ningún pago, obsequio, beneficio, valor ni oferta de trabajo para el presente o el futuro será hecha por los Contratistas, subcontratistas u otras Personas o Entidades asociados con éstos, con relación a ningún Contrato, Orden de Compra, proceso de adquisición u otro negocio que envuelva a la AVPPR como incentivo para la adjudicación de una Orden de Tarea, Orden de Entrega, subcontrato o suborden. Esta prohibición se establecerá en todos y cada uno de los materiales de solicitación de la AVPPR, los Contratos, Contratos de Requerimientos, Ordenes de Tareas, Ordenes de Entrega y Ordenes de Compra.

D. Conflicto de Intereses Que Envuelven los Contratos

1. Es una violación de ética para cualquier oficial, agente o empleado de la AVPPR participar directa o indirectamente en la adjudicación de algún Contrato, Orden de Compra u otro proceso de adquisición en el cual dicho oficial, agente o empleado sabe o debió haber sabido que algunos de sus familiares, hasta el cuarto grado de consanguineidad o segundo grado de afinidad (en adelante, los "Familiares") tienen un interés financiero, o algún negocio u organización en el cual dicho oficial, agente, o empleado o alguno de sus Familiares tiene un interés financiero; o alguna otra Persona o Entidad con quien dicho oficial, agente o empleado, o cualquiera de sus Familiares están negociando o tienen un acuerdo con relación al presente o futuro empleo u otro interés financiero.

2. Los oficiales, agentes o empleados de la AVPPR que ejercen o han ejercido funciones o responsabilidades con respecto a algún Contrato, Orden de Compra u otro proceso de adquisición, o que están en posición de participar en el proceso de toma de decisiones o que obtienen información interna relacionada con algún Contrato, Orden

de Compra u otro proceso de adquisición, no solicitarán ni obtendrán un interés financiero o beneficio de dicho Contrato, Orden de Compra u otro proceso de adquisición, ni tendrán interés en algún Contrato, subcontrato, Orden de Compra, u otro acuerdo con respecto al mismo, o a los beneficios bajo los mismos, ya sea para sí mismos, sus Familiares, o para aquéllos con los cuales tienen tratos comerciales, durante su incumbencia con la AVPPR y por un (1) año después de su partida de la AVPPR, excepto si se dispone de otro modo en el Contrato de Aportaciones Anuales.

3. Al descubrir la existencia de algún conflicto de intereses actual o potencial que envuelve un oficial, agente o empleado de la AVPPR, dicho oficial, agente o empleado radicará de inmediato por escrito una declaración de descalificación y se retirará de futura participación en el proceso de adquisición en cuestión.

4. Todo oficial, agente o empleado de la AVPPR que obtiene algún beneficio de algún Contrato, Modificación de Contrato, Orden de Cambio, Orden de Compra, Orden de Tarea, Orden de Entrega u otra adquisición adjudicada por la AVPPR a una Persona o Entidad con quien dicho oficial

de la AVPPR, agente o empleado tiene un interés financiero o económico, reportará dicho beneficio inmediatamente al Administrador.

E. Obsequios

Constituye una violación a las normas éticas que un Contratista, vendedor, Licitador, o Proponente ofrezca, de o acuerde ofrecer o dar a un oficial, agente o empleado de la AVPPR un obsequio, beneficio u oferta de empleo, y que un oficial, agente o empleado de la AVPPR, o un ex oficial, agente o empleado de la AVPPR solicite, exija, acepte, reciba, o se comprometa a solicitar, exigir, aceptar o recibir algún obsequio, beneficio u oferta de empleo.

F. Comisiones Confidenciales ("*Kickbacks*") y Prácticas de Colusión

Constituye una violación a las leyes estatales aplicables que un Contratista, Licitador o Proponente ofrezca, de o acuerde ofrecer o dar algún pago, obsequio, beneficio u oferta de empleo a un oficial, agente o empleado de la AVPPR como incentivo para la adjudicación de algún proceso de adquisición en particular.

Constituye una violación a las normas éticas que un Contratista o subcontratista bajo un Contrato ofrezca un pago, obsequio, beneficio u oferta de empleo a otro Contratista,

subcontratista o subcontratista de más alto rango("higher-tiered"), o a una Persona o Entidad asociada con el mismo, como incentivo para la adjudicación de un Contrato, Orden de Compra, Orden de Tarea, Orden de Entrega o subcontrato.

G. Uso de Información Confidencial

Los oficiales, agentes o empleados de la AVPPR no revelarán información alguna relacionada con los procesos de adquisición a Persona o Entidad alguna antes de adjudicarse un proceso de adquisición en particular, si dicha información no ha sido divulgada con anterioridad al público en general a tenor con un anuncio escrito oficial o notificación del Administrador.

Constituye una violación a las normas de ética que un oficial, agente o empleado, o un ex-oficial, agente o empleado de la AVPPR use información privilegiada o confidencial que obtuvo durante su incumbencia en la AVPPR para su propio beneficio personal actual o potencial, o para el beneficio personal actual o potencial de otra Persona o Entidad asociada con éste.

H. Prohibición Contra Honorarios Contingentes

Ningún oficial, agente o empleado de la AVPPR podrá ser contratado ni podrá contratar a una Persona o Entidad para solicitar u obtener o intentar solicitar u obtener la adjudicación de un proceso de adquisición en particular bajo un acuerdo o

entendimiento que incluya el pago de una comisión, porcentaje, cargo de corretaje, u honorario contingente, excepto por la contratación de empleados bona fide o agencias de ventas("selling agencies") establecidas bona fide. Esto incluye la prohibición contra la venta de incentivos que pueden ocurrir cuando un ex-oficial, agente o empleado de la AVPPR es contratado a base de un honorario contingente por una Persona o Entidad que intenta obtener la adjudicación de un proceso de adquisición, o que participa en otro proceso de adquisición de la AVPPR.

I. Prohibiciones Adicionales

1. Ningún oficial, agente o empleado actual, o ex-oficial, agente o empleado, de la AVPPR podrá actuar como principal o agente para alguien que no sea la AVPPR con relación a un Contrato, Orden de Compra u otro proceso de adquisición de la AVPPR en el cual el oficial, agente o empleado participó personal y/o sustancialmente durante la decisión, aprobación, recomendación, asesoramiento, investigación o de otro modo mientras trabajaba con la AVPPR o un contrato u otro acuerdo en el cual la AVPPR es parte, tiene o ha tenido un interés o envolvimiento directo o sustancial.

2. Ninguna Persona o Entidad en la cual un oficial, agente o empleado de la AVPPR tiene interés financiero actuará como principal o agente para una Persona o Entidad con relación a un Contrato, Orden de Compra o proceso de adquisición bajo este Manual.

3. Está estrictamente prohibido que los oficiales, agentes o empleados de la AVPPR sean empleados contemporáneamente de una Persona o Entidad que contrata o está activamente solicitando la adjudicación de un Contrato, Orden de Compra u otro proceso de adquisición con la AVPPR.

4. Ningún oficial, agente o empleado actual, o ex-oficial agente o empleado, proveerá servicios ni intentará vender bienes, servicios, trabajos, o trabajos de construcción a la AVPPR durante el período de un (1) año siguiente a la fecha de terminación de su empleo, salvo si se dispone de otro modo en este Manual. Los términos "proveer servicios" o "vender" significan firmar una Licitación o Propuesta, someter cotizaciones, Negociar, discutir o cambiar especificaciones, precios, costos, subsidios u otras partidas de un Contrato u Orden de Compra, transar disputas relacionadas con un Contrato u Orden de Compra u otra actividad de enlace cuyo fin es perfeccionar un

Contrato u Orden de Compra, aunque el Contrato o la Orden de Compra real está siendo Negociado por o adjudicado a otra Persona o Entidad.

J. Sanciones

1. Todo oficial, agente o empleado de la AVPPR que haya violado algunas de las disposiciones de esta Sección o haya ofrecido información falsa o tergiversada a la AVPPR con la intención de engañar, estará sujeto a sanciones en el empleo, incluyendo, pero sin limitarse a, el despido inmediato, de acuerdo con las leyes y los reglamentos laborales aplicables.

2. Todo oficial, agente o empleado de la AVPPR que intencionalmente radique una declaración falsa o tergiversada sobre sus intereses financieros, o que a sabiendas deje de radicar una declaración que deba radicarse a tenor con las disposiciones de este Manual, dentro de un período de tiempo razonable estará sujeto al despido inmediato.

3. Todo oficial, agente, empleado, o Contratista de la AVPPR que no someta los documentos o la información requerida por la AVPPR estará sujeto a sanciones, incluyendo el

despido inmediato o la terminación de sus derechos bajo cualquier contrato.

4. Toda violación a la ética gubernamental cometida por un oficial, agente o empleado de la AVPPR, será referida a la Oficina de Ética Gubernamental del Estado Libre Asociado de Puerto Rico.

5. Todo Contrato u Orden de Compra que ha sido negociada, otorgada o cumplida en violación a las disposiciones de este Manual será cancelada por la AVPPR por causa o conveniencia, según aplique.

6. Toda acción oficial tomada por un oficial, agente o empleado de la AVPPR en violación a alguna de las disposiciones de este Manual podrá ser anulable por la AVPPR.

SECCIÓN XXI. OTRAS DISPOSICIONES

Las políticas y procedimientos contenidos aquí aplican a todos los procesos de adquisición realizados por la AVPPR después de la fecha de efectividad de este Manual, y no afectarán ningún proceso de adquisición que se complete antes de dicha fecha de efectividad.

Este Manual sustituye a todos los reglamentos, políticas y procedimientos de la AVPPR, y a otros circulares, boletines o memorandos administrativos internos relacionados con la adquisición

por o para la AVPPR o cualquiera de sus agentes de todos los bienes, servicios, trabajos de construcción y/o demás productos.

En el caso de que alguna parte, disposición o cláusula de este Manual sea invalidada por un tribunal federal o estatal con jurisdicción, las demás disposiciones permanecerán en pleno vigor y efecto.

Nada en este Manual impedirá que la AVPPR mantenga acción para la contabilidad de algún beneficio pecuniario recibido por una Persona o Entidad, o para recuperar los daños por algún acto o práctica en violación a este Manual o a otras leyes y reglamentos aplicables.

SECCIÓN XXII. VERSIÓN QUE RIGE

Este Manual es adoptado en el idioma inglés y se acompaña una traducción al idioma español del mismo. En caso de inconsistencias entre la versión en inglés y la versión en español del Manual, la versión en inglés prevalecerá.

[El resto de la página se dejó en blanco intencionalmente.]

TRADUCCIÓN

SECCIÓN XXIII. EFECTIVIDAD

Este Manual entrará en vigor inmediatamente después de su radicación con el Departamento de Estado del Estado Libre Asociado de Puerto Rico.

Aprobado en San Juan, Puerto Rico hoy día 6 de marzo de 2002.

ILEANA ECHEGOYEN
SECRETARIA
DEPARTAMENTO DE LA VIVIENDA

CARLOS LABOY
ADMINISTRADOR
AVPPR

APÉNDICE 1

ADMINISTRACIÓN DE VIVIENDA PÚBLICA DE PUERTO RICO
SOLICITUD DE COMPRA PEQUEÑA
FORMULARIO FMA-01

Este formulario será utilizado por todos y cada uno de los Usuarios de la AVPPR, los Consejos de Administración de Residentes y los Agentes Administrativos (en adelante, el "Solicitante") para la adquisición de bienes, trabajo y/o servicios cuyo costo no excede de $100,000.00.

Este formulario será completado y enviado al Area de Adquisiciones con todos los documentos y firmas requeridas no menos de 30 días antes de la propuesta fecha de entrega de los bienes, trabajo y/o servicios solicitados.

El Area de Adquisiciones no iniciará el proceso de adquisición hasta que no determine que este formulario ha sido debidamente completado.

Todo Solicitante tiene que guardar copia de cualesquiera FMA-01's utilizados, como parte de su Expediente de Adquisición.

Si el espacio provisto es insuficiente, utilice hojas adicionales.

Solicitante _____ Fecha _____

Representante Técnico: _____

Descripción de los Bienes Solicitados: _____

_____

_____

_____

_____

Alcance de los Servicios Solicitados: _____

_____

_____

_____

Justificación de esta Solicitud de Compra Pequeña: _____

_____

_____

_____

Cotizaciones Obtenidas por el Area de Adquisiciones de parte de vendedores/suplidores, en orden de preferencia.

Mínimo Una (1) a Tres (3), según sea el caso.

El Area de Adquisiciones tiene que anejar la cotización original escrita obtenida del Vendedor/Suplidor

A. Primera Selección
- Nombre del Vendedor/Suplidor_____
- Dirección_____
- Teléfono_____
- Bienes o Servicios_____
- Cotización/Estimado_____
- Fecha/Hora_____
- Persona Contacto_____

B. Segunda Selección
- Nombre del Vendedor/Suplidor_____
- Dirección_____
- Teléfono_____
- Bienes o Servicios_____
- Cotización/Estimado_____
- Fecha/Hora_____
- Persona Contacto_____

C. Tercera Selección
- Nombre del Vendedor/Suplidor_____
- Dirección_____
- Teléfono_____
- Bienes o Servicios_____
- Cotización/Estimado_____
- Fecha/Hora_____
- Persona Contacto_____

Si el Solicitante entiende que otros factores, aparte del precio más bajo, deben ser considerados, explique dichos factores y su relevancia. (Estos factores adicionales tienen que ser divulgados a **todos** los vendedores/suplidores antes de que éstos sometan sus cotizaciones/estimados finales):_____
_____
_____

Si no se pudieron obtener cotizaciones, el Area de Adquisiciones tiene que explicar por qué:
_____
_____
_____

¿Está anejada la **Certificación de Fondos** del Negociado de Finanzas, con la debida **Codificación del Sistema Fundware** y el **Número de Cuenta de HUD**?
Favor circular su contestación. **SI NO.**
Si la contestación es **NO**, esta solicitud no será procesada.

¿Están anejados los **originales de las cotizaciones/estimados** de los vendedores/suplidores?
Favor circular su contestación. **SI NO**.
Si la contestación es **NO**, esta solicitud no será procesada.

Se solicitan los bienes y/o servicios antes descritos debido a que la cantidad estimada en dólares para su adquisición no excede el límite de $100,000.00 establecido por la AVPPR para Compras Pequeñas. Al estampar su firma en donde se indica más adelante, el Director del Solicitante afirma que esta adquisición no fue dividida para cualificar como Compra Pequeña.

Nombre del Director	**Firma**	**Fecha**

PARA USO EXCLUSIVO DEL AREA DE ADQUISICIONES

Recibido por_____ Fecha_____

¿Toda la información requerida ha sido suministrada? **SI NO.**
Si la contestación es **NO**, favor explicar la acción tomada.

_____
_____
_____
_____

Comentarios

_____
_____
_____
_____

Al estampar su firma en donde se indica más adelante, el Director de Adquisiciones de la AVPPR aprueba esta Compra Pequeña. Sin dicha firma esta adquisición no será procesada.

Nombre del Director de Adquisiciones	**Firma**	**Fecha**

APÉNDICE 2

ADMINISTRACIÓN DE VIVIENDA PÚBLICA DE PUERTO RICO
SOLICITUD DE IAS, SDP O SBC
FORMULARIO FMA-02

Este formulario será utilizado por todos y cada uno de los Usuarios de la AVPPR, los Consejos de Administración de Residentes y los Agentes Administrativos (en adelante, el "Solicitante") para la adquisición de bienes, trabajo y/o servicios cuyo costo excede de $100,000.00.

Este formulario será completado y enviado al Area de Adquisiciones con todos los documentos y firmas requeridas no menos de 120 días antes de la propuesta fecha de entrega de los bienes, trabajo y/o servicios solicitados en caso de una IAS y no menos de 180 días antes de la propuesta fecha de entrega en caso de una SDP o SBC.

El Area de Adquisiciones no iniciará el proceso de adquisición solicitado hasta que no determine que este formulario ha sido debidamente completado.

Todo Solicitante tiene que guardar copia de cualesquiera FMA-01's utilizados, como parte de su Expediente de Adquisición.

Si el espacio provisto es insuficiente, utilice hojas adicionales.

Solicitante _____ Fecha_____

Representante Técnico:_____

Descripción de los Bienes Solicitados:_____

_____

_____

_____

_____

Alcance de los Servicios Solicitados: _____

_____

_____

_____

Justificación de esta Solicitud de Adquisición Competitiva:_____

_____

_____

_____

Indique todos y cada uno de los factores de evaluación que el Solicitante entiende que deben ser considerados en la evaluación de cada oferta, especificando su relevancia e incluyendo la puntuación máxima para cada factor. (Favor de utilizar hojas adicionales de ser necesario):

Factor de Evaluación:	**Puntuación Máxima:**
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____
9. _____	_____

¿Están anejados el **Plan de Evaluación** y la **Hoja de Evaluación** correspondientes a este proceso de adquisición?
Favor circular su contestación. **SI** **NO**
Si la contestación es **NO**, esta solicitud no será procesada.

¿Está anejado el **Estimado de Costo** correspondiente a este proceso de adquisición?
Favor circular su contestación. **SI** **NO.**
Si la contestación es **NO**, esta solicitud no será procesada.
Si no se pudo preparar un **Estimado de Costo**, explique por qué:

_____

_____

_____

¿Está anejada la **Certificación de Fondos** del Negociado de Finanzas, con la debida **Codificación del Sistema Fundware** y el **Número de Cuenta de HUD**?
Favor circular su contestación. **SI NO.**
Si la contestación es **NO**, esta solicitud no será procesada.

Se solicita el proceso de adquisición de los bienes y/o servicios antes descritos debido a que la cantidad estimada en dólares para su adquisición excede el límite de $100,000.00 establecido por la AVPPR para Compras Pequeñas. Al estampar su firma en donde se indica más adelante, el Director del Solicitante afirma que esta solicitud de adquisición cumple con la reglamentación federal y estatal aplicable.

Nombre del Director	**Firma**	**Fecha**

PARA USO EXCLUSIVO DEL AREA DE ADQUISICIONES

Recibido por_____ Fecha_____

¿Toda la información requerida ha sido suministrada? **SI NO.**
Si la contestación es **NO**, favor explicar la acción tomada.

_____
_____
_____
_____

Comentarios

_____
_____
_____
_____

PARA USO EXCLUSIVO DE LA DIVISIÓN DE SEGUROS

Requisitos de Seguros

_____
_____
_____
_____

Al estampar su firma en donde se indica más adelante, el Director de Adquisiciones de la AVPPR aprueba esta solicitud. Sin dicha firma esta solicitud no será procesada.

Nombre del Director de Adquisiciones	Firma	Fecha

APÉNDICE 3

ADMINISTRACIÓN DE VIVIENDA PÚBLICA DE PUERTO RICO
LISTA DE COTEJO PARA CONTROL INTERNO
DE EXPEDIENTES DE ADQUISICIONES
FORMULARIO FMA-03

Este formulario será utilizado por el Área de Adquisiciones (AAdq), los Consejos de Administración de Residentes (CAR) y los Agentes Administrativos (AA) para mantener control de toda la documentación que debe estar incluida en el Expediente de Adquisición de todos y cada uno de los procesos de adquisición de la AVPPR y los referidos Consejos y Agentes.

Este formulario es parte del Expediente de Adquisición, por lo tanto cada Expediente de Adquisición debe incluir este formulario.

Cada ítem en este formulario debe ser completado y actualizado a medida que el proceso de adquisición particular progresa; de no ser así, una explicación escrita debe ser provista en los espacios indicados o en hojas adicionales.

En caso de que más de una persona escriba en este formulario, cada ítem deberá tener la firma legible (en el margen derecho de la hoja) de la persona que haya completado el ítem en particular.

Si el espacio provisto es insuficiente, utilice hojas adicionales.

Circule Uno: AAdq AA CAR Fecha_____

Circule Uno: CP IAS SDP SBC

Número de Contrato u Orden de Compra:_____

1.a. Descripción de los Bienes Solicitados:_____

_____

_____

_____

_____

1.b. Alcance de los Servicios Solicitados: _____

_____

_____

_____

2. ¿Incluye este Expediente el FMA apropiado?_____

   Favor circular su contestación: **SI** **NO**
   Si la contestación es NO, explique.

   _____

   _____

   _____

3. ¿Incluye este Expediente la **Certificación de Fondos** del Negociado de Finanzas?
   Favor circular su contestación. **SI** **NO.**
   Si la contestación es **NO**, explique.

   _____

   _____

   _____

4. ¿Incluye este Expediente copia del **Anuncio** correspondiente a este proceso de adquisición?
   Favor circular su contestación. **SI** **NO.**
   Si la IAS, SDP o SBC, según sea el caso, no fue publicada o no hay evidencia de dicha publicación, explique.

   _____

   _____

   _____

5. ¿Incluye este Expediente el **Estimado de Costos** correspondiente a este proceso de adquisición?
   Favor circular su contestación. **SI** **NO.**
   Si la contestación es **NO**, explique.

   _____

   _____

   _____

6. En caso de Compra Pequeña, ¿están anejadas al FMA-01 por lo menos una (1) o tres (3) de las **Cotizaciones**, según sea aplicable?
   Favor circular su contestación. **SI** **NO**.
   Si la contestación es **NO**, explique.

   _____

   _____

   _____

7. ¿Incluye este Expediente copia de los **Materiales de Licitación** correspondientes a este proceso de adquisición?
   Favor circular su contestación. **SI** **NO**.
   Si la contestación es **NO**, explique.

   _____

   _____

   _____

8. ¿Incluye este Expediente copia de cualesquiera **Enmiendas** a la IAS, SDP o SBC correspondiente a este proceso de adquisición?
   Favor circular su contestación. **SI** **NO**.
   Si la contestación es **NO**, explique.

   _____
   _____
   _____

9. Si se celebró una Conferencia Pre-Apertura de Licitaciones, ¿incluye este Expediente el registro de licitadores prospectivos y las minutas de dicha conferencia?
   Favor circular su contestación. **SI** **NO**.
   Si la contestación es **NO**, explique.

   _____
   _____
   _____

10. ¿Incluye este Expediente un récord de los licitadores prospectivos que compraron los materiales de licitación? ¿Un récord del total de licitaciones recibidas?
    Favor circular su contestación. **SI** **NO**.
    Si la contestación es **NO**, explique.

    _____
    _____
    _____

11. ¿Incluye este Expediente un récord de los Proponentes prospectivos que compraron los materiales de licitación? ¿Un récord del total de Propuestas recibidas?
    Favor circular su contestación. **SI** **NO**.
    Si la contestación es **NO**, explique.

    _____
    _____
    _____

12. En caso de IAS, ¿incluye este Expediente copia de las minutas de la pública apertura de las licitaciones?
    Favor circular su contestación. **SI** **NO**.
    Si la contestación es **NO**, explique.

    _____
    _____
    _____

13. Incluye este Expediente todas las Licitaciones o Propuestas, según aplique, recibidas en relación con este proceso de adquisición?
    Favor circular su contestación. **SI** **NO**.
    Si la contestación es **NO**, explique dónde se encuentran las mismas y quién es responsable de ellas.

    _____
    _____
    _____

14. Si la IAS, SDP o SBC ha sido adjudicada, ¿incluye este Expediente copia de la aprobación de la Junta de Subastas? ¿Copia de las notificaciones al Licitador o Proponente agraciado y las notificaciones a los Licitadores o Proponentes no agraciados? ¿Copia de la determinación de Responsabilidad?
    Favor circular su contestación. **SI** **NO.**
    Si la contestación es **NO**, explique.

    _____
    _____
    _____

15. ¿Hay alguna irregularidad en este Expediente (i.e., documentos extraviados originalmente incluidos en este Expediente? Explique.

    _____
    _____
    _____
    _____

Al estampar su firma en donde se indica más adelante, el Director de Adquisiciones, del Agente Administrativo o del Consejo de Administración de Residentes, según aplique, afirma que ha revisado detalladamente este Expediente y que toda la información aquí incluida está completa y es, según su mejor creencia, verdadera y correcta a la fecha de hoy.

_____	_____	_____
Nombre del Director	**Firma**	**Fecha**

Apéndice 3.wpd

APÉNDICE 4

ADMINISTRACIÓN DE VIVIENDA PÚBLICA DE PUERTO RICO
LISTA DE COTEJO PARA AUDITORÍA
DE CAR P AA
FORMULARIO FMA-04

Este formulario será utilizado por el personal del Área de Adquisiciones (AAdq) que audite cualesquiera Consejos de Administración de Residentes (CAR) o Agentes Administrativos (AA) para mantener control de toda la documentación que debe estar incluida en el Expediente de Adquisición de cada proceso de adquisición.

Este formulario debe ser firmado por la persona del Área de Adquisiciones que lleve a cabo la auditoría y por un representante autorizado del correspondiente CAR o AA.

Todo CAR y AA mantendrá una copia firmada de este formulario en el Expediente de Adquisición del correspondiente Contrato u Orden de Compra.

Si el espacio provisto es insuficiente, utilice hojas adicionales.

Circule Uno: AA CAR Fecha_____

Circule Uno: CP IAS SDP SBC

Número de Contrato u Orden de Compra:_____

1.a. Descripción de los Bienes solicitados:_____

_____

_____

_____

_____

1.b. Alcance de los Servicios Solicitados: _____

_____

_____

_____

2. ¿Incluye este Expediente el FMA apropiado?_____

   Favor circular su contestación: **SI** **NO**
   Si la contestación es **NO**, explique.

   _____

   _____

   _____

3. ¿Incluye este Expediente la **Certificación de Fondos** del Negociado de Finanzas?
   Favor circular su contestación. **SI** **NO.**
   Si la contestación es **NO**, explique.

   _____

   _____

   _____

4. ¿Incluye este Expediente copia del **Anuncio** correspondiente a este proceso de adquisición?
   Favor circular su contestación. **SI** **NO.**
   Si la IAS, SDP o SBC, según sea el caso, no fue publicada o no hay evidencia de dicha publicación, explique.

   _____

   _____

   _____

5. ¿Incluye este Expediente el **Estimado de Costos** correspondiente a este proceso de adquisición?
   Favor circular su contestación. **SI** **NO.**
   Si la contestación es **NO**, explique.

   _____

   _____

   _____

6. En caso de Compra Pequeña, ¿están anejadas al FMA-01 por lo menos una (1) o tres (3) de las **Cotizaciones**, según sea aplicable?
   Favor circular su contestación. **SI** **NO**.
   Si la contestación es **NO**, explique.

   _____

   _____

   _____

7. ¿Incluye este Expediente copia de los **Materiales de Licitación** correspondientes a este proceso de adquisición?
   Favor circular su contestación. **SI** **NO**.
   Si la contestación es **NO**, explique.

   _____

   _____

   _____

8. ¿Incluye este Expediente copia de cualesquiera **Enmiendas** a la IAS, SDP o SBC correspondiente a este proceso de adquisición?
   Favor circular su contestación. **SI** **NO**.
   Si la contestación es **NO**, explique.

   _____
   _____
   _____

9. Si se celebró una Conferencia Pre-Apertura de Licitaciones, ¿incluye este Expediente el registro de licitadores prospectivos y las minutas de dicha conferencia?
   Favor circular su contestación. **SI** **NO**.
   Si la contestación es **NO**, explique.

   _____
   _____
   _____

10. ¿Incluye este Expediente un récord de los licitadores prospectivos que compraron los materiales de licitación? ¿Un récord del total de licitaciones recibidas?
    Favor circular su contestación. **SI** **NO**.
    Si la contestación es **NO**, explique.

    _____
    _____
    _____

11. ¿Incluye este Expediente un récord de los Proponentes prospectivos que compraron los materiales de licitación? ¿Un récord del total de Propuestas recibidas?
    Favor circular su contestación. **SI** **NO**.
    Si la contestación es **NO**, explique.

    _____
    _____
    _____

12. En caso de IAS, ¿incluye este Expediente copia de las minutas de la pública apertura de las licitaciones?
    Favor circular su contestación. **SI** **NO**.
    Si la contestación es **NO**, explique.

    _____
    _____
    _____

13. Incluye este Expediente todas las Licitaciones o Propuestas, según aplique, recibidas en relación con este proceso de adquisición?
    Favor circular su contestación. **SI** **NO**.
    Si la contestación es **NO**, explique dónde se encuentran las mismas y quién es responsable de ellas.

14. Si la IAS, SDP o SBC ha sido adjudicada, ¿incluye este Expediente copia de la aprobación de la Junta de Subastas? ¿Copia de las notificaciones al Licitador o Proponente agraciado y las notificaciones a los Licitadores o Proponentes no agraciados? ¿Copia de la determinación de Responsabilidad?
Favor circular su contestación. **SI** **NO**.
Si la contestación es **NO**, explique.

15. En cumplimiento de las leyes federales y estatales aplicables, toda Oferta recibida por la AVPPR en relación con un proceso de adquisición, tiene que incluir los siguientes **formularios, documentos y certificaciones**. Favor marcar en el espacio indicado si el correspondiente formulario, documento o certificación se encuentra en el Expediente de Adquisición. De no encontrarse en el Expediente, explique por qué.

A. Documentos Requeridos

1._____ Garantía de Licitación (5%)
2._____ Afidávit sobre No-Colusión

B. Formularios de Subasta (del 1 al 9)

1._____ Formulario 1	2._____ Formulario 2	3._____ Formulario 3
4._____ Formulario 4	5._____ Formulario 5	6._____ Formulario 6
7._____ Formulario 7	8._____ Formulario 8	9._____ Formulario 9

C. Formularios de HUD

1._____ Formulario 2530	2._____ Formulario 5369	3._____ Formulario 5369A
4._____ Formulario 5369B	5._____ Formulario 5369C	6._____ Formulario 5370
7._____ Formulario 5370A	8._____ Formulario 51915A	

D. Certificaciones Estatales

1._____ Certificación de Deuda del Departamento de Hacienda
2._____ Planillas de Contribución sobre Ingreso para los últimos cinco (5) años previos a la Oferta
3._____ Certificación de Deuda del Centro de Recaudaciones de Ingresos Municipales (CRIM)
4._____ Certificación de Deuda de ASUME

16. El Expediente de Adquisición tiene que incluir documentación detallada sobre el proceso de evaluación y adjudicación. Si la documentación requerida se encuentra en el Expediente de Adquisición, favor marcar en el espacio indicado. De no encontrarse en el Expediente, explique por qué.

a._____ Determinación de que la Licitación agraciada es Responsiva.
b._____ Determinación de que el Licitador o Proponente agraciado es Responsable.
c._____ Evaluación de Precio de las Ofertas.
d._____ Informe del Comité Evaluador (Por porcientos)
e._____ Recomendación de Adjudicación del Comité Evaluador
f._____ Informe de la Junta de Subastas
g._____ Carta del Administrador al Licitador o Proponente agraciado y Notificación a los Licitadores o Proponentes no agraciados.

17. El éxito de los procesos de adjudicación depende de una eficiente **Administración de Contratos**. Todo Expediente de Adquisición tiene que incluir la documentación enumerada a continuación. Favor marcar en el espacio indicado si la documentación requerida se encuentra en el Expediente de Adquisición. De no encontrarse en el Expediente, explique por qué.

A. Documentos y/o Certificaciones de Seguros

1._____ Fondo del Seguro del Estado (F.S.E.)
2._____ Departamento del Trabajo
3._____ Fianza de Pago y Cumplimiento
4._____ Fianza de Fidelidad
5._____ Póliza de Responsabilidad General y Automovilística

B. Duración del Contrato

1. Desde _____, 20___ hasta _____, 20___.
2. Penalidades (Contratos de Construcción) $ _____ per diem.
3. Enmiendas _____

C. Pagos

1._____ Certificaciones de Pago
2._____ 51000 Itinerario de Pagos bajo el Contrato
3._____ 51001 Estimado Periódico para el Pago Final
4._____ 51002 Itinerario de Ordenes de Cambio
5._____ Relevo del Fondo del Seguro del Estado
6._____ Certificado de Culminación
7._____ Garantías

18. Hay alguna irregularidad en este Expediente (i.e., documentos extraviados originalmente incluidos en este Expediente? Explique.

Al estampar su firma en donde se indica más adelante, la Persona Autorizada del personal del Área de Adquisiciones de la AVPPR afirma que ha revisado detalladamente este Expediente y que toda la información aquí incluida es, según su mejor creencia, verdadera y correcta a la fecha de hoy.

Nombre de la Persona Autorizada	**Firma**	**Fecha**

Al estampar su firma donde se indica más adelante, el Representante Autorizado del Agente Administrativo o del Consejo de Administración de Residentes, según sea el caso, afirma que este Expediente de Adquisición está lo más completo posible según su mejor información y creencia.

Nombre del Representante Autorizado	**Firma**	**Fecha**

Apéndice 4.wpd

APÉNDICE 5

DOCUMENTOS REQUERIDOS PARA CONTRATOS CON LA AVPPR

1. Original de Certificado de Incorporación emitido por el Departamento de Estado u otra evidencia de autorización necesaria para llevar a cabo el negocio para el cual la Entidad concernida fue organizada.

2. Original de Certificado de Resolución Corporativa u otra autorización para participar en el proceso de adquisición en particular.

3. Original sellado del último informe anual radicado en, o certificado de "good standing" emitido por, el Departamento de Estado.

4. Copia de la planilla corporativa de contribución sobre ingreso correspondiente al año inmediatamente anterior.

5. Copia de las certificaciones sobre radicación de planillas en los últimos cinco años (en caso de no haber radicado en cualesquiera dichos años, someter declaración jurada explicando las razones).

6. Original de Certificado de Deuda emitido por el Departamento de Hacienda de Puerto Rico (si el certificado refleja deuda deberá presentar evidencia de plan de pago).

7. Original de Certificado de Deuda emitido por el Departamento del Trabajo de Puerto Rico.

8. Original de certificado(s) de deuda emitido(s) por el correspondiente Centro de Recaudaciones de Ingresos Municipales.

9. Evidencia de póliza con el Fondo del Seguro del Estado.

10. Certificado de fianza de fidelidad.

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List of Forms

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HUD-2516- “Contract and Subcontract Activity Report”

HUD-5369- “Instructions to Bidders for Contracts”

HUD-5369-A- "Representations, Certifications, and Other Statements of Bidders"

HUD-5369-B- "Instructions to Offerors-Non-Construction"

HUD-5370- "General Conditions of the Contract for Construction"

HUD-5370-C- General Contract Conditions for Non-Construction Contracts

HUD-5370-EZ - “General Conditions of the Contract for Small Construction/Development Contracts”

HUD-5372- “Construction Progress Schedule”

HUD-51000- “Schedule of Amounts for Contract Payments”

HUD-51001- “Periodic Estimate for Partial Payment”

HUD-51002- “Schedule of Change Orders”

HUD-51003- “Schedule of Materials Stored”

HUD-51004- “Summary of Materials Stored”

HUD-51915- “Model Form of Agreement Between Owner and Design Professional”

HUD-51915-A- “Contract Provisions Required by Federal Law or Owner Contract with the U.S. Department of Housing and Urban Development”

HUD-52158 - “Maintenance Wage Rate Determinations”

HUD-53010- “Low-Rent Public Housing Annual Contributions Contract, Part I”

HUD-53011- “Low-Rent Public Housing Annual Contributions Contract, Part II”

HUD-53012-A - “Terms and Conditions”

HUD-60002- “Economic Opportunities for Low and Very Low-Income Persons”

WH-347- “Payroll”

Special Attention of:
Public Housing Agencies;
Public Housing HUB Office Directors;
Public Housing Program Center Directors;
Regional Directors;
Field Office Directors; and
Resident Management Corporations

Transmittal for Handbook No: 7460.8 REV 2
Issued: March 2, 2007

1. This Transmits: HUD Handbook 7460.8 REV 2, Procurement Handbook for Public Housing Agencies, dated 2/2007

2. Summary: This handbook has been re-titled from "Procurement Handbook for Public Housing Agencies and Indian Housing Authorities" to read, "Procurement Handbook for Public Housing Agencies." This handbook applies only to Public Housing Agencies (PHAs or agencies) for the operation, modernization, and development of public housing and is not applicable to Tribally Designated Housing Entities (TDHEs), Indian Housing Authorities (IHAs), or the operation of the Section 8 Housing Choice Voucher Program.

   This handbook has been updated to clarify, simplify, and update procurement requirements for public housing. It incorporates changes in Federal laws, regulations, and other instructions, especially the increase in the Federal small purchase threshold, and aligns the Department's guidance in support of asset management.

   The handbook conforms to 24 CFR Part 85, Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments, dated April 1, 2006, which PHAs are required to follow. 24 CFR Part 85 is HUD's adaptation of the "Common Rule," establishing consistency and uniformity among Federal agencies in the administration of grants and the use of Federal program grant funds for procurement activities.

   The previous version of this handbook (Rev-1, January, 1993) assumed, primarily, a centralized approach to PHA purchasing, where a central purchasing department handled most aspects of the procurement function, from cost estimation through contract administration. Under asset management, purchasing functions are frequently administered by on-site personnel, with appropriate supervision and controls. The Department recognizes that PHAs may elect different organizational approaches to purchasing and that this

handbook is permissive of both approaches. Whichever approach is used, the PHA is ultimately responsible for assuring compliance with all applicable rules and regulations.

Areas that have been streamlined include:

- An increases in the small purchase threshold from $25,000 to $100,000, in accordance with revisions to 24 CFR 85.36;
- The establishment of a micro-purchase threshold of $2,000, requiring only one reasonable quote (consistent with the Federal Acquisition Regulations);
- The use of "incorporation by reference" of mandatory contract clauses into bid specifications and contracts;
- The elimination of any required forms for small purchases, with the exception of applicable maintenance and construction contracts exceeding $2,000;
- The use of a simplified contract for construction work that does not exceed $100,000;
- The elimination of the requirement to conduct a separate cost/price analysis when obtaining products or services of a commercial nature; and
- The ability of PHAs to "self-certify" that their procurement systems satisfy the requirements of 24 CFR 85.36, thereby eliminating the need for prior HUD approval for most change orders and non-competitive purchases.

Additionally, this handbook updates and expands guidance on such topics as cooperative purchasing, energy performance contracting, selecting HOPE VI and mixed-finance partners, and other areas.

Finally, this handbook provides PHAs with a sample procurement policy, along with associated procurement forms.

3. Appendices: The Appendices contain both sample formats for various procurement documents and required HUD forms. Sample formats provided in the Appendices are for optional use. Use of the HUD forms in this Handbook, however, is mandatory. Field Offices may approve changes to forms necessary to conform to State or local laws. Other changes to these forms may only be made with the written authorization of the Assistant Secretary for Public and Indian Housing. All changes are to be made by addendum to the original, unchanged form.

4. Filing Instructions:

Remove: HUD Handbook 7460.8 REV 1, Procurement Handbook for Public and Indian Housing Authorities, dated 1/93	Insert: HUD Handbook 7460.8 REV 2, Procurement Handbook for Public Housing Agencies, dated 9/2006

The existing handbook, HUD Handbook 7460.8 REV 1, will be canceled at the time of publication of HUD Handbook 7460.8 REV 2.

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Orlando J. Cabrera, Assistant Secretary
for Public and Indian Housing

CHAPTER 1. INTRODUCTION

1.1 Purpose of the Handbook

This handbook sets forth both required and recommended procurement practices applicable to Public Housing Agencies (PHAs or agencies) for the operation, modernization, and development of public housing. It incorporates changes in Federal laws, regulations, and other instructions, especially the increase in the Federal small purchase threshold, and aligns the Department's guidance in support of asset management.

1.2 Application

The instructions herein apply to all PHA procurement actions using Federal program grant funds, regardless of agency size, for the operation, modernization, and development of public housing. However, smaller PHAs will be governed mostly by the more streamlined small purchase procedures discussed in Chapter 5. Indeed, even among the largest PHAs, a majority of procurement actions may be conducted using small purchase procedures.

This handbook does not apply to:

- Tribally Designated Housing Entities (TDHEs) or to Indian Housing Authorities (IHAs);
- The operation of the Section 8 Housing Choice Voucher Program, which is exempted from **24 CFR 85.36** (see March 11, 1988, Federal Register, page 8050). Procurement activities within the voucher program, therefore, are governed by applicable state and local law (see Chapter 13 of this handbook). To the extent that the PHA utilizes procurement practices for its voucher program that are different from those required under **24 CFR 85.36**, the PHA should incorporate those differences in its procurement policy; or
- Income generated by the Central Office Cost Center through reasonable fee-for-service arrangements under **24 part 990**, e.g., management fees, bookkeeping fees, asset management fees, etc. Such fee income is not considered Federal program income and subject to **24 CFR part 85**. Fee income is governed only by State and local requirements, as applicable.

While this handbook is intended as the primary reference document for all PHA procurement matters, no document can be all-inclusive. Where situations arise that have not been addressed in this handbook, the PHA is urged to contact the local HUD field office. On a more limited basis, additional procurement-related technical assistance is available within HUD's Office of the Chief Procurement Officer (OCPO) and its three field-based Field Contracting Operations (Atlanta, Denver, and Philadelphia). Where necessary, the local HUD field office representatives can facilitate access to these latter resources.

To distinguish between instructions in this handbook that are mandatory versus those that are advisory, the following terms have the following meanings:

- "Shall" and "must," mean that an action or item is mandatory and is required by statute or regulation. Regulatory and statutory citations are provided throughout this handbook.

- "Should" and "may," mean that the action or item serves to provide guidance and/or best practices but is not mandatory.

1.3 Source Requirements

For administrative program purposes, PHAs are considered "local government(s)" and public housing assistance in the form of Operating Fund or Capital Fund assistance (or other grant assistance covered by 24 CFR Part 85) are considered a "Federal program grant funds." As such, PHAs are governed by **Part 85** of Title 24 of the Code of Federal Regulations (**24 CFR Part 85**), Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments. **24 CFR Part 85** is also known as the "Common Rule" in that it applies to all state and local government recipients of Federal housing assistance grants. **Section 85.36** of this "Common Rule" is the controlling regulation governing procurement activity. Among other items, **24 CFR 85.36** provides for full and open competition in all PHA procurement matters. The standards provided in this handbook are basic principles that each grantee must adhere to when it contracts for needed items using Federal program grant funds.

PHAs are also required to follow applicable State or local laws on procurement, depending on their location. In some cases, the Federal standards are stricter than State or local law. In such cases, the PHA must comply with the applicable Federal law and the rules in **24 CFR 85.36**. If State or local law is stricter than Federal standards, then State or local law will apply. Additional guidance on dealing with State and local regulations governing procurement is covered in Chapter 13 of this handbook. Other regulations that affect specific aspects of a PHA's procurement program include:

- **24 CFR Part 135** – Economic Opportunities for Low- and Very Low-Income Persons, which implements Section 3 of the Housing and Urban Development Act of 1968
- **24 CFR 941**, **Subpart F** – Public/Private Partnerships for the Mixed Finance Development of Public Housing Units
- **24 CFR Part 943** – PHA Consortia and Joint Ventures
- **24 CFR Part 963** – Public Housing — Contracting with Resident Owned Businesses
- **24 CFR Part 964** – Tenant Participation and Tenant Opportunities in Public Housing
- **24 CFR Part 965** – PHA-Owned or Leased Projects – General Provisions (see Subpart A on pre-emption of state prevailing wage requirements)
- **24 CFR Part 968** – Public Housing Modernization (see 968.110 on wage provisions and 968.135 on contracting requirements)
- **24 CFR Part 990** – The Public Housing Operating Fund Program (see Section 990.170 on utilities)

1.4 Consistency with Good Business Practices

The fundamental goal of a PHA's procurement system should be to satisfy end users in terms of cost, quality, and timeliness of the delivered product or service while complying with applicable laws, rules (e.g., HUD regulations and notices), and the PHA's own policies. Further, those involved in the procurement function should exercise personal initiative and sound business judgment in providing the best value product or service in meeting the agency's needs. Consistent with that goal, Contracting Officers may assume that, if a specific strategy, practice, policy or product is in the best interests of the PHA and is not addressed in this handbook, nor prohibited by law, executive order, regulation, or other directive including the PHA's own policy, the strategy, practice, policy or procedure may be a permissible exercise of authority. Contracting Officers are advised to seek advice whenever they have doubts about an intended strategy, practice, policy or procedure.

1.5 State and Local Law

Each PHA operates under a different set of State and/or local laws. In some cases, the Federal standards may be more stringent than the State or local law/regulation. In general, the PHA must comply with whichever is more stringent. It would be impossible for the Department to provide guidance on each and every State/local requirement affecting procurement. A more complete discussion of the relationships between Federal, State, and local laws is found in Chapter 13.

1.6 Public Access to Procurement Information

Certain information about PHA procurements is normally considered public (e.g., name of the winning contractor and total contract price) and should be released to the public in accordance with the PHA's procurement policy and applicable State laws and regulations governing freedom of information. Other information related to procurement is often protected from disclosure (e.g., proprietary business information such as technical methods or processes, detailed pricing information, personal information, or the PHA's pre-decided information such as internal proposal evaluations). PHAs must exercise caution to ensure that protected information is not made public. Contracting personnel should consult the PHA's legal counsel whenever there is any question regarding the release of information.

In addition to laws requiring the publication of procurement opportunities, many State governments have enacted Freedom of Information or similar laws designed to further the goal of open government by providing public access to procurement information. These laws are not uniform as each State has a different set of rules defining what type of information is considered public as well as how and when it may be released. The State law on public records may or may not apply to the PHA's procurement actions. Each PHA must incorporate applicable State laws into its procurement policy and ensure that procurement actions are conducted in accordance with such laws.

1.7 Availability of HUD Forms and Documents

All required forms listed in this document, as well as relevant HUD notices, handbooks, and regulations, can be found online through one or more of the following:

- Information related to the public housing programs and their requirements is available at HUD's Office of Public and Indian Housing web site:

http://www.hud.gov/offices/pih/index.cfm

- Valuable procurement-related information and contacts to HUD personnel who can provide procurement-related technical assistance are available at HUD's OCPO's web site:

http://www.hud.gov/offices/cpo/index.cfm

- HUD forms may be found through:

http://www.hudclips.org.

Please note that any mandatory forms or clauses discussed in this handbook must not be modified without written HUD approval. HUD field offices may approve changes to forms necessary to conform to State and local laws, subject to concurrence by HUD field office counsel. Other changes to these forms shall only be made with the written authorization of the Assistant Secretary for Public and Indian Housing.

1.8 Paperwork Reduction Information

The information collection requirements contained in this handbook has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number(s) 2535-0117; 2577-0157; 2577-0039; 2577-0025; 2577-0155; and 2577-0015. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Any new information collection and reporting requirements not covered under previous approvals will require a new package to be prepared and submitted to OMB for review.

1.9 Glossary

The following is a list of key procurement and contracting terms and definitions used throughout this handbook.

Acceptance – The act of an authorized representative of the PHA acknowledging that the supplies or services delivered to or received by the PHA conform to contract requirements.

Annual Contributions Contract (ACC) – Entered into between HUD and the PHA, setting forth terms and conditions for the operation, modernization, and development of public housing. The current version of the ACC (form HUD-53012-A, 7/95) does not actually contain any specific language governing PHA procurement activity, but incorporates by reference regulations promulgated by HUD at Title 24 of the Code of Federal Regulations, as well as all applicable laws and executive orders, and regulations.

Amendment – Written revision or clarification made to a solicitation.

Anti-competitive Practices – Actions by potential contractors that improperly reduce or eliminate competition or restrain trade. Examples are: an agreement or understanding among competitors to restrain trade, such as submitting collusive bids or proposals, rotating low bids, follow-the-leader pricing, or sharing of the business. Competition may also be wrongfully discouraged by illicit business actions that have the effect of restraining trade, such as controlling the resale price of products or an improper collective refusal to bid (24 CFR 85.36(c)(1)).

Architect/Engineer (A/E) – Person (or company) usually responsible for developing the plans and specifications of a building or development and, in some cases, supervising the construction effort.

Bid – The price submitted by a bidder in the sealed bidding method of procurement.

Bidder's List – General list of persons or firms who may be interested in contracting opportunities with the PHA, and in submitting bids in response to an Invitation for Bid.

Change Order – A unilateral modification made to the contract by the Contracting Officer under the authority of the contract's Changes clause. Only the specific changes permitted by the particular Changes clause may be made under a change order (e.g., modify the drawings, design, specifications, method of shipping or packaging, place of inspection, delivery, acceptance, or other such contractual requirement; see form HUD-5370). All change orders must be within the scope of the contract.

Changed Conditions – Construction site or repair conditions that differ significantly from those indicated in the contract or from those ordinarily encountered in the performance of the specific type of work required by the contract.

Competitive Proposals – Also called contracting by negotiation, a method of procurement using the solicitation, evaluation, and negotiation of proposals instead of sealed bids (see Chapter 7 for guidance on their use). The competitive proposal method is used for requirements exceeding the PHA's small purchase threshold when conditions are not appropriate for sealed bidding. (Note: Under the Qualifications-Based Selection method only, a Request for Qualifications (RFQ) is used in place of the RFP.)

Competitive Range – Those proposals submitted in response to a RFP that, after technical evaluation by the PHA's selection panel and considering the proposed costs/prices, have a reasonable chance of being awarded the contract (see Chapter 7, paragraph 7.2.N for detailed guidance).

Consortia – These are a special kind of PHA consortium where two or more agencies join together to perform planning, reporting and other administrative functions, including, importantly, the joint preparation of a PHA Plan. Consortia are addressed separately in paragraph 14.7.

Contract – A mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the PHA to pay for them. It includes all types of commitments that obligate an agency to an expenditure of funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include: contract awards and notices of awards; job orders or task letters issued under basic ordering agreements, requirement contracts, or definite- or indefinite-quantity contracts; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; bilateral (two-party) contract modifications; and various cooperative and interagency agreements (as described elsewhere in this Handbook). Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, *et seq*.

Contracting Officer – The Executive Director or an official authorized by the Executive Director to enter into and/or administer contracts and make related determinations and findings. For the purpose of this handbook, the term includes any PHA employee designated and authorized to perform the duties of a Contracting Officer.

Contract Administration – All the actions taken with regard to a contract after its award. Administration includes monitoring the contractor's performance to ensure compliance with the contract requirements, and terms and conditions.

Contract Modification – Any written alteration to a contract executed by an authorized contracting officer (see Chapter 11, paragraph 11.4.A).

Contractor – An Offeror who is awarded a contract.

Contract Pricing Arrangements – The arrangement, as reflected in the contract, for how the vendor will be paid for services. While there are two basic contract pricing arrangements – firm fixed-price and cost-reimbursement – there are multiple variations on these models, from indefinite quantity contracts (where the exact number of deliverable items is not known at the time of contract award but where minimum and maximum quantities are stated) to cost-plus fixed-fee (where costs are reimbursed, up to an estimated amount, plus a specified fee). (See Chapter 11 for more detail.)

Cost-Reimbursement Contract – The contractor is reimbursed for his/her allowable costs of performance up to a total estimated amount specified in the contract (see Chapter 10, section 10.1, for detailed guidance on cost-reimbursement contracts). The contract may provide for the payment of a fee (i.e., a type of profit) in addition to costs.

Cure Notice – A document originated by the Contracting Officer and sent to notify the contractor that the contract may be terminated for default unless performance is corrected within a specified number of days.

Excusable Delay – A failure to perform within the contract period that is beyond the control and without fault or negligence of the contractor, as determined by the Contracting Officer.

Federal Small Purchase Threshold – The maximum dollar amount for individual small purchases (see Chapter 5). The threshold is currently set at $100,000 (41 U.S.C. 403(11)). PHAs may establish lower thresholds.

Firm Fixed Price Contract – The contractor is paid a firm fixed-price for all required work regardless of the contractor's actual costs of performance (see Chapter 10, section 10.1, for detailed guidance on fixed-price contracts).

Independent Cost Estimate (ICE) – An estimate prepared by the PHA prior to obtaining offers. The degree of analysis will depend on the size and complexity of the purchase.

Inspection – The examination and/or testing of supplies and services to determine conformance with the contract requirements.

Instrumentality- Shall mean a subsidiary branch of the PHA through which functions or policies are implemented.

Intergovernmental or Interagency Agreement – An agreement between a PHA and a Federal, State, or local government agency (including other PHAs) for the provision of supplies or services. In recent years, the terms Cooperative Agreement, Intergovernmental Agreement, Consortium Agreement, or Memorandum of Agreement have been used interchangeably and are treated the same for the purposes of this handbook.

Internal Controls – Safeguards that ensure contracting actions will be conducted in conformity with applicable Federal and State regulations and PHA policy.

Invitation for Bids (IFB) – Solicitation type used under the sealed bidding method of procurement. This document explains the intended purchase and invites bids from potential contractors.

Joint Venture Partner – This is a participant, other than a PHA, in a joint venture, partnership, or other business arrangement or contract for services with a PHA.

Level-of-Effort Contract – Contract (usually cost-reimbursement) that specifies the number and type of person-hours that the contractor will use in performance of the contract requirements.

Major Change – Modification to an existing contract that is beyond the general scope of the contract or a change to a substantive element of the contract that is so extensive that a new procurement should be used.

Micro Purchases – Small purchases under $2,000 (or lower threshold established by the PHA; see paragraph 5.2.B).

Negotiation – Discussions with offerors in the competitive range regarding technical and/or price proposals when awarding a contract using the competitive proposals method of procurement or when issuing modifications to existing contracts or other required discussion with offerors for the other methods of procurement.

Noncompetitive Proposals – Procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

Offer – A response to a solicitation (IFB or RFP) that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called "bids" or "sealed bids", responses to requests for proposals (negotiation) are offers called "proposals"; however, responses to requests for quotations (small purchases) are "quotations," not offers. Small purchases become binding contracts once the vendor accepts the order (e.g., by signature or substantial performance of the order). Offers submitted under the Qualifications-Based Selection (QBS) method are called "qualifications" (see paragraph 7.3.A).

Offeror - The general term for the entity that submits a response to a solicitation. For the purposes of this handbook, offeror may be used interchangeably with bidder, proposer, or respondent.

Procurement – The acquiring by contract of supplies and services (including construction) with the PHA's Federal program grant funds through purchase, lease, or other means. Procurement begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

Proposal – The offer submitted by a potential contractor in the competitive or noncompetitive proposals method of procurement.

Qualification Based Selection (QBS) – A form of procurement of architect-engineering (A/E) or development services by competitive proposals in which price is not requested in the Request for Qualifications (RFQ) or used as an evaluation factor. Instead, technical qualifications only are reviewed negotiations are conducted with the best-qualified firm. Only A/E services and development partners may be procured by this method.

Quotation – The price or cost submitted by a vendor in the small purchase procedures method.

Request for Proposals (RFP) – Solicitation method used under both the competitive or non-competitive methods of procurement. Proposal evaluation and contractor selection are based on the evaluation criteria and factors for award as stated in the RFP. Contract award is based on the best proposal responsive to the requirements of the statement of work resulting in the greatest benefit and best value to the PHA, which may not necessarily be primarily determined based on price.

Responsible Bidder – A bidder who is able to comply with the required or proposed delivery or performance schedule; has a satisfactory performance record; has a satisfactory record of integrity and business ethics; has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them; has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and is otherwise qualified and eligible to receive an award under applicable laws and regulations, including the fact that the bidder is not suspended, debarred or under a HUD-imposed Limited Denial of Participation.

Responsive Bid – A bid that conforms exactly to the requirements in the Invitation for Bids (IFB).

Sanctions – Measures that may be invoked by HUD to exclude or disqualify contractors, PHA staff or agents acting on behalf of a PHA from participation in HUD programs (such as limited denial of participation or debarment), or measures the PHA may take regarding employees, officers, agents, or others who violate the ethical standards of the policies of the PHA (such as dismissal, reassignment, removal from position, etc.). In the case of violations, HUD would exercise any available remedy under the ACC, federal regulations and statutes, and grant agreements, including the U.S. Housing Act of 1937 as amended, 24 CFR Parts 84 and 85, and sections 17 and 19 of the ACC.

Sealed Bidding – A method of procurement inviting sealed bids. This method requires: specifications that are clear, accurate, and complete; a public bid opening; and evaluation of bids and award of the contract based on the lowest price submitted by a responsive and responsible contractor. Sealed bidding is the preferred method for construction (24 CFR 85.36(d)(2)).

Show Cause Letter – A document sent by the Contracting Officer notifying a defaulting contractor that the contract may be terminated for default unless the contractor can provide adequate justification for not terminating within a specified time period (usually 10 days).

Small Purchase Procedures – Small Purchase Procedure – A simplified method for acquiring supplies, materials, and services (including construction) that do not exceed the PHA's small purchase threshold. (The Federal threshold is $100,000; PHAs are limited to this or a lower amount as specified in applicable State or local law or dictated by the PHA's Procurement Policy or imposed by HUD due to PHA's procurement performance.) (24 CFR 85.36(d)(1)).

Small Purchase Threshold – The per purchase dollar limit established by a PHA for small purchases. The threshold is set in the PHA's procurement policy. The threshold may not exceed the Federal small purchase threshold (see Chapter 5, section 5.2).

Solicitation – The general term for the agency's request for offers from potential offerors. A solicitation package generally contains the proposed contract, including contract terms and conditions, instructions to potential offerors regarding the submission of an offer, and any other information needed to prepare an offer.

Solicitation Provisions – The instructions provided to bidders/offerors included in solicitations. The provisions include such information as how to prepare an offer, bonding requirements, date and time for submission of offers, etc. Provisions required by HUD, as applicable, are included on forms HUD-5369, Instructions for Bidders and HUD-5369-A, B and C, Representations, Certifications, etc., and HUD-5369-B for solicitations above the federal small purchase threshold.

Specifications or Scope – Description of the technical requirements of a contract.

Statement of Work (SOW) – Written description of work to be performed that establishes the standards sought for the supplies or services furnished under the contract; typically used for service contracts.

Subsidiary – A type of operating entity created and operated by a PHA over which it has a controlling interest. It may be wholly owned or controlled by the PHA and may be a non-profit organization.

Supplemental Agreement – A type of contract modification to which both parties agree.

Termination for Cause – Termination of a contract on a unilateral basis when the contractor fails to perform, fails to make progress so as to endanger performance, or commits a default as specified in the contract.

Termination for Convenience – Termination of a contract by the PHA on a unilateral basis when the product or service is no longer needed or when it is in the best interest of the PHA.

Time Delay – An interruption during which supplies are not delivered or services or work are not completed in accordance with the performance schedule stated in the contract.

Vendor – The term often used for an offeror or contractor when talking about small purchasing**.**

Vendor List – List of persons or firms qualified to do business with the PHA.

1.11 ACRONYM GUIDE

A/E – Architect/Engineer

ABA – American Bar Association

ACC – Annual Contributions Contract

BAT – Bureau of Apprenticeship and Training

BTU – British Thermal Unit

CEA – Comprehensive Energy Analysis

CFR – Code of Federal Regulation

CSS – Community and Supportive Services

DOE – U.S. Department of Energy

DOL – U.S. Department of Labor

EPC – Energy Performance Contracting

ESCO – Energy Service Company

FAR – Federal Acquisition Regulation

GAO – General Accounting Office

GSA – General Services Administration

HOPE VI – Homeownership and Opportunity for People Everywhere

HUD – U.S. Department of Housing and Urban Development

ICE – Independent Cost Estimate

IFB – Invitation for Bids

IPP – Individual Procurement Plan

LDP – Limited Denial of Participation

LGB- Local Governing Body

LSP – Legal Service Personnel

MBDC – Minority Business Development Center

MOC – Minority Owned Corporation

NAICS – North American Industry Classification System

NOFA/Super NOFA – Notice of Funding Availability

OCPO – Office of the Chief Procurement Officer

OMB – Office of Management and Budget

PDF – Portable Document Format

PHA – Public Housing Agency

PHAS – Public Housing Assessment System

Pub.L. – Public Law

QBS – Qualifications-Based Selection

QHWRA – Quality Housing and Work Responsibility Act

RFP – Request for Proposals

RFQ – Request for Qualifications

RMC – Resident Management Corporation

SBDC – Small Business Development Center

SOW – Statement/Scope of Work

T-List – U.S. Treasury Circular 570

U.S.C. – United States Code

WBC – Women's Business Centers

WBE – Women's Business Enterprise

CHAPTER 2. PROCUREMENT AUTHORITY AND ADMINISTRATION OF THE PROCUREMENT FUNCTION

2.1 General

This chapter discusses the authority for procurement activity and delegation of the administration of the procurement function.

2.2 The Procurement Policy

A. PHAs are required to establish and follow a written procurement policy that is consistent with **24 CFR 85.36**. A sample procurement policy may be found at **Appendix 1**. The policy need not contain detailed working-level procedures, but should require establishment of such procedures to carry out the policy. Some PHAs prefer to combine the policy and procedures into a single publication for the convenience of staff.

B. While it is not required that the procurement policy be submitted to HUD for approval, PHAs that wish to be exempt from prior HUD approval of certain individual procurement actions can have their procurement policy reviewed/approved by HUD, as discussed in Chapter 12. (PHAs can also self-certify that their procurement system meets all HUD requirements, which would also exempt them from certain HUD review requirements. See Chapter 12).

2.3 Delegation of Authority

A. Generally, the procurement policy delegates responsibility for procurement functions to the Executive Director, with authority to assign all or a portion of that responsibility to positions or individuals based on the organization and staffing of the PHA.

B. A person with authority for procurement activities is referred to as the Contracting Officer when he/she performs that function, regardless of any other job or position title he/she may have.

C. PHAs shall establish policies for the delegations of procurement authority (e.g., to the Executive Director). These policies should be included in the PHAs' written procurement policy. Delegations of procurement authority should clearly state the limits of the authority delegated in terms of dollar value of individual obligations the person may make and any other limits (e.g., types of contracts the individual may award such as small purchases). Delegations should also state whether the recipient may further redelegate any of the authority and, if so, how much.

2.4 Responsibility of the Contracting Officer

Regardless of the authority delegated, it is the responsibility of the Contracting Officer to:

A. Use sound judgment in accomplishing the procurement activities of the PHA;

B. Ensure that bidders and contractors receive fair, impartial, and equitable treatment;

C. Ensure that contract actions comply with all applicable Federal, state and local laws and rules and with the PHA's approved procurement policy; and

D. Seek the best value and greatest overall benefit for the PHA in response to the needs desired.

2.5 Contracting Officer Signature/Obligation of Funds

Each contract or purchase action (e.g., new contract, modification, interagency agreement, purchase order, etc.) that obligates the PHA to pay a contractor or vendor must be signed or otherwise authorized by an individual to whom the PHA has expressly delegated the authority to make such an obligation.

The signature of the Contracting Officer on PHA contracts is a legal commitment and requires continuing performance by the PHA under the terms and conditions of the contract. Performance includes such duties as monitoring contractor performance and acceptance or rejection of contractors' requests for changes in performance, specifications, or price.

Caution: If an individual is not an authorized Contracting Officer, that individual must not bind the PHA by making an implied contract such as by making a promise or stating an intent to purchase, either orally or in writing. Under the laws of agency and apparent authority, the PHA may be liable for, or bound by, the acts of a PHA employee, if such person (who is not a Contracting Office) appears to an offeror to have been given authority by the PHA. Therefore, all actions that could be misinterpreted as committing the PHA to purchase should be clarified with a statement such as, "this request for price quotation is not an offer to buy and should not be assumed as such."

2.6 Staffing and Training

PHAs ensure that their procurement employees have training and experience commensurate with the requirements of their duties. PHAs should develop training and experience standards for their procurement positions and periodically review their procurement operations to ensure that procurement personnel meet those standards. PHAs should consider any changes in the procurement environment (e.g., new laws, regulations, market conditions, or buying needs and practices of the PHA) when assessing the qualifications of personnel and the need for additional training.

-CHAPTER 3. GENERAL REQUIREMENTS

3.1 Procurement Planning (24 CFR 85.36 (b)(4))

A. **General**. Planning is essential to managing the procurement function properly; however, the type and extent of planning will depend on, among other factors, the method and size of the procurement, with larger and more complex procurements requiring more planning.

1. Careful advance planning provides the PHA with adequate time to accomplish its procurement actions. Advance planning helps to: maximize competition and competitive pricing among contracts and decrease the PHA's procurement costs; reduce PHA administrative costs; ensure that supplies and services are obtained without any need for re-procurement, e.g., resolving bid protests; and minimize errors that occur when there is inadequate lead-time.

2. PHAs should periodically review their record of prior purchases, as well as future needs, to find patterns of procurement actions that could be performed more efficiently or economically. Items purchased repetitively might be obtained more economically through various master contracts. However, consideration should be given to storage, security, and handling requirements when planning these types of purchasing actions. For example, it may not be economical or prudent to buy truckloads of salt in summer months for deep discounts if there is no appropriate storage space or if the cost of handling would exceed the savings in price.

3. PHAs may enter into intergovernmental agreements with State or local government agencies (including other PHAs) to obtain needed supplies or services if such agreements will foster economy and efficiency. The use of intergovernmental agreements can significantly reduce the amount of time required to contract for supplies or services, while allowing PHAs to take advantage of prices obtained through volume purchasing by State or local agencies. (See Chapter 14.)

B. **Individual Procurement Plans (IPPs).** For larger, more complex procurements, such as major computer purchases or construction projects, PHAs should establish IPPs. IPPs establish deadlines or milestones for completion of the steps necessary to assure timely delivery or performance and may also include staffing assignments. The scope of the IPP should be determined by the Contracting Officer.

C. **Equipment Lease or Purchase.** Based on a case-by-case evaluation of costs and other factors, PHAs should consider the leasing of equipment. Those factors would include: length of period the equipment is to be used and the extent of use within that period; financial and operating advantages of alternative types and makes of equipment; cumulative rental payments for the estimated period of use; net purchase price; transportation and installation; maintenance and other service costs; potential obsolescence of the equipment because of imminent technological improvements; availability of the purchase items; trade-in or salvage value; imputed interest; and availability of servicing capability (for example, whether the equipment can be serviced by PHA staff).

3.2 Independent Cost Estimate (ICE) (24 CFR 85.36(f))

A. The ICE is the PHA's estimate of the costs of the goods or services to be acquired under a contract or a modification. It serves as the PHA's yardstick for evaluating the reasonableness of the contractor's proposed costs or prices.

B. The ICE also helps the Contracting Officer determine the contracting method to be used. For example, if the costs can be estimated with a high degree of confidence in their accuracy, sealed bidding may be possible.

C. While the Contracting Officer is responsible for the preparation of the ICE, other personnel (e.g., the end user, or budget and finance) are usually involved and may actually do most of the preparation. The PHA may develop the ICE using its own employees, outside parties (e.g., consultants), or a combination of the two. If any outside party (whether compensated or not) assists in developing the ICE, the PHA must take appropriate steps to ensure that organizational conflicts of interest are avoided and that the outside party does not obtain any competitive advantage from its advance knowledge of the PHA's cost estimate (see also Chapter 4, Ethics in Public Contracting).

D. The Contracting Officer shall prepare, or have prepared, an ICE commensurate with the purchase requirement. The level of detail will depend upon the dollar value of the proposed contract and the nature of the goods or services to be acquired. The ICE must be prepared prior to the solicitation of offers. The requirements for ICEs are:

1. **For Micro Purchases (below $2,000)**, the Contracting Officer generally does not need to prepare an ICE. Price reasonableness normally will be based on a comparison with historical prices paid for the item, commercial catalog prices, or other offers.

2. **For purchases above $2,000 but less than the PHA's small purchase threshold**, documentation should be kept to a minimum. The ICE may be based on prior purchases, commercial catalogs, or detailed analyses (e.g., purchases for services).

3. **For purchases above the PHA's small purchase threshold,** the level of detail will vary but should be commensurate with the size (i.e., dollar value), complexity, and commercial nature of the requirement. ICEs are normally broken out into major categories of cost (e.g., labor, materials, and other direct costs such as travel, overhead, and profit). Commercially available products and services may require less detail as the marketplace tends to provide current reliable pricing information for commercially available products; a PHA may also not need to break out components. Non-commercial type requirements, and work designed specifically for the PHA, will require much more extensive estimation and a detailed ICE.

E. The ICE serves as the primary in-house gauge of cost and price reasonableness, but it should not be relied upon to the exclusion of other sources of pricing information. Market conditions may fluctuate between the time the ICE is prepared and the receipt of offers. For example, materials or labor costs may have increased or decreased. If a significant period of time has elapsed, or the PHA knows that certain market conditions have changed, the Contracting Officer should request that an updated ICE be prepared to use in evaluating offers.

3.3 Documentation

A. **General 24 (CFR 85.36(b)(9)).** The PHA must maintain records sufficient to detail the significant history of each procurement action. Such documentation is particularly important in the event a protest is lodged against the PHA. It will also facilitate future purchases of similar supplies or services since it will not be necessary to recreate solicitation documents. Supporting documentation shall be in writing and placed in the procurement file. These records shall include, but shall not necessarily be limited to, the following:

1. Rationale for the method of procurement selected. For example, the contract file would not need to state why the Contracting Officer chose small purchase procedures to order a desk but would want to note why non competitive proposals was used for a roofing contract.

2. The solicitation.

3. Selection of contract pricing arrangement, but only if not apparent. For example, the contract file would not need to document why a firm fixed-price was used to obtain building materials.

4. Information regarding contractor selection or rejection, including, where applicable, the negotiation memo, the source selection panel, evaluation report, cost and price analysis, email correspondence (including offers, selections, pertinent pre- and post-award discussions and negotiations, etc.)

5. Basis for the contract price (as prescribed in this handbook), and

6. Contract administration issues/actions.

   The level of documentation should be commensurate with the value of the procurement. A sample contract file checklist is included in **Appendix 2.**

B. **Record Retention (24 CFR 85.42(a)&(b).** PHAs shall retain all significant and material documentation and records concerning all procurements they conduct. These records must be retained for a period of three years after final payment and all matters pertaining to the contact are closed. If any claims or litigation are involved, the records shall be retained until all issues are satisfactorily resolved.

C. **Audits.** HUD and the Comptroller General of the United States have the right to audit all books, documents, papers, and records of the PHA that are pertinent to financial assistance provided by HUD (see section 15 of the Annual Contributions Contract, or ACC). HUD will periodically perform audits and management review of the PHA procurement function to determine whether the PHA's procurement actions meet the requirements set forth in **24 CFR 85.36** and this handbook. Additionally, **24 CFR 85.36(i)(11)** requires PHAs to include in their contracts a clause requiring retention by the contractor of all required records pertaining to the contract. (This clause is discussed in more detail, along with other mandatory contract provisions, in Chapter 10.) These records must be retained for a period of three years after final payment and all others matters pertaining to the contract are closed.

3.4 Funding and Payment

Regardless of the system used (centralized or decentralized purchasing), the PHA must make sure that funds are available for any purchases made and that there is an orderly process to pay contractors promptly.

- Under centralized purchasing arrangements, the Contracting Officer (often a "buyer" in the Purchasing Department) typically must receive approval from the Budget or Finance Department that funds are, indeed, available before making the purchase.

- Under a decentralized system, the Housing Manager is generally the Contracting Officer, who should make sure that funds are available in the property's approved budget before making a purchase.

To maintain good relations with contractors, a PHA should ensure that work performed is inspected in a timely manner and that contractor invoices for work accepted by the PHA are paid promptly. Unnecessary delays in either inspection or payment can discourage contractors from participating in future PHA procurements or cause them to increase their bid price to account for expected delays in payment. In addition, some States and local governments have passed "Prompt Payment" laws that establish specific time standards for payment of contractor invoices, along with interest penalties for unjustified late payments. Further, in accordance with Office of Management and Budget (OMB) Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments, and cross-referenced in **24 CFR 85.22**, certain penalties and interest cannot be paid with HUD program funds without written advance permission of HUD. The PHA should become familiar with any applicable State or local laws of this nature and incorporate their substance into the PHA's own operational procurement procedures.

3.5 Internal Controls

PHAs must establish appropriate internal controls to assure the proper expenditure of funds. In centralized purchasing arrangements, these controls often result in the separation of duties between those ordering, those receiving, and those paying for goods and services. In decentralized purchasing arrangements, the Housing Manager is often the person both ordering and receiving the goods/supplies as well as the person authorizing payment. In these latter arrangements, the PHA must establish other means of internal controls, such as site-based budgets and appropriate purchasing thresholds. Additional information regarding conflicts of interest and other ethical considerations is found in Chapter 4, Ethics in Public Contracting.

CHAPTER 4. ETHICS IN PUBLIC CONTRACTING

4.1 General

Ethical standards apply not only to PHA employees and Contracting Officers but to others with a vested interest in PHA contracts such as members of the Board of Commissioners, other officials and agents of the authority, and contractors with whom the PHA does business.

This chapter explains the specific ethical requirements for PHA contracting 24 CFR 85.36 (b)(3).

4.2 Principles

Members of the Board of Commissioners, PHA employees, and any others serving in an official position or acting as an agent of the PHA (hereafter referred to as employees, officers, or agents) must discharge their duties impartially to ensure fair competitive access to procurement opportunities by responsible contractors. Moreover, employees, officers, and agents should conduct themselves in such a manner as to foster the public's confidence in the integrity of the PHA procurement organization and process. Any attempt to realize personal gain through PHA employment or to serve as an officer or agent of the PHA through actions inconsistent with the proper discharge of duties is a breach of public trust.

4.3 Requirement for a Written Code of Standards (24 CFR 85.36(b)(3))

PHAs must maintain a written code of standards governing the performance of their employees engaged in the award and administration of contracts. These standards shall be included in the PHA's procurement policy.

4.4 Conflicts of Interest (24 CFR 85.36(b)(3) and Section 19 of the ACC)

PHAs must observe the following conflict of interest prohibitions.

A. No PHA employee, officer, or agent shall participate in the selection, award or administration of a contract supported by Federal funds if a conflict of interest, financial or otherwise, real or apparent, would be involved. Such a conflict would arise when the employee, officer or agent, any member of his or her immediate family; his or her partner; or an organization which employs or is about to employ any of the above, has a financial or other interest in the firm selected for the award.

B. In addition to any other applicable conflict of interest requirements, neither the PHA nor any of its contractors or their subcontractors may enter into any contract, subcontract, or arrangement in connection with a project under the ACC in which any of the following classes of people have an interest, direct or indirect, during his or her tenure or for one year thereafter:

   1. Any present or former member or officer of the governing body of the PHA, or any member of the officer's immediate family. There shall be excepted from this prohibition any present or former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the resident corporation, the PHA or a business entity.

   2. Any employee of the PHA who formulates policy or who influences decisions with respect to the project(s), or any member of the employee's immediate family, or the employee's partner.

3. Any public official, member of the local governing body, or State or local legislator, or any member of such individuals' immediate family, who exercises functions or responsibilities with respect to the project(s) of the PHA.
   (Note: For additional important provisions see Section 19 of the ACC)

C. No present or former PHA employee, officer, or agent shall engage in selling or attempting to sell supplies, services, or construction to the PHA for one year following the date such employment ceased (see Sections 515 of the old ACC, form HUD-53011, dated 11/69, and Section 19 of the new ACC, form HUD-53012A , dated 7/95). The term "sell" means signing a bid or proposal, negotiating a contract, contacting any PHA employee, officer, or agent for the purpose of obtaining, negotiating, or discussing changes in specifications, price, cost allowances, or other terms of a contract; settling contract disputes; or any other liaison activity with a view toward the ultimate consummation of a sale, although the actual contract is negotiated by another person.

4.5 Gratuities, Kickbacks, and Use of Confidential Information

PHA solicitations and contracts above the Federal small purchase threshold shall include clauses advising prospective contractors of the prohibitions against gratuities and kickbacks (24 CFR 85.36(i)(4)). These rules are designed to protect the integrity of the procurement system and to ensure that contracts are awarded fairly, based on merit, without improper influence.

A. **Gratuities (24 CFR 85.36(b)(3) and Section 19 of the ACC)**. PHA officers, current employees, former employees within one year of employment, or agents shall neither solicit, accept, or agree to accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. PHAs may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. These rules shall be incorporated in the PHA's Procurement Policy.

B. **Kickbacks and Anticompetitive Practices**. It is a breach of ethical conduct and prohibited for any payment, gratuity, or offer of employment to be made by, or on behalf of, a contractor or subcontractor under contract to the prime contractor, higher tier subcontractor, or any person associated therewith as an inducement for the award of a subcontractor order.

   The Contracting Officer shall report to the Executive Director, the HUD Field Office, and the appropriate State and local officials any suspected anticompetitive practices by contractors.

C. **Use of Confidential Information**. Disclosure of confidential information to any person not authorized by the Contracting Officer to receive such information shall be a breach of the ethical standards. Confidential information includes but is not necessarily limited to: the contents of a bid (prior to bid opening) or proposal (prior to contract award using competitive proposals), names of individuals or firms that submitted bids (prior to bid opening) or proposals (prior to contract award); PHA-generated information related to a procurement (including PHA cost estimates, contractor selection and evaluation plans, specifications [before solicitation is issued]); and any other information the disclosure of which would have a direct bearing upon the contract award or the competitive process. It is a breach of ethical conduct for any current or former employee, officer, or agent to knowingly use confidential information for actual or anticipated personal gain or for actual or anticipated personal gain of any other person.

4.6 Prohibition Against Contingent Fees (24 CFR 85.36(c) and (24 CFR 85.36(b)(8))

It is a breach of ethical conduct for a person to be retained to solicit or secure a PHA contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for the retention of bona fide employees or a bona fide agency established for the purpose of securing business. This prohibition includes the employment of former PHA officials and employees on a contingency basis to obtain contracts with the PHA by a business seeking PHA contracts. Many States also have specific laws against contingent fees.

4.7 Sanctions (24 CFR 85.36(b)(11) and (12))

The Executive Director and the Board of Commissioners are responsible for establishing sanctions for violation of the ethical standards. As stated previously, many States have passed laws governing the conduct of officials involved in procurement. All such laws shall be enforced by the Executive Director and, in cases where the State or local government has no such rules, appropriate sanctions for violation of the standards of conduct in this Chapter shall be published and imposed.

Civil and administrative remedies should be established for use whenever employees, officials, or agents breach ethical standards. References to State ethics laws, which should be consulted by the PHA in developing and administering sanctions for misconduct, should be included in the Procurement Policy. In addition, the PHA may impose any one or more of the following:

- Oral or written warnings or reprimands;
- Suspension with or without pay for specified period of time;
- Termination of employment; or
- Dismissal from the official or agency position.

The value of anything received by an employee or a non-employee in breach of the ethical standards shall be recoverable by the PHA either by confiscating the items or by charging the violator for any and all gratuities received. All procedures in this Chapter shall be in accordance with due process requirements and existing law. In addition, notice and an opportunity for a hearing shall be provided before imposing any suspension or termination of employment. Remedies against contractors may include suspension and/or debarment, as provided in Chapter 11, Contracts, Contract Clauses, and Contract Administration.

In the case of violations, HUD may exercise any available remedy under the ACC, the federal regulation and statutes, and grant agreements including the U.S. Housing Act of 1937 as amended, **24 CFR Parts 84** and **85**, and sections 17 and 19 of the ACC.

CHAPTER 5. SMALL PURCHASE PROCEDURES

5.1 General (24 CFR 85.36(d)(1))

Small purchase procedures are a simplified method for acquiring supplies, materials, and services (including professional and construction) that do not exceed the PHA's small purchase threshold. These procedures are the simplest method of procurement and will be used for the vast majority of a PHA's purchases.

5.2 Small Purchase Dollar Limits

A. PHAs shall establish a dollar threshold for individual small purchases in their Procurement Policy. The threshold may not exceed the Federal small purchase threshold (currently, $100,000), or any lower dollar value set by the State or locality having jurisdiction over the PHA. In no case may the PHA adopt a State- or locally-approved threshold that exceeds $100,000.

B. PHAs may also establish a separate Micro Purchase threshold of up to $2,000 per purchase.

5.3 Competition Requirements (24 CFR 85.36(c)(1))

A. **Purchases Above the Micro Purchase Limit.** The PHA must solicit price quotes from an adequate number of qualified sources (generally defined as not less than three, except in the case of Micro Purchases, below). The PHA's Procurement Policy shall state any specific policy (e.g., requirement for three offers).

B. **Micro Purchases.** PHAs may award Micro Purchases without soliciting competitive quotations if the Contracting Officer considers the price to be reasonable (e.g., based on recent research, experience, or purchases). To the extent practicable, PHAs shall distribute Micro Purchases equitably among qualified vendors.

C. **Prohibition Against Bid Splitting.** The Contracting Officer shall not break down requirements aggregating more than the small purchase threshold (or the Micro Purchase threshold) into multiple purchases that are less than the applicable threshold (commonly called 'bid splitting' or "unbundling") merely to permit use of the small purchase procedures or avoid any requirements that apply to purchases that exceed those thresholds. However, larger requirements may be broken into smaller ones to afford small and minority businesses the opportunity to participate in the PHA's procurements. The Contracting Officer should document in the contract file the reasons for breaking down larger requirements into smaller ones.

5.4 Method of Solicitation

Quotations for small purchases may be obtained in writing (hard copy or email), orally, by fax, via catalogs, by letter, through electronic means, e.g., the Internet, through paid advertisement, or by displaying the solicitation in a public place. The method should be

appropriate to the purchase (e.g., obtaining price quotes by phone for a commercially available supply item). PHAs may establish in their Procurement Policies dollar thresholds or other requirements for the use of written and oral solicitations. Written solicitations are used when it is necessary to provide vendors with detailed information that cannot be conveyed orally (e.g., by phone), or with detailed quotation evaluation information. The Contracting Officer should determine the best method, given the situation.

5.5 Quotation Evaluation (24 CFR 85.36(f))

A. **Price Reasonableness.** Before making an award, the Contracting Officer must determine that the proposed price is fair and reasonable. For most small purchases, price analysis is sufficient to make that determination. In cases where the PHA purchases services or items of a non-commercial nature (e.g., a special training course designed for the PHA's employees), submission of cost details and a cost analysis may be needed (see Chapter 10, section 10.3).

1. **Micro-Purchases**. Price analysis normally consists of comparing the quoted price to prices recently paid for the same or similar items, price lists, or catalog prices. The signature of the Contracting Officer on the Purchase Order or contract signifies the Contracting Officer's determination that the price is reasonable, based on prior purchases of a similar nature or other sources of information.

2. **Other Small Purchases above the Micro Purchase Level**. Generally, price analysis will consist of a comparison of quotations to each other and to other sources of pricing information (e.g., past prices paid, catalog prices, etc.). If only one response is received, the Contracting Officer should include a statement of reasonableness in the contract file. This statement may be based on market research, comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, or advertisements, a comparison with similar items in a related industry, the Contracting Officer's personal knowledge at the time of purchase, comparison to the ICE, or any other reasonable basis. Only in rare cases would the Contracting Officer conduct a cost analysis (a non-commercial type purchase unique to the PHA's needs, such as a training course for PHA accounting personnel).

B. **Other Factors**. If using "price and other factors" to determine award, the Contracting Officer has broad discretion in fashioning suitable evaluation procedures. In these situations, the Contracting Officer should ensure that quotations can be evaluated in an efficient and minimally burdensome fashion. Competitive proposal type procedures (e.g., formal evaluations, determining competitive ranges, conducting detailed negotiations, or requesting best and final offers) should not be used for small purchases. Contracting Officers may use information such as their knowledge of, and previous experience, with the supply or service being purchased, the vendor's past performance for the PHA, or customer surveys to evaluate the quotation.

C. **Evaluating Contractor Responsibility**. PHAs must make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. For small purchases, where payment is generally made only after full delivery/completion of the job, the Contracting Officer has broad latitude in evaluating contractor responsibility, including the Contractor's personal knowledge of, or past experience with, the vendor. The signature of the Contracting Officer on the Purchase Order or contract signifies the Contracting Officer's determination of responsibility is satisfactory.

D. **Documentation (24 CFR 85.36(b)(9))**

1. **Purchases Above the Micro Purchase Threshold**. Documentation should be kept to a minimum. PHAs should retain information supporting their purchases (paper or electronic) to the minimum extent and duration needed for management review purposes (tracking purchasing activity, etc.). The following illustrate the extent to which quotation information should be recorded:

a. Oral solicitations. The contracting office should establish and maintain records of oral price quotations sufficient to reflect clearly the propriety of placing the orders at the price paid with the particular vendor. In most cases, this effort will consist merely of showing the names of the vendors contacted and the prices and other terms and conditions quoted by each.

b. Written solicitations. Limit written records of solicitations or offers to notes or abstracts that show prices, delivery, references to printed price lists used, the vendors contacted, and any other pertinent information.

c. Special situations. Include additional statements—

i. Explaining the absence of competition if only one source is solicited; or

ii. Supporting the award decision if other than price-related factors were considered in selecting the vendor.

3. **Micro Purchases.** If competitive quotations are solicited and award is made to other than the low quote, documentation to support the purchase may be limited to identification of the solicited vendors and a brief explanation for the award decision.

5.6 Petty Cash Purchases

A. **General**. Petty cash funds are to be used for very small, one time purchases. If utilized, petty cash funds should be established in the PHA's Procurement Policy and should be sufficient to cover very small purchases over a reasonable period (for instance, one month).

B. **Petty Cash Policy**. A Petty Cash Policy must (1) be in compliance with **24 CFR 85.36**, including the small purchase method, (2) establish the overall amount of the fund, (3) establish the maximum amount for each purchase, and (4) either establish

the appointment of one or more individuals as Petty Cash Administrators or the procedures for appointing such individuals.

5.7 Purchasing Cards

A. **General**. Purchasing cards (including debit or credit cards) are a payment method and not necessarily a method of procurement, as defined in this handbook. Purchasing cards can be helpful in reducing transaction costs. Purchasing card usage, however, should follow the rules for all other small purchases. For example, the Contracting Officer may use a purchasing card for Micro Purchases without obtaining additional quotes provided the price is considered reasonable. However, for amounts above the Micro Purchase level, the Contracting Officer would generally need to have obtained a reasonable number of quotes before purchasing via a purchasing card.

B. **Card Management/Internal Controls**. When using purchasing cards, PHAs should adopt reasonable safeguards and procedures to assure that they are used only for intended purposes (for instance, limiting the types of purchases or the amount of purchases that are permitted with credit cards). PHAs should also make sure that they have guidelines for selecting merchants/vendors, tracking purchases, and card payment/settlement procedures.

5.8 Bonding Requirements

There are no requirements for bid, payment, or performance bonds for small purchases.

5.9 Purchase Orders

A. **General**. Most purchases under the small purchase method will be done via a Purchase Order sent or given to the contractor to initiate delivery of the item(s) or performance of the service(s). The issuance of a Purchase Order by the PHA and its acceptance by the contractor (either through performance or signature on the purchase order) constitute a contract. It is crucial, therefore, that the Purchase Order clearly specify the item(s) or service(s) being purchased and the terms and conditions of the purchase.

B. **Form**. Purchase Orders are usually issued on a standard PHA form. While HUD does not prescribe any specific form, the Purchase Order will generally contain information regarding scope of work/service to be provided, price, delivery, method of payment, inspection, and acceptance. However, additional terms and conditions may be added depending on the nature and complexity of the work requested. Mandatory provisions are listed below in paragraph 5.10. PHAs should make sure that they include all necessary contract clauses in their Purchase Orders or in their Request for Quotes, providing the latter are referenced, and made part of, the Purchase Order.

5.10 Standardized Forms/Mandatory Contract Clauses

A. **General**. Except in the case of bid specifications and contracts for construction or maintenance work in excess of $2,000 (see paragraphs B and C, below), small purchases, including purchase orders, are subject only to the mandatory clauses contained in Table 5.1.

PHAs may be further bound by certain State or local requirements (See Chapter 13). Other than these Federal, State or locally-mandated provisions, PHAs should include language with any small purchase that is necessary and appropriate, consistent with good business practice.

In addition to Table 5.1, HUD has developed forms which contain the contract clauses required for small purchases related to construction and maintenance work. The use of the Table and these forms are described in the paragraphs below.

B. **Mandatory Requirements for <u>Construction Contracts greater than $2,000 but not more than $100,000</u>**. PHAs must incorporate the clauses contained in form HUD-5370-EZ, General Conditions for Small Construction/Development Contracts, and the applicable Davis-Bacon wage decision. Form HUD-5370-EZ has been designed for small construction jobs. PHAs may use form HUD-5370 in lieu of the HUD-5370-EZ if the former is more appropriate given the nature of the work.

C. **Mandatory Requirements for <u>Maintenance Contracts (including nonroutine maintenance work) greater than $2,000 but not more than $100,000</u>**. PHAs must incorporate the clauses contained in Table 5.1; Section II of form HUD-5370-C, General Conditions for Non-Construction Contracts, and the applicable HUD wage decision.

D. **Acceptable Methods of Incorporation**. PHAs may utilize any one or any combination of the following methods to incorporate mandatory clauses and applicable wage decisions into bid specifications and contracts. PHAs may:

1. Attach the Table 5.1, HUD form(s), and/or wage decisions, as printed;

2. Incorporate the clauses/text of the applicable HUD form and wage decision into other documents (e.g., into the PHA's own forms) that are bound/attached to the contract (and bid specifications, if applicable) or incorporated by reference (see paragraph 3, below).

3. Incorporate the clauses or HUD forms and/or any applicable Davis-Bacon or HUD wage decision by reference. The reference must be specific as to the exact clauses or form(s) that are incorporated, and where the clauses or forms(s) may be accessed or obtained (e.g., HUDClips, PHA web site). A Davis-Bacon wage decision may be incorporated by reference to <u>www.wdol.gov</u> and to the specific number, modification number, and date of the wage decision. HUD maintenance wage decisions are not available at HUD's web site; however, a PHA may post any applicable HUD wage decision to its own web site and reference that site. PHAs must provide hard-copies of any referenced clauses, forms, and/or wage decisions on request.

TABLE 5.1 MANDATORY CONTRACT CLAUSES FOR SMALL PURCHASES OTHER THAN CONSTRUCTION

The following contract clauses are required in contracts pursuant to **24 CFR 85.36(i)** and Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. HUD is permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy. The PHA and contractor is also subject to other Federal laws including the U.S. Housing Act of 1937, as amended, Federal regulations, and state law and regulations.

Examination and Retention of Contractor's Records. The PHA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until three years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

Right in Data and Patent Rights (Ownership and Proprietary Interest). The PHA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials, and documents discovered or produced by Contractor pursuant to the terms of this Contract, including, but not limited to, reports, memoranda or letters concerning the research and reporting tasks of the Contract.

Energy Efficiency. The Contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under this contract is performed.

Procurement of Recovered Materials

(a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure 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. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

(b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of $10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of $10,000 of the item both under and outside that contract.

Termination for Cause and for Convenience (contracts of $10,000 or more).

(a) The PHA may terminate this contract in whole, or from time to time in part, for the PHA's convenience or the failure of the Contractor to fulfill the contract obligations (cause/default). The PHA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the PHA all information, reports, papers, and other materials accumulated or generated in performing the contract, whether completed or in process.

(b) If the termination is for the convenience of the PHA, the PHA shall be liable only for payment for services rendered before the effective date of the termination.

(c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (cause/default), the PHA may (1) require the Contractor to deliver to it, in the manner and to the extent directed by the PHA, any work described in the Notice of Termination; (2) take over the work and prosecute the same to completion by contract of otherwise, and the Contractor shall be liable for any additional cost incurred by the PHA; and (3) withhold any payments to the Contractor, for the purpose of set-off or partial payment, as the case may be, of amounts owned by the PHA by the Contractor. In the event of termination for cause/default, the PHA shall be liable to the Contractor for reasonable costs incurred by the Contractor before the effective date of the termination. Any dispute shall be decided by the Contracting Officer.

5.11 Use of Indefinite-Delivery Contracts

PHAs may avoid making repetitive small purchases by awarding indefinite-delivery contracts, sometimes referred to as "blanket" or "open-end" contracts. Indefinite-delivery contracts are used when the PHA has a recurring need (e.g., cleaning supplies), but needs to order supplies and services and have them delivered as needed within a specific time period (e.g., one year). The contract specifies what the PHA may buy and establishes the prices. The PHA then orders the supplies or services from the contractor as needed. This type of contract avoids the administrative cost of making numerous separate purchases (see Chapter 10, paragraph 10.1.C.3 for guidance on the use of these contracts).

5.12 Negotiations

Small purchases procedures are not sealed bidding. Therefore, Contracting Officers may, and are encouraged to, negotiate price and other terms of purchases (see Chapter 7 for more information on negotiations), when appropriate. PHAs may not alter or negotiate changes to mandatory contract clauses (see section 5.10).

5.13 Rejection and Notification of Unsuccessful Offerors

In the handling of offers that are not accepted, PHAs are encouraged to follow good business practices. For example, for many small purchases, and particularly Micro Purchases, vendors typically understand that if they are not notified fairly quickly of an award, they did not win the quote and a rejection letter is not necessary. PHAs should determine when such formality is appropriate.

5.14 Appeals

The PHA's procurement policy should indicate the type of appeal processes to be used for small purchases. PHAs are encouraged to adopt informal appeal procedures for these types of purchases.

5.15 Receiving Goods/Services and Approving Payments

PHAs should establish systems for ensuring that the items required by contract are received in accordance with contract terms. Payments should also be processed promptly to allow for prompt payment discounts, where applicable, and to otherwise maintain good relations with contractors.

CHAPTER 6. SEALED BIDS

6.1 General

For all PHA contracting requirements above the small purchase threshold, competitive procurements are conducted by inviting sealed bids or by requesting competitive proposals. Both methods are effective ways of satisfying the PHA's contractual requirements. The requirements for sealed bidding are discussed in this chapter and requirements for competitive proposals are discussed in Chapter 7. This chapter only applies to contracts in excess of the Federal small purchase threshold.

6.2 Description

Under sealed bids, the PHA publicly solicits bids and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. Sealed bidding is the preferred method for procuring construction, supply, and non-complex service contracts in excess of the Federal small purchase threshold. However, PHAs may use competitive proposals for construction contracts.

6.3 When to Use Sealed Bids

Sealed bidding should be used whenever the requirements in **24 CFR 85.36(d)(2)(i)** can be met.

6.4 Alternate Bids

PHAs should not request alternate bids, i.e., two different systems or types of projects. Instead, when necessary because of limited available funding, a PHA may specify the most expensive system as the base bid and list deductive alternates in inverse priority order. Thus, in the case of limited funding, deductive alternates may be taken in numerical order as listed until the award can be made within available funds.

Example: If the full-scope base bid included complete repainting and cleaning of 75 apartments, Deduct Alternate #1 might delete cleaning of 25 apartments and Deduct Alternate #2 might delete all cleaning. In this way, PHAs can maximize the amount of work to be completed within a limited budget. Without alternates the project may have to be re-bid if the full-scope price exceeds the available budget.

6.5 Invitation for Bids (IFB) (24 CFR 85.36(d)(2))

The IFB is the entire package of information necessary for potential bidders to submit a bid. The IFB includes a description of the supplies or services being purchased, any unique technical information, time and place of bid opening, time and place of site inspections or pre-bid conferences, a form for stating the bid price, and any required forms, as outlined below.

A. **IFB Package**. The IFB packages for supplies, services, or construction are quite similar. The major difference is the length and complexity of the specifications or scope of work and the variety of attachments. All IFBs must be in writing. The basic documents to be included in an IFB package are:
   1. **Cover Page with Table of Contents**. States the name, address and phone number of the PHA, a person to contact for information regarding the solicitation, the project

name and solicitation number, and a table of contents for the complete solicitation package. A sample IFB cover page is shown at **Appendix 4**.

2. **Bid Form**. This is the form on which bidders enter their bid or price(s). The form must be clear, accurate, and unambiguous.

3. **Specification and Statement of Work**. Description of the work or items required. See Chapter 9.

4. **Form HUD-5369, Instructions to Bidders for Contracts, Public and Indian Housing Programs** (construction) or **form HUD-5369-B, Instructions to Offerors Non-Construction**.

5. **Form HUD-5369-A, Representations, Certifications, and Other Statements of Bidders, Public and Indian Housing Programs** (construction) or **form HUD-5369-C, Certifications and Representations of Offerors Non-Construction Contract.**

6. **Form HUD-5370, General Conditions of the Contract for Construction** or **form HUD-5370-C, General Conditions for Non-Construction Contracts,** along with any appropriate Davis-Bacon or HUD wage decision for construction and maintenance work.

B. Method of Solicitation. While any of the following methods can be employed, the Contracting Officer should choose the method, which, considering matters of economy, provides for full and open competition.

1. Advertising in newspapers or other print mediums of local or general circulations. A sample advertisement is provided in **Appendix 3**.

2. Advertising in various trade journals or publications.

3. E-Procurement. PHAs may conduct their public procurements through the internet using e-procurement systems. However, all e-procurements must otherwise be in compliance with **24 CFR 85.36**, State and local requirements, and the PHA's own procurement policy. Steps must be taken to meet the requirements for full and open competition to avoid potential protests.

C. Time Period for Solicitation. The solicitation must be run for a period sufficient to achieve effective competition, which, in the case of paid advertisements, should generally be run not less than once each week for two consecutive weeks. State or local law may impose additional advertising requirements.

6.6 Amendments

If a change to the IFB, e.g., specifications, plans, date or time for bid opening, etc., becomes necessary after it has been issued, the change must be accomplished by issuing a written amendment, sometimes called an addendum. The amendment must indicate the IFB

number, project title, issue date of the original IFB, and formally detail each change. Each amendment must be noted on the PHA's solicitation log. A copy of the amendment should be mailed to each prospective bidder who was provided the initial IFB package with acknowledgement required. If an amendment needs to be issued just before the scheduled bid opening date, the bid opening should be postponed for an adequate period of time to permit the potential bidders to fully analyze the change and to submit timely bids. A sample solicitation amendment is included at **Appendix 5**.

6.7 Pre-Bid Conference

After the IFB is issued and before bids are due, the Contracting Officer may hold a pre-bid conference with prospective contractors to discuss the project requirements and details of the IFB. The conference should be attended by the Contracting Officer and supporting technical staff. A pre-bid conference is normally conducted for large or complex procurements. Notice of any scheduled conference should be included in the IFB. The timing of the conference should allow bidders enough time to review the IFB before the conference and adequate time to prepare or revise their bids before the bid opening. At the conference, the Contracting Officer should state that nothing said at the conference will change any of the terms of the IFB unless a subsequent written amendment to the solicitation is issued. A written summary of the conference should be made available to anyone requesting it. The summary should also be provided to all those who submitted IFBs or solicitations, not just those who attended the pre-bid conference. Attendance by offerors at the pre-bid conference, while desirable, should not be mandatory, and non-attendees should not be deemed non-responsive. The PHA should consider the need for all potential bidders to attend. Attendance may not be necessary for firms familiar with the work and others may be unable to schedule a representative to attend, although they may be well qualified to do the work at a reasonable price. To impose a requirement to attend a pre-bid conference could unnecessarily limit competition.

6.8 Canceling an IFB

A. The PHA may cancel IFBs when necessary or when otherwise considered to be in the best interest of the PHA. A common reason for canceling an IFB is that the low bid significantly exceeds the PHA's budget (note, this is a good reason to consider the use of deductive alternate bids) or when the scope of work or specifications are found to be ambiguous or flawed, e.g., by the submission of wildly different bids or offer prices. Cancellations must be done in accordance with the PHA's written procurement policy and procedures. While it is not prohibited, the repeated cancellation of a single IFB or cancellation of multiple IFBs only serves to create a lack of confidence in the PHA's bidding process. Such actions may create the appearance that either the PHA does not really know what it wants, or that the PHA may be seeking a particular bidder or bidders.
B. The Contracting Officer or designated procurement official shall document the procurement file with the reasons and supporting facts for canceling the IFB (24 CFR 85.36(b)(9)).

6.9 Bid Opening (24 CFR 85.36(d)(2))

The bid opening process shall be carried out as follows:

A. **Time and Place Certainty**. Each bid must be dated and time-stamped immediately upon receipt by the PHA. Sealed bids should be stored in a locked bid box, cabinet, or safe to ensure that they are not opened or mishandled prior to the bid opening. A PHA staff person should standby just before the deadline to see that bids received at the proper location are date- and time-stamped expeditiously. Sealed bids received after the time specified in the IFB should be recorded as a late bid and kept unopened in the contract file. A late bid received before the award is made may only be considered in accordance with the procedures listed in the form HUD-5369, Item 5, or form HUD-5369-B, Item 6.

B. **Public Bid Opening Process**. To ensure fairness in the award process, anyone is permitted to attend the bid opening. Bids shall be publicly opened on the scheduled date and time shown in the solicitation. The bid opening official (usually the Contracting Officer) reads aloud the bidders' names and the bid prices. This information is recorded and may be made available for public inspection. No commitment or statement regarding contract award should be made to any bidder at the bid opening.

C. **Recording the Bids**. As bids are publicly opened and read aloud, an abstract (sometimes referred to as a tabulation) of all bids is prepared showing the name of each bidder and their bid prices including alternates, if any. This abstract becomes part of the official contract file. The abstract is public information and a copy may be sent to interested parties when requested.

6.10 Mistakes in Bids

A. **General**. Correction or withdrawal of bids requires careful consideration. The integrity of the competitive bidding system must be maintained, fairness ensured, and delays avoided. While bidders must be bound by their bids (the "firm bid rule"), circumstances may arise where correction or withdrawal of bids is proper and may be permitted.

B. **Mistakes Before Bid Opening**. Unless otherwise prohibited by State or local law, bidders shall be permitted to withdraw or modify their bids by written or facsimile notice prior to bid opening (see form HUD-5369, Item 5, and form HUD-5369-B, Item 6).

C. **Review of Bids for Mistakes**. After the bid opening, the Contracting Officer should carefully review all bids to ensure that the bidders have not made any obvious mistakes in their bids, e.g., the sum of individual bid line items does not equal the total bid price. An item-by-item recalculation of the bid costs will often reveal the miscalculation or error. If a bidder appears to have made a mistake, the Contracting Officer should immediately notify a bidder of any apparent mistake in his/her bid and request verification of the bid as submitted. If the bidder is not present at bid opening, or if the Contracting Officer performs the bid review after opening takes place, the Contracting Officer should notify the bidder by phone. PHAs are strongly advised to confirm phone notifications with a follow-up letter containing the information communicated by phone. The Contracting Officer should place a copy of the letter or otherwise document the procurement file.

D. **Mistakes after Bid Opening**. In general, bidders should not be permitted to change a bid after bid opening. In rare cases, the Contracting Officer may permit the revision of a bid if the bidder is able to present clear and convincing evidence, acceptable to the Contracting Officer, of a mistake and the intended bid price. Allowing changes to bids without appropriate evidence may compromise the integrity of the public bid process and serve to undermine public confidence in the PHA's bidding process. Therefore, the Contracting Officer should request as much evidence as he or she deems necessary. Examples of evidence may include: original work papers, bids from suppliers and subcontractors used to develop the bid, bonding or insurance evidence supporting a different bid price, etc. Failure or refusal by a bidder to provide adequate evidence shall result in the original bid remaining unchanged. PHA personnel should consult with their legal counsel before allowing a change in bid. If justified, a low bidder can be replaced with the next lowest bidder.

E. **Withdrawal of Bids**. Withdrawal of a bid is permissible if there is an obvious error in the bid such as a math error, but the mistake must be readily apparent from the bid itself. A bidder may be permitted to withdraw a low bid if a mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident. A bidder may also be permitted to withdraw a low bid if the bidder submits written evidence that clearly and convincingly demonstrates that a mistake was made. The PHA should require written supporting evidence before allowing withdrawal by the bidder. If the PHA allows withdrawal, the bid bond should be returned to the bidder upon verification of the error. In cases of alleged mistakes or requests for withdrawal, the decision to allow a correction or withdrawal should only be made after consultation with the PHA's legal counsel.

6.11 Bonds/Guarantees (24 CFR 85.36(b); 24 CFR Part 1000)

This section describes the specific bonding requirements for construction contracts of more than the Federal small purchase threshold. While PHAs may use sealed bidding for other types of materials and service contracts, the same bonding requirements do not apply. PHAs may adopt bonding requirements for these other sealed bidding contracts as they deem appropriate.

A. **General**. In sealed bid construction contracts, three types of bonds or guarantees are required: a bid bond or guarantee, a performance bond, and a payment bond. The purpose of these bonds is to ensure bidders will honor their bids, complete work as contracted, and pay their subcontractors and suppliers.

B. **Definitions**

1. **Bid Bonds/Guarantees**. A bid bond or guarantee is included in the bid package submitted by each bidder. The bonds or guarantees ensure that if awarded the contract, the bidder will accept and perform the work under the contract. It also ensures that the bidder will not attempt to withdraw or otherwise not fulfill the contract. Finally, the bid bond ensures that the bidder will execute the contractual documents that are required within the time specified in the solicitation, or forfeit all or part of the guarantee. A certified check, bank draft, U.S. Government Bonds at par value, bid bond secured by an acceptable surety company, or other negotiable instrument may be accepted as a bid guarantee. If the successful bidder refuses to sign the contract after award, the bid bond is forfeited and award will go to the next lowest responsive, responsible bidder. If there is not a responsive and responsible next lowest bidder, the procurement should be re-bid. If a bid bond or guarantee is not submitted with the bid, the PHA should reject the bid as non-responsive. The PHA should not return any bid bonds until the contract has been awarded and the required performance and payments bonds have been furnished, until all bids have been rejected, or the time specified for acceptance of bids has expired.

2. **Performance Bonds**. Performance bonds are means to ensure that the contract is successfully completed. The performance bond guarantees that if the contractor is unable to complete the contract, the surety company will step in to finish the work. In the case of a letter of credit or cash escrow, the PHA may use these funds to complete the contract work.

3. **Payment Bonds**. The payment bond is a method of ensuring that the contractor pays the subcontractors and suppliers. By requiring payment bonds, the PHA avoids becoming entangled in disputes concerning payment of subcontractors and suppliers by the general contractor. The surety underwriting the payment bond ensures the contractors and suppliers will be paid. Often, performance and payment bonds are combined into a single document. Failure to pay subcontractors for work performed in commercial contracts may often lead to the subcontractor filing a mechanic's lien against property owners to obtain payment for services rendered. PHA contracts require payment bonds to prevent this problem and ensure that no liens will be filed against any PHA building or lot of ground. Clause 24 of form HUD-5370, General Conditions of the Contract for Construction, clearly forbids the placement of liens and is binding on any contractor, subcontractor, and material supplier.

C. **Bonding Companies**

An acceptable surety (bonding) company is one that is authorized to do business in the State where the project is located and acceptable to HUD and the PHA. The surety must be listed on the most recently published U.S. Treasury Circular 570 (often referred to as the T-List). Individual sureties are not permitted. Circular 570 is available from the U.S. Department of the Treasury, Financial Management Service, Surety Bond Branch, Room

262C, 401 14th Street, S.W., Washington, D.C. 20227. The T-List may also be accessed on the Internet at: http://www.fms.treas.gov/ c570/index.html.

D. **HUD Bonding Requirements for PHAs**

1. In order to encourage participation by a broad range of competitors, including small and minority firms, HUD has provided for alternate bid and contract guaranties. These apply to all construction projects greater than $100,000, whether development or modernization, funded pursuant to the U.S. Housing Act of 1937, as amended. As a result, the contractors for all construction projects shall be required to submit the following bid and contract guarantees. Please note that only the bid bond is required at time of bid; however, one of the purposes of the bid bond is to provide the PHA with assurance that the successful bidder will indeed obtain the necessary performance and payment bonds. (There are no bonding requirements for non-construction projects; PHAs should only require bonds for non-construction where consistent with good business practice.) State or local laws or regulations may require a higher level of guarantees. Required bonds include a bid guarantee from each bidder, equivalent to 5% of the bid price, and one of the following:

   - A performance and payment bond for 100% of the contract price;
   - Separate payment and performance bonds each for 50% or more of the contract price;
   - A 20% cash escrow; or
   - A 25% irrevocable letter of credit.

2. The Contracting Officer, via form HUD-5369, has the option to select any one of the above contract guarantees. Careful consideration should be given to the selection, as the options vary greatly in degree of security provided to the PHA versus cost and degree of difficulty in obtaining by the contractor.

E. **Inadequate Surety**. If the low bidder fails to provide an acceptable assurance of completion (payment and performance bonds) after award of the contract, the PHA should consider the bid guarantee forfeited and notify the surety company. The contract is then terminated for default. The amount to be recovered from the bid bond or guarantee should equal at least the difference between the defaulted bid and the next higher acceptable bid or the amount by which the bid accepted by re-soliciting exceeds the defaulted contract.

6.12 Contract Award (24 CFR 85.36(d)(2)(ii)(D))

The following steps should be used in awarding a contract based on the sealed bids method of procurement:

A. **Evaluate Bids & Any Alternates**

1. The apparent low bid should be evaluated according to the procedures outlined in the paragraphs below. If the apparent low bid exceeds the project budget, any deduct alternates should be applied to the bid prices, one at a time, to identify the bidder whose resulting price falls within the budget. If the first deduct alternate does not produce an acceptable bid, then the second alternate should be applied, and so on, until an acceptable price and bidder is identified.

2. If alternates are employed, and the apparent low bid falls below the available budget, a similar process of applying the alternates one at a time may be employed to identify

the low bidder who includes the greatest number of alternates within the available funding.

3. The PHA should not use alternate prices as a way to select a preferred bidder.

B. **Determining Responsiveness & Contractor Responsibility**. The next step in the contract award process is to review the low bid for responsiveness.
   1. **Responsiveness (24 CFR 85.36(b)(8))**. To be considered responsive, a bid must conform to the material requirements of the IFB. The Contracting Officer must examine the low bid to be sure that the bidder did not alter the specifications or other terms and conditions (e.g., delivery schedules, payment terms, etc.) or attempt to impose different terms and conditions. If the bid does not conform to the solicitation, it must be rejected and the next lowest bid examined for responsiveness. Allowing a bidder to alter the material requirements of a solicitation gives the bidder an unfair advantage over the other bidders and destroys the integrity of the sealed bidding process. It also limits the PHA's rights in the contract. The Contracting Officer shall document his/her findings regarding the low bidder's responsiveness in the procurement file. Minor informalities (see paragraph D) are not grounds for determining a bid to be non-responsive.

   2. **Responsibility**. After determining the responsiveness of the low bid, the Contracting Officer shall determine if the bidder is responsible. See Chapter 10, paragraph 10.2.A, for detailed guidance on assessing responsibility.

C. **Equal Bids**. In the rare case when two or more low bids are equal in all respects, the award should be decided by drawing lots or other random means of selection. Authority to use this method should be included in the PHA's Procurement Policy and stated in the IFB.

D. **Minor Informalities**. The Contracting Officer may waive minor informalities or allow the bidder to correct them. Minor informalities are matters of form rather than substance. They are insignificant mistakes that can be waived or corrected without prejudice to the other bidders and have little or no effect on price, quantity, quality, delivery, or contractual conditions. Examples include failure to: return the number of signed bids required by the bid package; sign the bid, provided that the unsigned bid is accompanied by other documents indicating the bidder's intent to be bound (e.g., a signed cover letter or a bid guarantee); complete one or more certifications; or acknowledge receipt of an amendment or addendum, provided that it is clear from the bid that the bidder received the amendment/addendum and intended to be bound by its terms, or the amendment/addendum had a negligible effect on price, quantity, quality, or delivery.

E. **Rejection of Bids (24 CFR 85.36(b)(9))**. Rejection of any bid during the evaluation process shall be fully documented, including all reasons for the rejection. Minor informalities in the bid may be waived, as described above. Any bid may be rejected if the Contracting Officer determines that the price is unreasonable. Determining a bid price to be unreasonable includes not only the total price of the bid, but the prices for individual items as well. Any bid may be rejected if the prices for any of the items are materially unbalanced (such as bidding a high price for the first items to be provided and then low prices for subsequent items). A bid is materially unbalanced if and when there is a reasonable doubt that the bid would result in the lowest overall cost to the PHA, even if it is the lowest bid, or if the bid is so grossly unbalanced that accepting it would amount to an advance payment.

F. **Award to the Lowest Responsive and Responsible Bidder (24 CFR 85.36(d)(2)(ii)(D))**. After the Contracting Officer evaluates each bid, the responsive and responsible bidder that submits the bid whose dollar value is lowest overall and meets all specified requirements shall be awarded the contract. A sample contract award letter is

included in **Appendix 6**. Unsuccessful bidders also should be notified in writing of the contract award. A sample notice is shown as **Appendix 7**.

6.13 Bid Protests (24 CFR 85.36(b)(12))

Protests against the award of contracts shall be handled as described in Chapter 10, section 10.4.

6.14 Multi-Step Bids

PHAs may use two-step or multi-step sealed bidding procedures where appropriate and if permitted by their procurement policy. The two-step procedure is designed to obtain the benefits of sealed bidding by awarding a contract to the lowest responsive, responsible bidder. Simultaneously, this procedure is designed to obtain the benefits of the competitive proposals method through soliciting technical offers and conducting discussions that evaluate and determine the acceptability of technical offers. Under the two-step sealed bidding process, technical proposals alone are requested first. Then the proposals are evaluated for acceptability and negotiations or discussions held, if necessary.

In the second step, the normal sealed bid process is followed except that only bidders with acceptable technical proposals may bid, and each bidder's price is based on its own technical proposal. An example of this method would be equipment contracts with performance specifications rather than detailed design specifications, where the PHA needs a certain level of performance but is not specifying how this performance is achieved.

These procedures offer certain advantages. First, two-step sealed bidding encourages competition for contracts since contractors who might not have competed on the basis of strict specifications under sealed bidding may participate in the first step of two step sealed bidding because alternative approaches to the project or the design specifications are encouraged. Second, because of the price competition of step two, the general aims and benefits of price competition are achieved. Third, step one allows the PHA to take full advantage of the industry's experience and creativity.

Note: Two-step sealed bidding also has significant disadvantages. The process is generally time consuming and costly for both the PHA and bidders who must draw up detailed technical proposals to meet the specifications or statement of work. In addition, the two-step procedure may result in the procurement of a product or service that is not necessarily the best or most cost effective overall. In step two, bidders will generally bid on their least costly design in order to maximize their chances of success. Since the PHA is to accept the least costly proposal in step two, it may be compelled to turn down proposals which, though a bit higher priced, are superior technically to the lowest cost proposal. In addition, the flexibility and general unfamiliarity of the process lead to a greater likelihood of bid protests and contract disputes.

It is also noted here that the Federal government has issued procedures in construction contracting for using a concept known as two-phase design-build selection procedures, similar to the two-step process outlined above. The process is described in detail in the Federal Acquisition Regulation (FAR) **48 CFR Chapter 1, Part 36, Subpart 36.3**. PHA procurement is not regulated by the FAR. This reference to the direction provided in it is purely for informational purposes.

CHAPTER 7. COMPETITIVE PROPOSALS

7.1 General

The competitive proposal method (also commonly referred to as "negotiated procurement") is the primary alternative to sealed bidding for contract requirements that exceed a PHA's small purchase threshold. While the instructions in this chapter apply only to contracts above a PHA's small purchase threshold, PHAs may adopt and adapt any of these procedures for small purchases if they choose. However, they should not overly complicate the small purchasing process with laborious and unnecessary processes.

A. **Sealed Bidding vs. Competitive Proposals**. Unlike sealed bidding, the competitive proposal method permits: consideration of technical factors other than price; discussion with offerors concerning offers submitted; negotiation of contract price or estimated cost and other contract terms and conditions; revision of proposals before the final contractor selection; and the withdrawal of an offer at any time up until the point of award. Award is normally made on the basis of the proposal that represents the best overall value to the PHA, considering price and other factors, e.g., technical expertise, past experience, quality of proposed staffing, etc., set forth in the solicitation and not solely the lowest price. (See Chapter 6, Section 6.3 for additional guidance on when to use sealed bidding.)

B. **Conditions For Use (24 CFR 85.36(d)(3)**. The conditions for using competitive proposals rather than sealed bidding should be established in the PHA's Procurement Policy. Generally, the competitive proposals method should be used whenever any of the following conditions exist:

1. The requirement cannot be described specifically enough to permit the use of sealed bidding. In other words, the work is not definite enough to accurately estimate the total cost of the contract. Therefore, the contractor would have to build monetary contingencies into his/her price to ensure that his/her costs were covered. The PHA, in turn, would end up paying for the increase in price due to the contingency costs.

2. The nature of the requirement is such that the PHA needs to evaluate more than just price to be sure that the prospective contractor understands the PHA's needs and can successfully complete the contract, especially when contracting for professional services (e.g., legal, architect-engineer, accounting, etc.) where the PHA needs specific expertise and experience.

3. The requested work lends itself to different approaches, e.g., proposals.

C. **Justification**. If not self-evident, the rationale for choosing competitive proposals rather than sealed bidding procedures should be documented in the procurement file.

D. **Bonding**. PHAs will generally need to require bid or performance bonds for competitive proposals for construction or facility improvements.

E. **Types of Competitive Proposals**. There are two types of competitive proposals: Request for Proposals (RFPs) and Requests for Qualifications (RFQs). The latter may only be used in more limited circumstances, as described in paragraph 7.3 of this chapter.

F. Method of Solicitation. While any of the following methods can be employed, the Contracting Officer should choose the method, which, considering matters of economy, provides for full and open competition.

1. Advertising in newspapers or other print mediums of local or general circulations. A sample advertisement is provided in **Appendix 3**.

2. Advertising in various trade journals or publications.

3. E-Procurement. PHAs may conduct their public procurements through the internet using e-procurement systems. However, all e-procurements must otherwise be in compliance with **24 CFR 85.36**, State and local requirements, and the PHA's own procurement policy. Steps must be taken to meet the requirements for full and open competition to avoid potential protests.

G. Time Period for Solicitation. The solicitation must be run for a period sufficient to achieve effective competition, which, in the case of paid advertisements, should generally be run not less than once each week for two consecutive weeks. State or local law may impose additional advertising requirements.

7.2 Competitive Proposal Process (24 CFR 85.36(d)(3) (i-iv))

A. **Format**. Provided below is a suggested format for RFPs.

1. Cover Page;

2. Table of Contents;

3. Statement of Work (SOW);

4. Submission Requirements, along with pricing instructions;

5. Evaluation Factors; and

6. Attachments (including mandatory forms – see paragraph 7.2.B below).

B. **Mandatory Forms/Contract Provisions**. The PHA must include with the solicitation/bid package the following mandatory forms, which contain all mandatory contract provisions. (Note: the forms listed below assume that competitive proposals are used for procuring non-construction services. Only under limited circumstances would construction services be procured by competitive proposals.)

1. Form HUD-5369-B, Instructions to Offerors – Non-Construction.

2. Form HUD-5369-C, Certifications and Representations of Offerors – Non-Construction Contract.

3. In addition, the PHA may want to include with the solitication **Form HUD-5370-C, General Conditions for Non-Construction Contracts.**

C. **Submission Requirements**. The PHA should make sure that the submission requirements (1) include all HUD-required forms and certifications and (2) are consistent with the factors used for evaluation. For example, if the RFP indicates that proposals will be evaluated based on similar experience in the particular activity, the PHA should make sure that it requests respondents to include information on relevant past experience.

D. **Evaluation Factors, Non-Price (24 CFR 85.36(d)(3)(iii))**

1. The RFP must contain a clear statement of the evaluation factors to guide the offerors in structuring their proposal. Non-price factors are also called "technical factors."

2. The written statement of evaluation factors and their relative values clarifies each important factor to the offerors and ensures a fair selection process.

3. The evaluation criteria should be tailored to fit each procurement.

4. Typical evaluation criteria include the following:

    a. Demonstrated understanding of the requirement

    b. Appropriateness of the technical approach in the proposal (including labor categories, estimated hours, and skill mix); and

    c. Quality of the work plan.

    d. Technical capabilities (in terms of personnel, equipment, and materials) and management plan (including staffing of key positions, method of assigning work, and procedures for maintaining level of service, etc.);

    e. Demonstrated experience in performing similar work; and

    f. Demonstrated successful past performance (including meeting costs, schedules, and performance requirements) of contract work substantially similar to that required by the solicitation as verified by reference checks or other means.

E. **Evaluation Factors, Price (24 CFR 85.36(d)(3)(iii), 24 CFR 85.36(f))**. Price must be a factor in making awards. In terms of evaluating price, a PHA has two options, which must be indicated in the RFP:

1. **Where Price is Assigned an Explicit Point(s)**. Under this method, the PHA may award price a specific number of points. For example, the PHA may rank proposals on a 100-point scale. Of the total points, the PHA may award, for example, 80 points for technical merit and 20 points for price. In using this method, the PHA will need to determine the weight given to price versus technical factors and how to convert price into a point scale.

2. **Where Price and Other Technical Factors are Considered**. Under this method, technical factors are first determined and offerors are ranked. Then, prices are evaluated. The PHA can award to the offeror whose price and technical factors are the most advantageous to the PHA. This method is also known as the "trade-off" method in that the PHA trades-off, or weighs the importance of, price versus technical factors. All amendments must be in writing.

F. **Amending and Canceling the RFP**. PHAs may amend or cancel RFPs when necessary or when otherwise considered to be in the best interest of the PHA.

1. **Amendments Before the Proposal Due Date**. If changes to the RFP are needed after it has been issued but before proposals are due, the Contracting Officer should issue a written amendment to all potential offerors who were furnished a copy of the original solicitation. The amendment should then be provided with the original RFP to those who request the RFP after the amendment is made.

2. **Amendments After the Proposal Due Date**. If changes to the RFP are needed after the due date for receipt of proposals, the Contracting Officer should provide a written

amendment to all offerors who submitted a proposal. If, however, the changes are significant enough that potential offerors who did not submit offers might have if the changes had been made before the proposal due date, the PHA should consider extending the proposal due date.

3. **Amendments After Determination of the Competitive Range**. If the need for changes is discovered after the Contracting Officer has determined the competitive range (see paragraph 7.2.N), the Contracting Officer should provide the amendment to all offerors determined to be within the competitive range. If the changes may have had an impact on the acceptability of any offeror who was not included in the competitive range, the Contracting Officer should consider re-determining the range to include such offerors and provide them with the amendment.

4. **Changes Requiring Cancellation of the RFP**. If at any time in the process any needed changes are substantial enough to constitute an essentially new requirement, the Contracting Officer should cancel the RFP, make the needed changes, and issue a new RFP with a new proposal due date. This will be a judgment call on the part of the Contracting Officer.

5. **Canceling an RFP**. Cancellations must be done in accordance with the PHA's written procurement policy and procedures. While it is not prohibited, the repeated cancellation of a single RFP or frequent cancellation of RFPs serves to create a lack of confidence in the PHA's contracting process. Such actions may create the appearance that either the PHA does not really know what it wants, or the PHA may be seeking the participation of a particular contractor.

6. **Documenting Amendments and Cancellations**. The Contracting Officer shall document the procurement file providing the rationale and supporting facts for amendments and cancellations, where necessary.

G. **Pre-proposal conferences.** See Chapter 6, section 6.7 for instruction on pre-proposal conferences. Please note that for the purposes of this paragraph, "pre-bid" means "pre-proposal," and "IFB" means "RFP."

H. **Receiving Proposals**. Proposals are to be date-time stamped when they are received and held unopened in a secure place until the established date for receipt of proposals has passed. Since proposals are submitted in confidence and may contain proprietary information (such as trade secrets or other confidential business information regarding the offeror's approach to the work), they are not opened publicly. After the closing date, all proposals received are opened and evaluated in confidence. Proposals and any changes to those proposals are shown only to PHA personnel who have been authorized by the Contracting Officer as having a legitimate interest in them on the condition that information in the proposals will not be released to anyone who has not been so authorized.

I. **Late Submissions**. Any offer received at the designated place after the specified time should not be considered unless it is the only proposal received.

J. **Confidentiality**. No information regarding any of the proposals, including the names of the offerors or the number of proposals received, should be provided to anyone without the Contracting Officer's permission. Offerors submit proposals in confidence and expect

their proposals to be protected from disclosure to other offerors or individuals. The PHA could be subject to liability if proprietary information is disclosed. Each member of the evaluation committee (see below) and any advisors to the evaluation committee should be required to sign a certification of nondisclosure. A sample is provided as **Appendix 9**.

K. **Evaluation Process (24 CFR 85.36(d)(3))**

1. The evaluation shall be based on the evaluation factors set forth in the RFP. Factors not specified in the RFP shall not be considered. Initially, proposals should be evaluated on an individual basis against the requirements stated in the RFP; at this point proposals are not analyzed in comparison with each other. Also during the initial evaluation, the committee evaluates only the content of the proposals. No personal knowledge of the offeror not based on the contractor's written submission is or should be part of the written proposals' initial evaluation; however, the contractor's prior performance with the PHA should be included as part of the standard review of offeror responsibility.

2. Unlike sealed bids, which are opened publicly, the results of proposal evaluation may or may not be disclosed; either before or after the contract is awarded. Disclosure will depend on State or local law. In the case of protests or litigation, evaluation documentation will almost certainly be made available to the protestor or litigant and their legal counsels. Therefore, evaluators should be especially careful to make the evaluations as thorough, objective, and well documented (e.g., citing the specific areas of the proposal that led to the particular portion of the evaluation) as possible. The Contracting Officer is responsible for ensuring that the evaluation results are sufficiently documented and included in the contract file. To be safe, the Contracting Officer should always assume that an award will be protested.

3. Contracting Officers must be alert to attempts by offerors to change the requirements of an RFP by inserting conditions in their offers or otherwise altering the contract's requirements. While proposals are not required to be "responsive," as that term is used in sealed bidding (see Chapter 6), offerors may not impose conditions or change requirements to suit their own needs or desires.

   Examples of conditioning offers include:

   a. Adding special terms or clauses to impose State or local laws not applicable to the PHA's contracts;

   b. Inserting "hold harmless" clauses to avoid certain liabilities;

   c. Making provision for attorney's fees (to attempt to make the PHA pay the contractor's legal costs if the PHA sues the contractor); or,

   d. Taking exception to clauses, in whole or in part.

4. When possible, Contracting Officers should be willing to negotiate changes unless the changes violate Federal, State or local law or regulation, are required by HUD policy, or prejudice the other offerors (e.g., making a change that benefits a single offeror).

L. **Evaluation Report (24 CFR 85.36 (b)(9))**. The PHA shall prepare an evaluation report to document the ranking of the proposals by technical merit, using point scores, or similar methodology. (If price is included in the point scoring, the evaluation report will also include the price or cost analysis, as appropriate.) In addition, a narrative should accompany the scores to explain how the scores were derived, detailing the significant strengths, weaknesses, and deficiencies in the proposal. The level of detail for the evaluation report will be influenced by the complexity of the procurement, with more complex procurements likely requiring more detailed reports.

M. **Evaluation of Price (24 CFR 85.36(f)).** The evaluation of price is made using the cost and price analysis techniques in Chapter 10 and other evaluation processes described in the RFP.

N. Competitive Range (24 CFR 85.36(f))

1. After the evaluation committee has evaluated all proposals, the Contracting Officer should determine a competitive range. The competitive range includes the proposals that have a reasonable chance of being selected for award considering their technical evaluation results and their proposed costs or prices.

2. The Contracting Officer examines the evaluation results contained in the evaluation report to decide if each offer is technically acceptable (i.e., appears to be able to perform the technical requirements of the contract). The Contracting Officer analyzes the proposed cost or pricing information (see Chapter10, section 10.2) to decide if the offers propose a reasonable total cost or price. The Contracting Officer then considers the combination of technical and cost (the "total package") presented by each proposal to decide if it should be kept in the running for negotiations and possibly award.

   Example: A high scoring, technically acceptable offeror proposes a price that far exceeds all the competition and the PHA's ICE. The Contracting Officer would be justified in not including it in the competitive range. It would be highly likely that once the costs were negotiated down to a reasonable level, the technical quality would be much lower, too. Therefore, the offer does not truly stand a reasonable chance of award.

3. Before conducting negotiations, technical proposals included in the competitive range should be classified as:

   a. "Acceptable." This means that based upon the proposal as submitted, the PHA could contract with the offeror and expect that the work would be completed. The proposal is not perfect, but it contains no significant weaknesses.

   b. "Potentially acceptable." This means that the technical part of the proposal contains weaknesses that keep it from being acceptable, but with relatively minor changes or additional information from the offeror, it might be made acceptable. Once additional information is obtained via initial negotiations, this type of proposal must become either acceptable or unacceptable.

   c. "Unacceptable." This means that the proposal is seriously flawed to the point that no amount of negotiation would lead to improve it, or the offer would have to be

substantially rewritten to be found acceptable. Either the offeror simply did not understand the PHA's requirement or did not elect to prepare a sufficient proposal. Technically unacceptable proposals should never be included in a competitive range.

4. The competitive range, including the Contracting Officer's rationale for it, must be documented in the contract file.

5. The Contracting Officer may redetermine the competitive range after the initial round of negotiations. For example, a potentially acceptable offer becomes unacceptable. In that case, the Contracting Officer should not ask the offeror for a Best and Final offer (see paragraph Q, below). Instead, the Contracting Officer should redetermine the range and remove that proposal. This may be done after successive rounds of negotiation, if more than one is used.

O. Pre-negotiation Objectives

1. Pre-negotiations objectives are the Contracting Officer's negotiating positions. Normally, the Contracting Officer should develop target objectives (e.g., best case, expected, highest acceptable price, etc.) for the contract price. Objectives may also be established for technical aspects of proposals. For example, the Contracting Officer may have included a "potentially acceptable" offer in the competitive range (see paragraph 7.2N). The technical pre-negotiation objectives would then include obtaining answers or clarification relative to the areas of the proposal that made it potentially acceptable.

2. The Contracting Officer should establish specific pre-negotiation objectives for each offer in the competitive range.

P. **Negotiations with Offerors**

1. Negotiations are exchanges (in either competitive or sole source environment) between the PHA and offerors that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining.

2. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract or other terms of a proposed contract.

3. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions.

4. Discussions are tailored to each offeror's proposal, and shall be conducted by the contracting officer with each offeror within the competitive range.

5. The primary object of discussions is to maximize the PHA's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. The Contracting Officer shall indicate to, or discuss with, each offeror still be considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as cost, price, technical approach, past performance, and terms and conditions) that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposer's potential for award.

6. The scope and extent of discussions are a matter of the Contracting Officer's judgment. The Contracting Officer may inform an offeror that its price is considered by the PHA to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible to indicate to all offerors the cost or price that the PHA's price analysis, market research, and other reviews have identified as reasonable. "Auctioning" (revealing one offeror's price in an attempt to get another offeror to lower their price) is prohibited.

Q. **Best and Final Offers**

1. After initial negotiations are complete, the Contracting Officer shall invite the offerors in the competitive range to submit their best and final offers, making any changes they wish in their technical proposal and the price. All offerors in the competitive range should be provided an opportunity to present best and final offers.

2. The best and final offers shall be evaluated in essentially the same manner as the initial offers. At his/her discretion, the Contracting Officer may have the entire evaluation committee or only a subset of the committee evaluate the best and final offers. In either case, the Contracting Officer shall ensure that a full evaluation is conducted sufficient to support the award decision.

3. Best and final offers are usually requested only once in a competition. However, in exceptional circumstances, the Contracting Officer may determine that it is in the PHA's best interest to conduct another round of negotiations and request a second best and final offer. (Note: The Contracting Officer may also redetermine the competitive range based upon the best and final offers. In that case, only those offerors still in the competitive range – but all of them - are asked to submit another revised best and final offer; see also paragraph N, above.) The Contracting Officer should document in the contract file his/her rationale for re-opening negotiations and requesting any additional best and final offers.

4. The Contracting Officer shall establish a common date and time for submission of offers. Late responses should be treated the same as late initial offers. When requesting best and final offers, the Contracting Officer shall clearly inform offerors that should they fail to submit a best and final offer, or fail to submit one by the due date, their initial offer will be deemed to be their best and final offer.

R. **Award without Negotiations**. If, after the initial evaluation of proposals, there is a clear winner, and there is no need to negotiate or obtain further clarification or information from that offeror (e.g., the price is reasonable), the Contracting Officer may proceed directly to award, provided that the RFP clearly stated that award could be made without negotiations (see paragraph 7 of form HUD-5369-B).

S. Contract Award (24 CFR 85.36(b)(8))

1. **General**. Contracts shall be awarded only in accordance with the terms of the solicitation. Contracts awarded using the competitive proposals method are based on both price and technical merit of the proposal. Awards shall be made only to offerors who have been determined to be responsible contractors. Procedures for determining contractor responsibility are included in Chapter 10, and a sample Responsibility Determination form is included in **Appendix 10**.

2. **Notice to Unsuccessful Offerors**. The Contracting Officer should notify each unsuccessful offeror and the awardee price in writing. In accordance with any applicable State or local law, the notice should identify the successful offeror and the contract price, and the basis for the offeror not being selected for contract award. The basis should clearly describe the offer's salient weaknesses and deficiencies that resulted in it not being considered for award (e.g., not simply state that the offeror's proposal did not receive a high enough score).

3. **Debriefing Unsuccessful Offerors.** The notice to unsuccessful offerors should also provide them with the opportunity to request a debriefing by the Contracting Officer. The notice should state any time frame during which the request must be made (e.g., within 10 business days after receipt of notice). The debriefing should explain how the offer was unsuccessful (e.g., by comparing it to the requirements of the RFP). The debriefing should **not** include a detailed point-by-point comparison with the successful offer or any other offer, and may not reveal any information about another offer that is protected from disclosure (e.g., personal information, proprietary business information; see Chapter 1, section 1.7).

T. Protests. Protests against the award of contracts shall be handled as described in Chapter 10, Section 10.4.

7.3 Requests for Qualifications

A. **General**. The Qualifications-Based Selection (QBS) method is conducted using an RFQ. Use of the QBS is limited and is different, primarily, from the RFP method in that the PHA first selects the highest-ranked respondent on technical factors and then negotiates price. The most common use of RFQs is for Architect/Engineer (A/E) contracts. RFQs can also be used to select development partners for mixed-financed projects (Chapter 16). The discussion in this section references those special requirements/conditions in using RFQs.

B. **Procedure**. Unlike other methods, the QBS method does not use price as an evaluation factor. The PHA requests technical qualifications statements from prospective firms and then ranks the statements according to their qualifications as related to the project. The PHA then opens negotiations with the top-ranked firm with intentions to reach agreement on a fair and reasonable price. If agreement cannot be reached, the PHA terminates negotiations with this firm and proceeds to the next-highest rated firm until a price determined to be fair and reasonable to both parties is obtained. Once negotiations have been terminated with a firm, the PHA may not go back to that firm for additional negotiations – even if the next lower ranked respondent is higher in price.

C. **Eligible Uses**. The QBS method can only be used for A/E services, or Developer's related contracts, or when specifically authorized by HUD. Further, in accordance with **24 CFR 85.36(d)(3)(v)**, the QBS method cannot be used to contract for other types of services provided by A/E firms, even though A/E firms are a potential source for performing the proposed effort.

D. **Alternative Methods of Selecting A/E Firms (24 CFR 85.36(d)(3)(v))**. There are several alternatives available to PHAs in contracting for the full range of services offered by A/E firms:

1. A "full-service" approach may be used if the PHA solicits offers using competitive proposal procedures or QBS for assistance in preparing modernization plans, with

options for the follow-on design and construction phases for a specific contract. The evaluation criteria in the solicitation should address the qualifications and experience of prospective A/E firms for all tasks. If QBS is used, the PHA evaluates the qualification statements for technical competence, selects the best-qualified A/E, and negotiates a fair and reasonable price for the initial task. (If agreed by the A/E and the PHA, the contract may stipulate that in the event that Phase I is not approved, the A/E is not entitled to any payment.) If QBS is not used, price is considered along with technical qualifications and experience in the initial evaluation.

The PHA specifies the optional task (design/construction) in the contract without a price because the full scope of the A/E services is not yet known.

If the PHA then wishes to exercise its option for the additional services, the PHA notifies the A/E accordingly and requests a design proposal. The PHA conducts a cost/price analysis, enters into negotiations, and establishes a mutually acceptable price for the design and construction phases. The PHA prepares a contract modification (supplemental agreement), executed and signed by both parties authorizing the A/E to begin the design/construction phase, or the PHA has no further obligation to the A/E and may issue a new competitive solicitation for the follow-on work.

With the exception of the full-service approach, described in paragraph 7.3.D.2 below, the PHA should determine whether or not there is an actual or potential conflict of interest resulting from the same A/E who was involved in the Phase I being subsequently involved in the related design/construction phase work.

If the PHA wishes to separate Phase I from the design/ construction phase, the PHA first solicits and contracts for Phase I. Then, after Phase I approval, the PHA solicits and contracts for the design/construction phase. The A/E who was awarded Phase I may compete for the design/construction phase, provided that the PHA makes all application-related information available to all competing A/E firms and that there is no organizational conflict of interest. (For example, award of the contract to the A/E who developed the plan would result in an unfair competitive advantage because, by virtue of doing Phase I work, an unfair advantage exists through information which might not be available to others).

The PHA is not to allow an A/E contractor, on a sole-source basis, to prepare a grant (or development application) on a “no fee” basis and then compensate that A/E by paying a contingent fee (or contracting on a sole-source basis to do the design and construction phases).

2. If the PHA wishes to procure A/E services for more than one specific project, the PHA may solicit for an indefinite-quantity of A/E services, e.g., design of various administrative or maintenance buildings, where separate orders would be placed for each building as the need arises. Because this approach may provide the successful A/E with a substantial level of business and basically confers status as the “resident A/E,” the contract should contain a clause precluding the successful A/E from competing on related A/E work solicited by the PHA during the term of the contract if the other A/E work would result in an organizational conflict of interest (such as unfair competitive advantage or impairment of contractor objectivity).

E. **A/E Evaluation Factors**. The following evaluation factors are recommended for use for modernization and development A/E contracts:

1. Evidence of the A/E's or firm's ability to perform the work as indicated by profiles of the principals' and staffs' professional and technical competence/experience, and their facilities;

2. Capability to provide professional services in a timely manner;

3. If design work is involved, evidence that the A/E is currently registered in the State of the project's location and carries Errors and Omissions insurance (Note that this is a yes or no criterion: if the answer is no, the firm is disqualified, not point-scored);

4. Past performance in terms of cost control, quality of work, and compliance with performance schedules;

5. Demonstrated knowledge of local building codes and Federal building alterations requirements; and

6. Other factors determined to be appropriate by the PHA.

F. **Forms for A/E Contracts**. The form HUD-51915, Model Form of Agreement Between Owner and Design Professional, is required for use by PHAs for A/E contracts that exceed the Federal small purchase threshold. In preparing the solicitation, it should be noted that in States that mandate QBS, a price shall not be solicited for the initial competition, but shall be requested from the best-qualified A/E firm after the evaluation of qualifications and ranking the firms (24 CFR 85.36(d)(3)(v)).

G. **Inadequate Response to A/E Solicitation**. If the PHA receives fewer than three proposals, the PHA should analyze and document the reasons for the inadequate response (such as if public notice advertising and outreach to potential offerors were insufficient, or if the solicitation was unduly restrictive or vague). Depending on the results of the analysis, the PHA may either reject the proposals and issue a revised solicitation, or the PHA may proceed to evaluate the proposals as deemed appropriate. If only one responsive proposal was received, the PHA should follow the procedures described in Chapter 10.

7.4 Procurement of Legal Services by PHAs (24 CFR 85.36(b)(1))

A. **Purpose and Applicability**. The following information sets forth procedures for the procurement of legal services by PHAs. This guidance provides similar guidance to HUD staff and PHAs included in PIH Notice 2006-9, Procurement of Legal Services by PHAs or its successor guidance. The following information is not intended as the primary source of guidance in this area but is provided to remind all HUD Offices and PHAs of the proper procedures for procuring legal services and to briefly review areas of common interest and concern. This information applies to all PHA procurements of legal services that are funded with HUD grant funds subject to **24 CFR Part 85**, e.g., Operating Fund subsidies and Capital Fund.

B. **Background**. PHAs obtain required outside legal services through procurement contracts. Such procurement is subject to the requirements set forth in **24 CFR Part 85**, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," in particular, **24 CFR 85.36**. 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 OMB Circular A-87, which contains a set of cost principles that PHAs must use for determining the allowability of costs they incur under Federal grants and provides

guidance in their use. Contracts for litigation services are also to meet the requirements of the HUD Litigation Handbook 1530.1 REV-5 dated May 2004 (the "Litigation Handbook").

C. **Methods of Procurement**. **24 CFR 85.36(d)** permits PHAs to use all of the contracting methods listed below. PHAs are expected to choose the method of procurement that is reasonable based on the facts surrounding the particular situation. The methods of procurement outlined in **24 CFR 85.36(d)** are:

1. **Small Purchase Procedures**. If the relatively simple and informal small purchase methods are used, price or rate quotations will be obtained from an adequate number of qualified sources.

2. **Sealed Bids**. This method is normally not appropriate for securing legal services. Sealed bidding 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. In addition, it is often critical to consider other factors besides price (e.g., experience) when selecting a legal services contractor. Sealed bidding does not permit the use of other factors.

3. **Competitive Proposals**. This method is generally preferred when procuring professional services because it allows for the consideration of technical quality or other factors (in addition to price) for securing services estimated to cost more than the Federal small purchase threshold or a lower threshold as established by the PHA (e.g., to conform to State law). Competitive offers are solicited, proposals are evaluated, and award is made to the offeror whose proposal is most advantageous to the PHA, with price and other factors (as specified in the solicitation) considered. Either a fixed-price or cost reimbursement type contract may be awarded. This method is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the conditions in **24 CFR 85.36(d)(3)** must be followed.

4. **Noncompetitive Proposals**. This method may only be used when the other methods of procurement are infeasible 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. An example of a situation considered to violate the requirements of full and open competition in **24 CFR 85.36** would be noncompetitive award to an attorney for legal services on a retainer basis.

D. **Time and Materials Contracts**. Legal services can be procured on an hourly basis using a type of contract known as time-and-materials (or sometimes, "labor-hour") contracts. Under these contracts, the contractor's services are pre-priced (usually, in terms of hours) in the contract, and the PHA orders services in unit amounts (e.g., hours) as needed until the funds in the contract are exhausted. PHAs may use this type of contract only after the PHA determines that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk.

E. **Obtaining Legal Services by Procurement or Employment Methods**. PHAs may employ an attorney directly (house counsel), or the PHA may enter into a procurement contract with an attorney or firm. The procurement of legal services shall follow the

procedures outlined in paragraph C above. The employment of house counsel is not covered by **24 CFR 85.36**. PHA house counsel is ineligible to receive procurement contracts for legal services. All services of a PHA house counsel would be part of his/her employment contract and are not to be procured separately. Where legal services are desired outside of the scope of services provided by the PHA house counsel, PHAs may use one of the procurement procedures described in paragraph C above.

F. **Contracts for Litigation Services**

1. **General Requirements and Regional Counsel Approval**. In addition to the requirements described above in paragraph C, the Litigation Handbook sets thresholds for Regional Counsel and Headquarters Program Associate General Counsel approval of litigation service contracts. With the exception of litigation involving a PHA acting as a section 8 private developer, a PHA must submit to HUD Regional Counsel for prior written concurrence any litigation service contract where the fee is expected to exceed $100,000 with a private attorney involving PHA program, project, or activity receiving loan, grant, or other subsidy assistance from HUD. 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, the PHA shall consult appropriate Field and Regional Offices staff.

   Upon receiving a request for concurrence, if Regional Counsel is satisfied that the PHA has not violated HUD requirements or is otherwise not at fault, the Regional Counsel shall concur in a request received from the PHA for approval of a contract for litigation services if he/she is also satisfied that: the contract contains adequate protection against fraud and abuse; the contract contains all mandatory provisions for professional service contracts for the program or activity giving rise to the litigation; and the contract amount is reasonable. (Note: In cases where the PHA is at fault, the Regional Counsel may authorize the limited use of program funds for the PHA's defense to facilitate settlement or obtain judicial definition of the required relief.) The contract amount will be considered reasonable if it does not exceed the rates prevailing in the same or similar localities for the same or similar services, or the PHA can demonstrate special circumstances that require payment of a higher amount. Regional Counsel's concurrence signifies that the attorney's fee (proposed contract price) under the contract is an allowable project expense, but is not a certification that there are sufficient project funds available to cover the contract amount.

2. **Headquarters Program Associate General Counsel Approval**. No contract for attorney's fees for litigation services entered into by any PHA, which calls for an estimated maximum price in excess of $300,000 may be approved by the Regional Counsel without the prior concurrence of the Headquarters Program Associate General Counsel.

3. **Use of Fixed-Price Contracts**. Fixed-price proposals will be approved only where the issues are uncomplicated, extensive preparation probably is not required, and any trial that may ensue probably will not be lengthy. Ordinarily, a fixed-price proposal in excess of $100,000 shall not be approved but Regional Counsel may approve a higher amount for a good cause. For additional information regarding the above litigation services requirements, consult paragraphs 2-3g(3), 3-3b(3) and 5-4 of the Litigation Handbook.

G. **Contract Addendum – Legal Services Protocol**. As indicated above, recent attention to the key role that attorneys play in PHA activities prompt the following guidance to promote and improve the Department's partnership with PHAs. See **Appendix 11** for a form of addendum to an engagement letter, which the Department urges PHAs to follow in procuring and utilizing legal services. The form of engagement letter is intended to set a course that will be helpful to both PHA and HUD partners, clarifying a method of operation for HUD's statutory oversight responsibilities while optimizing the statutory directive in section 2(a)(1)(C) of the United States Housing Act of 1937 "to vest in PHAs that perform well, the maximum amount of responsibility and flexibility in program administration, with appropriate accountability to public housing residents, localities, and the general public."

H. **Legal Fee Management Service Contracts**. PHAs may also find it helpful to engage a legal fee management firm when heavy demand or high local priorities or other conditions merit secure oversight of legal services.

7.5 Employment Contracts

A. **Employment vs. Independent Contracts**. There is a distinction between employing an individual (employment contracts), such as an employment contract for an executive director, and contracting for independent services (independent service contract). The former is part of the personnel process and is subject to those rules and regulations. The latter is considered to be a procurement action, subject to the standards in **24 CFR 85.36(d)(3)**. In an independent services contract there is no employer-employee relationship. Employment contracts are not subject to **24 CFR 85.36** and need not be competitively procured.

B. **Executive Directors**. Executive Directors may be hired as PHA employees or may be retained under an independent services contract. A contract with a term in excess of two years requires prior written approval by the local HUD office if the PHA operates under the old ACC form HUD-53011 (11/69). The new ACC form HUD-53012A (7/95), does not specify a term; however, as with other contracts of this length, it is recommended that the PHA issue the contract for two base years with three one-year option periods. HUD can question and disallow fees or salaries paid by PHAs that are determined to be in violation of the ACC's provisions for economy and efficiency.

CHAPTER 8. NONCOMPETITIVE PROPOSALS

8.1 General

This chapter defines noncompetitive proposals, the conditions for their use, and the requirements for documentation.

8.2 Definition

A noncompetitive proposal means a procurement through either a "sole source," when the PHA solicits an offer from one source, or a "single source," when the PHA solicits offers from multiple sources but receives only one or the competition is determined inadequate. As described in Chapter 15, certain contracting with resident-owned businesses and resident management corporations are exempted from these restrictions on non-competitive proposals.

8.3 Restrictions

A. All noncompetitive proposal awards must comply with **24 CFR 85.36(d)(4)**.

B. As described in Chapter 15, certain contracts with resident-owned businesses and resident management corporations are exempt from these restrictions on noncompetitive proposals.

8.4 Process

A. Award of contracts from noncompetitive proposals follows a process similar to that used for competitive proposals (see Chapter 7). The proposal must be evaluated. Technical and cost aspects of the proposal may be negotiated. The offeror must be determined to be responsible at the time of award.

B. Because there is no price competition, cost analysis (see Chapter 10) is required. Costs or price must be determined to be reasonable.

C. PHAs are required to submit proposed noncompetitive contracts to HUD for pre-award review and approval in accordance with 24 CFR 85.36(g), unless exempted under **24 CFR 85.36(g)(3)** (see Chapter 12 for more discussion.)

8.5 Justification/Documentation

A. Procurement by noncompetitive proposals shall be conducted only if a written justification is made as to the necessity of using this method in accordance with the procedures described in PHA's procurement policy (see **Appendix 1** for sample). Approval to award a contract resulting from a noncompetitive proposal does not eliminate or alter any other requirements of **24 CFR 85.36** governing the contract. The justification should include the following information:

1. Description of the requirement;

2. History of prior purchases and their nature (competitive vs. noncompetitive);

3. The specific exception in **24 CFR 85.36(d)(4)(i)(A) through (D)** which applies;

4. Statement as to the unique circumstances that require award by noncompetitive proposals;

5. Description of the efforts made to find competitive sources, e.g., advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc;

6. Statement as to efforts that will be taken in the future to promote competition for the requirement; and,

7. Signature of the Contracting Officer and any higher approving official as required by the PHA's policy.

B. The Contracting Officer shall include the written justification and approval in the contract file.

CHAPTER 9. SPECIFICATIONS AND STATEMENTS OF WORK

9.1 General

This chapter describes the development of specifications and statements (or scopes) of work, along with their uses. Properly prepared or described specifications and statements of work (1) enhance competition, and (2) clarify the relationship between the contractor and the PHA, resulting in improved contract administration

9.2 Regulatory Requirement

24 CFR 85.36(c) states, in part, "all procurement transactions shall be conducted in a manner providing for full and open competition." In compliance with this requirement, the specifications or statement of work must be designed so as not to restrict competition to one supplier.

9.3 Specifications (24 CFR 85.36(c)(1)(i))

A. **Definition**. A specification is a detailed description of materials, supplies, equipment, pre-cuts, or construction work that is used in the procurement process to tell prospective contractors precisely what the PHA desires to purchase. (A statement or scope of work is a unique type of specification generally used for the procurement of professional or management services, as discussed in paragraph 9.4.)

B. **Specification Types**. Three general types of specifications are used in preparing contracts for equipment, supplies, or construction – functional or performance specifications, design specifications, and brand name or equal specifications. While these general types are described below, it is rare to find specifications that fit completely into just one of the above categories. Most specifications contain a combination of design and performance requirements and may, include brand name or equal descriptions of components.

1. **Functional or Performance Specifications**. These specifications contain performance characteristics that are desired for the item or that identify how the item functions. The detailed design or exact measurements are not stated.

   A functional or performance specification is inherently risky. Performance specifications state the overall requirements so that each contractor may furnish its own item to meet the required performance. For example, a new boiler specification can simply call for a gas-fired hot water boiler that will produce 100,000 British Thermal Units (BTU) per hour. It is easy to imagine a gas-fired boiler that can produce 100,000 BTUs per hour but may also require continuous and costly maintenance.

2. **Design Specifications.** Design specifications contain a description of the item desired as opposed to performance standards. Design specifications may be as detailed as needed. Depending on the nature of the item, the design specifications may contain precise measurements, tolerances, materials, product tests, quality control, and other detailed information, provided competition is not being limited to one product. The information furnished in the specification should be sufficiently detailed to ensure that all items manufactured to the specifications will be virtually the same. A detailed

description of kitchen cabinets, giving dimensions, fastening details, materials, and hardware, is one example of this type of specification.

3. **Brand Name or Equal Specifications (24 CFR 85.36(c)(1)(vi))**. Under this form of specification, clear and accurate product descriptions are developed. These descriptions shall not contain features that unduly restrict competition. It may be necessary to describe technical requirements for materials and equipment by referencing brand name products in order to define performance or other salient requirements. References to brand names shall be followed by the words "or equal" and a description of the item's essential characteristics so that competition is not restricted.

   Specific brand names may be used only for establishing design and quality standards and only if there is no other reasonable method of designating the required quality of the item desired. When brand names or catalog numbers are used, inform the offerors that such references establish only design or quality standard; in fact, any other products that clearly and demonstrably meet the standard are also acceptable.

C. **Standardizing Inventory.** Many PHAs, for efficiency, standardize their inventory of equipment and parts. As stated above, PHAs must comply with procurement standards that requires full and open competition and prohibits using specifications that unduly restrict competition. To standardize the PHA's inventory, specifications or descriptions that use brand names may be used only when accompanied by the term "or equal." The specific features of the product (design, functional, or performance) that are essential in order to be considered "or equal" shall be clearly stated. In addition to the brand name product specified, any other product that meets the same technical requirements shall be given full and fair consideration.

   In all cases, the PHA should give all offerors the opportunity to present reasons or data showing that their product can meet the stated requirements. Descriptions or specifications shall not be written so as to specify a particular product or feature of a product particular to one manufacturer unless that feature or product is critical to the intended use.

D. **Avoiding Manufacturers Specifications.** PHAs should avoid incorporating a particular manufacturer's specification as the project specification. This may give the appearance of restricting competition and suggest that other manufacturers' products are at a disadvantage and may not be accepted. If the PHA specifies a brand name cabinet, the essential key elements or features of the product should be stated. For example, if specifying kitchen cabinets with the key features of solid wood doors and plywood frames, then many available brands and styles of cabinets will meet the key criteria. Therefore, all of these brands should be acceptable.

E. **Contractor-Developed Specifications (24 CFR 85.36(c)(1)(iv)).** In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors funded to develop or draft specifications, requirements, statements of work, invitations for bid, or requests for proposals shall be excluded from competing in the procurement. The only exception to this rule is if, prior to the solicitation, all respondents to solicitations are provided with materials and information made available to the contractor involved in matters pertinent to the solicitation.

9.4 Statement of Work (SOW)

A statement or scope of work SOW is normally used for contracts for services, such as accounting or payroll services, energy audits, consultant, legal or A/E services, as well as non-professional services such as maintenance and grounds keeping.

A. **Purpose and Functions of the SOW.** The primary purpose of a SOW is to provide a basis for mutual understanding between the PHA's Contracting Officer and the offeror and subsequent contractor of the PHA's requirements.

   1. The adequacy and detail of the SOW may affect the number of offerors who are willing and able to respond. If the SOW is not specific enough, some may not respond, either because of uncertainty about the risks involved or because they may not understand the relationship of the requirement to their own particular capabilities.

   2. The clarity and specific detail of the requirements presented in the SOW directly relate to the amount of the offer and the quality of the proposals submitted.

   3. Under the competitive proposals method, the SOW establishes conclusive baseline tasks that are the foundation for sound evaluation criteria. The SOW plays a significant role in the proposal evaluation and contractor selection process.

   4. The SOW also becomes the standard for measuring contractor performance. When a question arises over an apparent increase in the scope of the work to be performed, the SOW is the baseline document for resolving the question. Negotiation of cost and schedule modifications will be impaired, if not rendered impossible, if the SOW is not definitive in these areas. (Alternately, some solicitations may include the actual contract, which is summarized or referenced in the statement of work.)

B. **Elements of the SOW.** The particular issues to be addressed in a SOW will vary with the nature, purpose, size, and complexity of the work. At a minimum, every SOW should include:

   1. Detailed work and task requirements;

   2. End results and deliverables, including the criteria which a deliverable must meet to be considered acceptable;

   3. Delivery schedules/period of performance;

   4. Any reporting and compliance requirements;

   5. A precise statement of the objectives;

   6. Contact information for PHA contact person/contract administrator; and

Other special considerations (warranties, personnel and required classifications, testing procedures, procedural safeguards, etc.).

CHAPTER 10. MISCELLANEOUS REQUIREMENTS

10.1 Contract Pricing and Types

This chapter includes miscellaneous procurement requirements.

A. General Guidance. A wide selection of contract types is available to PHAs to provide needed flexibility in acquiring supplies and services.

1. Contract types vary according to: (a) the degree and timing of the responsibility assumed by the contractor for the costs of performance; and (b) the amount and nature of the profit incentive offered to the contractor for achieving or exceeding specified standards or goals.

2. The contract types are grouped into two broad categories: fixed-price contracts and cost-reimbursement contracts. The specific contract types range from firm-fixed-price, in which the contractor has full responsibility for the performance costs and resulting profit (or loss), to cost-plus-fixed-fee, in which the contractor has minimal responsibility for the performance costs and the negotiated fee (profit) is fixed. In between are the various incentive contracts, in which the contractor's responsibility for the performance costs and the profit or fee incentives offered are tailored to the uncertainties involved in contract performance.

3. Contracts resulting from sealed bidding shall be firm-fixed-price contracts or fixed-price contracts with economic price adjustment.

4. Contracts resulting from competitive proposals may be of any type or combination of types.

5. In accordance with **24 CFR 85.36(f)(4)**, the use of the following types of contracts is prohibited:
   a. **Cost-plus-percentage-of-cost.** This type of contract is prohibited because it obligates the PHA to pay all costs incurred throughout the contract, plus a commission based on the percentage of future costs. In this type of pricing arrangement, the contractor's profit increases in proportion to its costs incurred in the performance of the contract. The contractor has a clear incentive to increase costs.
   b. **Cost-plus-percentage-of-construction-cost**. The cost for individual construction-related services is determined by applying a percentage of actual construction costs as a fee, such as an A/E contract in which the fee is determined based on the total construction cost. Such an arrangement allows the possibility of the contractor designing an overly expensive construction project in order to increase profits.

B. Selecting Contract Type. There are many factors that the Contracting Officer should consider in selecting and when appropriate (e.g., using competitive proposals), negotiating the contract type. They include:

1. Price competition. Normally, effective price competition results in realistic pricing, and a fixed-price contract is ordinarily in the PHA's interest.
2. Price analysis. Price analysis, with or without competition, may provide a basis for selecting the contract type. The degree to which price analysis can provide a realistic pricing standard should be carefully considered.
3. Cost analysis. In the absence of effective price competition and if price analysis is not sufficient, the cost estimates of the offeror and the PHA provide the bases for negotiating contract pricing arrangements. It is essential that the uncertainties involved in performance and their possible impact upon costs be identified and evaluated, so that a contract type that places a reasonable degree of cost responsibility upon the contractor can be negotiated.
4. Type and complexity of the requirement. Complex requirements, particularly those unique to the PHA, usually result in greater risk assumption by the PHA. This situation is especially true for complex development contracts, when performance uncertainties or the likelihood of changes makes it difficult to estimate performance costs in advance. As a requirement recurs or as quantity production begins, the cost risk should shift to the contractor, and a fixed-price contract should be considered.
5. Urgency of the requirement. If urgency is a primary factor, the PHA may choose to assume a greater proportion of risk or it may offer incentives to ensure timely contract performance.
6. Period of performance. In times of economic uncertainty, contracts extending over a relatively long period may require economic price adjustment terms.
7. Contractor's technical capability and financial responsibility.
8. Adequacy of the contractor's accounting system. Before agreeing on a contract type other than firm-fixed-price, the Contracting Officer should ensure that the contractor's accounting system will permit timely development of all necessary cost data in the form required by the proposed contract type. This factor may be critical when the contract type requires price revision while performance is in progress, or when a cost-reimbursement contract is being considered and all current or past experience with the contractor has been on a fixed-price basis.
9. Concurrent contracts. If performance under the proposed contract involves concurrent operations under other contracts, the impact of those contracts, including their pricing arrangements, should be considered.
10. Extent and nature of proposed subcontracting. If the contractor proposes extensive subcontracting, a contract type reflecting the actual risks to the prime contractor should be selected.

11. Procurement history. Contractor risk usually decreases as the requirement is repetitively acquired. Also, product descriptions or descriptions of services to be performed can be defined more clearly**.**

C. Contract Types

The following types are the most commonly used by PHAs. They are ranked in order of risk to the PHA, from lowest to highest. Other types and variations on these types may be used as appropriate in accordance with the limitations set forth in this section 10.3.

1. **Fixed-Price.** Fixed-price types of contracts provide for a firm price or, in appropriate cases, an adjustable price. Fixed-price contracts providing for an adjustable price may include a ceiling price, a target price (including target cost), or both. Unless otherwise specified in the contract, the ceiling price or target price is subject to adjustment only by operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances.
   a. **Firm fixed-price**. This contract type requires the delivery of products or services at a specified price, fixed at the time of contract award and not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. It is appropriate for use when fair and reasonable prices can be established at time of award, definite design or performance specifications are available, products are off-the-shelf or modified commercial products or services for which realistic prices can be offered, and any performance uncertainties can be identified and reasonable cost estimated in advance. Its advantages are that it encourages contractor efficiency and places total responsibility and risk on the contractor. Its disadvantages are that it lacks flexibility in pricing and performance. It is the most preferred type of contract and the most commonly used, requiring the least amount of contract administration. However, as discussed below under other types, it is not always possible to use firm fixed-price contracts.
   b. **Fixed-price with economic price adjustment**. In cases where the market for a particular supply or service is especially volatile, and the PHA needs a contract for a term greater than just an initial quantity, this contract type allows for adjustment in the contract price based upon the occurrence of specified contingencies stated in the contract (e.g., changes in market conditions, the Consumer Price Index, or other commodity price indices that are not controlled by the contractor). The contract contains initial firm fixed prices that may be adjusted upward or downward during the performance period. The contract must contain a clause explaining how the price adjustment will be made, identifying the price index to be used, the

frequency of adjustment, and any overall ceiling price. A fixed-price contract with economic price adjustment may be used when:

i. There is serious doubt concerning the stability of market or labor conditions that will exist during an extended period of contract performance; and,

ii. Contingencies that would otherwise be included in the contract price can be identified and covered separately in the contract. Price adjustments based on established prices should normally be restricted to industry-wide contingencies. Price adjustments based on labor and material costs should be limited to contingencies beyond the contractor's control.

2. **Cost-reimbursement**. Cost-reimbursement types of contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the contracting officer. Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract. A cost-reimbursement contract may be used only when: the contractor's accounting system is adequate for determining costs applicable to the contract; and, appropriate surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used.

   a. **Cost contract (no fee)**. This is a cost-reimbursement contract under which the contractor receives no fee. This type is often used when contracting with nonprofit organizations that may not receive any fee or profit.

   b. **Cost-plus-fixed-fee**. This is a type of cost-reimbursement contract that provides for payment to the contractor of a negotiated fee (profit) that is fixed at the time of contract award. The fixed fee does not vary with the contract's actual costs (e.g., the contractor will not receive a greater fee for incurring less cost), but may be adjusted as a result of changes in the work to be performed under the contract (e.g., as a result of a change order). This contract type permits contracting for efforts that might otherwise present too great a risk to contractors (e.g., there is a high degree of uncertainty in, or the ultimate costs of, accomplishing the contract's requirements). A cost-plus-fixed-fee contract presents the greatest risk to the PHA because it provides the contractor only a minimum incentive to control the costs of contract performance. Therefore, it should be used only when no other type is feasible. Like all cost-reimbursement contracts it requires a significant amount of monitoring by the PHA to ensure contractor compliance.

i. There are two forms of cost-plus-fixed-fee contracts:

(A) The completion form describes the scope of work by stating a definite goal or target and specifying an end product. This form of contract normally requires the contractor to complete and deliver the specified end product (*e.g.*, a final report of research accomplishing the goal or target) within the estimated cost, if possible, as a condition for payment of the entire fixed fee.

(B) The term form describes the scope of work in general terms and obligates the contractor to devote a specified level of effort for a stated time period. Under this form, if the Contracting Officer considers the contractor's performance to be satisfactory, the fixed fee is payable at the expiration of the agreed-upon period.

ii. Because of the differences in obligation assumed by the contractor, the completion form is preferred over the term form whenever the work, or specific milestones for the work, can be defined well enough to permit development of estimates within which the contractor can be expected to complete the work. The term form should not be used unless the contractor is obligated by the contract to provide a specific level of effort within a definite time period.

3. **Indefinite-delivery contracts**

a. There are three types of indefinite-delivery contracts: definite-quantity contracts, requirements contracts, and indefinite-quantity contracts. The appropriate type of indefinite-delivery contract may be used to acquire supplies and/or services when the exact times and/or exact quantities of future deliveries are not known at the time of contract award.

i. **Definite-quantity** contracts provide for delivery of a definite quantity of specific supplies or services for a fixed period of time (e.g., one year), with deliveries or performance to be scheduled at designated locations upon order. A definite-quantity contract may be used when it can be determined in advance that:

(A) A definite quantity of supplies or services will be required during the contract period; and,

(B) The supplies or services are regularly available or will be available after a short lead time.

ii. **Requirements** contracts provide for filling *all* of the PHA's purchase requirements for the supplies or services specified in the contract during a fixed period of time. The PHA may not buy the supplies or services from another source during the period of the contract. A requirements contract may be appropriate for acquiring any supplies or services when the PHA anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that it will need during a definite period.

iii. **Indefinite-quantity** contracts provide for delivery of an indefinite quantity, within stated limits (a minimum and maximum quantity), of supplies or services during a fixed period. Quantity limits may be stated in the contract as number of units or as dollar values. PHAs may use an indefinite-quantity contract when they cannot predetermine, above a specified minimum, the precise quantities of supplies or services that they will require during the contract period, and it is inadvisable to commit itself for more than a minimum quantity. PHAs should use an indefinite-quantity contract only when a recurring need is anticipated.

(A) The contract must require the PHA to order and the contractor to furnish at least a stated minimum quantity of supplies or services. In addition, if ordered, the contractor must furnish any additional quantities, not to exceed the stated maximum. The Contracting Officer should establish a reasonable maximum quantity based on market research, trends on recent contracts for similar supplies or services, survey of potential users, or any other rational basis.

(B) To ensure that the contract is binding, the minimum quantity must be more than a nominal quantity, but it should not exceed the amount that the PHA is fairly certain to order.

(C) The contract may also specify maximum or minimum quantities that the PHA may order under each task or delivery order and the maximum that it may order during a specific period of time. This ensures that the contractor knows what the potential maximum number of deliveries he/she may have to make and allows him/her to adequately prepare.

(D) The solicitation and resulting contract for an indefinite-quantity contract should:

(1) Specify the period of the contract, including the number of options and the period for which the PHA may extend the contract under each option;

(2) Specify the total minimum and maximum quantity of supplies or services the PHA will acquire under the contract. This may be expressed in units (e.g., number of items) or total dollar amount;

(3) Include a statement of work, specifications, or other description, that reasonably describes the general scope, nature, complexity, and purpose of the supplies or services the PHA will acquire under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer;

(4) State the procedures that the PHA will use in issuing orders, including the ordering media (fax, email, etc.) and whether oral orders may be placed; and,

(5) Identify the PHA personnel who are authorized to issue orders.

b. Indefinite-delivery contracts:

i. Specify the prices for the supplies or services, the period under which the PHA may place orders with the contractor, the ordering procedures, and the contract terms and conditions that govern the orders;

ii. Provide for obtaining the supplies or services when needed by placing orders with the contractor within the time period stated in the contract (e.g., one year);

iii. May be awarded using sealed bidding or competitive proposals as appropriate. Indefinite-delivery purchase orders should not be used unless the PHA knows that multiple orders for items or services will be needed, and the total amount of all orders will not exceed the PHA's small purchase threshold; and,

iv. May use any type of pricing arrangement (e.g., fixed-price) as appropriate to the supplies and/or services being purchased.

c. Orders placed under indefinite-delivery contracts are not considered purchase orders. Since the indefinite-delivery contracts are

awarded competitively, no further competition is required for individual orders placed under it.

4. **Time and materials and labor-hour**.

   a. A time-and-materials contract provides for acquiring supplies or services on the basis of:

      i. Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and,

      ii. Materials at cost, including, if appropriate, material handling costs as part of material costs.

   b. In accordance with **24 CFR 85.36(b)(10)** a time-and-materials contract may be used only when the Contracting Officer has determined that no other type of contract is suitable (i.e., it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence), and the contract includes a ceiling price that the contractor exceeds at his/her own risk. The contracting officer shall document the contract file to justify the reasons for and amount of any subsequent change in the ceiling price.

   c. A time-and-materials contract provides no positive profit incentive to the contractor to control cost or labor use. The more the contractor's labor force works, the more profit the contractor realizes. Therefore, appropriate PHA surveillance of contractor performance is required to ensure that efficient methods and effective cost controls are being used.

   d. A labor-hour contract is a variation of the time-and-materials contract. The only difference is that the contractor provides only labor and no materials.

5. **Letter contract**. A letter contract is a written preliminary contractual instrument that authorizes the contractor to begin immediately performing services or delivering supplies while the contract terms are negotiated. A letter contract is a form of negotiated contract (i.e., not sealed bidding) and may result in any contract type (e.g., fixed-price, cost-reimbursement, etc.). It should be used only in exceptional circumstances, and is most appropriate for emergency work, or other urgent and compelling needs. The single advantage of this method is that it expedites the procurement process. The contractor may begin performance on urgent requirements before the full requirements of the contract are made final, or

"definitized." The disadvantage is that it provides no incentive for cost control by the contractor, and the PHA is in a very weak bargaining position at the time the final contract is negotiated. The contractor is already performing the work, and the work is usually critical.

a. A letter contract may be used when:

i. The PHA's interests demand that the contractor be given a binding commitment so that work can start immediately; and,

ii. Negotiating a definitive contract is not possible in sufficient time to meet the requirement. However, a letter contract should be as complete and definite as feasible under the circumstances. Letter contracts that are subject Davis-Bacon or HUD-determined wage rate requirements shall so state, and where feasible, the applicable wage determination shall be attached.

b. When a letter contract award is based on price competition, the contracting officer should include an overall price ceiling in the letter contract.

c. Each letter contract should contain a negotiated definitization schedule including:

i. Dates for submission of the contractor's price proposal;

ii. A date for the start of negotiations; and,

iii. A target date for definitization. PHA's may establish maximum periods for negotiating final contracts (e.g., no more than 90 days after the issuance of the letter contract) in their Procurement Policies.

d. The maximum liability of the PHA under a letter contract should be the estimated amount necessary to cover the contractor's requirements for funds before definitization. PHAs should establish limits on letter contract liability in their Procurement Policies (e.g., no more than 50% of the total estimated contract price).

e. A letter contract should be used only after the Contracting Officer, or another official as designated in the PHA's Procurement Policy, determines in writing that no other contract is suitable. Letter contracts should not:

i. Commit the PHA to a definitive contract in excess of the funds available at the time the letter contract is executed;

ii. Be entered into without competition unless infeasible (see **24 CFR 85.36(c)**); or,

iii. Be amended to satisfy a new requirement unless that requirement is inseparable from the existing letter contract. Any such amendment should be subject to the same requirements and limitations as a new letter contract.

f. A letter contract is not a letter of intent. A letter contract is a bona fide obligation on the part of the PHA. A letter of intent is a non-binding statement to a contractor about an intended future contract. Since a letter of intent has no legal effect, it should not be used as a form of contract.

10.2 Contractor Responsibility

A. **General Requirements and Definition**. PHAs shall not award any contract until the prospective contractor, i.e., low responsive bidder or successful offeror, has been determined to be responsible. A responsible bidder/offeror must:

1. Have adequate financial resources to perform the contract, or the ability to obtain them;

2. Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;

3. Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them;

4. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all the bidder's/offeror's existing commercial and governmental business commitments;

5. Have a satisfactory performance record;

6. Have a satisfactory record of integrity and business ethics; and

7. Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended, debarred or under a HUD-imposed LDP.

B. **Acceptable Evidence of Responsibility**

It is incumbent upon bidders/offerors to provide acceptable evidence of their ability to meet the requirements in paragraph 10.2.A(1) through 10.2(A)(3). Acceptable evidence normally consists of a commitment or explicit arrangement that will be in existence at the time of contract award to rent, purchase, or otherwise acquire the needed facilities, equipment, financing, personnel, or other resources.

C. **Researching Responsibility**. The Contracting Officer will need to conduct research to determine that a prospective contractor is responsible. The size and complexity of the contract, the degree of prior experience of the PHA or the Contracting Officer with the offeror, and the extent to which the PHA can cancel the contract and install a replacement vendor will all influence the extent of research required. For example, a $150,000 requirements contract for supplying appliances may require minimal research in that the vendor may be well-known. It is also the case that there are multiple alternate vendors in the event that the initial supplier were to be replaced due to non-performance. On the other hand, more research would be required of a vendor to design a new accounting software program for the agency. Only that information deemed necessary to determine the offeror's responsibility should be requested, obtained, and reviewed. Some methods include:

1. **Financial Capability**. Obtain financial information and credit bureau reports; require the offeror to provide information on and then verify their lines of credit and account balances with the financial institution officer servicing their account;

2. **Compliance with Delivery and Performance Schedules**. Request information on all other active contracts the offeror is performing and verify their status with those buyers;

3. **Performance Record**. Require offerors to submit contact information for recent contracts they have performed for other customers and contact them to ascertain the offeror's quality of performance, including timeliness of delivery/completion, quality of work, compliance with terms and conditions of the contract, and cost control, if applicable. Inquire of past customers whether or not they would contract with the offeror again and why. Research the offeror's performance history with the PHA;

4. **Integrity and Business Ethics**. Contact the offeror's previous and current customers to verify their dealings with the offeror. Check with the local Better Business Bureau, local offices of Code Compliance and Business Licenses, or other regulatory agencies for business ethics record and compliance with public policy. Verify the offeror's compliance with payments, wage rates, and affirmative action requirements with other customers and with applicable State and Federal Government offices, e.g., DOL Wage and Hour Division;

5. **Necessary Organization, Experience, Accounting and Operational Controls, and Technical Skills**. Verify experience with other customers. Request copies of any audits. Verify that necessary personnel will be available to work on the PHA's contract;

6. **Necessary Production, Construction, and Technical Equipment and Facilities**. Request evidence that the offeror has all the equipment and facilities he/she will need or the capability to obtain them. Visit the offeror's place of business or other job sites to verify equipment and facilities. Contact equipment dealers and/or facility owners from whom the offeror indicates that he/she will rent or lease equipment or space; and

7. **Eligible to Receive a PHA Contract**. Verify that the offeror has not been suspended, debarred or is under a HUD LDP (see paragraph H below).

D. **Responsible at Time of Award**. Bidders/offerors must be determined to be responsible at the time of award. For sealed bidding this means at the point where the low, responsive bidder has been determined. For the competitive proposal method, this

means after the successful offeror has been selected for award. Bidders/offerors may be afforded the opportunity to provide acceptable evidence of their ability to meet the stated requirements after bid opening (sealed bidding) or contractor selection (competitive proposal method) in accordance with the PHA's written procurement policy and procedures and applicable State or local law or regulation. The Contracting Officer must clearly indicate to potential bidders/offerors the time frame in which they are required to submit evidence that they meet the above requirements.

E. **Determination of Non-Responsibility**. With the exception of a finding that a bidder/offeror is suspended, debarred or under a HUD LDP, a determination of non-responsibility will be a matter of judgment on the part of the PHA, given the preponderance of the evidence. If the facts indicate that the bidder/offeror fails to meet the requirements for responsibility, the Contracting Officer shall document the findings of fact that led him/her to make the determination (see paragraph G below).

F. **Notifying Bidders/Offerors of Non-Responsibility**. The Contracting Officer should notify low bidders or otherwise successful offerors who are determined to be non-responsible. Some States require a hearing before a bidder or offeror may be determined to be non-responsible. The PHA should include guidance on any applicable hearing procedures in its solicitations.

G. **Documenting the Responsibility Determination**. After all research is completed, the Contracting Officer shall document the results in the procurement file. Any determination of non-responsibility must be signed by the authorized official (if not the Contracting Officer) designated in the PHA's written procurement policy and procedures. A sample checklist format is provided in **Appendix 10**.

H. **Limited Denials of Participation and Debarments and Suspensions**. PHAs should determine whether contractors have been restricted from participation in HUD or Government Services Administration (GSA) contracts.

1. **LDP.** HUD may impose an administrative sanction against a contractor known as a LDP. It is a temporary restriction on a contractor and is narrower in scope and effect than either suspension or debarment as prescribed in **24 CFR 24.700 - 24.713** and discussed below.

   Reasons that HUD may impose an LDP include irregularities in a contractor's past performance, failure to honor contractual obligations, deficiencies in ongoing construction projects, false certifications or statements, or any other cause prescribed in **24 CFR 24.305**.

   When HUD has issued an LDP, the contractor or firm becomes ineligible for participation in HUD programs (Multifamily or Public Housing) in which the violation occurred. The LDP is limited to the geographic jurisdiction of the office that imposed it. An LDP remains in effect until the causes for which it was imposed are eliminated and the action is withdrawn, or until the life of the sanction has lapsed (up to 12 months).

2. **Suspensions and Debarment**. The PHA shall not make an award to any contractor or individual who has been suspended or debarred and whose name appears on the GSA List of Parties Excluded from Procurement and Non-procurement Programs, i.e., debarred and suspended.

   Debarment is an exclusion from participation in all Federal programs for a reasonable and specified time-period commensurate with the seriousness of

the violation or failure to perform on other contracts. Debarment may be imposed for violation of contract clauses, including equal employment opportunity provisions, acceptance of contingent fees, or other serious contract violations. The Secretary of Labor may also debar a contractor based on violation of the labor standards regulations.

Suspension means a disqualification from all Federal programs for a temporary time-period because of adequate evidence that the contractor engaged in criminal, fraudulent, or other very serious misconduct. A contractor is suspended pending investigation and appropriate action. All suspensions are temporary, pending the completion of an investigation and such legal proceedings as may ensue.

3. **PHA Responsibility in LDPs, Debarment, and Suspension**. Before a contact is awarded, the PHA shall check to determine if HUD has issued an LDP or if a contractor has been debarred or suspended. A list of persons and contractors for which LDPs have been issued may be found on the Internet at: www.hud.gov/enforce. All persons or contractors that have been suspended or debarred from Federal programs will show up on the GSA website: http://epls.arnet.gov. It is recommended that PHAs also check with their State agencies regarding debarred or suspended contractors.

   Prime contractors are responsible for determining that potential subcontractors are not on any of the above lists precluding participation in a PHA project. The PHA should advise potential contractors of their responsibility to confirm in their proposals the acceptability of their subcontractors. The PHA should also advise potential contractors of their responsibility to provide evidence that a check has occurred on each proposed subcontractor before the award is made or before new subcontractors will be allowed to participate in the contract. The PHA may check the subcontractor references if they so desire. If a subcontractor is found to be under sanctions, the prime contractor must be notified that the subcontractor may not participate in the work.

4. **Enforcement**. If a PHA materially fails to comply with any term of an award whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, there are a number of enforcement actions that HUD may exercise, including those listed at **24 CFR 85.43(a)**.

10.3 Evaluating Cost and Price (For Purchases above the Federal Small Purchase Threshold)

A. **General**. For every procurement, PHAs are required to perform a cost or price analysis to determine that the price is reasonable. In competitive procurements, the force of competition is usually adequate to allow the PHA to make a price reasonableness determination based simply on a comparison of the offered prices.

1. PHAs should always compare the prices offered with the ICE. While this initial cost estimate may not be sufficient for price reasonableness, it can assist the Contracting Officer in determining the extent to which the offerors understand the PHA's requirements. Sometimes, the comparison of prices may point out the need for verification of bids (in sealed bid procurements) or negotiations (in the competitive proposals methods) if prices of the different offerors vary widely or seem unusually high (or low) compared to the ICE.

2. If adequate competition does not exist, including sole source procurements or noncompetitive proposals, the PHA must perform a cost analysis, except as provided in 10.3.B. A cost analysis is an evaluation of the separate elements that make up a contractor's total cost proposal or price to determine if they are allowable, directly related to the requirement, and reasonable.

3. The number of times that a PHA will need to conduct a cost analysis will be limited given that most purchases will be of a commercial nature and based on adequate competition.

B. **Alternative Methods of Determining that a Price is Reasonable (Other than Cost Analysis)**. A comparison of proposed prices received in response to the solicitation to each other is generally sufficient to establish price reasonableness, assuming a sufficient number of competitive offers are received to constitute competitive pricing from the marketplace. If, after appropriate solicitation efforts, the PHA does not receive an adequate number of responses, the PHA may use one of the following alternative methods of establishing price reasonableness without having to conduct a formal cost analysis. In all such cases, the PHA should appropriately support and document its actions in the procurement file.

1. Comparison to prior proposed prices and contract prices with current proposed prices for the same or similar items/services. The PHA should factor in any market changes, e.g., commodity price changes or inflation, since the last time the item or service was purchased.

2. In comparison to competitive price lists, published catalog or market prices of commodities and products, similar indices and discount or rebate arrangements. The Contracting Officer should analyze the offered price in terms of its commerciality. This involves examining any catalog used by the contractor to ensure that catalog prices are bona fide prices charged to commercial customers. Any discounts offered to commercial customers should be offered to the PHA; however, consideration must be given to differing terms and conditions of commercial contracts as compared with public contracts. There may be justification for paying more than the catalog or market price if the PHA's contracts demand more of the contractor (such as services, warranties, etc.) than do those of commercial customers.

   In some cases, there may be no catalog prices, but the offered price may qualify as a market price, meaning a price paid by buyers and sellers free to bargain. As with a catalog price, a market price should be verified independently before it is accepted as reasonable. The bidder should be asked to provide evidence of recent sales at the market price to the general public or provide a justification for not charging the PHA the same price or better. The volume of sales should be significant compared to the PHA's procurement to ensure that commercial sales are sufficient to establish a bona fide catalog or market price. The goal should be to ensure that the PHA does not pay more than other buyers, particularly commercial customers, normally pay for the same item.

3. Professional estimate, either one prepared by the PHA or outside party. The level of analysis should be commensurate with the extent and complexity of the procurement.

C. **Situations Requiring a Cost Analysis**. A cost analysis must be conducted if one or more of the following conditions apply:

1. All sole source and non competitive proposals. In noncompetitive situations, no incentive exists for an offeror to submit a low price, and no price competition exists for determining the reasonableness of the price.

2. If, after soliciting bids/proposals, the PHA receives only one bid/proposal that it finds unreasonable and decides to cancel the solicitation and negotiate a contract price with the sole bidder

3. If, under sealed bidding or competitive proposals, a sufficient number of bids were not received and the PHA cannot establish price reasonableness through alternative means.

4. If, under competitive proposals, the PHA requested that bidders provide separate elements of their costs, e.g., labor, materials, overhead, profit, etc. (Note: it will not be necessary in most competitive procurements to ask for bidders to submit separate elements of their costs. For example, if a PHA is soliciting property management services, the PHA should not need to request a break-out of costs since one can generally evaluate the reasonableness of management fees without such break-down.)

5. When there is a contract modification. When negotiating a modification to any contract (even if the basic contract was awarded competitively through sealed bidding) that changes the scope of work previously authorized and impacts the price or estimated cost, the PHA must use cost analysis to arrive at a reasonable cost. The only exception to this rule is a contract modification based on pricing terms already established in the contract document, e.g., exercising an option to buy additional items at preset prices. It is important to note that changes in a contract's scope do not always result in increased costs. Elimination or reduction of contract work may result in a decrease in the contract price. Regardless of the direction of the price change, these modifications require cost analysis using the cost principles to determine that the price change is fair and reasonable.

6. When making contract termination payments. When terminating a contract of any type (fixed-price or cost-reimbursement) for convenience, or terminating a cost-reimbursement contract for cause, the PHA must use cost analysis - and the appropriate cost principles - to negotiate the final amount of the termination settlement.

7. When awarding any construction contracts that were obtained through means other than sealed bidding. Construction contracts awarded using any method other than sealed bidding and modifications to construction contracts require cost analysis.

D. **Cost Analysis Technologies**. Where a formal cost analysis is required, PHAs should follow the instructions in this section. As indicated, the number of instances where a PHA will be required to conduct a formal cost analysis will be limited.

1. **Commercial Yardsticks**. Where available, a PHA may use commercial yardsticks in lieu of a formal cost analysis. Since the overall purpose of a cost analysis is to settle on total prices that are fair and reasonable, these yardsticks provide a measure of that overall price reasonableness. The following examples illustrate this point.

a. A PHA is negotiating A/E fees with the architect for additional work pursuant to the changes clause in the contract. The PHA would not need to request that the A/E firm break out its hourly fees in terms of profit, overhead, etc., provided that the overall hourly fee was reasonable; vis-à-vis fees normally charged in that community.

b. A PHA has a 6-unit scattered site project that is adjacent to its HOPE VI development. The HOPE VI development is operated by a private management company. The PHA determines that it is in the best interest of the PHA that the HOPE VI development and the scattered site project be managed jointly and is negotiating a sole source procurement with the HOPE VI management company. The PHA would not need to request that the management company break out its proposed management fee in terms of profit, overhead, etc., provided that the overall management fee was reasonable vis-à-vis fees normally charged in that community.

c. The PHA has a security guard contract for its high-rise properties. The rates charged are $14/hour for non-armed guards. Because of a recent rise in security incidents, the agency is negotiating a change order to increase the coverage under the contract. The PHA would not need to request that the security company break out its proposed cost fee in terms of profit, overhead, etc., provided that the overall hourly rate was reasonable vis-à-vis rates normally charged in that community.

2. **Level of Detail and Analysis**. The level of detail and complexity of the cost analysis should be commensurate with the dollar value and complexity of the contract. For example, in a construction change order proposal for $30,000, where the PHA's changes to the specifications only result in added labor hours for three skill categories, and the wage rates are at the Davis-Bacon wages, the PHA's cost analysis may be limited to determining the reasonableness of the number of hours proposed. If, however, the change order proposal was for $250,000 and included added material, new subcontracts, and other items, the PHA should evaluate whether the costs proposed are allowable, allocable, and reasonable, using the more detailed techniques described below.

3. **Conducting a Cost Analysis**. When conducting a cost analysis, PHAs should generally proceed in accordance with the following (see also **Appendix 12** for a guideline).

a. Verify the cost and pricing information submitted and evaluate the following:

i. The necessity for, and reasonableness of, proposed costs, including allowances for contingencies. Proposed costs must meet three critical tests. The costs must be:

- *Allowable*. The applicable cost principles (see discussion below) will usually state whether a type of cost is allowable or not.

- *Allocable*. This means that the costs are logically related to or required in the performance of the contract. Many costs may be allowable but not related to the work required under the contract.

- *Reasonable*. This term is generally defined as what a prudent business would pay in a competitive marketplace. A cost can be allowable, allocable and still not be what a prudent businessperson would pay.

ii. The projection of the contractor's cost trends. Are his/her costs likely to increase or decrease?

iii. The assessment of proposed direct cost elements by a technical expert, e.g., engineer, architect, etc., to determine their necessity to perform the contract and reasonableness, e.g., in comparison to market rates.

iv. The application of audited or pre-negotiated, e.g., by the Federal Government, indirect cost, e.g., overhead rates, labor and fringe benefit rates, or other factors.

v. The effect of the contractor's current practices on future costs. Does the contractor have a track record of containing costs (completing contracts at or "under cost")? Does he/she overrun costs?

b. Compare costs proposed by the offeror with:

i. Actual costs previously incurred by the same offeror. If it is a repetitive type of work or service, how much has it cost in the past? Apply any appropriate inflation factors for past work.

ii. Costs proposed by other offerors. This comparison may point out the need for negotiations if prices of the different offerors vary widely or seem unusually high (or low) compared to the ICE.

iii. Previous cost estimates from the offeror or other offerors for the same or similar items.

iv. The methods proposed by the offeror with the requirements of the solicitation (i.e., do the costs reflect the technical approach proposed and the work required, and are they cost efficient?).

v. The PHA's ICE.

c. Verify that the offeror's cost submissions comply with the appropriate set of cost principles.

i. When performing a cost analysis, PHAs shall use the applicable set of cost principles, which have been issued by the Federal Government, to determine the allowability of proposed costs. (Note that cost principles are not used when performing a price analysis.) These cost

principles set the standards for the allowability of a wide range of costs (e.g., salaries, travel, advertising, etc.). Each set applies to contracts with a specific group or type of organizations, so one set will not work for all contracts.

ii. The cost principles and the type of contractor entity to which they apply are as follows:

- OMB Circular A-87, for contracts with State, local or Indian tribal governments.
- OMB Circular A-122 for contracts with most non-profit organizations.
- OMB Circular A-21 for educational institutions.
- **FAR 48 CFR Chapter 1**, **Subpart 31.2** for profit-making entities (e.g., commercial business concerns) and certain nonprofit organizations listed in Attachment C of OMB Circular A-122.

E. Documentation. With respect to price reasonableness, the procurement file should be documented to support the actions taken. In the case of sealed bids where there was adequate competition, no additional documentation is required in that the bid tabulation sheet, or equivalent, will serve as the test of price reasonableness. Similarly, in the case of competitive proposals where (1) there was adequate competition, (2) the scope of work was not complex (easy to evaluate competing bids), and (3) the PHA did not ask the vendor to break out elements of costs separately, no additional documentation is required for price reasonableness other than the comparison of prices offered. However, documentation is required to demonstrate price reasonableness, including any cost analyses, whenever (1) adequate competition did not exist, (2) adequate competition existed but the PHA received only one bid/proposal, or (3) the price obtained varied significantly from the ICE, in which case the Contracting Officer should notate/explain the reasons for the difference, e.g., poor estimate, etc.

F. Audit.

1. When cost analysis is required, and the usual means of analysis (e.g., comparison historical cost data) are insufficient, the PHA may need to audit or review the contractor's/offeror's financial records. Such a review should be limited to the needs of the immediate procurement action (new contract award, modification, etc.) and not be overly broad in scope or intrusive. The audit should provide an independent verification that the costs proposed by the contractor are legitimate. The PHA may conduct the audit using its own employees, obtain the services of other governmental agencies to perform the audit, or contract with a private firm for audit services.

2. The audit should examine each element of cost relevant to the procurement action, indicating whether it should be accepted, questioned, or further

documented. The audit should also analyze the contractor's accounting system to ensure that it is adequate to properly allocate costs in accordance with the applicable cost principles, and in the case of new contract awards or significant modifications, will permit timely development of all necessary cost data in the form required by the contract type contemplated.

3. Audit reports should always be written and maintained in the contract file.

4. The Contracting Officer's cost analysis shall document how and the degree to which the audit results were relied upon.

5. In accordance with **24 CFR 85.36(i)(10)**, contractors (i.e., firms under contract to the PHA) may not deny access to their records for the purpose of audits. A competing offeror's denial of access may disqualify it from contract award. In the case of competitive proposals, offerors may withdraw their offer, unless they have been notified that they have been selected for award. Then it is up to the PHA's discretion to permit the withdrawal. In the case of a single bid received under the sealed bidding method (the most likely scenario under which cost analysis would be needed), the bidder may not withdraw his/her bid once it has been opened. The Contracting Officer s should seek advice from legal counsel when a contractor or offeror denies access to records.

10.4 Protests (24 CFR 85.36(b)(12))

Disagreements over the award of a PHA contract, referred to as protests, may occasionally arise between the PHA and an offeror. Usually, the protestor asserts that he/she should have received the contract award and alleges that the PHA did not conduct the competition appropriately. (Note: While protests are commonly referred to as "bid protests," any type of contract award, including small purchase, competitive proposal, or sealed bid, may be protested by an unsuccessful offeror.) For small purchase procedures see Chapter 5.

A. **Responsibility**. PHAs, in accordance with sound business judgment, are responsible for the settlement of protests arising from the procurement process.

B. **Written Protest Procedures**. Providing a formal, objective means for offerors to receive an unbiased hearing of their concerns is critical to preserving the integrity and confidence in the PHA's procurement operations. Therefore, PHAs shall have written procedures for handling and resolving protests against their contract awards. These may be included in the PHA's procurement policy. The procedures should include:

1. **Designation of Protest Officials**. The procedure should identify:

a. The PHA employee responsible for receipt of protests (e.g. Contracting Officer), This information should be included in written solicitations;

b. The PHA employee or a designee (e.g., an independent third party who can render an impartial opinion) who will decide the protest; and

c. The official or third party who will hear any appeal of the initial protest decision.

2. **Requirement for written protests**. Protestors should be required to submit protests in writing, clearly stating the basis for their protest. Protests should include, at a minimum, the following information:

a. Name, address, and phone number(s) of the protestor;

b. Solicitation number and project title;

c. A detailed statement of the basis for the protest;

d. Supporting evidence or documents to substantiate any arguments; and

e. The form of relief requested (e.g., reconsideration of their offer).

3. **Submission Time Period**. The procedure shall state the time period during which a protest must be submitted. Generally, the time period should begin on the date that the protestor has knowledge, or may be presumed to have knowledge, of the basis for his/her protest (e.g., the date the solicitation was issued, or the date he/she receives notification from the PHA that his/her proposal did not win). The protest submission period must be stated in solicitations. Protests against the terms of a solicitation should be considered late if submitted after the due date for offers.

4. **Remedial Action**. The PHA's procedures shall provide remedies when a protest is decided in favor of the protestor, and the PHA must take appropriate action in accordance with those procedures.

For example, if the contract has not been awarded, the PHA may cancel or revised the solicitation or proposed contract award, or if the contract has been awarded, the contract may be terminated for convenience and awarded to the protestor, or the procurement may be canceled and offers resolicited.

5. **Emergencies or Unusual and Compelling Circumstances.** PHA protest procedures should provide for allowing contracts to remain in place

despite a successful protest in cases of emergency or unusual and compelling need for the supplies or services. However, if the PHA determines, based on compelling circumstances such as an emergency or serious disruption of the PHA's operations, that termination or re-solicitation would not be in the best interest of the PHA, the PHA may allow the award to stand and pay the successful protestor costs associated with preparing the bid along with the cost of filing and pursuing the protest and other damages determined.

6. **Denials**. The PHA's protest procedures shall require the Contracting Officer to notify the protestor in writing of the PHA's decision and state the basis for the denial. The notification shall apprise the protestor of any appeal rights in accordance with the PHA's protest procedures.

7. **Appeal Procedures.** The PHA's protest procedures shall provide for hearing appeals by unsuccessful protestors including, but not limited to: requirements for written appeals, designation of appeal official(s) and timeframes for submitting and resolving appeals. Appeals should contain a statement of the factual and legal grounds on which reversal or modification of the decision is deemed warranted, specifying any errors of law made or information not previously considered.

C. **Documentation**. The Contracting Officer shall fully document the protest decision in writing in the contract file. The PHAs protest procedures should describe the requirements for such documentation.

D. **Informal Resolution Processes.** PHAs are encouraged to resolve potential and actual protests outside of the formal protest process or litigation (e.g., through mediation).

E. **HUD Review 24 CFR 85.36(b)(12)(i) & (ii).** Review by HUD of a protest will be limited to:

1. Violations of Federal law or regulations. The protest should cite the specific Federal or HUD regulation that has been violated. Violations of State or local laws should be referred to the State or local entity having jurisdiction over such matters.

2. Violation of the PHA's protest procedures for failure to review a complaint or protest. The PHA shall submit a copy of the protest to the HUD Field Office having jurisdiction over the PHA.

HUD will refer any protests other than those specified above back to the PHA for action.

10.5 Mandatory Contract Clauses (For purchases above the Federal Small Purchase Threshold)

A. **Mandatory Requirements for Construction/Development Contracts greater than $100,000**. PHAs must incorporate the clauses contained in form HUD-5370, General Conditions of the Contract for Construction, and the applicable Davis-Bacon wage decision.

B. **Mandatory Requirements for Non-Construction Contracts (without maintenance work) greater than $100,000.** PHAs must incorporate the clauses contained in Section I of form HUD-5370-C, General Conditions for Non-Construction Contracts.

C. **Mandatory Requirements for Maintenance Contracts (including non-routine maintenance work) greater than $100,000.** PHAs must incorporate the clauses contained in Sections I and II of form HUD-5370-C, General Conditions for Non-Construction Contracts.

D. **Acceptable Methods of Incorporation**. PHAs may utilize any one or any combination of the following methods to incorporate mandatory clauses and applicable wage decisions into bid specifications and contracts. PHAs may:

1. Attach the HUD form(s), and/or wage decisions, as printed;

2. Incorporate the clauses/text of the applicable HUD form and wage decision into other documents (e.g., into the PHA's own forms) that are bound/attached to the contract (and bid specifications, if applicable) or incorporated by reference (see paragraph 3, below).

3. Incorporate the clauses or HUD forms and/or any applicable Davis-Bacon or HUD wage decision by reference. The reference must be specific as to the exact clauses or form(s) that are incorporated, and where the clauses or forms(s) may be accessed or obtained (e.g., HUDClips, PHA web site). A Davis-Bacon wage decision (applicable to construction/development work) may be incorporated by reference to www.wdol.gov and to the specific number, modification number, and date of the wage decision. HUD wage decisions (applicable to maintenance work) are not available at HUD's web site; however, a PHA may post any applicable HUD wage decision to its own web site and reference that site. PHAs must provide hard-copies of any referenced clauses, forms, and/or wage decisions on request.

10.6 Prohibited Clauses-Project Labor Agreements. HUD regulations at **24 CFR 5.108** implement Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects. Under this regulation, to the extent permitted by law, the bid specifications, project agreements, or other controlling documents for a constructions contract awarded by a HUD grantee or recipient of financial assistance for a construction project (or a construction manager acting on their behalf) shall not:

(1) Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations on the same or other related federally funded construction project; or

(2) Otherwise discriminate against bidders, offerors, contractors, or subcontractors, for becoming or refusing to become or remain signatories, or otherwise adhere to agreements with one or more labor organizations, on the same or other related federally funded construction project.

Accordingly, documents pertaining to a construction contract awarded by a PHA or other recipient of HUD financial assistance shall not contain the above-prohibited provisions. HUD may exempt a particular construction project or contract from these requirements in special circumstances specified in Section 5.108. Contractors and subcontractors are not prohibited from voluntarily entering into project labor agreements.

10.7 Performance Standards

It is possible to use performance, delivery, or cost incentives to motivate the contractor to achieve realistic, measurable targets set forth in the specification, purchase description, or statement of work. Performance standards may be used to determine the degree to which the desired results are achieved. Performance incentives increase the efficiency of contractor performance. For example, there could be a monetary bonus for early delivery. Cost incentives are used to motivate the contractor to manage costs effectively, but cost incentives should not be used if a large number of technical changes in the project are expected. As for all contracts, PHA personnel should closely monitor contractor performance.

10.8 Use of Options

A. **General**. In many cases, the PHA may have a recurring need for specific supplies or services. One method of obtaining firm commitments from contractors for additional quantities or longer time-periods is to include an option clause in the contract. The advantage of awarding a contract with options is that it gives the PHA a continued source of supply or services under contract at known prices.

B. **Definition**. The option to extend the term of the contract or to order additional supplies or services is the unilateral right of the PHA. The additional supplies or services are ordered at the prices specified in the original contract. A clause that allows an option to be exercised by the contractor is not a legitimate option clause.

C. **Limitations.**

1. **Price**. The option to extend the term of the contract or to order additional quantities may only be exercised if the contract contained an options clause and if a price for the additional supplies or services was included. An unpriced option is considered a new procurement and, therefore, may not be used. In the case of a cost-reimbursement contract, an estimated cost for the option periods or additional quantities must be negotiated and included in the contract award; otherwise, the option will need to be treated either as a change order or a new contract.

2. **Time and Quantity**. Contracts shall not exceed a period of five years, including options for renewal or extension. (For PHAs still operating under the "old" ACC – form HUDs-53010 and 53011 – the maximum contract term is two years.) Contracts, other than energy performance contracts, with terms, plus extensions, that exceed a total of five years are viewed as restrictive of competition and in violation of **24 CFR 85.36(c)**. A Field Office may approve contracts in excess of five years if it determines there is no practical alternative. Energy performance contracts may be for a period not to exceed 20 years in accordance with **24 CFR Part 990** and PIH Notice 2006-6. A PHA must also follow its own procurement policy and any applicable local or State laws and regulations. There must be a finite period for a contract, including all options, and a specific limit on the total quantity or maximum value of items to be purchased under an option.

3. **Option to Extend.**

   a. Any contract containing options must specify the timeframe within which the option to extend the term of the contract must be exercised.

   b. If the PHA decides to include options in a solicitation, the pricing of the options should be evaluated as part of the overall contract award.

   c. Contractors should be notified of the PHA's likely intention to exercise the option to extend the term of the contract approximately 90 days before the expiration date of the contract. This notice does not obligate the PHA to extend the contract; however, it allows PHA staff time to assess the need for and advisability of extending the contract. It also makes the contractor aware of the potential extension.

d. The Contracting Officer should notify the contractor at least 30 days before the contract expiration date of the specific intention to exercise the option, and then issue a formal modification extending the contract.

e. Options may not be exercised after the term of the contract has expired; technically, there is no longer a legal and binding contract to extend.

D. **Exercising Options**. Before exercising an option, the PHA should document the contract file with a written determination. At least the following items should be included:

1. Fund availability;

2. Statement that the option was included in and evaluated as part of the basic contract;

3. A brief review of market prices to justify price reasonableness, indicating whether the option is still economical for the PHA; and

4. Any other factors that support the PHA's decision to exercise the option. For example, the PHA avoids the cost of a new procurement and ensures continuity in service.

10.9 Federal Labor Standards and Wage Rates - Construction

A. **General**. All laborers and mechanics (including apprentices and other workers trained by PHAs, Resident Management Corporations (RMCs), or other contractors under HUD's "Step-Up" or similarly approved training initiatives) involved in construction contracts in excess of $2,000 must be paid wages in accordance with Federal labor standards issued pursuant to the Davis-Bacon Act by the Department of Labor (DOL). In addition, the overtime requirements of the Contract Work Hours and Safety Standards Act are applicable to construction contracts in excess of $100,000. See, also, DOL regulations at **29 CFR Parts 1, 3 and 5**. Additional information about labor standards administration and enforcement is contained in HUD Handbook 1344.1, REV 1, Chg 1.

B. **Solicitations and Contracts.** Solicitations (e.g., Invitations for Bids) and contracts subject to Davis-Bacon wage requirements must contain the applicable wage decision and labor standards provisions. Davis-Bacon Wage Decisions can be obtained at no charge from a DOL-approved web site at: www.wdol.gov

C. **Reporting**. As provided by DOL regulations (**29 CFR Parts 3 and 5**), each construction employer (the contractor and any/all subcontractors) shall submit a payroll report and statement of compliance to the PHA for each week during which work is performed under the contract. Such reports may be submitted on the DOL Payroll Form (WH-347), which includes on its reverse side the required Statement of Compliance. These forms, WH-347 and instructions, may be obtained from HUD's Labor Relations field staff and are also available in "fillable" Portable Document

Format (PDF) on-line through HUDClips or directory at the DOL web site at this address: www.dol.gov/esa/programs/dbra/forms.htm

Employers are not required to use the form WH-347 and may substitute other payroll formats, including computer-generated forms, *provided* that all of the required information and the exact language of the Statement of Compliance (reverse side of the WH-347) is included.

D. **Compliance.** The contractor and any/all subcontractors are responsible, on no less than a weekly basis, for paying not less than the applicable wage rates to all laborers and mechanics in their employ and engaged in work under the contract. The contractor is responsible for its own full compliance, and for the full compliance of any/all subcontractors, with all wage, overtime and reporting requirements included in the contract.

E. **Enforcement**. The PHA is responsible for the administration and enforcement of labor standards requirements as provided in HUD Handbook 1344.1, REV 1, Chg 1 and as required by DOL regulations applicable to Davis-Bacon covered work (**29 CFR Part 5**). These activities include:

1. **Posting Wage Rates**. The PHA must ensure that a copy of the applicable Davis-Bacon wage decision and the DOL poster *Notice to All Employees* (WH-1321) are displayed at the job site in a place accessible to all laborers and mechanics and placed in an area that is protected from inclement weather. The WH-1321 poster is available through HUDClips or directory at DOL's web site at: www.dol.gov/esa/programs/dbra/forms.htm

2. **On-site Interviews**. The PHA is responsible for conducting interviews with the laborers and mechanics on the jobsite to determine if the work performed and wages received are consistent with the job classifications and wage rates contained in the applicable wage determination and the classifications and wages reported by the employer on certified payrolls. On-site interviews are documented on form HUD-11, Record of Employee Interview, which can be found at HUDClips.

3. **Certified Payroll Review**. The PHA must review the certified payroll reports submitted by the contractor for itself and any subcontractors to ensure that all laborers and mechanics are classified and paid in accordance with the applicable wage determination and must compare information collected during on-site interviews to ensure consistency with such interview data. Any discrepancies found must be corrected and wage restitution must be required wherever underpayments are disclosed.

F. Recordkeeping. The PHA shall retain all payroll reports and statements of compliance for three years from the date of contract completion and acceptance by

the PHA, or from the date of resolution of any standards issues outstanding at contract completion.

10.10 Federal Labor Standards and Wage Rates - Maintenance

A. General. All maintenance laborers and mechanics employed under contracts in excess of $2,000 for the operation of public housing must be paid no less than prevailing wages determined or adopted by HUD. In addition, the overtime requirements of the Contract Work Hours and Safety Standards Act are applicable to maintenance contracts in excess of $100,000.

B. **Employment of apprentices or trainees**. PHAs, RMCs, or other contractors on work subject to HUD-determined wage rates may employ apprentices or trainees. Apprentices and trainees may be compensated at less than the prevailing wage rate for their craft, provided that they are individually registered in an apprenticeship or trainee program that has been approved by HUD, the DOL's Bureau of Apprenticeship and Training (BAT), or a BAT-recognized state apprenticeship agency. PHAs, RMCs, or other contractors who wish to discuss the development of such training programs may contact HUD Labor Relations Staff for assistance. Unless otherwise directed, RMCs and other contractors should submit all requests to develop approved training/apprenticeship programs and proposed program descriptions to the HUD Labor Relations field staff with jurisdiction over the PHA.

C. **Exclusions for professional service contracts**. Contracts for certain professional services are excluded from coverage by HUD-determined (or HUD-adopted) prevailing wage rates. These exclusions include: Periodic inspections or testing of equipment without repairs; testing for lead-based paint; warranty inspections; installation, service or maintenance of leased equipment, fixtures or appliances; and installation, inspections, maintenance or service on equipment or fixtures which are owned by a utility. Examples include, but are not limited to, local code or performance inspections of elevators or escalators, gas lines or equipment, or fire hydrants or water lines; inspections or routine servicing of fire extinguishers, smoke detectors, security systems, boilers, heating systems, water heaters, air conditioners, water testing or treatment; soil testing or treatment; energy use or conservation analyses; routine garbage removal; and pest control (without attendant repairs).

D. **Solicitations and Contracts.** Solicitations (e.g., Invitations for Bids) and contracts for all maintenance services subject to HUD wage rates must contain the applicable HUD wage decision and labor standards provisions.

1. HUD wage decisions are obtained from the HUD Labor Relations staff. A list of the Labor Relations staff, their contact information, and the jurisdictions they cover can also be found at the HUD web site: www.hud.gov/offices/olr

2. For all maintenance contracts of more than $2,000, but less than the Federal small purchase threshold, PHAs should use the clauses found in Table 5.1 and the

clauses in Section II of form HUD-5370-C. For all maintenance contracts of more than the Federal small purchase threshold, PHAs should use the clauses in Sections I and II of form HUD-5370-C.

E. **Reporting**. Unlike construction contracts subject to Davis-Bacon wage provisions, maintenance contracts subject to HUD-determined wage rates do *not* require the submission of payroll reports. Contractors and subcontractors are still required to maintain payroll records and must make such records available to the PHA and/or to HUD, on request (see Labor Relations Letter No. LR 2004-01).

F. **Compliance**. The contractor and any/all subcontractors are responsible, on no less than a *semi-monthly* basis, for paying not less than the applicable wage rates to all maintenance laborers and mechanics in their employ and engaged in work under the contract. The contractor is responsible for its own full compliance, and for the full compliance of any/all subcontractors, with all wage, overtime and record keeping requirements included in the contract.

G. **Enforcement**. The PHA is responsible for the administration and enforcement of labor standards requirements as provided in Labor Relations Letter LR-2004-01. These activities include:

1. **Posting Wage Rates**. The PHA must ensure that a copy of the applicable HUD wage decision is displayed at the job site in a place accessible to all laborers and mechanics and placed in an area that is protected from inclement weather.

2. **On-site Interviews**. The PHA is responsible for conducting interviews with the laborers and mechanics on the jobsite to determine if the work performed and wages received are consistent with the job classifications and wage rates contained in the applicable wage determination and the classifications and wages reported by the employer on certified payrolls. On-site interviews are documented on form HUD-11, Record of Employee Interview, which can be found at HUDClips.

3. **Enforcement**. The PHA must perform contractor compliance monitoring with such frequency and depth as appropriate (based upon the scope and duration of the contract involved) to ensure that all laborers and mechanics are paid no less than the HUD prevailing wage rate for the type of work they perform.

H. Recordkeeping. The PHA shall retain all compliance monitoring records, including employee interview records, for three years from the date of contract completion and acceptance by the PHA, or from the date of resolution of any labor standards issues outstanding at contract completion.

10.11 Guidance on Federal Labor Standards Requirements

Additional guidance on Federal labor standards is available on the Office of Labor Relations web site at: www.hud.gov/offices/olr

This web site offers the latest in HUD policy guidance and instructional materials regarding labor standards, including two guides concerning Davis-Bacon, *Making Davis-Bacon Work: A Practical Guide for States, Indian Tribes and Local Agencies* and *A Contractor's Guide to Prevailing Wage Requirements*, and Labor Relations Letters. The web site also includes HUD's Regional and Field Office Labor Relations Staff as well as links to other related web sites.

10.12 Procurement of Recovered Materials

PHAs must give preference to EPA-listed recovered materials in their own procurement practices, in accordance with the provisions in Section 6002 of the Solid Waste Disposal Act. See EPA regulations in **40 CFR Part 247**. Required language relating to procurement of recovered materials is included with the mandatory contract clauses/forms.

CHAPTER 11. CONTRACT ADMINISTRATION

11.1 General

This chapter provides guidance on the administration of contracts. Administration refers to all the actions taken regarding a contract after award to ensure that it is successfully performed, and that the PHA receives the required supplies or services.

11.2 Administering Construction Contracts

The following guidance and instructions are provided for administration of construction contracts. Contract administration for non-construction contracts is discussed in 11.3 of this chapter. (Information regarding contract administration for PHA development contracts is included in HUD Handbook 7417.1, Chapter 12.)

A. **Pre-construction Conference and the Notice to Proceed**. Following the award of a construction contract, a pre-construction and safety conference should be held to thoroughly discuss key construction and contract administration-related issues. The PHA should issue a Notice to Proceed to the contractor stating the starting and completion dates and typical contract-related information. The notice should be prepared in an original with at least two copies signed by the Contracting Officer. The contractor should retain the original and sign, date, and return the copies. This Notice may be hand-delivered to the contractor at the conference and signed immediately. The PHA should retain one copy for the official contract file and, if requested, send the other copy to HUD. See **Appendix 14** for a sample Notice to Proceed.

B. **Progress Meetings**. The PHA should meet with its architect and the contractor on a regular basis (usually weekly for large or complex projects) to discuss work progress, payments, any problems or deficiencies noted during inspection visits, overdue reports, and the construction schedule. The PHA or the A/E should prepare a written record of the items discussed at each meeting and place a copy in the construction contract file.

C. **Inspections**. If an A/E firm has been retained to conduct the contract administration function, the PHA must hold the A/E firm accountable for carrying out the necessary inspections and monitoring. The quality of the inspection is critical, and the PHA should ensure that either the A/E or the designated person responsible for inspection (Clerk-of-the-Works) is fully qualified and performs the inspections frequently and thoroughly.

   1. **Inspection Reports**. All progress inspections should be documented using an appropriate PHA inspection report form. The inspection report should include a description of the work completed and a determination as to whether or not the work is acceptable. If payment is made on a unit price basis, quantities must be verified. If payment is made on a time and materials basis, the report should show that the time charged was spent on PHA work and that materials were charged at cost. A copy of the inspection report should be included in the contract file. Based on the progress report, the Contracting Officer should initiate any needed follow-up actions to ensure that the terms of the contract are being fulfilled.

   2. **Deficiencies**. Upon being notified by its architect or HUD of construction deficiencies, the PHA shall promptly notify the contractor in writing of the deficiencies observed. This notification should also advise the contractor that failure to make timely corrections will be an infraction of the contract and that the contractor will be held liable for any resulting losses or delays.

D. **Labor Standards**. The PHA is responsible for the administration and enforcement of labor standards requirements as provided in HUD Handbook 1344.1, REV 1, Chg1 as required by DOL regulations applicable to Davis-Bacon covered work (**29 CFR 5**). See 10.8.E of this Handbook.

E. **Progress Payments**. Some state laws impose mandatory payment schedules to contractors that may not be consistent with HUD's holdback requirements. Any such problems should be resolved before soliciting bids for a contract. For Capital Fund and Development Projects, payments shall be made as follows:

1. If progress payments are necessary (they may not be necessary in small construction contracts), the PHA shall require the contractor to prepare a construction progress schedule for each project immediately after issuing the Notice to Proceed. The PHA may require use of form HUD-5372, Construction Progress Schedule, or another appropriate form from various professional organizations. The information must be realistic and consistent with the information provided by the contractor on the PHA-approved schedule of amounts for contract payments and the HUD-approved Project Implementation or Development Schedule, as applicable.

2. The PHA or its architect should review the contractor's construction progress schedule to ensure that the scheduled dates and amount of work to be completed are reasonable and consistent with the contract. If acceptable, the PHA's architect shall sign the schedule and forward it to the PHA for approval. After approval by the PHA, the construction progress schedule shall be returned to the contractor and copies filed in both the construction contract file and the official contract file.

3. The PHA should require the contractor to prepare a schedule of amounts of payments immediately after execution of the contract. The PHA must use form HUD-51000, Schedule of Amounts for Contract Payments, for this purpose.

4. The PHA and its architect shall review the schedule to determine that both the scheduled work to be completed by the specified dates and the amount of payment for such work are reasonable. If acceptable, the PHA should approve and return the schedule to the contractor. HUD review is not required.

5. The PHA is responsible for making progress payments to the contractor based on the PHA-approved schedule of amounts for contract payments. Generally, progress payments for acceptable work and materials delivered and stored on the site are made at 30-day intervals. HUD authorization of progress payments based on the approved payment schedule is not required.

6. The contractor should submit a request for payment for each project on form HUD-51001, Periodic Estimate for Partial Payment. The request shall be accompanied by the contractor's written designation of a certifying officer. In addition, the contractor should submit the following HUD forms or other appropriate forms, if applicable, with each periodical estimate for partial payment: form HUD-51002, Schedule of Change Orders; form HUD-51003, Schedule of Materials Stored; and form HUD-51004, Summary of Materials Stored.

7. The PHA should review each contractor request and should approve the payment if the following conditions have been met (if the contractor requests payment for items that have not been acceptably completed, the PHA should delete those items and adjust the payment accordingly):

   a. The contractor's request is consistent with the PHA-approved schedule of amounts for contract payments;
   b. The request does not include the amount to be retained by the PHA under the contract;

c. The work covered by the payment has been performed in accordance with the construction documents;
d. The form HUD-51001, Periodic Estimate for Partial Payment, has been properly executed and all applicable supporting documentation submitted; and
e. The contractor has submitted all required reports, such as payroll reports. The PHA shall retain the original form HUD-51001 and any applicable supporting documentation for its file and return a copy of the PHA-approved forms to the contractor.

F. **Delays and Time Extensions**. The contractor is responsible for completing the work within the time established in the contract. The PHA is responsible for monitoring the contractor to ensure that work will be completed as scheduled. The PHA may authorize justifiable time extensions without prior HUD review and approval, unless the PHA is subject to prior HUD approval under a HUD-established threshold that is less than the requested amount. The "Default" clause on the forms HUD-5370, 5370-C and 5370-EZ prescribes the conditions under which a time extension may be granted. The basic principle is that delays arising from unforeseeable causes beyond the control and without the fault or negligence of the contractor may be grounds for allowing a time extension. Such time extensions should be formalized in a written modification to the contract.

1. **Construction Log**. The PHA should maintain a construction log to record potential causes for delays that may be used as the basis for granting time extensions or for denying a request for a time extension. The construction log should contain daily reports that record at least the following: the daily temperature, the daily amount of precipitation, delays in obtaining labor and materials, including the duration and the applicable construction trade, delays experienced by others in completing non-contract public improvements (whether on-site or off-site), and other causes for delays, such as fires, floods, vandalism, or court orders.

2. **Time Extension Criteria**. In order to be considered for approval by the PHA, requests for time extensions should meet the following criteria:

   a. The contractor should submit a written notice to the PHA within 10 calendar days of the start of any delay;
   b. The severity and extent of adverse weather could not have been reasonably foreseen by the contractor (normal seasonal levels of rain, snow, cold or heat should have been considered by the contractor); and
   c. The cause of the delay was beyond the contractor's control.

3. **Documentation**. Immediately upon receipt of the contractor's notification of delay or request for time extension, the PHA should send a letter of acknowledgment to the contractor. The letter should indicate that either: (1) immediate consideration will be given to the contractor's request or (2) the actual delay in work is difficult to determine and consideration will be given to the contractor's request upon completion of work. PHA staff should review records to ensure that the information provided by the contractor is accurate and complete. This will allow the Contracting Officer to determine the cause of the delay and the extent that it was within the contractor's control. It will also determine if the request meets the contract's criteria for approving or rejecting the request for a time extension. Two criterion for approval of time extension requests follow:

   a. The contractor's request, as documented by the PHA "finding of fact," meets the requirements stated in paragraph 11.6.F.2 above, and
   b. The additional time requested by the contractor is reasonable based on the nature and duration of the delay.

G. **Completion of Work**. The completion of a construction contract requires some formal procedures, including the following:

1. **Notification**. The contractor should provide prompt written notification to the PHA when all work is completed. A final inspection of completed work shall then be conducted. Until the final inspection has been carried out and corrections made, the PHA should not advance any of the retainage or make the final payment to the contractor.

2. **Final Inspection**. Upon receipt of the contractor's notification of the date when the work has been completed, the PHA should conduct a final inspection within 10 calendar days.

3. **Post-Inspection Meeting**. The inspection team should meet after completing the final inspection to determine whether the work has been completed in accordance with the construction documents and to identify any minor items of incomplete or unsatisfactory work (or seasonal work such as planting of shrubs and lawns). The team should also reach agreement on the items to be included on the PHA's or its architect's final punch list and on any major deficiencies that must be corrected by the contractor.

4. **Documentation**. Following final inspection, the PHA should notify the contractor to submit the following documentation to the PHA:

    a. A certificate of occupancy issued by the responsible local agency for each building (where appropriate);
    b. One notarized original and two copies of the contractor's release, including certification that indicates:
        i. The work was completed in accordance with the construction documents, including contract modifications, except any minor items identified on the PHA's or its architect's proposed certificate of completion;
        ii. The total amount due the contractor and a separately stated amount for each unsettled claim against the PHA;
        iii. Documentation noting that the PHA is released of all claims, other than those stated in the contractor's release; and
        iv. Wages paid to laborers or mechanics were consistent with the wage rate requirements of the contract and there are no outstanding claims for unpaid wages.
    c. Assignment of all guarantees and warranties to the PHA; and
    d. "Final" partial payment. The PHA may accept part of a project for occupancy before contract settlement if the following conditions are met:
        i. The dwelling units to be accepted (except items approved for delayed completion) have been completed and are ready for occupancy;
        ii. The general contractor agrees to early occupancy and completion of items approved for delayed completion;
        iii. Early occupancy will not unduly inconvenience or represent a safety risk to tenants while the unfinished work is being completed;
        iv. The PHA has obtained occupancy permits from the responsible local agency for each unit to be accepted; and
        v. The PHA has executed an occupancy agreement with the general contractor indicating that the PHA partially accepts specified work, provided that the contractor accepts the responsibility to complete the project by the established completion date.

H. **Final Payment**. The PHA should ensure that an adequate and notarized certificate and release are received from each construction contractor to assure that the work was in full compliance with the construction contract documentation and that all materials, supplies, equipment, and labor-related expenses have been paid in full by the contractor. Prior to making final payment, the PHA should ensure that all required certified payroll reports have been received and that any discrepancies and/or wage underpayments have been corrected. Upon receipt of the approved certificate of completion, the PHA is authorized

to make payment to the contractor. The PHA payment to the contractor should be the amount specified in the certificate of completion, but it should not include any amount to be retained for disputed items and incomplete work, such as the punch list or seasonal items.

I. **Construction Warranties**. The warranty period for all construction work should be at least 365 calendar days from the date of final acceptance of the work in question or such longer period as otherwise specified in the contract. For complex equipment or systems (such as boilers, air conditioning units, thermal paned windows or storefronts, or membrane roofs), the PHA should consider using a full two-year warranty. The extra year will help to ensure that the PHA can discover and report any hidden or latent deficiencies while the warranty is still in force. The contractor is fully responsible to correct any and all legitimate deficiencies reported within the warranty period. It is often a good approach to specify the additional warranty period on replaced or repaired items; one full additional year is generally reasonable and appropriate.

1. **Warranty Inspections**. The PHA is responsible for performing required warranty inspections, including the 11-month inspection, during the warranty period and promptly notifying the contractor in writing to remedy any defects relating to manufacturer or contractor warranties on equipment and systems and contractor warranties on materials and workmanship. This is an area that has been frequently overlooked by some PHAs and their A/Es. Failure to enforce warranties is a violation of the ACC requirement for economy and efficiency and can be very costly to the PHA. In such cases, the PHA will have to use its own funds after the expiration of the warranty to correct defects that were the contractor's responsibility.

2. **Corrective Action**. Upon receipt of the PHA's written notice, the contractor should promptly remedy any defects due to the use of faulty equipment or materials or poor workmanship. The contractor is also responsible for paying for any damage to other work resulting from such defects. If the contractor fails to resolve such warranty issues, the bonding company should be contacted by the PHA for final resolution.

11.3 Administering Non-Construction Contracts

The necessary amount of oversight and monitoring, i.e., contract administration, will vary with the complexity of the work. Relatively simple contracts may require limited monitoring, while large, complex contracts will need more in-depth monitoring and oversight. Efforts to develop good specifications and a carefully planned solicitation can be undermined by weak contract administration.

A. **Post-award Conference**. For relatively complex projects, it is advisable to meet with the contractor soon after contract award to ensure that all parties understand the contract's performance requirements. Terms of the contract should be thoroughly discussed. In addition, formal minutes of the meeting should be recorded and subsequently issued to all meeting attendees. Also at this meeting, samples may be presented if required and inspection personnel introduced. Any necessary changes to the contract resulting from this meeting should be reflected in a formal written modification to the contract, rather than through oral agreements or instructions from PHA staff. Only the Contracting Officer has the authority to make a formal change in a contract.

B. **Establishing a System for Receiving Supplies, Equipment, and Services**.

1. The PHA should establish a system for ensuring that the items required by contract are delivered to an appropriate location where PHA personnel can make certain that receipt of supplies, materials, or equipment is properly handled and documented. For example, a contract for supplies should indicate where delivery should be made (what room or other location, such as a management office) and how the receipt will be recorded and provided to the contractor.

2. The receiving report, either a standardized PHA document or one submitted by the contractor, should contain, at a minimum, the following information: contract number, item number/description of the item, date of receipt, place received, receiving official (printed name, signature, date), date of inspection, inspection official (printed name, signature, date), whether the work/item was or was not accepted (and, if not accepted, reasons for rejection), and accepting official (printed name, signature, date). The receiving, inspecting, and accepting official may, in certain circumstances, be the same individual, particularly under project-based management.

C. **Monitoring and Inspecting Supplies and Services**. Once received, the PHA should monitor or inspect the supplies or services obtained in accordance with the contract. If poor contractor performance occurs, the PHA should document the file and remember that performance when awarding future contracts. The PHA should also make recommendations to HUD, when appropriate, regarding suspensions and debarments and provide evidence involving serious complaints, areas of non-responsibility, and other violations of or failure to comply with Federal, State, or local laws and regulations to the HUD Field Office for review (see Chapter 10, Evaluating Contractors and Analyzing Cost and Price).

D. **Enforcing Specifications and Timelines**. The PHA should establish a system to enforce both specifications and timelines and, when necessary, enforce compliance with all of the contract specifications, particularly since the rules of law may relieve a contractor of any liability if the PHA failed to regularly monitor the contractor's performance before final acceptance. The PHA is not obligated to pay for or accept supplies or services until it has had an opportunity to fully inspect them. Such inspection and any rejection resulting therefrom should be within a reasonable time after delivery or performance. If the PHA fails to require the contractor to correct a particular defect because of the PHA's failure to inspect (assuming that the defect could have been found by reasonable inspection), the PHA may have waived its rights to future rejection based on that particular defect.

   Acceptance may be assumed to have occurred, with or without concurrence by the PHA, if after a reasonable time to inspect has passed and the PHA has failed to make any notification to the contractor that the supplies, services, or construction do not conform to the contract requirements.

E. **Acceptance of Supplies and Services**

1. The Contracting Officer should ensure the supplies received from vendors are inspected and accepted, the performance of services was satisfactory, and receiving documents are prepared and processed for payment. This acceptance should not be delayed, since prompt payment will help to ensure good relations with vendors and contractors. In addition, many contracts allow a discount for prompt payment if made within a specified number of days. Discounts, if offered by the contractor, should always be taken by the PHA to the greatest extent feasible, and procedures should be established to facilitate expedited receipt and prompt payment.

2. **Nonconformance**. When supplies, services, or construction items do not conform to the contract, the PHA has three response options. reject the items, require the contractor to correct them, or conditionally accept them.

   If any items or services are rejected, the contractor is subject to being declared in default unless it can provide conforming items or make a correction within the required delivery schedule/completion time. If the contractor is required to correct the defects, it would appear that the PHA has elected to have them corrected; therefore, the PHA may not terminate the contract for default until the contractor has a reasonable opportunity to correct the defects. If the contractor does not correct the

defects within the required timeframe, the PHA may accept the defective items or deficient services, but negotiate a commensurate reduction in price.

F. **Labor Standards**. Maintenance contracts in excess of $2,000 require the payment of HUD-determined wage rates.

1. **Posting Wage Rates.** PHAs must ensure that a copy of the applicable HUD wage decision is displayed at the job site in a place accessible to all maintenance laborers and mechanics and placed in an area that is protected from inclement weather.

2. **Compliance Monitoring.** PHAs have certain compliance monitoring and enforcement responsibilities for maintenance contracts subject to HUD-determined wage rates. See Chapter 10 of this Handbook for a discussion of the wage and recordkeeping requirements and the enforcement requirements of the PHAs.

G. **Control of Payments**. To the extent practical, and to help eliminate disputes that arise when shortages or damages are not discovered until after payment has been made, payment for supplies and services should be made only after the delivered items are inspected and found to be satisfactory.

11.4 Contract Modifications

A. **General**. Occasionally, it is necessary to modify a contract or purchase order to reflect changes in the required effort, period of performance, or price. Contract and purchase order modifications shall be issued in writing in one of the following forms:

1. Unilateral modification (a modification that is signed only by the Contracting Officer, such as a change order pursuant to the Changes clause on form HUD-5370, or administrative modification, such as a change in the address of the payment office), or

2. Bilateral modification (such as a supplemental agreement in which both parties mutually agree on contract changes) that is signed by both the Contracting Officer and the contractor. Bilateral modifications are the preferred method of modifying contracts and purchase orders.

B. **Process**. A change order is issued by the Contracting Officer after the award of a contract in any of the contract terms, including specifications, completion time, description of the work, etc., within the scope of the contract.

1. The Changes clause is included in form HUD-5370 (for construction) and form HUD-5370-C (for non-construction contracts) and form HUD-5370-EZ (for small construction/development contracts).

2. A change order may be issued unilaterally by the Contracting Officer. In such cases, the contractor is entitled to submit a change order proposal to identify any changes in cost or schedules as a result of the change, and the parties negotiate an equitable adjustment.

3. Change orders may be issued bilaterally if the contractor agrees to the change in advance. When a change is mutually agreed upon, including price adjustment for concessions made by either party, a contract modification is prepared and signed by both parties to the original contract. See **Appendix 15** for a Sample Contract Modification format that may be used for modifications.

4. Change orders/modifications should include at least the following: a detailed description of the proposed change in work, a reference to the applicable working drawings and specifications, when applicable, a price (credit, debit, or no change) for the change in contract work, estimate of additional time, if any, required to complete

the work, the contractor's itemized breakdown of the cost of materials and labor and an itemized breakdown for any applicable subcontractors, and the change indicate on the architectural or engineering drawings, if applicable.

C. **Limitations on Change Orders**. The Changes clause contained in forms HUD-5370, 5370-C, and 5370-EZ, prescribes the specific circumstances in which a change order may be issued. For example, adding the construction of a new building to a modernization contract would not be considered within the scope of the contract or within the authority of the Changes clause but should be considered a new contract (and subject to competition).

D. **Modification Register**. The PHA shall maintain accurate records and documentation regarding contract modifications by including a modification register or other record in each contract file. This register is required to provide a permanent record of all actions taken in connection with each contract. The modifications register should generally include information on the following: the number of modifications, a brief description of the change, the cost of the proposed modification, the date submitted to HUD for approval, if applicable, any critical deadline dates, the date of HUD approval or disapproval, if applicable, and the action taken, and the amount of any additional time required by the contractor.

E. **HUD Approval of Modifications**. PHAs must submit to HUD for prior approval any proposed contract modifications changing the scope of the contract in accordance with the Changes clause in the contract, or that increases the contract by more than the Federal small purchase threshold, unless exempted under paragraph 12.5 of this handbook.

11.5 Contract Claims

A. **General**. Contract claims may occur after the contract has been executed and may be pursued by the PHA or the contractor, although most often the contractor is the claimant. Disputes may arise regarding breach of contract, mistake, misrepresentation, other cause for contract modifications, or other disputes as described in the contract documents, such as unforeseen conditions. Forms HUD-5370, 5370-C and 5370-EZ, describe types of disputes and how claims will be processed. PHAs are required to have a provision in the procurement policy that explains how claims and disputes will be handled.

B. **Filing Claims**. The PHA should make every effort to resolve claims informally and expeditiously to avoid time losses or expensive delays. However, if the dispute cannot be resolved by mutual agreement, the following steps must be taken:

1. The contractor must submit the claim to the PHA's Contracting Officer in writing within the timeframe specified in the contract documents.

2. The claim must identify the nature and scope of the claim, including extra costs or time sought by the contractor.

C. **Rendering Decisions on Claims**. The Contracting Officer shall review the facts pertinent to the claim and secure any necessary assistance from legal, technical, or other advisors and shall issue a final written decision promptly and within the timeframe stated in the contract documents. (As provided by forms HUD-5370 and 5370-C, if the Contracting Officer does not issue a final decision within 60 days after written request by the contractor for a final decision, or longer period if mutually agreed upon by both parties, then the contractor may proceed as if an adverse decision has been received.) The written decision should include:

1. A description of the claim;

2. A reference to the pertinent contract clauses;

3. A statement of the factual areas of agreement or disagreement;

4. A statement of the Contracting Officer's decision with support rationale; and

5. A statement referencing appeal rights as provided in the PHA's Procurement Policy.

D. The Contracting Officer shall immediately furnish a copy of the decision to the contractor by certified mail, with return receipt requested.

E. **Records of Claims**. The PHA shall maintain a complete written and dated record of any actions that may result in a dispute or claim for damages. An example would be records of weather conditions during the course of a contract, delays in receiving materials ordered by the PHA, or other items that may result in requests for time delays that may be disputed. These records protect the PHA's interests during any litigation that may arise later.

At a minimum, the PHA should maintain records of the following:

1. A complete and detailed job record; and

2. A disputes and claims file, including a cross-reference to other pertinent files (such as a separate file for a particular subcontractor), any correspondence related to a dispute, written minutes of meetings between the PHA and architects, or job meetings where decisions or agreements were made regarding disputes.

11.6 Contract Terminations

A. **General**. Contracts are terminated either for default or termination, as prescribed in the termination clauses on forms HUD-5370, 5370-C, and 5370-EZ.

B. **Termination Notice**. The Contracting Officer shall terminate contracts for convenience or default only by a written notice to the contractor. The notice shall be sent by certified mail with a return receipt requested. The notice shall state, at a minimum, the following:

1. The contract is being terminated for default or for the convenience of the PHA under the cited contract clause authorizing the termination;

2. Whether the contract is terminated in whole or in part (for partial terminations, identify the specific items being terminated);

3. If terminated for default, the acts or omissions constituting the default, the Contracting Officer's determination that failure to perform is not excusable, the PHA's rights to charge excess costs of re-procurement to the contractor, and the contractor's appeal rights;

4. The effective date of termination;

5. The contractor's right to proceed under the non-terminated portion of the contract;

6. Any special instructions; and

7. Copies of the notice should be sent to the contractor's surety, if any, and any assignee.

C. **Termination for Convenience**. Contracts may be terminated for convenience when the PHA no longer needs or desires the supplies or services under contract or can no longer fund the procurement.

1. **Settlement**. Settlement of contracts terminated for convenience may be settled through negotiations or by a unilateral determination of the Contracting Officer. The

contractor should submit a settlement proposal promptly to the Contracting Officer for any amounts claimed as a result of the termination. Whenever possible, the Contracting Officer should negotiate a fair and prompt settlement with the contractor and should settle by determination only when mutual agreement cannot be reached.

2. **Compensation**. A settlement should compensate the contractor fairly for work performed, for other costs incurred under the contract, and for preparations made for the terminated portions of the contract, including a reasonable allowance for profit. However, no profit shall be allowed on settlement expenses. In addition, the Contracting Officer shall not allow profit if it appears that the contractor would have incurred a loss had the entire contract been completed. Fair compensation is a matter of judgment and cannot be measured exactly. The Contracting Officer should use prudent business judgment in the settlement process, as opposed to strict accounting principles. The parties may agree to a total amount to be paid to the contractor without agreeing on individual cost items or profit.

D. **Termination for Default**. A contract may be terminated for default because of the contractor's actual or anticipated failure to perform its contractual obligations. Under a termination for default, the PHA is not liable for the contractor's costs on undelivered work and may be entitled to the repayment of progress payments. If the contractor fails to make progress so as to endanger performance of the contract, the Contracting Officer should issue a written notice to the contractor (generally called a "Cure Notice") specifying the failure and providing a period of 10 days (or longer period if needed) in which to "cure" the failure. After the 10 days, the Contracting Officer may issue a notice of termination for default, unless the failure to perform has been cured.

1. **Notice**. If the contractor has failed to perform work within the required time and a termination for default appears appropriate, the Contracting Officer should, if practicable, notify the contractor in writing of the possibility of the termination. This notice shall call the contractor's attention to the contractual liabilities if the contract is terminated for default, and request the contractor to "show cause" why the contract should not be terminated. If the response to this "show cause" notice is inadequate or insufficient, action is taken in response to it; the contract should then be terminated for default.

2. **Alternatives to Termination**. Alternatives to termination for default include the following (at the PHA's discretion): allow alternative dispute resolution (arbitration or mediation) as agreed to by both parties; allow the contractor or the surety to continue performance of the contract under a revised delivery schedule (in exchange for a reduced price or other consideration); permit the contractor to continue performance of the contract by means of a subcontract or other business arrangement with an acceptable third party, provided the rights of the PHA are adequately protected; or, if the contractor is not liable to the PHA for damages, execute a no-cost termination settlement agreement.

3. **Repurchase**. When the supplies, services, or construction activities are still required after termination, the Contracting Officer should seek to contract for the same or similar items as soon as possible. The Contracting Officer may use any appropriate contracting method for the procurement (sealed bids or competitive or noncompetitive proposals, as appropriate), provided competition is solicited to the maximum extent practicable to secure the lowest price obtainable under the circumstances in order to mitigate damages.

CHAPTER 12. HUD REVIEW REQUIREMENTS

12.1 General

HUD review of a PHA's procurement activity is limited to those actions funded with Federal program grant funds.

12.2 Contracting Actions Requiring HUD Approval

Except as exempted under paragraph 12.5, the following contracting actions shall have prior HUD approval:

A. Noncompetitive procurements expected to exceed the Federal small purchase threshold;

B. Brand name-only procurements expected to exceed the Federal small purchase threshold;

C. Awards over the Federal small purchase threshold to other than the apparent low bidder under a sealed bid;

D. Proposed contract modifications that change the scope of the contract (as per the "Changes" clause in forms HUD-5370, HUD-5370-C or HUD-5370-EZ) or increasing the contract amount by more than the Federal small purchase threshold;

E. Use of the QBS method of procurement for other than A/E services, joint venture partners or developers, or energy service contracts;

F. For PHAs operating under the "old" ACC 53010 and 53011, any agreement or contract for professional, management, fee accountants, legal, or other professional services with any person or firm if the total period or term of the contract, including renewal option provisions, exceeds two years;

G. Procurements for legal or other non-personal services in connection with litigation, per HUD's Litigation Handbook, that exceed $100,000;

H. Procurements that exceed the amount included in (1) the HUD-approved Development Cost Budget or (2) where HUD has required prior approval on a Notice of Deficiency or corrective action order under the Capital Fund Program;

I. Contracts that exceed five years, including options. To approve terms in excess of five years, Field Offices must determine there is no practical alternative;

J. PHAs operating under the "old" ACC who enter into a transaction with any joint venture, subsidiary, affiliate, or other identity-of-interest entity. Section 515 of the old ACC specifies that such transactions must comply with the conflict of interest provisions that apply to the PHA. PHAs and their instrumentalities operating under the "new" ACC must comply with the conflict of interest provisions under section 19 of the new ACC;

K. Solicitations, and any resulting contracts, related to energy performance contracting and utility add-ons, as per Chapter 17 of this handbook; and

L. Solicitation and contracts by any PHA whose procurement procedures or operations fail to comply with the procurement standards in **24 CFR 85.36**.

12.3 PHA Submission Requirements for Actions Requiring HUD Approval

The PHA shall submit all paperwork necessary for HUD to review the contracting actions identified in 12.2. The HUD Field Office shall review this information, and shall indicate what additional information may be necessary, as appropriate, to ensure compliance with **24 CFR 85.36** and the applicable sections of this Chapter. For non-competitive proposals, specifically, the PHA should comply with the instructions in Chapter 8. Any changes to HUD forms or waivers to this handbook must be sent to HUD Headquarters Office of Public Housing for review and approval.

12.4 Development

The PHA shall submit to the HUD Field Office for prior approval A/E contracts, fee appraiser contracts, development manager contracts, construction solicitations, construction contracts, and contract modifications.

12.5 Exemption from Pre-Award Review

A. A PHA shall be exempt from the pre-award review required in paragraph 12-2.A through 12.2.F if:

   1. The PHA requests, and HUD subsequently certifies, that its procurement system be reviewed by the Field Office to determine if its systems meet the standards under **24 CFR 85.36** and the essential requirements of this Handbook and HUD Handbook 7485.1; or

   2. The PHA self-certifies that its procurement system meets the standards under **24 CFR 85.36** and the essential requirements of this Handbook and HUD Handbook 7485.1.

B. Exemptions are granted for a one-year period and may be automatically renewed each year unless the PHA is found not to be in compliance with **24 CFR 85.36** or the PHA requests that the exemption be rescinded.

CHAPTER 13. STATE AND LOCAL LAWS AND REGULATIONS GOVERNING PHA PROCUREMENT

13.1 General

In addition to federal law and regulations, PHAs are governed by a wide assortment of state and local requirements. In general, where these rules conflict, the more stringent law or rule applies. For example, the Federal statutory limit on small purchases is $100,000. That does not prohibit a State from imposing a more stringent limit, e.g., $25,000, on small purchases. A PHA governed by that State's law would comply with the $25,000 limit.

HUD requires a standard form of Cooperation Agreement between a PHA and the Local Governing Body (LGB) under which the LGB is required to furnish the same public facilities and services to the PHA and its tenants as to other dwellings. The LGB is required to cooperate with the PHA in the development and administration of its projects, to accept dedications of lands for roads, alleys and sidewalks and to provide water, storm and sanitary storm services for which the PHA shall pay the same amount as private owners. These arrangements may require some flexibility in complying with PHA procurement requirements.

This chapter discusses the relationship between these federal, state, and local rules, as they relate to procurement, and also lists suggested resources and other guidance to help PHAs remain current in these various requirements.

13.2 Exceptions to Local Pre-emption

In general, a PHA must comply with state or local procurement rules if they are more stringent. Two exceptions include:

A. **Geographic Preferences**. Although some States impose certain geographic preference restrictions in the evaluation of offers, **24 CFR 85.36(c)(2)** preempts such laws by prohibiting the use of geographic restrictions unless expressly required or encouraged by Federal law.

B. **State Prevailing Wage Requirements**. Federal wage determinations (either Davis-Bacon or HUD-Determined Wage Rates) preempt any State prevailing wage rate when the State wage rate is higher than the applicable Federally-imposed wage rate (**24 CFR Part 965**). Appropriate Federal preemption language is included in the labor standards clauses found in forms HUD-5370, 5370-EZ, and 5370-C.

13.3 State Law

Typically, PHAs are governed by two sets of state regulations. One set is called "state-enabling legislation" and the second is a separate set of state statutes or codes.

A. State public housing laws generally describe the creation and operation of PHAs within the state (also referred to as "Local Housing Authorities," "Municipal Housing Authorities," "Regional Housing Authorities," "County or City Housing Authorities," "Consolidated Housing Authorities," and in some cases a "State PHA"). Some State public housing laws also provide guidance on specific operational tasks, such as procurement actions with which PHAs must comply.

B. The separate State statutes or codes sometimes apply to local governments, including PHAs, but in other states, the State statutes or codes do not apply.

C. The laws that enable the establishment of public housing authorities and other State requirements that impact procurement activities differ from state to state, as follows:

1. State-enabling legislation may include specific guidance on how the various procurement regulations apply to PHA contracts within that State; or

2. The State law creating public housing may be silent on procurement, and:

a. The State procurement code applies to units of local government, including PHAs;

b. The State procurement code does not apply to local governments, including PHAs;

c. Adoption of the state procurement statutes is not mandatory for units of local government;

d. A State's procurement code generally does not apply to PHAs because they are not State agencies; however, specific clauses in the regulations may apply; and

e. The State procurement code may mandate certain practices but specifically exempt PHAs from one or more of the requirements.

D. Some States have passed laws on procurement but specifically exempt contracts awarded with Federal funds. Also, in some cases, procurement laws may be waived if the PHA makes a written request and provides sufficient justification for not following the State law.

E. Some States have passed very detailed "Procurement Codes" based on the American Bar Association's (ABA) Model Procurement Code for State and Local Governments, which apply to local governments, including PHAs. In these States, detailed procedures are provided for nearly all key aspects of public contracting ranging from types of specifications to contract administration.

13.4 Local Law

Some local governments pass laws applicable to public housing contracts, others do not.

A. In cases where State procurement laws do not specifically apply to PHAs, local government laws on public contracts should be consulted and PHAs should establish their policy and procedures based on the most stringent requirements, either Federal or local; and

B. When applicable local laws, in addition to State law, exist on procurement, the most stringent of the three applies as long as the procurement conforms to Federal requirements.

Local jurisdictions frequently pass ordinances on specific construction practices and bonding requirements that a PHA must follow in addition to any State or local laws as long as they conform to Federal requirements.

13.5 Guidance on State and Local Procurement Laws

A. The complex structure of Federal, State, and local laws pertaining to procurement and contracting activities (including applicable labor rates) requires that a PHA have a comprehensive understanding of the combination of rules and regulations with which it

must comply. A PHA's procurement policy and procedures must incorporate and reflect the relationship between each set of laws and procurement practices. To properly carry out the procurement function and ensure compliance with all applicable Federal, State, and local procurement regulations, PHAs should take the following steps:

B. Create a procurement resource center that includes copies of all applicable laws and regulations. Update those resources as necessary. Consult the following to locate applicable Federal, State, and local documents:

   1. www.hudclips.org
   2. www.statelocalgov.net;
   3. The state legislation that creates your state's Housing Authorities (State enabling legislation);
   4. State procurement laws, State procurement codes, or State statutes pertaining to contracting and procurement;
   5. Local government laws on public contracts;
   6. Most recent State or local prevailing wage rates; and
   7. Most recent Davis-Bacon rates for your area (www.wdol.gov); and
   8. The current HUD Maintenance Wage Decision (HUD-52158) for the PHA.

C. Ensure that PHA staff involved in contracting and procurement are familiar with all Federal and State laws (or regulations) and local ordinances relating to procurement activities.

D. Before submitting a policy for adoption by the Board, it is advisable to consult with your legal counsel and/or HUD Field Counsel to ensure that policy language adequately covers all applicable rules. Update the policy as pertinent regulations change.

E. Tailor an existing procurement policy (or develop a new procurement policy) that reflects the mix of all procurement laws applicable to your PHA.

F. Develop detailed plans of implementation for procurement procedures and train the staff. Update plans as necessary.

CHAPTER 14. COOPERATIVE BUSINESS RELATIONSHIPS

14.1 General

PHAs can choose to coordinate, collaborate, partner, or contract with various types of public or private entities to administer or manage any or all of their programs or to handle procurement matters. This chapter assists PHAs in recognizing the benefits of these relationships and explains how the Federal procurement regulations apply. Please note that, for PHAs to access various interagency purchasing agreements, the underlying contract(s) must have been procured in accordance with **24 CFR 85.36**.

Use of cooperative and interagency agreements can often greatly simplify and expedite the procurement process by relieving the PHA of developing specifications or issuing solicitations. These cooperative arrangements can also offer substantial discounts over what a PHA might be required to pay if it purchased the items on its own.

Please note that requirements of a PHA associated with a mixed-finance development process are addressed separately in Chapter 16 of this Handbook.

14.2 Intergovernmental Agreements for Procurement Activity

A. **Requirements**. A PHA may enter into intergovernmental or interagency purchasing agreements without competitive procurement provided the following conditions are met:

1. The agreement provides for greater economy and efficiency and results in cost savings to the PHA. Before utilizing an interagency agreement for procurement, the PHA should compare the cost and availability of the identified supplies or services on the open market with the cost of purchasing them through another unit of government to determine if it is the most economical and efficient method;

2. The agreement is used for common supplies and services that are of a routine nature only. In deciding whether it is appropriate for the PHA to obtain supplies or services through an intergovernmental agreement rather than through a competitive procurement, the nature of the required supplies or services will be a determining factor. Intergovernmental agreements may be used only for the procurement and use of common supplies and services. If services, required by the PHA, are provided by the State or locality and are part of that government's normal duties and responsibilities, it is permissible for the PHA to share the services and cost of staff under an agreement. For example, a PHA could enter into an intergovernmental agreement, without competitive procurement, to use the services of a local government's accounting office to conduct an annual audit of its books or to use the services of a city health agency to provide advice about drug abuse prevention strategies. A PHA could not, however, without competitive procurement, enter into an intergovernmental agreement with a local police department to purchase cabinets manufactured by the police department (the manufacturing of cabinets is not a normal function of a law enforcement agency);

3. PHAs must take steps to ensure that any supplies or services obtained using another agency's contract are purchased in compliance with **24 CFR 85.36**;

4. A PHA's procurement files should contain a copy of the Intergovernmental Agreement and documentation showing that cost and availability were evaluated before the agreement was executed, and these factors are reviewed and compared at least annually with those contained in the agreement; and

5. The agreement must be between the PHA and a state or local governmental agency, which may be another PHA.

B. **Examples**. Types of intergovernmental agreements may include, but are not limited to:

1. Paying a city for the cost of additional police patrols (i.e., for special "community policing" efforts) so long as those patrols are above and beyond those that the police department would provide under the PHA's Cooperation Agreement with the city (see **Appendix 16** for sample intergovernmental agreement);

2. Using the city's Recreation Department to operate an after-school sports program for residents of public housing;

3. Using the services of the city's accounting office to conduct an internal audit;

4. Sharing warehouse space with the city;

5. Purchasing supplies and services through a local, county, or State government's supply, service, or equipment contractor;

6. Using a local, county, or State governmental unit, including another PHA, to perform procurement activities for the PHA; or

7. Using bonding services from a state Housing Finance Agency.

C. **Process for Using Intergovernmental Agreements**. Typically, the process for entering into intergovernmental agreements is as follows:

1. The government agency solicits bids or proposals, then enters into contracts with vendors for a variety of supplies or services;

2. The PHA enters into an agreement with the government agency whereby the PHA is able to order supplies and services from the vendors who have a contractual agreement to furnish the supplies and services to the government agency (note, however, that some states/localities allow for PHAs to access state/local contracts directly without any formal agreement between the PHA and the lead agency);

3. The PHA orders the supplies or services covered by the government contract at the prices specified;

4. Depending on the agreement structure, PHAs may order the supplies or services either directly from the vendor or indirectly from the government agency; and

5. Again, depending on the agreement structure, the vendor will bill the PHA directly and payment will be made to the vendor or, if ordered through the sponsoring agency, the PHA will reimburse the agency directly.

D. **Terms of Agreement**. Most government agencies will have their own intergovernmental agreement forms. However, the PHA should review any standard agreements to make sure that all applicable procurement regulations are met and that the PHA's interests are protected. PHAs should consider inclusion of the following provisions in their intergovernmental agreements:

1. Identification of the parties;

2. Effective date;

3. Basic purpose of the agreement;

4. Procedures for providing lists of needed items;

5. Description of items to be purchased;
6. Identification of lead party in the procurement;
7. Rules or codes that should be followed in the procurement (PHA procurement policy, State procurement code, Federal Regulations, etc.);
8. Delivery terms;
9. Types of contract (indefinite quantity, etc.);
10. Warranty terms;
11. Any fees to be paid to the lead agency;
12. Procedures for resolving disputes with contractors;
13. Procedures for resolving disputes between the parties;
14. Procedures for bilateral modification or early termination of the agreement.
15. Any provisions for meetings on specification issues;
16. Non-exclusivity clause (right to conduct separate procurements, notwithstanding the existence of a cooperative purchasing agreement); and
17. Authorized signatures and titles.

E. **Evaluating the Use of Intergovernmental Agreements**. After entering into an agreement, PHAs should compare cost and availability annually to determine if the terms of the agreement continue to pass the tests of economy and efficiency.

F. **Federal Supply Schedule Contracts**. The General Services Administration (GSA) within the Federal government awards a wide variety of contracts under which Federal agencies may purchase supplies and services from pre-priced schedules. (Note: These contracts may provide supplies or services despite the name Federal Supply Schedule.) Section 211 of the E-Government Act of 2002 only allows for state and local government entities (including PHAs) to purchase from GSA Schedule 70, Information Technology, and Consolidated (formerly Corporate Contracts) Schedule contracts containing IT SINs. State and local government entities may not purchase information technology from any other GSA Schedules. No other schedule contracts are available to PHAs. In addition, PHAs may not purchase items from GSA schedule contractors on a noncompetitive basis. PHAs may solicit GSA contractors for prices for supplies and services when conducting competitive procurements, but they shall be considered only another potential source.

14.3 Selecting Joint Venture Partners

In connection with the provision of PHA administrative or management functions of public housing, or the provision of supportive and social services, PHAs may use one of the following options for the selection of joint venture partners:

A. The QBS method, using a RFQ, subject to the negotiation of a fair and reasonable price; or

B. The solicitation of a sole source proposal, under the following conditions:

1. The proposed joint venture partner has under its control and will make available to the partnership substantial, unique, and tangible resources or other benefits that would not otherwise be available to the PHA on the open market (such as planning expertise, program experience, or financial or other resources).

   In this case, the PHA must carefully and thoroughly document both the cost reasonableness and the unique qualifications offered by its proposed partner; or

2. A resident group or a PHA subsidiary is willing and able to act as the partner in performing the administrative or management function or to provide supportive or social services. A resident group or a PHA subsidiary must comply with the requirements of **24 CFR Part 84** (if the entity is a nonprofit) or **24 CFR Part 85** (if it is a State or local government) in selecting members of the team. Team members must be paid on a cost reimbursement basis only. The PHA must document the cost reasonableness of its selection of a resident group or subsidiary and the group's ability to act as a PHA partner.

14.4 Conflict of Interest Considerations for Joint Ventures, Subsidiaries and Affiliates

Federal, and often State and local procurement laws, contain various conflict of interest provisions barring PHAs from obtaining supplies and services from persons or entities with certain conflicts.

A. Section 515 of the old ACC (53010 and 53011) specifies that transactions between PHAs and any joint venture, subsidiary, affiliate, or other identity-of-interest entity must comply with the conflict of interest provisions.

B. Section 19 of the new ACC (HUD 53012-A, 7/95) similarly specifies that PHA transactions must comply with the conflict of interest provisions. In addition, the conflict of interest provisions of **24 CFR 85.36** must also be followed if Federal grant funds are involved.

C. In addition to Federal conflict of interest provisions in the ACC and in **24 CFR 85.36**, all joint venture partners and the joint venture as a whole must comply with State and local procurement and conflict of interest requirements in conducting activities to acquire supplies and services. A person who is a member of both a PHA's Board of Commissioners and another entity's governing board may not participate in actions by the PHA Board that are incidental agreements with the entity and may present a conflict of interest, real or apparent.

D. Disclosures of conflict must be made to HUD and waivers of conflict under the ACC and exceptions under **24 CFR 85.36** must be submitted to the HUD Field Offices for approval by HUD Headquarters if the HUD Field Office recommends approval. HUD Headquarters will determine if good cause exists for approving a waiver under the ACC or an exception under **24 CFR 85.36**.

E. The ability of a PHA Board to act at all in these cases will be determined by whether a quorum of Board members is left after the abstentions of common board members who have conflicts.

14.5 Procurement Requirements of Joint Venture Partners (24 CFR Part 943, Subpart C)

A. A joint venture partner is generally not a grantee or subgrantee and, accordingly, is not required to follow **24 CFR Parts 84** or **85** in procuring supplies or services. The exception to this general rule applies if the joint venture partner is a subsidiary, affiliate or identity-of- interest party of the PHA. (See Section 14.6.B below.)

B. If the joint venture partner is a resident group, subsidiary, affiliate, or identity-of-interest party of the PHA, it must comply with **24 CFR Parts 84** or **85**, as applicable. HUD may, on a case-by-case basis, grant an exemption to the joint venture partner from the need to comply with the requirements under **24 CFR 85.36** if HUD determines there is good cause and that the joint venture partner has developed an acceptable alternative procurement plan.

C. A selected joint venture partner may contract with an identity-of-interest party for goods or services or a party specified in the selected bidder's response to an RFP or RFQ (as applicable) without further procurement if:

1. The PHA can demonstrate that its original competitive selection of the partner clearly anticipated the later provision of such goods and services;

2. Compensation of all identity-of-interest parties is structured to ensure that there is no duplication of profit or expenses; and

3. The PHA can demonstrate that its selection is reasonable based on prevailing market costs and standards, and the quality and timeliness of the goods and services is comparable to that available in the open market.

14.6 Contracting with PHA Subsidiaries, Affiliates, and Joint Venture Partners

A PHA may, in connection with public housing, contract with a joint venture partner, subsidiary, or affiliate to perform (1) administrative or maintenance services, (2) the provision of social and supportive services, or (3) other services only after compliance with **24 CFR 85.36**, i.e., full and open competition.

14.7 Consortia

The 1998 Quality Housing and Work Responsibility Act (QHWRA) created a new Section 13 of the Housing Act of 1937 that authorizes PHAs to form a special type of consortium, called a Section 13 Consortium. Regulations on Consortia can be found at **24 CFR Part 943**.

A. Under a Section 13 Consortium, participating PHAs enter into a consortium agreement, submit joint PHA Plans to HUD, and may combine all or part of their funding and program administration.

B. Although PHAs do not need to comply with **24 CFR 85.36** to enter into Consortia, the consortium itself must comply.

14.8 Considerations

A PHA should consider several factors before deciding to participate in a particular type of operating organization, including:

- The complexity of the program(s) to be managed and administered;
- Technical capability of staff;
- PHA financial strength;
- PHA willingness to assume financial risk;
- PHA statutory and contractual powers;
- Identity-of-interest and conflict of interest issues; and
- State Law. PHAs are typically created through State-enabling legislation and governed by State statutes. As a result, contractual powers may vary significantly. For this reason, PHAs should have legal counsel investigate the specific limitations, liabilities, and authority available under State law before entering into any cooperative business relationship.

CHAPTER 15. EMPLOYMENT & TRAINING OPPORTUNITIES AND CONTRACTING WITH RESIDENTS, RESIDENT-OWNED, SMALL, MINORITY, AND OTHER DISADVANTAGED BUSINESSES

15.1 General

HUD strongly supports a policy of providing training and employment opportunities to residents and contracting with residents and resident-owned businesses, including RMCs, whenever possible. In addition, HUD encourages PHAs to establish goals for contract awards to small and minority-owned businesses and minority business enterprises (MBEs), women's business enterprises (WBEs), and businesses in labor surplus areas.

15.2 Section 3 of the Housing and Urban Development Act of 1968 (24 CFR 135)

A. **Overview.** The purpose of Section 3 is to ensure that, to the greatest extent feasible, employment, training, and business opportunities created by HUD financial assistance be directed to low and very-low income persons. Efforts to promote Section 3 objectives must be consistent with existing Federal, State and local laws and regulations.

B. **Covered Programs**. Section 3 requirements apply to:

1. PHA utilization of funds for public housing development, operations, and capital fund programs; these requirements do not apply to Section 8; and

2. In addition, certain Notification of Funding Availability (NOFA) and grant agreements governing assistance to PHAs may contain Section 3 requirements.

C. **Covered Work**. Section 3 covers contracts for work and does not apply to contracts for the purchase of supplies and materials. However, contracting with PHA resident-owned businesses for the purchase of supplies and materials is considered providing an "other business related economic opportunity" under 24 CFR 135.40, which can be used to satisfy a PHA's overall Section 3 obligations. Additionally, if the contract includes installation of purchased equipment, the contract would be covered by Section 3.

D. **Mandatory Section 3 Contract Clause**. The mandatory Section 3 contract clause can be found at 24 CFR 135.38, which applies to all contracts covered by Section 3. Covered contracts described at 24 CFR135.3(a) include developments, operating and modernization assistance. This clause is included in forms HUD-5370, HUD-5370-C, and HUD-5370-EZ

E. **Annual Report**. Pursuant to 24 CFR 135.90, PHAs must submit to, the Assistant Secretary for Fair Housing and Equal Opportunity, an annual report using the Section 3 Data Reporting System on form HUD-60002- Economic Opportunities for Low- and Very Low-Income persons.

15.3 Resident-Owned Businesses

A. A resident-owned business is any business concern that is owned and controlled by public housing residents.

B. HUD strongly encourages PHAs to contract with resident-owned businesses to the maximum extent feasible.

C. The regulation at **24 CFR Part 963** allows PHAs to use an alternative procurement process when contracting with businesses owned in substantial part by PHA residents (resident-owned businesses) for public housing services, supplies, or construction. The alternative procurement process must comply with procedures and requirements as set

forth in HUD's procurement regulations at **24 CFR 85.36**, except that solicitations are limited to resident-owned businesses. Use of this alternative procurement process is not a requirement.

D. The alternative procurement process under **24 CFR Part 963** is as follows:

1. The PHA prepares an ICE for the procurement.

2. The PHA selects the appropriate method of procurement (small purchase, sealed bidding, competitive proposals, or noncompetitive proposals).

3. The PHA solicits a bid, proposal, or offer from one or more resident-owned businesses.

4. The PHA receives offer(s) from one or more resident-owned businesses and ensures that:

   a. The offeror has submitted the required certification described in **24 CFR Part 963** regarding previous contracts received under the alternative procurement process and the total amount of such previous contracts is less than $1,000,000;

   b. The PHA performs a cost or price analysis of the offer(s) received and determines that the price is reasonable, i.e., the price that normally would be paid for comparable supplies, services, or construction in the project area;

   c. The PHA makes an award to the responsive and responsible bidder/offeror/respondent whose bid/offer/proposal is most advantageous overall to the PHA, consistent with the evaluation factors stated in the solicitation. The resident-owned business must be capable of performing satisfactorily; and

   d. The PHA documents the procurement file and complies with all other procurement requirements of **24 CFR 85.36**, including the requirement for economy and efficiency.

15.4 Contracting with an Resident Management Corporation (RMC)

A. A PHA may enter into a contract with an RMC to provide property management under **24 CFR Part 964**, Tenant Participation and Tenant Opportunities in Public Housing. As with any other property management contract, the management agreement must specify the functions for which the RMC will be responsible.

B. The property management contract between the PHA and the RMC is administered as any other contract for services, and is subject to any collective bargaining agreement provisions. However, the requirements for competitive procurement and prior written contract approval by HUD, where applicable (see Chapter 12), do not apply to the decision of a PHA to contract with an RMC for property management.

C. In order for the PHA to make a sole source award to an RMC, certain conditions must be met that differentiate an RMC from a resident-owned business. They are:

1. The duly elected resident council or councils of the development(s) and a majority of the residents must officially approve the RMC;

2. If no resident council exists, a majority of the residents of the development must approve the RMC;

3. The RMC's voting members must be 18 years of age, or heads of households (of any age) whose name appears on the lease of the development to be represented by the RMC;

4. The RMC must be a validly incorporated nonprofit organization; and

5. The RMC must be governed by an elected Board of Directors and include representatives from each participating Resident Council. It must have by-laws stating qualification of officers, frequency of elections, and procedures for recall. Elections must be held at least every three years.

D. Before making a sole source award, the PHA must ensure that the organization meets all criteria to qualify as an RMC, that the RMC can demonstrate that it is capable of performing the proposed work, and that the price is reasonable.

E. The RMC is obligated to provide fidelity bond coverage and insurance or equal protection to the PHA and HUD against loss, theft, embezzlement or fraudulent acts by the RMC or its employees.

F. In performing services, the RMC must comply with the requirements of **24 CFR Part 84**. The RMC must also be audited each year by a licensed CPA and submit the audit report to HUD and the PHA within 30 days of issuance.

15.5 Assistance to Small and Other Disadvantaged Businesses

A. **Required Efforts**. Consistent with Presidential Orders 11625, 12138, and 12432, the PHA shall make every feasible effort to ensure that small businesses MBEs, WBEs, and labor surplus area businesses participate in PHA contracting. Suggested steps are included in the sample Procurement Policy in **Appendix 1**.

B. **Goals**. PHAs are encouraged to establish goals by which they can measure the effectiveness of their efforts in implementing programs in support of Section 3 and contracting with disadvantaged firms. It is important to ensure that the means used to establish these goals do not have the effect of limiting competition and should not be used as mandatory set-aside or quota, except as may otherwise be expressly authorized in regulation or statute. Some localities have adopted minority contracting set-aside policies or geographic limitations, which may be in conflict with Federal requirements for full and open competition.

C. **Form HUD-2516, Contract and Subcontract Activity Report**. PHAs are required to report MBE progress on this form semi-annually. Where the prime contract is awarded to a MBE, the PHA counts the entire dollar amount of the contract toward the MBE goal. Where the prime contract is not awarded to a MBE, but one or more of the subcontracts are awarded to a MBE, the PHA counts the dollar value of such subcontract(s) toward the MBE goal. The dollar value of the prime contract and each of its subcontracts are not to be double counted.

When developing an outreach program for small, WBE, MBE, or labor surplus area, or Section 3 businesses, consider how to ensure that the program has the effect of enhancing competition by increasing the number of potential bidders and contractors capable of competing effectively for work generated by the PHA. Among the steps that have proved effective in some PHAs are:

1. Study the existing barriers facing low-income persons and disadvantaged businesses;

2. Examine PHA policies and procedures that may contribute to these barriers and determine how to improve those policies and procedures;

3. Communicate directly with disadvantaged firms and resident-owned businesses about contracting opportunities, the standards the PHA requires for quality work at a reasonable cost, and how to succeed in bidding for PHA work;

4. Maintain a list of disadvantaged and resident-owned firms and notify them of planned procurement activities;

5. Establish partnerships with other community agencies, Federal, State and local agencies, and educational institutions. Many have as their mission the fostering of job creation, training, and business development; and

6. Consider partnering in a consortium or interagency agreement with other PHAs or units of local government to enhance capacity to achieve Section 3 and disadvantaged contracting goals.

Remember that the best programs will serve the needs of the PHA, assist resident-owned businesses and low-income persons, and promote a more competitive environment.

A list is provided in **Appendix 16** that includes sources of information on working with resident-owned businesses.

CHAPTER 16. PUBLIC/PRIVATE PARTNERSHIPS, HOPE VI, AND MIXED-FINANCE DEVELOPMENT

16.1 General

This chapter discusses the special provisions associated with selecting HOPE VI and Mixed-Financed partners and, once selected, the procurement rules that apply to these different partners, including the PHA.

16.2 Application

A. Unless otherwise indicated in this Chapter, **24 CFR 85.36** applies to HOPE VI and Mixed-Finance procurement activity whenever HUD or other Federal funds are used in either the development or operations of the public housing project.

B. If public and private funds are co-mingled, **24 CFR 85.36** applies.

C. **24 CFR 85.36** does not apply when the PHA is not spending HUD or other Federal funds.

16.3 Definitions

The following terms, as used in this chapter, have the following definitions:

A. **Community and Supportive Services (CSS)**. That portion of a HOPE VI revitalization plan that addresses the service needs of residents of the severely distressed public housing including activities undertaken by the PHA, community partners, and sub-grantees. Under the terms and conditions of a HOPE VI grant, PHAs are obligated to provide (either directly or through partnership and/or contractors) a range of services designed to help HOPE VI residents and residents relocated from the distressed site make effective progress toward self-sufficiency.

B. **CSS Partner**. A community entity or social service provider offering supportive services to residents of a HOPE VI site or relocated residents as part of the overall implementation of the HOPE VI grant. PHAs are encouraged to form CSS partnerships during the grant application development process. When specific nonprofit service providers are named as CSS partners in the grant application, they may qualify as sub-grantees rather than contractors. For-profit providers or entities selected for CSS roles after grant award must generally be competitively procured.

C. **Development Partner**. A for-profit or nonprofit partner of the PHA or a development affiliate of the PHA, carrying out the physical revitalization of a mixed-finance project site, bearing financial risk. A Development Partner is an entity with whom the PHA enters into a partnership or other contractual arrangement in order to provide for the mixed-finance development of public housing units. The Development Partner has primary responsibility with the PHA for the development of the housing units and/or non-residential structures under the terms of the approved mixed-finance proposal. The Development Partner other than a PHA Instrumentality must also be procured in accordance with **24 CFR 85.36**.

D. **Instrumentality.** An entity formed in accordance with applicable law, and whose assets, operations and management are legally and effectively controlled by the PHA, and that utilizes Public Housing Funds and assets for the purpose of creating public and affordable housing.

E. **Mixed-Finance**. The combined use of Federal public housing funds and privately financed sources of funds for the development of public housing units under **24 CFR Part 941 Subpart F**.

F. **NOFA**. The notification of funding availability that invites applications from PHAs for a HOPE VI grant and describes the conditions for grant award in any given grant cycle.

G. **Owner Entity**. This is the entity that will own the public housing units in a mixed-finance development. The owner entity may be a partnership that includes a PHA affiliate. It may also be a separate entity altogether, i.e., one not owned by the PHA or a PHA affiliate.

H. **Operating Subsidy-Only Projects.** The term "Operating Subsidy-Only Project" refers to the development of public housing replacement units financed without the use of HUD public housing capital assistance or HOPE VI funds, but for which HUD agrees to provide operating subsidies under Section 9(e) of the U.S. Housing Act of 1937 (the "Housing Act"). The PHA must procure developers and/or owners of an Operating Subsidy-Only Project using the competitive procurement process required by 24 CFR 941.606(n)(1)(ii) and 24 CFR 85.36. For additional information, refer to PIH Notice 2004-5.

I. **Program Manager**. An entity a PHA procures in accordance with **24 CFR 85.36** to represent its interests and to assume responsibility for coordinating all participants including the PHA, HUD, third party consultants and financing sources. A program manager may also assist the PHA in its negotiations with a developer.

J. **Sub-grantee**. A nonprofit entity, commonly a service provider named in a HOPE VI grant application, playing an integral role in grant implementation, and not procured. A sub-grantee may also be a governmental entity that does development work on behalf of the PHA.

16.4 Selection of Developer/Development Partner

A. HUD permits the QBS method of procurement to select a development partner, under an exception that parallels the selection of an A/E and where price is negotiated with the highest-ranked offeror based on responses to an RFQ. Requirements and guidance governing the selection of a development partner (or master developer) can be found in **24 CFR 941.602(d)(1)** of the Mixed-Finance Interim Rule.

B. All procurement transactions must be conducted in a manner that provides full and open competition.

C. A cost or price analysis must be completed for all procurements, prior to the submission of proposals to determine an estimated value for the requested services. An explanation of Cost and Price analysis is found in Chapter 10.

D. The QBS method is not permitted for the procurement of HOPE VI, Mixed-Finance Program Managers, and legal services.

16.5 HUD Review of Hope VI Procurement Actions

Except where old grant agreements specifically require HUD approval, HUD does not approve procurement actions for the HOPE VI program. Each grantee should consult their individual grant agreement.

16.6 Procurement Requirements of Developer

Once the developer has been selected in accordance with Part 85, the selected development partner is not subject to **24 CFR 85.36** except where the PHA or its PHA instrumentality "exercises significant functions within the owner entity with respect to managing the development of the proposed units."

A. Actions that are considered to be exercising significant functions are:

   1. When a PHA or its PHA instrumentality is acting as the sole or managing general partner in the owner entity.

   2. When a PHA or PHA instrumentality is acting as developer.

B. The following are examples of actions taken by a PHA or its PHA instrumentality that are not considered significant functions:

   1. Monitoring units receiving operating subsidy to ensure compliance with various regulations.

   2. Coordinating communications with agencies regarding project financing and operations.

   3. Providing Community and Supportive Services (CSS) services.

   4. Attending construction meetings, reviewing and approving draws.

   5. Maintaining the waiting list.

   6. Reviewing and approving operating and capital budgets.

C. **24 CFR 85.36** applies to the developer when a city agency is acting as a developer through a sub-grantee agreement with the PHA.

D. As private entities, developers, procured by a PHA in accordance with **24 CFR 85.36** and **941.602(d)**, are not required to comply with **24 CFR 85.36** in selecting their subcontractors (see also paragraph 16.7.B.2 and **24 CFR 941.606(n)(1)(ii))**.

16.7 Other Required Efforts

The complex nature of public/private partnerships and Mixed-Finance development require that the PHA and its partners adhere to certain provisions to avoid even the appearance of impropriety. Important provisions include, but are not limited to, the following:

A. **Conflict of Interest Provisions**. Federal and often State and local statutes and regulations contain conflict of interest provisions that prohibit the PHA from obtaining supplies and services from persons or entities with certain conflicts. These prohibitions are included in NOFAs, ACCs, the HOPE VI Grant Agreement, **24 CFR Part 85**, **24 CFR 941.606**, as well as at the State and local level.

   The HOPE VI Grant Agreement includes requirements for identifying conflicts of interest. The following is a list of general requirements. The HOPE VI Grant Agreement is modified each year, and PHAs should consult the applicable Grant Agreement for specific language relating to conflicts of interest.

   1. In addition to the conflict of interest requirements in **24 CFR Part 85**, no person who is an employee, agent, consultant (excluding an independent contractor), officer, or elected or appointed official of the Grantee who participates in any facet of the

decision-making process may obtain a financial interest or benefit from the procurement. This limitation continues for one year after the procurement. Relatives and family members of the decision-makers are also excluded from benefiting from the procurement.

2. In addition to the conflict of interest requirements in 24 CFR Part 85, no person who is an employee, agent, officer, or elected or appointed official of the Grantee and who exercises or has exercised any functions or responsibilities with respect to activities assisted under this HOPE VI Grant, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

3. The Department may grant an exception to the exclusion in paragraph 16.7A.1, above, on a case-by-case basis. However the PHA must provide a disclosure of the nature of the conflict, accompanied by 1) an assurance that there has been public disclosure of the conflict, 2) a description of how the public disclosure was made and 3) an opinion of the Grantee's attorney that the interest for which the exception is sought does not violate State or local laws.

B. **Identity of Interest**.

1. PHAs must ensure that all partners participating in the development, regardless of any identity of interest, have no conflict of interest.24 CFR 941.606(n)(I)(ii).

2. If a partner and/or owner entity (entity in which it has an Identity of interest) wants to serve as the General Contractor, it may award itself the construction contract only if it can demonstrate that its bid is the lowest bid submitted in response to a public request for bids or the PHA may seek a waiver.

C. **Required Contract Clauses**. **24 CFR 85.36(i)** lists 13 required clauses in a contract. As some of these clauses may directly affect negotiations with partners, these clauses must be included in the solicitation documents so that all potential offerors are aware of them.

16.8 Procurement by Parties Other Than the PHA or the Developer

A HOPE VI or Mixed-Finance project typically involves many parties other than the PHA, some of whom will be procuring supplies and services in connection with grant implementation. The following guidelines apply to such PHA partners:

A. **Private Property Managers**. If a PHA has procured a developer in accordance with **24 CFR 85.36**, the developer does not need to comply with **24 CFR 85.36** in selecting a private property manager. Further, in this case, the private property manager does not need to comply with **24 CFR 85.36** when selecting subcontractors or procuring supplies and services. However, if the PHA is the developer, it must comply with **24 CFR 85.36** in selecting private property managers, unless the property manager is the PHA or its instrumentality;

B. **Program Managers**. Although Program Managers are private entities, their role in a HOPE VI or a Mixed-Finance development places them in the role of agent for or adjunct staff to the PHA. If the Program Manager is subcontracting out a portion of its duties, or entering into direct contracts to accomplish tasks it is required to perform under its contract with the PHA (and provided such duties and tasks are within the scope of tasks the Program Manager was procured to perform), the PM is not bound by the procurement requirements of **24 CFR 85.36**. However, when the Program Manager is procuring a provider for the PHA, i.e., by developing an RFP for supplies or services that the PHA

will purchase, then **24 CFR 85.36** applies. Even if the Program Manager enters into such a contract, but the PHA retains involvement and control over all the decisions and other aspects of the contract (beyond approval or veto over the actions of the PM), HUD will most likely consider such a procurement to be subject to **24 CFR 85.36**;

C. **Resident Groups**. Resident groups acting as "sub-grantees" are subject to **24 CFR Part 84.** See Section 37 for further guidance on working with sub-grantees; and

D. **Resident-Owned Businesses**. Resident-owned businesses are governed by **24 CFR Part 963 Subpart B**, which allows the PHA to limit competition on certain procurement actions to resident owned businesses. Additional guidance on contracting with resident-owned businesses may be found in Chapter 15 of this Handbook, unless the property manager is the PHA or its instrumentality.

16.9 Resident Involvement

A. RMCs, as distinguished from Resident-Owned Businesses, may qualify for a sole-source award for property management contracts only, provided that the RMC is duly constituted and qualified as such. See Chapter 15 for guidance.

B. As part of HUD's guidance on resident and community involvement in HOPE VI redevelopment projects and Mixed-Finance Developments, HUD has encouraged the inclusion of residents on selection panels provided that the PHA constitutes the majority membership on the panels and the residents have been trained in the procurement process.

1. Resident members of, or advisors to, selection panels are acting as agents of the PHA and therefore are subject to the conflict of interest provisions of **24 CFR 85.36(b)(3)**. PHAs are advised to seek HUD guidance on this issue before constituting the make-up of a selection panel.

2. Localities are frequently involved as key community partners with PHAs in carrying out HOPE VI and Mixed-Finance projects, particularly when the local planning or redevelopment agency has experience in the management of public-private ventures, negotiating with developers, and managing large scale development projects. PHAs often include local government staff on selection panels. In these cases, care should be taken to ensure that PHA representation constitutes the majority of the panel membership and all panel members must comply with conflict of interest requirements.

C. Despite the relative experience or expertise of local government or redevelopment agency staffs, the PHA, as the grantee, is obligated to carry out its own procurement and must not delegate that responsibility to another agency.

16.10 Procurement by the PHA as Developer with Ownership Interest in the Development or Ownership Entity

A. Generally, whenever the PHA or Instrumentality is acting as the development entity or performs a significant role in the actions and decision-making of such an entity (as through a partnership with a private entity), the requirements of **24 CFR 85.36** apply to procurement. HUD may make a case-by-case exception if such an entity presents an acceptable alternative procurement plan that adequately protects the public interest.

B. **PHA Procurement of Instrumentalities** - A PHA's procurement with its instrumentality is not subject to Part 85. However, the instrumentality must procure other members of the operational or development team subject to the same procurement rules as the PHA (i.e. 24 CFR Part 85).

16.11 Issues Arising in CSS Procurement Activity

A. A PHA must comply with **24 CFR 85.36** when selecting an administrator for its community supportive services program.

B. Social service providers that are nonprofit or governmental agencies may be sub-grantees if included in the grant application. Such sub-grantees do not have to be competitively procured. However, pursuant to the HOPE VI Grant Agreement, a PHA must gain HUD approval of the sub-grantee agreement with a social service provider.

C. In each HOPE VI grant year, there have been changes in the CSS portion of the HOPE VI program and applicable procurement requirements. These changes appear in the NOFA and the HOPE VI Grant Agreement for the applicable grant year. PHAs should consult the NOFA and the HOPE VI Grant Agreement for requirements that may pertain to that specific year's grant awards.

16.12 Contracting with Sub-Grantees

A PHA may decide to use sub-grantees to complete elements of the project including development and CSS.

A. The PHA is responsible for ensuring that sub-grantees are aware of the requirements imposed on them by Federal statutes and regulations as well as any requirements of Grant agreements.

B. The PHA must ensure that sub-grants include any clauses required by Federal statutes and executive orders and their implementing regulations.

C. Sub-grantees are considered to be acting as the PHA. Sub-grantees who procure supplies or services paid for by HOPE VI or other grant funds will be subject to **24 CFR Part 85** if the sub-grantee is a governmental agency, or **24 CFR Part 84** if it is a non-profit sub-grantee.

D. The PHA will monitor compliance by sub-grantees.

16.13 Mandatory Contract Clauses

Contracts with developers and others must contain the applicable requirements of **24 CFR 85.36(i)**, the HOPE VI Grant Agreement, the ACC, and other contract provisions that may be applicable to the HOPE VI program. The mandatory Section 3 contract clause can be found at **24 CFR 135.38,** which applies to all contracts covered by Section 3**.** Forms HUD-5370, HUD-5370-C and 5370-EZ must be used where applicable.

16.14 Fees and Guarantees

A. **Guarantees**. PHAs must not provide completion, operating deficit, or other guarantees to investors from funds received by the PHA under the public housing development program, the Capital Fund program, the Operating Fund, operating receipts of the PHA derived from public housing property (which means property which is owned by the PHA and must be subject to a Declaration of Trust in favor of HUD), or any operating reserve of the PHA funded from the operating Fund or operating receipts, if any, derived from public housing property. The PHA needs to have a non-HUD source to pay guarantees.

B. **Developer Fees**. HUD has developed cost control and safe harbor guidelines for acceptable development fees in HOPE VI and mixed finance projects. HUD reserves the right to review and reject a negotiated fee if it does not meet the cost control guidelines.

C. **Developer Fees to PHAs**. A PHA acting as developer or co-developer of a HOPE VI project may be entitled to a fee, provided the fee is returned to the project. Only in cases where the project or subsequent phases of the project cannot benefit from the reinvested developer fee, may the PHA use the developer fee for other low-income housing purposes. The PHA must disclose the fee and its use in the Program Income Certification described in Exhibit H of the Mixed-Finance ACC Amendment.

CHAPTER 17. UTILITY PURCHASING, ENERGY CONSERVATION LOANS, AND ENERGY PERFORMANCE CONTRACTING

17.1 General

This chapter discusses the contracting methods associated with energy conservation loans (subsidy add-on), energy performance contracting and utility purchasing. For additional information related to energy conservation opportunities, project planning, monitoring, performance contracting models, financing and other related energy subjects, refer to the resources section cited in 17.6.

17.2 Energy Conservation Loans (Operating Subsidy Add-On)

Under this financing incentive, a PHA obtains a loan to finance energy improvements. The PHA receives a subsidy add-on under 24 CFR 990.185 to cover the cost of amortizing the improvement loan during the term of the contract. The amount of the add-on must not exceed the cost savings generated each year by the energy conservation measures (ECMs) installed under the contract.

Before initiating an energy conservation loan, a PHA must procure a Comprehensive Energy Analysis (CEA) from a qualified vendor and must have the CEA, along with the list of identified improvements, reviewed and approved by HUD. HUD must also review and approve the loan document. The improvements are procured in the same manner as any other purchases addressed in this handbook.

17.3 Energy Performance Contracting (Frozen Rolling Base Incentive)

A. General. Energy performance contracting allows the PHA to qualify for the incentive to freeze the utility rolling base (see 24 CFR 990.185). A PHA's utility expense level (UEL) will be calculated at the pre-retrofit consumption level. The PHA keeps 100 percent of the savings that result from the decreased consumption due to the energy efficiency measures installed, of which 75 percent must be used to pay off the debt and related project costs.

B. Third-Party Energy Performance Contracts (EPCs). With a third-party EPC, the energy performance contractor must be procured in a manner that provides full and open competition consistent with the instructions in this handbook and 24 CFR 85.36. Typically, this means procurement by competitive proposals.

For Third-Party EPCs, HUD approval is required of:

A. The CEA, which the PHA must procure from a qualified vendor
B. The RFP for the energy contractor, prior to advertisement. Approval will be based upon a determination by HUD that payments under the contract can be funded from the reasonably anticipated energy cost savings.
C. The final performance contract negotiated between the PHA and the energy performance contractor.

C. Self-Managed Energy Performance Contracts. PHAs may, at their discretion, seek to self-manage an energy performance contract. The energy improvements are procured in the same manner as any other purchases addressed in this handbook.

PHAs must be designated Standard Performers or High Performers under the Public Housing Assessment System (PHAS) to complete energy projects without an energy services company. HUD will consider requests on a case-by-case basis from PHAs designated as Troubled under PHAS when an authority is able to show it has the appropriate capabilities to successfully complete the project.

For self-managed EPCs, HUD approval must be secured for the following:

1. In lieu of the RFP commonly used with third-party EPCs, the PHA must provide a detailed energy project plan. The project plan will include an assessment of its facility needs; PHA statement of capabilities and internal project processes; an assessment of the agency's energy opportunities, including capital costs and estimated savings; financial cash flow projections; a project commissioning and preventative maintenance plan; and a measurement & verification plan. PHAs must have on their team a licensed (bonded) professional engineer familiar with performance contracting, commissioning, measurement & verification, state and local codes.
2. An initial plan must be submitted to the HUD field office for review and approval to proceed. After a detailed engineering study is completed, the PHA will submit its detailed project plan for field office review and approval. The detailed study will be based on actual quotes for construction, finance, maintenance, and other costs. The PHA must also identify how it will complete design and construction and integrate the energy project with its ongoing modernization program. Included in its energy project plan the PHA will include a detailed description of its construction management practices and associated financial controls. The description should include protocols for design, construction inspections, construction draws, and requisition approvals.

17.4 Utility Purchasing

Deregulation and restructuring in the utility industry allows utility providers to operate like other open markets, with greater competition and choices. These changes offer utility consumers such as PHAs an opportunity to achieve lower utility costs by purchasing energy directly from the utility providers at lower rates, based on a direct rate reduction or from new consumer rate strategies. Where deregulation has occurred and there are multiple providers, PHAs must competitively procure utilities in accordance with 24 CFR § 85.36.

Alternately, where deregulation has not occurred (a publicly regulated rate environment where there is one utility provider for gas, electric, fuel, oil and/or water), the PHA is not required to competitively procure utilities. Further, unlike other sole source procurements, the PHA does not need to justify the reasonableness of the price charged or require HUD approval.

17.5 Procurement Regulations Pertaining to Energy Conservation Loans and Energy Performance Contracting

Conceptually, both strategies are nothing more than financing methods that result in energy savings over a period of time. Both operate within the guidelines of all Federal procurement regulations specified elsewhere in this handbook.

A. PHAs must adhere to applicable State and local procurement requirements, as well as the PHA's Procurement Policy. For example, the PHA must include the form HUD-5370, General Conditions of Contracts for Construction, with all construction contracts for more than $100,000; or form HUD-5370-EZ for construction contracts between $2,000 and $100,000;
B. PHAs must treat the energy improvement measures as any capital program and follow requirements for Federally funded construction projects;

C. In capturing the savings, PHAs must conform to the requirements defined in the Operating Fund rule (24 CFR Part 990);
E. With respect to third-party EPCs, negotiating terms and conditions can be a crucial component of the procurement process.

17.6 Resources

Additional information and expertise on energy conservation loans, energy performance contracting, and other energy conservation measures can be found at:

A. Relevant Public Housing Notices and Guidebooks
   1. *Energy Performance Contracting for Public and Indian Housing – A Guide for Participants*, prepared by HUD/DOE (2/92). This guidebook, which outlines the details of preparing, implementing, and managing an energy performance contract is available at HUD User (1-800-245-2691), www.huduser.org or the HUD PIH Energy Conservation Clearinghouse webpage at: http://www.hud.gov/offices/pih/programs/ph/phecc/index.cfm

   2. *Energy Conservation for Housing – A Workbook* prepared by HUD 9/98. This guidebook outlines the details of preparing, implementing, and managing an energy performance contract. The workbook is available from the Public and Indian Housing Information and Resource Center (PIH IRC) at 1-800-955-2232 or the PIH Energy Conservation Clearinghouse webpage at: http://www.hud.gov/offices/pih/programs/ph/phecc/index.cfm

   3. Training Materials for Streamlining Energy Performance Contracting can be obtained at: http://www.hud.gov/offices/pih/programs/ph/phecc/eperformance.cfm

   4. These documents are available from HUD User (1-800-245-2691 or www.huduser.org or Public and Indian Housing energy site http://www.hud.gov/offices/pih/programs/ph/phecc/)

      a. Any successor or related notices, handbooks, or guidebooks.

B. Local HUD. From the beginning of the planning process, view the local HUD Field Office as a partner in the process. Involving the HUD field office early and throughout the project should help to obtain a timely review and approval by HUD. HUD is required to approve key documents in the process and will be able to provide guidance proactively in order to expedite the approval process. The local HUD field office will be able to provide information on other PHAs using performance contracting and sources of technical assistance in the area.
C. If no relevant technical expertise exists within the PHA, the PHA should consider engaging the services of a qualified consultant. These fees can be paid from the savings generated or the capital budget. (Note: Such an individual or firm may not later be included, or compete, in a solicitation for the energy performance contract.)
D. Other Federal and private energy-conservation programs or local utility providers.
E. Other PHAs who have successfully implemented these utility conservation measures. HUD's energy website related to "Success Stories" can be helpful - http://www.hud.gov/offices/pih/programs/ph/phecc/success.cfm.

APPENDIX 1. PROCUREMENT POLICY
FELTON HOUSING AUTHORITY

This Procurement Policy complies with the Annual Contributions Contract (ACC) between Felton Housing Authority (FHA) and the HUD, Federal Regulations at **24 CFR 85.36**, the procurement standards of the Procurement Handbook for PHAs, HUD Handbook 7460.8, Rev 2, and applicable State and Local laws.

GENERAL PROVISIONS

General

The FHA shall: provide for a procurement system of quality and integrity; provide for the fair and equitable treatment of all persons or firms involved in purchasing by the FHA; ensure that supplies and services (including construction) are procured efficiently, effectively, and at the most favorable prices available to the FHA; promote competition in contracting; and assure that FHA purchasing actions are in full compliance with applicable Federal standards, HUD regulations, State, and local laws.

Application

This Procurement Policy applies to all procurement actions of the Authority, regardless of the source of funds, except as noted under "exclusions," below. However, nothing in this Policy shall prevent the FHA from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with the law. When both HUD and non-Federal grant funds are used for a project, the work to be accomplished with the funds should be separately identified prior to procurement so that appropriate requirements can be applied, if necessary. If it is not possible to separate the funds, HUD procurement regulations shall be applied to the total project. If funds and work can be separated and work can be completed by a new contract, then regulations applicable to the source of funding may be followed.

Definition

The term "procurement," as used in this Policy, includes the procuring, purchasing, leasing, or renting of: (1) goods, supplies, equipment, and materials, (2) construction and maintenance; consultant services, (3) Architectural and Engineering (A/E) services, (4) Social Services, and (5) other services.

Exclusions

This policy does not govern administrative fees earned under the Section 8 voucher program, the award of vouchers under the Section 8 program, the execution of landlord Housing Assistance Payments contracts under that program, or non-program income, e.g., fee-for-service revenue under 24 CFR Part 990. These excluded areas are subject to applicable State and local requirements.

Changes in Laws and Regulations

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

Public Access to Procurement Information

Most procurement information that is not proprietary is a matter of public record and shall be available to the public to the extent provided in the _____(State) Freedom of Information Act.

ETHICS IN PUBLIC CONTRACTING

General

The FHA hereby establishes this code of conduct regarding procurement issues and actions and shall implement a system of sanctions for violations. This code of conduct, etc., is consistent with applicable Federal, State, or local law.

Conflicts of Interest

No employee, officer, Board member, or agent of the FHA 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.

Gratuities, Kickbacks, and Use of Confidential Information

No officer, employee, Board member, or agent shall ask for or accept gratuities, favors, or items of more than $25 in value from any contractor, potential contractor, or party to any subcontract, and shall not knowingly use confidential information for actual or anticipated personal gain.

Prohibition Against Contingent Fees

Contractors wanting to do business with the FHA 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.

PROCUREMENT PLANNING

Planning is essential to managing the procurement function properly. Hence, the FHA will periodically review its record of prior purchases, as well as future needs, to: find patterns of procurement actions that could be performed more efficiently or economically; maximize competition and competitive pricing among contracts and decrease the FHA's procurement costs; reduce FHA administrative costs; ensure that supplies and services are obtained without any need for re-procurement, e.g., resolving bid protests; and minimize errors that occur when there is inadequate lead time. Consideration should be given to storage, security, and handling requirements when planning the most appropriate purchasing actions.

PURCHASING METHODS

Petty Cash Purchases

Purchases under $50 may be handled through the use of a petty cash account. Petty Cash Accounts may be established in an amount sufficient to cover small purchases made during a reasonable period, e.g., one month. For all Petty Cash Accounts, the FHA shall ensure that security is maintained and only authorized individuals have access to the account. These accounts should be reconciled and replenished periodically.

Small Purchase Procedures

For any amounts above the Petty Cash ceiling, but not exceeding $100,000, the FHA may use small purchase procedures. Under small purchase procedures, the FHA shall obtain a reasonable number of quotes (preferably three); however, for purchases of less than $2,000, also known as Micro Purchases, only one quote is required provided the quote is considered reasonable. To the greatest extent feasible, and to promote competition, small purchases should be distributed among qualified sources. Quotes may be obtained orally (either in person or by phone), by fax, in writing, or through e-procurement. Award shall be made to the qualified vendor that provides the best value to the FHA. If award is to be made for reasons other than lowest price, documentation shall be provided in the contract file. The FHA shall not break down requirements aggregating more than the small purchase threshold (or the Micro Purchase threshold) into several purchases that are less than the applicable threshold merely to: (1) permit use of the small purchase procedures or (2) avoid any requirements that applies to purchases that exceed the Micro Purchase threshold.

Sealed Bids

Sealed bidding shall be used for all contracts that exceed the small purchase threshold and that are not competitive proposals or non-competitive proposals, as these terms are defined in this document. Under sealed bids, the PHA publicly solicits bids and awards a firm fixed-price contract (lump sum or unit price) to the responsible bidder whose bid, conforming with all the material terms and conditions of the IFB, is the lowest in price. Sealed bidding is the preferred method for procuring construction, supply, and non-complex service contracts that are expected to exceed $100,000.

A. **Conditions for Using Sealed Bids.** FHA shall use the sealed bid method if the following conditions are present: a complete, adequate, and realistic statement of work, specification, or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; the contract can be awarded based on a firm fixed price; and the selection of the successful bidder can be made principally on the lowest price.

B. **Solicitation and Receipt of Bids.** An IFB is issued which includes the specifications and all contractual terms and conditions applicable to the procurement, and a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the solicitation. The IFB must state the time and place for both receiving the bids and the public bid opening. All bids received will be date and time-stamped and stored **unopened** in a secure place until the public bid opening. A bidder may withdraw the bid at any time prior to the bid opening.

C. **Bid Opening and Award**. Bids shall be opened publicly. All bids received shall be recorded on an abstract (tabulation) of bids, and then made available for public inspection. If equal low bids are received from responsible bidders, selection shall be made by drawing lots or other similar random method. The method for doing this shall be stated in the IFB. If only one responsive bid is received from a responsible bidder, award shall **not** be made unless the price can be determined to be reasonable, based on a cost or price analysis.

D. **Mistakes in Bids**. Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the IFB prior to the time set for bid opening. After bid opening, corrections in bids may be permitted only if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made. All decisions to allow correction or withdrawal of a bid shall be supported by a written determination signed by the Contracting Officer. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the FHA or fair competition shall not be permitted.

Competitive Proposals

Unlike sealed bidding, the competitive proposal method permits: consideration of technical factors other than price; discussion with offerors concerning offers submitted; negotiation of contract price or estimated cost and other contract terms and conditions; revision of proposals before the final contractor selection; and the withdrawal of an offer at any time up until the point of award. Award is normally made on the basis of the proposal that represents the best overall value to the PHA, considering price and other factors, e.g., technical expertise, past experience, quality of proposed staffing, etc., set forth in the solicitation and not solely the lowest price.

A. **Conditions for Use**. Where conditions are not appropriate for the use of sealed bidding, competitive proposals may be used. Competitive proposals are the preferred method for procuring professional services that will exceed the small purchase threshold.

B. **Form of Solicitation**. Other than A/E services, competitive proposals shall be solicited through the issuance of a RFP. The RFP shall clearly identify the importance and relative value of each of the evaluation factors as well as any subfactors and price. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established **before** the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals until after award. The FHA may assign price a specific weight in the evaluation criteria or the FHA may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.

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

D. **Negotiations**. Negotiations shall be conducted with all offerors who submit a proposal determined to have a reasonable chance of being selected for award, unless it is determined that negotiations are not needed with any of the offerors. This determination is based on the relative score of the proposals as they are evaluated and rated in accordance with the technical and price factors specified in the RFP. These offerors shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their proposals. No offeror shall be given any information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal. A common deadline shall be established for receipt of proposal revisions based on negotiations. Negotiations are exchanges (in either competitive or sole source environment) between the PHA and offerors that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract or other terms of a proposed contract. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions. Discussions are tailored to each offeror's proposal, and shall be conducted by the contracting officer with each offeror within the competitive range. The primary object of discussions is to maximize the FHA's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. The contracting officer shall indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as cost, price, technical approach, past performance, and terms and conditions) that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposer's potential for award. The scope and extent of discussions are a matter of the contracting officer's judgment. The contracting officer may inform an offeror that its price is considered by the PHA to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible to indicate to all offerors the cost or price that the government's price analysis, market research, and other reviews have identified as reasonable. "Auctioning" (revealing one offeror's price in an attempt to get another offeror to lower their price) is prohibited.

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

F. **A/E Services**. The FHA must contract for A/E services using QBS procedures, utilizing a RFQ. Sealed bidding shall not be used for A/E solicitations. Under QBS procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. QBS procedures **shall not** be used to purchase other types of services, though architectural/engineering firms are potential sources.

Noncompetitive Proposals

A. **Conditions for Use**. Procurement by noncompetitive proposals (sole-source) may be used **only** when the award of a contract is not feasible using small purchase procedures, sealed bids, cooperative purchasing, or competitive proposals, **and** if one of the following applies:

1. The item is available only from a single source, based on a good faith review of available sources;

2. An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the FHA, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any of the other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary simply to meet the emergency;

3. HUD authorizes the use of noncompetitive proposals; or

4. After solicitation of a number of sources, competition is determined inadequate.

B. **Justification**. Each procurement based on noncompetitive proposals shall be supported by a written justification for the selection of this method. The justification shall be approved in writing by the responsible Contracting Officer. Poor planning or lack of planning is not justification for emergency or sole-source procurements. The justification, to be included in the procurement file, should include the following information:

1. Description of the requirement;

2. History of prior purchases and their nature (competitive vs. noncompetitive);

3. The specific exception in **24 CFR 85.36(d)(4)(i)(A)** through **(D)** which applies;

4. Statement as to the unique circumstances that require award by noncompetitive proposals;

5. Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);

6. Statement as to efforts that will be taken in the future to promote competition for the requirement;

7. Signature by the Contracting Officer's supervisor (or someone above the level of the Contracting Officer); and

8. Price Reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing an analysis, as described in this Policy.

Cooperative Purchasing/Intergovernmental Agreements

The FHA may enter into State and/or local cooperative or intergovernmental agreements to purchase or use common supplies, equipment, or services. The decision to use an interagency agreement instead of conducting a direct procurement shall be based on economy and efficiency. If used, the interagency agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. The FHA may use Federal or State excess and surplus property instead of purchasing new equipment and property if feasible and if it will result in a reduction of project costs. The goods and services obtained under a cooperative purchasing agreement must have been procured in accordance with **24 CFR 85.36**.

ICE

For all purchases above the Micro Purchase threshold, the FHA shall prepare an ICE prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item to be purchased.

COST AND PRICE ANALYSIS

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

Petty Cash and Micro Purchases

No formal cost or price analysis is required. Rather, the execution of a contract by the Contracting Officer (through a Purchase Order or other means) shall serve as the Contracting Officer's determination that the price obtained is reasonable, which may be based on the Contracting Officer's prior experience or other factors.

Small Purchases

A comparison with other offers shall generally be sufficient determination of the reasonableness of price and no further analysis is required. If a reasonable number of quotes is not obtained to establish reasonableness through price competition, the Contracting Officer shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the Contracting Officer's personal knowledge at the time of purchase, comparison to the ICE, or any other reasonable basis.

Sealed Bids

The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, and when the bid received is substantially more than the ICE, and where the FHA cannot reasonably determine price reasonableness, the FHA must conduct a cost analysis, consistent with federal guidelines, to ensure that the price paid is reasonable.

Competitive Proposals

The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, the FHA must compare the price with the ICE. For competitive proposals where prices cannot be easily compared among offerors, where there is not adequate competition, or where the price is substantially greater than the ICE, the FHA must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable.

Contract Modifications

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

SOLICITATION AND ADVERTISING

Method of Solicitation

A. **Petty Cash and Micro Purchases**. The FHA may contact only one source if the price is considered reasonable.

B. **Small Purchases**. Quotes may be solicited orally, through fax, or by any other reasonable method.

C. **Sealed Bids and Competitive Proposals**. Solicitation must be done publicly. The FHA must use one or more following solicitation methods, provided that the method employed provides for meaningful competition.

   1. Advertising in newspapers or other print mediums of local or general circulations.

   2. Advertising in various trade journals or publications (for construction).

   3. E-Procurement. The FHA may conduct its public procurements through the Internet using e-procurement systems. However, all e-procurements must otherwise be in compliance with **24 CFR 85.36**, State and local requirements, and the Authority's procurement policy.

Time Frame

For purchases of more than $100,000, the public notice should run not less than once each week for two consecutive weeks.

Form

Notices/advertisements should state, at a minimum, the place, date, and time that the bids or proposals are due, the solicitation number, a contact who can provide a copy of, and information about, the solicitation, and a brief description of the needed items(s).

Time Period for Submission of Bids

A minimum of 30 days shall generally be provided for preparation and submission of sealed bids and 15 days for competitive proposals. However, the Executive Director may allow for a shorter period under extraordinary circumstances.

Cancellation of Solicitations

A. An IFB, RFP, or other solicitation may be cancelled before bids/offers are due if:

   1. The supplies, services or construction is no longer required;

   2. The funds are no longer available;

   3. Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best; or

   4. Other similar reasons.

B. A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if:

   1. The supplies or services (including construction) are no longer required;

   2. Ambiguous or otherwise inadequate specifications were part of the solicitation;

   3. All factors of significance to the FHA were not considered;

   4. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;

   5. There is reason to believe that bids or proposals may not have been independently determined in open competition, may have been collusive, or may have been submitted in bad faith; or

   6. For good cause of a similar nature when it is in the best interest of the FHA.

C. The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request.

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

E. If all otherwise acceptable bids received in response to an IFB are at unreasonable prices an analysis should be conducted to see if there is a problem in either the specifications or the FHA's cost estimate. If both are determined adequate and if only one bid is received and the price is unreasonable, the Contracting Officer may cancel the solicitation and either

   1. Re-solicit using an RFP; or

2. Complete the procurement by using the competitive proposal method. The Contracting Officer must determine, in writing, that such action is appropriate, must inform all bidders of the FHA's intent to negotiate, and must give each bidder a reasonable opportunity to negotiate.

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

Credit (or Purchasing) Cards

Credit card usage should follow the rules for all other small purchases. For example, the Contracting Officer may use a credit card for Micro Purchases without obtaining additional quotes provided the price is considered reasonable. However, for amounts above the Micro Purchase level, the Contracting Officer would generally need to have obtained a reasonable number of quotes before purchasing via a credit card.

When using credit cards, the FHA should adopt reasonable safeguards to assure that they are used only for intended purposes (for instance, limiting the types of purchases or the amount of purchases that are permitted with credit cards).

BONDING REQUIREMENTS

The standards under this section apply to construction contracts that exceed $100,000. There are no bonding requirements for small purchases or for competitive proposals. The FHA may require bonds in these latter circumstances when deemed appropriate; however, non-construction contracts should generally not require bid bonds.

A. Bid Bonds. For construction contracts exceeding $100,000, offerors shall be required to submit a bid guarantee from each bidder equivalent to 5% of the bid price.

B. Payment Bonds. For construction contracts exceeding $100,000, the successful bidder shall furnish an assurance of completion. This assurance may be any one of the following four:

1. A performance and payment bond in a penal sum of 100% of the contract price; or
2. Separate performance and payment bonds, each for 50 % or more of the contract price; or
3. A 20 % cash escrow; or
4. A 25 % irrevocable letter of credit.

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

CONTRACTOR QUALIFICATIONS AND DUTIES

Contractor Responsibility

PHAs shall not award any contract until the prospective contractor, i.e., low responsive bidder, or successful offeror, has been determined to be responsible. A responsible bidder/offeror must:

A. Have adequate financial resources to perform the contract, or the ability to obtain them;

B. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all the bidder's/offeror's existing commercial and governmental business commitments;

C. Have a satisfactory performance record;

D. Have a satisfactory record of integrity and business ethics;

E. Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;

F. Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,

G. Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended, debarred or under a HUD-imposed LDP.

If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the official contract file, and the prospective contractor shall be advised of the reasons for the determination.

Suspension and Debarment

Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined to be ineligible by HUD in accordance with HUD regulations (**24 CFR Part 24**) or by other Federal agencies, e.g., Dept of Labor for violation of labor regulations, when necessary to protect housing authorities in their business dealings.

Vendor Lists

All interested businesses shall be given the opportunity to be included on vendor mailing lists. Any lists of persons, firms, or products which are used in the purchase of supplies and services (including construction) shall be kept current and include enough sources to ensure competition.

CONTRACT PRICING ARRANGEMENTS

Contract Types

Any type of contract which is appropriate to the procurement and which will promote the best interests of the FHA may be used, **provided the cost -plus-a-percentage-of-cost and percentage-of-construction-cost methods are not used**. All solicitations and contracts shall include the clauses and provisions necessary to define the rights and responsibilities of both the contractor and FHA.

For all cost reimbursement contracts, FHA 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.

Options

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

A. The option is contained in the solicitation;

B. The option is a unilateral right of the Authority;

C. The contract states a limit on the additional quantities and the overall term of the contract;

D. The options are evaluated as part of the initial competition;

E. The contract states the period within which the options may be exercised;

F. The options may be exercised only at the price specified in or reasonably determinable from the contract; and

G. The options may be exercised only if determined to be more advantageous to FHA than conducting a new procurement.

CONTRACT CLAUSES

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

Additionally, the forms HUD-5369, 5369-A, 5369-B, 5369, 5370, 5370-C, and 51915-A , which contain all HUD-required clauses and certifications for contracts of more than $100,000, as well as any forms/clauses as required by HUD for small purchases, shall be used in all corresponding solicitations and contracts issued by this Authority.

CONTRACT ADMINISTRATION

The FHA shall maintain a system of contract administration designed to ensure that contractors perform in accordance with their contracts. These systems shall provide for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on major projects including construction contracts, and similar matters. For cost-reimbursement contracts, costs are allowable only to the extent that they are consistent with the cost principles in HUD Handbook 2210.18.

SPECIFICATIONS

General

All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying FHA needs. Specifications shall be reviewed prior to issuing any solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. Function or performance specifications are preferred. Detailed product specifications shall be avoided whenever possible. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

Limitation

The following types of specifications shall be avoided:

A. geographic restrictions not mandated or encouraged by applicable Federal law (except for A/Econtracts, 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.

APPEALS AND REMEDIES

General

It is FHA policy to resolve all contractual issues informally and without litigation. Disputes will not be referred to HUD unless all administrative remedies have been exhausted. When appropriate, a mediator may be used to help resolve differences.

Informal Appeals Procedure

The FHA shall adopt an informal bid protest/appeal procedure for contracts of $100,000 or less. Under these procedures, the bidder/contractor may request to meet with the appropriate Contract Officer.

Formal Appeals Procedure

A formal appeals procedure shall be established for solicitations/contracts of more than $100,000.

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

B. **Contractor Claims**. All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer for a written decision. The contractor may request a conference on the claim. The Contracting Officer's decision shall inform the contractor of its appeal rights to the next higher level of authority in FHA. Contractor claims shall be governed by the Changes clause in the form HUD-5370.

ASSISTANCE TO SMALL AND OTHER BUSINESSES

Required Efforts

Consistent with Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, all feasible efforts shall be made to ensure that small and minority-owned businesses, women's business enterprises, and other individuals or firms located in or owned in substantial part by persons residing in the area of the FHA project are used when possible. Such efforts shall include, but shall not be limited to:

A. Including such firms, when qualified, on solicitation mailing lists;

B. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;

C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;

D. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;

E. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;

F. Including in contracts, to the greatest extent feasible, a clause requiring contractors, to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with the project to business concerns which provide opportunities to low-income residents, as described in **24 CFR Part 135** (so-called Section 3 businesses); and

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

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

Definitions

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

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

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

4. A **"Section 3 business concern"** is as defined under **24 CFR Part 135**.

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

BOARD APPROVAL OF PROCUREMENT ACTIONS

Other than approval of this Procurement Policy, approval by the Board of Commissioners is not required for any procurement action, as permitted under State and local law. Rather, it is the responsibility of the Executive Director to make sure that all procurement actions are conducted in accordance with the policies contained herein.

DELEGATION OF CONTRACTING AUTHORITY

While the Executive Director is responsible for ensuring that the FHA's procurements comply with this Policy, the Executive Director may delegate all procurement authority as is necessary and appropriate to conduct the business of the Agency.

Further, and in accordance with this delegation of authority, the Executive Director shall, where necessary, establish operational procedures (such as a procurement manual or standard operating procedures) to implement this Policy. The Executive Director shall also establish a system of sanctions for violations of the ethical standards described in Section III below, consistent with Federal, State, or local law.

DOCUMENTATION

The FHA 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 handbook);

E. A copy of the contract documents awarded or issued and signed by the Contracting Officer;

F. Basis for contract modifications; and

G. Related contract administration actions.

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

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

DISPOSITION OF SURPLUS PROPERTY

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

FUNDING AVAILABILITY

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

SELF-CERTIFICATION

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

APPENDIX 2. PROCUREMENT FILE CHECKLIST

The following table lists the types of documentation that generally should be included in the contract file for each procurement. Note, however, that the circumstances of each procurement will dictate the documentation required. For example, an RFP for Property Management Services would not necessarily require a separate cost analysis if there were an ample number of price proposals and the costs (management fees) were within the range established in the ICE. Similarly, for small purchases, the issuance of a purchase order will likely serve as a Notice to Proceed; however, for some very technical services acquired under small purchases, the PHA might want to hold a post-award meeting and then issue a Notice to Proceed. In all, the contract file should contain all significant documentation relating to the specific procurement. Any shaded item would generally not apply for that type of purchase.

Item	Micro Purchase	Small Purchase	Sealed Bid	Competitive Proposals	Non-Competitive Proposals
Pre-Solicitation					
Independent Cost Estimate					
Individual Procurement Plan					
Rationale for Contract Method (if not apparent)					
Rationale for Contract Type (if not apparent)					
Evaluation Plan					
Solicitation					
Sources (mailing lists, advertisements, etc.)					
Solicitation Notice and Amendments					
IFB/RFP					
Notes of Pre-Bid/Proposal Conferences					
IFB/RFP Correspondences					
Record of Bids/RFPs Requested					
Quotes, Bids or Proposals Received					
Justification for Other than Full/Open Competition					
Evaluation					
Bid Opening					
Evaluation Panel Disclosures and Ethics Statement					
Technical Evaluation					
Price Evaluation					
Competitive Range Determinations					
Evaluation Report					
Memo of Negotiation and Selection Decision					
Pre-award Survey and Responsibility Determinations					
Award					

Contract and Award Documents					
Notification to Unsuccessful Bidders					
Appeals (all correspondence)					
Post-Award and Contract Administration					
Insurance and Bonding Requirements					
Records of Post-Award Conferences					
Notice to Proceed					
Contract Modifications and Supporting Documentation					
Receiving Reports					
General Contract Correspondence					
Payment Record/Documentation					
Inspections and Field Reports					
Completion Certificate					

APPENDIX 3. SAMPLE ADVERTISEMENT

The **Felton Housing Authority (FHA)** invites sealed bids from contractors for the snow removal at **Vandross Manor, located at 56 Music Lane, Felton, USA, 56789**. The work consists of the replacing toilets at all 150 units in accordance with the documents prepared by Maurice Plumbing.

Bids are subject to State Law.

Bids will be received until **2:00 P.M**. on **MM/DD/YY** and publicly opened, forthwith at Felton Housing Authority, Property Management Division, 727 Robin Place, Felton, USA 56789. General bids shall be accompanied by a bid deposit that is not less than five (5%) of the greatest possible bid amount (considering all alternates), and made payable to the Felton Housing Authority.

A bid package will be available for pick-up from _____ at 727 Robin Place after **2:00 p.m., MM/DD/YY**. Cost of plans and specifications is **$25.00**. Company checks are required.

THE JOB SITE AND/OR EXISTING BUILDING WILL BE AVAILABLE FOR A WALK THROUGH ON MM/DD/YY AT 10:00 A.M. AT VANDROSS MANOR, 56 MUSIC LANE, FELTON, USA. PROSPECTIVE BIDDERS SHOULD MEET AT THE ABOVE-MENTIONED ADDRESS.

APPENDIX 4. SAMPLE IFB COVER SHEET

IFB Number: _____

Date of Issuance: _____

Sealed bids will be accepted at the Felton Housing Authority (FHA), Property Management Division, until the date and time noted below. Bids will be publicly opened and recorded immediately thereafter in the Conference Room, 727 Robin Place, Felton, USA, 56789.

Snow Removal at Vandross Manor

Pre-Bid Meeting will be held:_____(date)_____ (time)

Bid Opening: _____(date)_____ (time)

Property Management Division

727 Robin Place

Felton, USA 56789

Point of Contact: Mary Jane (987) 654-3210

Table of Contents:

A. Bid/Price Form

B. Specifications/Scope of Work

C. Instructions to Bidders

D. Required Certifications

E. General Contract

F. Other Attachments

APPENDIX 5. SAMPLE SOLICITATION AMENDMENT

FELTON HOUSING AUTHORITY
PROPERTY MANAGEMENT DIVISION
727 ROBIN PLACE
FELTON, USA 56789

1. Amendment number:
2. Issued by:
3. Amendment of solicitation number: _____ dated: _____
4. The hour and date specified for receipt of bids/proposals is _____is not _____ extended to the following new hour and date:
5. The above-numbered solicitation is amended as set forth below. Bidders/offerors must acknowledge receipt of this amendment prior to the hour and date specified for receipt of bids/proposals, by signing this form below or by completing the acknowledgement on the form titled "Solicitation, Bid/Proposal and Award."
6. Description of amendment:

   {Cite specific sections and/or pages of the solicitation that are being amended.}

   Except as provided herein, all terms and conditions of the solicitation remain unchanged and in full force and effect.
7. Name and title of signer:

Signature and date:

APPENDIX 6. SAMPLE CONTRACT AWARD

FELTON HOUSING AUTHORITY
P ROPERTY MANAGEMENT DIVISION
727 ROBIN PLACE
FELTON, USA 56789

1. Contract Number: _____ 2. Effective Date: _____

3. Solicitation Number/ Project Title: _____

4. Name & Address of Contractor: _____

5. Contract Amount: $ _____

6. Accounting Code: _____

7. Table of Contents:

[X]	SECTION	Description	[Pages]	[X]	SECTION	Description	[Pages]
	A	CONTRACT AWARD FORM	1		F	DELIVERIES OR PERFORMANCE	
	B	SUPPLY/SERVICE & PRICES			G	CONTRACT ADMINISTRATION DATA	
	C	STATEMENT OF WORK/SPECS			H	SPECIAL CONTRACT REQUIREMENTS	
	D	PACKAGING & MARKING			I	CONTRACT CLAUSES	
	E	INSPECTION & ACCEPTANCE			J	LIST OF ATTACHMENTS	

8. **Award**: Your bid/offer on Solicitation Number _____including additions or changes made by you, which additions or changes are set forth in full within the sections listed above, is hereby accepted as to the items listed in Section B and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the PHA's solicitation, (b) your bid/offer, and (c) this award document/contract. No further contract document is necessary.

9. **Name of Contracting Officer: _____**

   Signature of Contracting Officer: _____

   Date Signed: _____

10. **Name/Title of Authorized Signer/Contract Representative:**

    _____

    Signature of Contracting Representative: _____

    Date Signed: _____

APPENDIX 7. SAMPLE NOTICE TO UNSUCCESSFUL BIDDERS

(Letterhead)

Re: IFB#_____

1. Receipt of your bid is acknowledged in response to our invitation for bid referenced above.
2. The contract was awarded after competition by sealed bidding to the lowest responsive and responsible bidder. The total amount of the awarded contract was $_____. The award was made to:

(Insert Bidder Name)

3. Enclosed is the bid bond your company submitted for the above-referenced solicitation.
4. The Felton Housing Authority appreciates your time and effort in preparing and submitting your bid. We hope that your firm will participate in future solicitations.

_____ _____

Name
Contracting Officer Date

APPENDIX 8. SAMPLE PROCEDURES FOR EVALUATION COMMITTEES (FOR AMOUNTS ABOVE THE FEDERAL SMALL PURCHASE THRESHOLD)

INTRODUCTION

This document establishes the procedures for the evaluation review process and shall apply to the evaluation of all competitive proposals. The evaluation process must be impartial, consistent and fair.

Establishment of an Evaluation Panel

A. A committee will be appointed by the Contracting Officer to evaluate technical proposals in accordance with a written evaluation plan. The Contracting Officer may serve as a panel member.

B. A minimum of three persons (or a larger group having an odd number of designated voting members) must be selected.

C. A designated chairperson shall be responsible for the deliberations of the committee and other duties as outlined below. The Contracting Officer may serve as Chairperson.

D. Panel members who have a conflict of interest or relationship, financial or otherwise, or that may be construed as a conflict of interest, must disclose the existence of the conflict and, if necessary, excuse themselves from the panel.

Establishment of a Written Plan

Prior to the issuance of the RFP, a written plan for evaluating technical and cost proposals should be established. However, where practical, the evaluation criteria set forth in the RFP can serve as the written plan for the evaluation.

The evaluation criteria as set forth in the RFP shall be the basis for all evaluations. Factors not specified in the RFP shall not be considered.

Conduct of Evaluation

Prior to a formal meeting to discuss the proposals and evaluations, the Contracting Officer shall provide each evaluator with a copy of each qualified proposal, a rating sheet and a nondisclosure certificate, which must be executed by the panel member and returned to the Chairperson. The rating sheet will list each evaluation criterion and the weights assigned to it, as reflected in the RFP. The rating sheets should require the evaluator to assign both an adjectival rating for each evaluation criterion and a narrative justification to support the ratings given.

The evaluation committee will then meet to discuss the proposals. Initially the proposals should be compared on an individual basis, separately, against the requirements stated in the RFP, not analyzed in comparison with each other. During the evaluation, the committee members should only evaluate the content of the proposals; personal knowledge that is not based on the proposer’s written submission, except for relevant past performance information, should not be part of the initial technical evaluation.

The evaluation committee members will perform the following functions: 1) review all of the proposals using as the standard the evaluation criteria as set forth in the RFP; 2) meet to discuss the evaluations, the ratings of each evaluator and the reasons for such ratings; and 3) complete the ratings sheet including both an adjectival and narrative justifications for each proposal submitted.

The chairperson is responsible for collecting the individual rating sheets from each committee member, preparing a summary rating sheet which reflects an overall adjectival rating for each rating criterion, and preparing a formal written report to the Contracting Officer regarding the evaluation committee meeting and discussions (such as the minutes from the evaluation committee meeting). This written report shall rank the proposers and shall describe how the scores were determined. The chairperson shall then forward the individual rating sheets, the summary rating sheet and the written narrative report to the Contracting Officer.

Negotiations

If necessary, negotiations will be conducted with all proposers in the competitive range. The extent of involvement of committee members in these negotiations will be determined by the Contracting Officer. These negotiations will be conducted in accordance with applicable agency policies/procedures.

Disclosure of Information

The evaluators shall not disclose any information included in any of the proposals (such as the names and number of proposers or rating scores) to anyone during the solicitation and evaluation period. Proposers submit proposals in confidence and expect their proposals and proprietary information contained therein to be protected from disclosure to other proposers or individuals. At the appropriate time, the Contracting Officer and/or his designee shall discuss information regarding the solicitation and award.

APPENDIX 9. CERTIFICATION OF NONDISCLOSURE (FOR USE IN COMPETITIVE PROPOSALS METHOD OF PROCUREMENT)

As a condition of serving as an evaluator of offers under _____ *[insert solicitation number or other identification, e.g., task order number]*, I hereby certify that I will:

(1) Use the information1 provided to me for the intended evaluation purposes only and will not disclose this information to any individual outside of the evaluation panel, including my supervisor or manager, without the express authorization of the evaluation panel chairperson or the Contracting Officer;

(2) Not solicit or accept any information other than that provided to me by the evaluation panel chairperson or the Contracting Officer;

(3) Report to the evaluation panel chairperson or the Contracting Officer any attempt by other parties to obtain from or provide to me any information described in this certification;

(4) Honor any authorized restrictive legends placed on the information by prospective contractors or subcontractors or by the PHA and apply them to any reproductions or abstracts I may make or order to be made; and,

(5) Return all copies of the information whether originally provided to me by the HA or made or ordered by me in the course of my evaluation, and any abstract thereof, to the evaluation panel chairperson.

I understand that my unauthorized release of information may result in the termination of my participation in this procurement and/or administrative, civil and criminal penalties. I also understand that this certification will be made part of the source selection record and the official contract file and does not relieve me of the responsibility for any other disclosure or certification required by law, regulation or other directive.

_____

Typed or Printed Name

_____

Signature

_____

Date

1 Information includes but is not limited to the acquisition strategy, acquisition timeline, source selection criteria, evaluation plan, identity and number of offers, contents of offers, evaluation results and other documentation resulting from the evaluation process.

APPENDIX 10. SAMPLE CHECKLIST FOR

DETERMINATION OF CONTRACTOR RESPONSIBILITY

Public Housing Agency Name: _____
_____

Solicitation Number: _____
_____

Contractor Name and Address: _____
_____

Circle all applicable statements:

1. A review of the GSA and HUD websites data dated _____ has been conducted and the contractor does/ does not appear as suspended, debarred or operating under a LDP.

2. The Contractor has/ has not performed satisfactorily on other contract(s) awarded by this PHA.

3. A survey of other agencies and companies doing business with the contractor was performed. Adverse/ no adverse information has been received that would bring the contractor's present responsibility and technical capability into question. List the agencies/companies contacted, dated contacted and person providing information.

4. A review of the Contractor's financial and technical resources indicates/ does not indicate that it is capable of performing the contract. List documentation reviewed.

5. State/local government agencies were contacted, and the contractor does/ does not have a record of any outstanding code violations, improper business practices, or similar history of non-compliance with public policy. List agencies contacted.

6. Other pertinent information received does/ does not affect the Contractor's responsibility. List parties contacted and results of contact (e.g., Better Business Bureau, Business Licenses, Dunn and Bradstreet, other credit agencies).

In accordance with **24 CFR 85.36 (b)(8)**, the contractor is considered to be responsible/ non-responsible and possesses/ does not possess the ability to successfully perform under the terms and conditions of this contract.

_____	_____	_____
Name Contracting Officer	Signature	Date

APPENDIX 11. SAMPLE LEGAL SERVICES ENGAGEMENT LETTER

The United States Department of HUD urges inclusion of the following provisions into all legal services contracts executed and/or administered by PHAs, unless no federally provided funds will be used to administer the contract.

ADDENDUM TO ENGAGEMENT AGREEMENT

1. The [name of PHA] and [name of legal service individual or firm] Legal Service Personnel (LSP) engaged to provide professional legal services to the PHA in connection with [briefly and precisely describe the nature, scope and limits of the legal services to be provided by the LSP] agree that the provisions of this Addendum to the Engagement Agreement are hereby incorporated into PHA and LSP's engagement agreement as if they had been set forth at length therein.

2. During the pendency of the legal services engagement, LSP shall not, without HUD approval, represent any officer or employee of PHA, in her/his individual capacity, in connection with potential civil liability or criminal conduct issues related to PHA operations.

3. LSP has an obligation not to, and shall not, interfere with, disrupt, or inappropriately delay or hinder any authorized monitoring, review, audit, or investigative activity of HUD (including the Office of Inspector General), the General Accounting Office (GAO), or the officers and employees of HUD and GAO. Any and all representation by LSP cannot be inconsistent with the foregoing obligation. Specifically, LSP shall not deny access to HUD, GAO, or the officers and employees of HUD and GAO, to PHA records in response to document demands by HUD, GAO, or the officers and employees of HUD and GAO, notwithstanding possible discovery privileges that would otherwise be available to PHA. HUD requires PHAs to provide HUD, GAO, or the officers and agents of HUD and GAO, with "full and free" access to all their books, documents, papers and records. See **24 CFR 85.42(e)(1)**.

4. PHA and LSP shall make available for inspection and copying, by HUD (including the Office of Inspector General), GAO, and the officers and employees of HUD and GAO, all invoices, detailed billing statements, and evidence of payment thereof relating to LSP's engagement. Such records constitute "PHA records" and are subject to section 3, above.

5. If HUD or PHA determines that LSP is violating any provision of this Addendum to the Engagement Agreement, it shall timely notify LSP of such violation. LSP will have 48 hours following its receipt of the notice of violation to cease and desist from further violation of the addendum. If LSP fails to adequately cure the noticed violation within 48 hours: (A) HUD, in its discretion, may demand that PHA terminate the professional legal services engagement for breach, or, henceforth, satisfy all costs associated with the engagement with non-Federal funds; and/or (B) PHA, in its discretion, may terminate the professional legal services engagement for breach. Additionally, HUD may sanction LSP pursuant to **24 CFR** Part **24**.

6. Should any part, term, or provision of this Addendum to the Engagement Agreement be declared or determined by any court of competent jurisdiction to be illegal or invalid, the validity of the remaining parts, terms, and provisions shall not be affected.

_____

Date: [Enter date]

_____ _____

[Enter name of PHA Exec. Dir.] [Enter name of LSP key partner]

APPENDIX 12. GUIDELINES FOR CONDUCTING COST ANALYSIS

A cost or price analysis must be performed in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation. An independent estimate must be made before receiving bids or proposals.

- When evaluating competitive proposals;
- When there is a sole source (or non-competitive proposal);
- When after solitciting bids, only one bid is received, the PHA does not have sufficient data on costs to establish price reasonableness (such as prior purchases of similar nature), and the PHA is considering making an award to the sole bidder;
- When negotiating modifications to contracts that impact the price or estimated cost;
- When terminating a contract and the contractor is entitled to payment of reasonable costs incurred as a result of terminiation; or
- When awarding a cost-reimbursement contract.

The following lists the basic steps in conducting a cost analysis (please refer to chapter 10 for more when a cost analysis is required):

A. Verify cost and price information, including:

1. The necessity for, and reasonableness of, the proposed cost;
2. Technical evaluation or appraisal of the proposed direct cost elements;
3. Application of audited or pre-negotiated indirect cost rates, direct labor rates, etc.;

B. Evaluate the effect of the offeror/contractor's current practices on future costs;

C. Compare costs proposed by the offeror/contractor with the following:

1. Actual costs previously incurred by the same firm;
2. Previous cost estimates from the same firm or other firms for the same or similar items;
3. The methodology to be used to perform the work (are the costs consistent with the technical approach being proposed?);
4. The independent cost estimate (ICE).

D. Verify that the offeror/contractor's cost proposal complies with the appropriate cost principles;

E. Verify that costs are allowable, allocable, and reasonable.

The major categories of costs are:

A. Direct Costs, which include:

1. Direct Labor (personnel)

2. Equipment
3. Supplies
4. Travel and Per Diem
5. Subcontractors
6. Other Direct Costs

Cost Proposal	Cost Principle
For-Profit or commercial organization	FAR Part 31
State or local governments	OMB Circular A-87
Private, non-profit organizations	OMB Circular A-122
Educational institutions	OMB Circular A-21

B. Indirect Costs, which includes:

1. Overhead
2. General and Administrative Expenses
3. Profit (or Fee)

In the process of analyzing costs, profit should be analyzed separately. In analyzing profit, consideration should be given to:

A. Complexity of the work to be performed;

B. Contractor's risk in performing the contract;

C. Contractor's investment in the contracted effort;

D. Amount of subcontracting;

E. Contractor's record of past performance; and

F. Industry profit rates in the general area for similar work.

Remember: The objective is to establish overall cost reasonableness and not individual components.

APPENDIX 13. SAMPLE NOTICE TO PROCEED

PHA NAME: _____

DATE: _____

To: Contractor name and address

Re: Contract Number

Project name/description

A. NOTICE TO PROCEED

Pursuant to the terms of the above contract, you are hereby notified to commence work at the start of business on (**date**). The time for completion, including the starting day, as established by the contract, is (**date**).

It is the responsibility of the contractor to meet the schedule as set forth and in accordance with the terms and conditions of the contract. Failure to comply with the schedule will result in the enforcement of the liquidated damages stated in the contract.

Please note carefully and fulfill the requirements of the contract regarding the submittal and approval of Workmen's Compensation and Manufacturers' and Contractors' Public Liability Insurance.

The contractor shall also contact the PHA in writing within three days prior to mobilization on the project to enable the PHA to coordinate this work with others.

The contractor shall within ten days after receipt of this notice send to the PHA copies of all required permits for work to be performed under this contract. Failure to comply with these instructions shall constitute a breach of contract.

Your cooperation on this construction to its conclusion is of the utmost importance to the PHA.

Sincerely,

Contracting Officer

cc: Contract File

Other PHA Files

APPENDIX 14. SAMPLE CONTRACT MODIFICATION

1. Modification Number: _____

2. Effective Date: _____

3. Contract Number: _____ Dated: _____

4. This Modification Modifies The Contract As Described Below:

This Change Order Is Issued Pursuant To:

(Cite Contract Clause) _____

The Contract Is Modified To Reflect The Following Administrative Changes (E.G., Changes In Payment Office) _____

_____

This Supplemental Agreement Is Entered Into Pursuant

To:

_____

(Cite Contract Clause Or Mutual Agreement Of The Parties)

Other (Specify Type Of Modification And Authority):

5. The contractor ___[is] or ___[is not] required to sign this document and return ____ copies to the Contracting Officer.

6. Description Of Modification: (Include Section, Clause, Page Number, And Subject Matter)

_____

Except As Provided Herein, All Terms And Conditions Of The Contract Remain Unchanged And In Full Force And Effect.

7. Name And Title Of Signer: _____

Date: _____

8. Name And Title Of Contracting Officer: _____

Date: _____

APPENDIX 15. INTERGOVERNMENTAL AGREEMENT FOR SUPPLEMENTAL COMMUNITY POLICING SERVICES

A. General

This Agreement, between the Felton Housing Authority (FHA) and the Felton Police Department, is for the purpose of providing supplemental community policing services at Turner Towers, a 150-unit family property owned and managed by the FHA. This Agreement is made pursuant to the authority in **24 CFR 85.36** [and any other applicable law or regulation].

B. Services

In consideration of the mutual promises contained in this Agreement, the parties agree as follows:

1. This agreement does not affect the normal, baseline services provided to the FHA through its Cooperation Agreement with the City of Felton .
2. This community policing program will consist of the assignment of (the equivalent of) one full-time police officer to Turner Towers.
3. To the extent practical, the hours of the community policing program will be from 11:00 a.m. to 7:00 p.m., Monday-Friday. However, the days and times may change based on the needs of the property, as authorized by the Housing Manager.
4. To the extent possible, and to allow for continuity, the GPD will try to maintain regularity in the personnel assigned to this program.
5. The primary emphasis of the program will be on crime prevention and youth intervention.

C. Compensation

For the services rendered, the FHA will compensate the GFD an amount equal to $49,400 annually. This amount covers all costs associated with the assignment of the equivalent of one full-time officer. It includes, for example, the cost of the officer's vehicle.

D. Invoicing and Payment

The GPD shall invoice the FHA monthly. The invoice should include a listing of the hours worked, by personnel, and along with a summary of monthly activities. Invoices should be sent to:

Housing Manager
Turner Towers
999 Taylor Place
Felton, USA 56789

The FHA will process invoices within two weeks of receipt.

E. Term

The parties may bilaterally modify this Agreement in writing at anytime.

This agreement shall be in effect for one year, from _____ (date) until _____ (date).

Either party may withdraw from this Agreement at any time upon written notice to the other party with 30 days notice.

IN WITNESS WHEREOF, the parties to this Memorandum have caused their names to be affixed hereto by their proper officers this _____day of _____ 20____.

Felton Housing Authority

By_____

City of Felton Police Department

Attest: _____ By:_____

APPENDIX 16. DISADVANTAGED BUSINESS ENTERPRISE RESOURCE LIST

- **Small Business Development Centers (SBDC)**

  SBDC provide businesses with management, marketing and financial counseling. The centers assist in the development of business and marketing plans, improving business ownership skills, financial analysis of businesses, accessing specialized services including export and government marketing and other business management needs.

- **Women's Business Centers (WBC)**

  Each women's business center provides assistance and/or training in finance, management, marketing, procurement and the internet, as well as addressing specialized topics such as home-based businesses corporate executive downsizing and welfare-to-work. All provide individual business counseling and access to the SBA's programs and services; a number of centers are also intermediaries for the SBA's MicroLoan and Loan Prequalification programs. Each WBC tailors its programs to the needs of its constituency; many offer programs and counseling in two or more languages.

- **Minority Business Development Centers (MBDC)**

  The MBDC's provide business development services to aid in the creation, expansion and preservation of minority-owned businesses. It is MBDC's largest client services program and is structured to cover areas that contain approximately 80% of the country's minorities.

- **Native American Business Development Centers**

  The Minority Business Development Agency established the Native American Program (NAP) to address the special problems of the Native American firms and individuals interested in entering, maintaining, or expanding their efforts in the competitive marketplace.

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

- To locate local SBA District/Field offices, SBDC and other resources, visit SBA's website at: www.SBA.gov/regions/states.html

- To locate local MBDA regional offices, MBDCs and other resources, visit MBDA's website at: www.MBDA.gov

- The SBA, DOD, the Office of Management & Budget and GSA created an integrated database of small businesses called Central Contractor Registration (CCR). CCR can provide you with listings of small businesses that offer the products and services that you procure. Visit www.ccr.gov

- To facilitate searches for small businesses in particular industries, refer to the North American Industry Classification System (NAICS). Visit the website at: http://naics.com

- To assist you in advertising your contracting opportunities, include your upcoming contracting requirements in MBDA's "Opportunity Database" called Phoenix. Phoenix matches MBE's with contracts and other business opportunities via e-mail at: www.MBDA.gov

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