

**COMMONWEALTH OF PUERTO RICO  
DEPARTMENT OF HOUSING  
PUERTO RICO PUBLIC HOUSING ADMINISTRATION**

**PUERTO RICO PUBLIC HOUSING  
ADMINISTRATION  
POLICY AND PROCUREMENT MANUAL**

# PUERTO RICO PUBLIC HOUSING ADMINISTRATION POLICY AND PROCUREMENT MANUAL

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# **PUERTO RICO PUBLIC HOUSING ADMINISTRATION POLICY AND PROCUREMENT MANUAL**

## **ARTICLE I GENERAL PROVISIONS**

### **Section 1 Title**

This legal body shall be known and cited as the *“Puerto Rico Public Housing Administration Policy and Procurement Manual”*.

### **Section 2 Legal Basis**

This Manual is adopted pursuant to the authority granted to the Puerto Rico Public Housing Administration (PRPHA) by Law Number 66, approved in August 17<sup>th</sup>, 1989, as amended, known as “The Organic Law of the Puerto Rico Public Housing Administration” and the authority delegated to the PRPHA in the Administrative Order No. HD 00.19, issued by the Secretary of Housing of the Government of Puerto Rico on March 13, 2000, pursuant to Law Number 97, approved in June 10<sup>th</sup>, 1972, known as the “Department’s Organic Act”, and in accordance with (i) Law Number 170, approved in August 12<sup>th</sup>, 1988, as amended, known as the “Puerto Rico Uniform Administrative Procedure Act (PRUAPA)”, (ii) Part 200 of Title 2 of the Code of Federal Regulations (“2 C.F.R. part 200”), as in effect on the date hereof and as the same may be hereinafter amended, (iii) the

Annual Contributions Contract (“ACC”) between the Department of Housing and Urban Development of the United States of America (“HUD”), the Department of Housing of Puerto Rico (“Department”) and the PRPHA, and (iv) the provisions of the HUD Procurement Handbook 7460.8 REV-2, known as the “Procurement Handbook for Public Housing Agencies”, issued in February 2007, as in force at the date of this document and as the same may be amended in the future. Regulation No. 7854 of May 21, 2010, on the Department and its Components’ Purchases of Goods and Non Personal Services, Regulation No. 6106 of February 25, 2000, on the Department’s Bid Board (“Regulation No. 6106”), as amended, and Regulation No. 6793 of March 29<sup>st</sup>, 2004, on the Department’s Bid Revision Board (“Regulation No. 6793”), as amended, will complement this Manual. However, in the event of any conflict between the provisions of these regulations (Federal and local procurement regulations) and this Manual, the provisions of this Manual, PRPHA Policy and Procurement Manual, or the most stringent provision must prevail.

### **Section 3      Purpose**

The purpose of this Manual is conduct procurements in a manner providing full and open competition or fair treatment of all persons or entities involved in each and every PRPHA procurement process funded totally or partially with federal funds; to assure that goods, services and construction works are procured efficiently, without

unjustified delay, and at the lowest cost available to the PRPHA; to promote competition in contracting with the PRPHA; to provide safeguards for maintaining a procurement system of quality and integrity; and to assure that such procurement processes are in full compliance with federal laws, rules and regulations, including but not limited to, 2 C.F.R. part 200, and applicable state laws, rules and regulations.

#### **Section 4      Application**

The procurement policies and procedures contained herein are applicable to each and every procurement process required under PRPHA programs and activities funded totally or partially with federal funds (hereinafter referred to as a “procurement process” or “procurement processes”). When PRPHA combines federal and non-federal funds to award a contract, PRPHA Policy and Procurement Manual will apply totally to the referred project.

#### **Section 5      Exclusions**

This Manual shall not apply to the procurement processes related to the administration of the Housing Voucher Program for rental housing under Section 8 (“Housing Choice Program, Section 8 of the Housing Act of 1937; 42U.S.C. Section 1437f” and the “Housing Assistance Program”, program of benefits to Renter’s contracts) and those funded with revenues generated by the “Central Office Cost Center” through fee arrangements for services under 24 C.F.R. Part 990, such as:

management fees, accounting fees, asset management fees, etc. The use of such revenues from fees shall be governed by local requirements, such as, but not limited to: Regulation No. 8232, approved by the Department of State of the Government of Puerto Rico on July 20<sup>th</sup>, 2012, known as “Regulation of the Puerto Rico Public Housing Administration for the Acquisition of No Personal Goods and Services with Funds from the Central Office Cost Center” and other local laws and regulations approved by the Government of Puerto Rico or government agencies referring to the acquisitions of goods and services by the Government and the contracts related to these acquisitions. The PRPHA shall comply with the terms and conditions of any concession, grant, contract, donation, or legacy that will be consistent with the law.

## **ARTICLE II DEFINITIONS**

### **Section 1 Terms and Phrases**

For the purposes of this Manual the following terms or phrases shall have the following meanings, unless the context indicates otherwise:

- a. Administrator** – PRPHA’s Executive Director and Contracting Officer. Executive Official of the PRPHA that responds directly to the PRPHA Governing Board who has the responsibility of organizing, directing and executing all PRPHA’s functions and duties as assigned by the Governing Board.

- b. Architect/Engineer (A/E) services** – Architect and/or Engineer professional services associated with the research, design and, in most cases, the supervision of construction or modernization of projects that are required to be performed or approved by a person licensed, registered or certified by the Government of Puerto Rico.
- c. Award** - Written statement by which the PRPHA accepts a bid or proposal in a particular procurement process.
- d. Bid** - In the Sealed Bidding Method of procurement the offer submitted by a Bidder.
- e. Bid Board** – Organism of the Department integrated by five (5) members designated by the Secretary in virtue of an Administrative Order. These members of the Board may be officials or employees of the Department and ascribed agencies, or personnel contracted for professional services by the Department and its ascribed agencies. One of the members must be the Sub Secretary of the Department, who will act as President of the Board. Also, one of the members shall be a licensed Lawyer, according to the laws of the of Puerto Rico. Three of the five members can constitute quorum. The Board will be in charge of the mission to evaluate, award or decide the bids or Request for Proposals for the acquisition of non-personal goods or non-personal services and professional services in a formal procurement process to be executed in the PRPHA, according to

the applicable regulations. (Article 2 of Regulation Num. 6106, Bid Board Regulation of the Department and its Affiliated Agencies of February 25, 2000)

- f. Bid Revision Board** – Organism of the Department integrated by three (3) members designated by the Secretary. One of these members will be designated by the Secretary as President of the Board, who shall be a licensed Lawyer, according to the laws of the Government of Puerto Rico. This Board has exclusive authority and jurisdiction to evaluate and solve appeals submitted by persons affected by decisions of the Bid Board. (Article 5 of Regulation Num. 6793, Regulation of the Bid Review Board of March 29, 2004)
- g. Blanket Purchase Order** – A purchase arrangement in which the PRPHA contracts with a Vendor or Supplier to provide PRPHA's requirements for an item(s) or a service(s), on as required and often over the counter basis. Such arrangements set a limit on the period of time they are to be valid and the maximum amount of money which may be spent at one time or within a period of time, including the number of options and the period for which the PRPHA may extend the contract under each option. May also be referred to as Open-end Contract.
- h. Change Order** – A written document which evidences a unilateral and/or bilateral action taken by the Contracting Officer



within the scope of the Contract in order to modify the drawings, specifications, method of shipping or packing, place of inspection, delivery, or acceptance in an existing Construction Contract.

- i. Competitive Proposals Method** – The Competitive Proposals Method of procurement is used when the Small Purchases Method or the Sealed Bidding Method are not feasible.
- j. Competitive Range** – In the Competitive Proposals Method, specifically the Request for Proposal (RFP), after the Evaluation Committee has evaluated all the technical proposals, and considering the proposed costs/prices, it is the Proposals determined by the Contracting Officer to have a reasonable chance to receive the award.
- k. Contract** – A mutually binding legal relationship between the PRPHA and a Contractor.
- l. Contracting Officer** – PRPHA Administrator
- m. Contractor** – A Vendor, Supplier, Offer or Bidder, as applicable, who is awarded and executes a Contract or a Purchase Order with the PRPHA.
- n. Cooperative Purchasing/Intergovernmental Agreements** – Agreements between the PRPHA and other government entity 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. PRPHA may use Federal or State excess and surplus property instead of purchasing new equipment and property if feasible and if it will result in a reduction of project costs. The goods and services obtained under a cooperative purchasing agreement must have been procured in accordance with 2 C.F.R. 200.318 (e).

- o. Cure Notice** – Written notification issued to a Contractor to the effect that the Contract may be terminated by reason of default if the condition endangering performance of the Contract is not corrected within the number of days specified in such notification.
- p. Designated Area** – In a Management Agent Contract, one or more public housing projects assigned to a Management Agent by PRPHA.
- q. Emergency** - Situation which causes unexpected and unforeseen public needs and which requires immediate action by the PRPHA due to the danger that it represents to the life, health or public safety.
- r. Evaluation Committee** – Administrative body comprised by at least three (3) PRPHA employees appointed by the Administrator to evaluate proposals (mostly execute rating and ranking) in a

competitive procurement process. PRPHA should designate a Chairman to lead the process. The Procurement Area will provide a standardized orientation to the Evaluation Committee participants in every Competitive RFP/RFQ procurement process to ensure adequate and consistent methodology and parameters in each process.

- s. **Independent Cost Estimate (ICE)** – An estimate of the costs of the goods or services to be acquired, prepared by the PRPHA prior to obtaining offers. The degree of analysis will depend on the size and complexity of the purchase.
- t. **Invitation for Bids (IFB)** – The written solicitation for bids, publicly advertised to prospective bidders, for the procurement of goods, work or services, excluding A/E Services for PRPHA, under the Sealed Bidding Method.
- u. **Management Agent (MA)** - A legal or governmental entity, under a contract with PRPHA, to manage and/or operate a Designated Area appointed by the PRPHA.
- v. **Micro Purchase Method** - Purchases of supplies or services using simplified acquisition procedures, the aggregate dollar amount which does not exceed the Micro Purchase Threshold (\$3,000.00) or less, except for acquisitions of construction subject to Davis-Bacon Act, \$2,000.00 (2 CFR 200.320(a))

- w. Minority Owned Business** - Entity whose management and daily operations are controlled by, and where at least 51% of the voting stock is owned by a person or persons who belong to a racial, ethnical or cultural group.
- x. Modification** - Unilateral or bilateral written revision or change to a Contract or Purchase Order within the original scope, thereof, after the award and execution, or during the performance of such Contract or Purchase Order.
- y. Negotiation** – Discussions with Offers’ or Proponents 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 discussions with Offers’ in other procurement processes.
- z. Noncompetitive Proposal Method** – Procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.
- aa. Offer** – A response to a solicitation by the PRPHA that, if accepted, would bind the Offer or Proponent to perform the resultant Contract.

**bb. Proponent** – A person or legal entity that responds to a solicitation issued by the PRPHA in a Competitive Proposal Method procurement.

**cc. Proposal** – The Offer submitted by a potential Contractor in the Competitive or Non-competitive Proposals Method of procurement.

**dd. Qualification Based Selection Method (QBS)** – A procurement method conducted using a solicitation denominated Request for Qualifications (RFQ). Use for the QBS is limited and is different, primarily, from the RFP method in that the PRPHA first selects the highest ranked Respondent on technical factors and then negotiates price. The most common use of RFQ's is for Architect/Engineer (A/E) Contracts. RFQ's can also be used to select development partners for mixed financed projects, or when specifically authorized by HUD.

**ee. Quotation** – A price or offer submitted by an Offer or Supplier under the Small Purchase Procurement Method.

**ff. Request for Proposals (RFP)** – Solicitation method used under both the Competitive or Noncompetitive 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 PRPHA, which may not be primarily determined based on price.

**gg. Resident Owned Business (ROB)** – Any entity which is owned and controlled by PRPHA public housing residents as defined in 24 CFR Part 963.

**hh. Responsible Bidder** – A Bidder who is able to comply with the required or proposed delivery of goods or performance of services; 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 Participation. At the local level, Law Number 458 of December 29<sup>th</sup>, 2000, as amended, establishes the prohibition of Government Agencies. Public Corporations or Municipal Governments to award Bids or Contracts to persons or entities interested in offering services or goods, when there has been a conviction or a plead of guilt under state, federal or any other judicial jurisdiction of the United States of America or any other country, of crimes which constitute fraud, improper intervention or influence in Bid and Contract awards, forgery, bribery, improper use or appropriation of public funds, and others. A list of these crimes appears in Article 3 of Law Number 428 of September of 2004 which amends Law Number 458, cited previously. The person or entity will submit a statement before a

Public Notary where he, she or it will inform if there has been a conviction or plead of guilt or he, she or it is subject to investigation in any legislative, judicial or administrative process in Puerto Rico, the United States of America or any other country.

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

**jj. Small Purchase Method** – Competitive method for procurement of goods, work and/or services in an aggregate amount equal or less than the Simplified Acquisition Threshold established by HUD for Small Purchase, one hundred fifty thousand dollars (\$150,000.00). (Federal Acquisition Regulation (FAR) at 48 CFR Subpart 2.1 and will be periodically adjusted for inflation at 2 CFR Sections 200.88 and 200.320(b)) The most common methods of making Small Purchases are by Petty Cash, Purchase Orders, Blanket Purchase Orders, and Contracts.

**kk. Sealed Bidding Method** – A method of procurement used for Contracts that exceed the Small Purchase Threshold and requires accurate and complete specifications, a Public Bid Opening, an evaluation of Bids, and award of the Contract based on the lowest price submitted by a Responsive Contractor.

**ll. Task Order** - Written statement for performance of work or services issued by PRPHA under an Indefinite Delivery-Indefinite Quantity Contract or a Requirement Contract.

**mm. User Area** – Administrative unit, bureau or area within the PRPHA

that requests services under an Indefinite-delivery Contract (IDC). There are three kinds of Indefinite-delivery Contracts: Definite-quantity Contracts, Requirements Contracts, and Indefinite-quantity Contracts.

## **Section 2 Interpretation**

The concepts used in this Manual in the present tense include the future; those used in the masculine gender include the feminine and neutral, except for the cases in which such an interpretation may result absurd; the singular number includes the plural and the plural includes the singular.

# **ARTICLE III PROCUREMENT ADMINISTRATION**

## **Section 1 Contracting Officer**

Pursuant to the authority granted to the PRPHA by Administrative Order No. OA HD 00.19, issued by the Secretary, and the Annual Contributions Contract, the PRPHA is responsible of its own procurement system. The Administrator is the Contracting Officer for the purposes of administering the PRPHA procurement system. All procurement processes shall be the responsibility of the Administrator in accordance to PRPHA's Organic Act. Procurement processes shall be the responsibility of the Administrator and officials



authorized to administrate the procurement system and processes, including:

- a. procurement of goods;
- b. procurement of professional and technical services;
- c. Issue, with the approval of the Governing Board, any and all administrative bulletins necessary to clarify and implement this Manual;
- d. Execute, with the approval of the Governing Board, all disciplinary actions necessary to correct any violation of the ethical standards set forth in this Manual and applicable federal and state laws, rules and regulations;
- e. Ensure that all procurement processes of the PRPHA are consistent with the Annual Contributions Contract and the procurement planning to achieve the most efficient and cost-effective procurement;
- f. Ensure that every procurement process of the PRPHA will have a complete Procurement File with all the information required by this Manual and applicable federal and state laws, rules and regulations;
- g. Ensure that the PRPHA meets the procurement and program requirements set forth in Part 200 of Title 2 of the Code of Federal Regulations in each procurement process or action funded totally or partially with federal funds;

h. Ensure that the PRPHA complies with the applicable HUD review requirements in establishing operational procedures, as indicated at 2 C.F.R. 200.324:

(a.) The non-Federal entity (in our case it would be PRPHA) must make available, upon request of the Federal awarding agency or pass-through entity (in our case HUD), technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally would take place prior to the time the specification is incorporated into a solicitation document. However, the Federal awarding agency or pass-through entity may still review the specifications after the solicitation has been developed;

(b.) The non-Federal entity must make available to the Federal awarding agency or pass-through entity, upon request, pre-procurement review, procurement documents or Independent Cost Estimates, when:

(1.) The non-Federal entity procurement procedures or operation fails to comply with the procurement standards here indicated;

(2.) The procurement is expected to exceed the Small Purchase Threshold (\$150,000.00) and is to be awarded

without competition or only one Bid or Offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Small Purchase Threshold, specifies a “brand name” product;

(4.) The proposed Contract is more than the Small Purchase Threshold and is to be awarded to other than the apparent low Bidder under Sealed Bid procurement;

(5.) A proposed Contract modification changes the scope of the Contract or increases the Contract amount by more than the Small Purchase Threshold;

(c.) The non-Federal entity is exempt from the pre-procurement review in paragraph (2.) above if PRPHA determines and certifies to HUD that its procurement systems comply with the standards of this part.

(1.) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party Contracts are awarded on a regular basis;

(2.) The non-Federal entity may self- certify its procurement system. Such self-certification must not limit the

Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

At present, PRPHA has a self-certified procurement system; therefore, 2 C.F.R. 200. 324, (c) (2) is of application, although it has not self-certified to HUD that this system is in compliance with applicable standards (policies, procedures, regulations).

- i. Ensure that recommendations to the Bid Board for the award of Contracts in excess of one hundred fifty thousand dollars (\$150,000.00) are made in favor of the Responsible Bidder with the Responsive Bid that offers the lowest price, or to the Responsible Proponent whose Proposal is the most advantageous to the PRPHA in terms of price and other evaluation factors considered;
- j. Ensure that all Contracts, Purchase Orders, Task Orders, Delivery Orders, modifications and/or Change Orders are issued in writing and are supported by all required documentation.

## **Section 2      Procurement Process**

The PRPHA will review periodically its registers of previous acquisitions and even future acquisitions, to determine courses of action in the procurement processes that will result in an economic and efficient exercise; maximize competence and competitive prices in the Contracts and minimize the costs of acquisitions. The PRPHA will also reduce administrative costs, ensure that the goods and services are obtained without the necessity of re-acquisitions and that all materials and equipment purchased comply with Federal and State laws and regulations. Particular attention should be given to the requirements of filling, security, and management of the procurement process, including dispute solving.

## **ARTICLE IV   DELEGATION OF PROCUREMENT AUTHORITY**

The Administrator is the Contracting Officer of the PRPHA. The Procurement processes shall always be the responsibility of the Administrator and the officials who are ordinarily authorized to administrate the procurement system and processes.

## ARTICLE V PROCUREMENT PLANNING

### Section 1 Centralized Approach / Asset Management

PRPHA has, primarily, a centralized approach of purchasing goods or services in which the Procurement and Contracting Area (Central Building Office) handles most aspects of the procurement function. All purchases of goods and services funded totally or partially with federal funds are processed following the federal regulations established in 2 CFR part 200, and as reference or guidance, the HUD Procurement Handbook 7460.8 REV 2; also, the PRPHA Organic Law and as this Manual. The limits of purchasing or thresholds for Micro Purchase (\$3,000.00) and Small Purchase (\$150,000.00) established in these regulations must be applied in all the procurement processes. The practice of approving purchases or modifications of contracts aggregating more cost to the original Small Purchase and increasing the cost of the purchase so as to sum more than the threshold (\$150,000.00) , denominated *bid splitting*, must be avoided. In addition, the PRPHA should strive to maximize, as efficiently as possible, full an open competition in all procurement transactions. (2 CFR 200.319 (a)) As part of the procurement planning, an internal procurement Implementation Plan will be developed and reviewed every five years, or less, if deem necessary, to ensure the PRPHA procurement planning strategy is current with existing market conditions, emphasizing on a consistent cost effective and efficient

procurement decision making process that provides the best benefit to the properties under the Asset Management. Procedures must be in place in order to avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. The Implementation Plan will determine which procurement activities, under the Asset Management structure, will take place at the Centralized level and Project Level or a combination of both administrative methods. The determination to consolidate procurement activities should be made based on cost effectiveness and efficiency. Example (recurring maintenance activities: Roofing, Kitchen Cabinets, Painting) or Resident Services activities.

The PRPHA will establish a long term Capital Needs program that will support the PHA Implementation Plan by providing the necessary data to program and schedule procurement planning needs in a strategic manner, in order to maximize time and resources.

The Procurement Area (Central Building Office) can purchase goods and services for use of the PRPHA and also to be used or distributed to satisfy similar needs in the public housing projects, based on purchases that are most advantageous to the agency and standard accounting principles. On the other hand, the Management Agents

(legal and governmental entities), by virtue of the Administrative Contract signed with the PRPHA, are authorized to purchase goods and services for operational purposes and according to the needs of each project located in the Designated Area. As part of this project-based approach (Asset Management Strategy), the PRPHA must assure that every public housing project (Asset Management Project; AMP) has its own budget and that the purchasing of goods and services of each project is executed strictly according to its needs. The Management Agent to which the PRPHA has delegated part of its procurement function, should process the acquisition of goods and services of each project according to the availability of funds in each project budget. The Management Agent will present the Operating Budget to the PRPHA ninety (90) days after the effective date of the Administrative Contract.

The Management Agents are administrative agents of all real and personal property, in connection with the public housing projects (Asset Management Projects; AMP's) within the Designated Area appointed in the Contract. The Management Agents will be responsible for the compliance of the PRPHA's obligation with respect to the administration, operation and maintenance of the AMP's. The Management Agents will receive a compensation (Management Fee) for administrating and operating the Designated Area that will accrue only for Units occupied by *bona fide* qualified



residents in full compliance with continued occupancy standards. As indicated, within ninety (90) days of the effective date of the Administrative Contract with the PRPHA, the Management Agent must have submitted, and the PRPHA approved, an annual budget for each AMP, under the responsibility of the first fiscal year within the term of the Contract. Thereafter, the Management Agent shall annually submit revised operating and, if applicable, Capital Improvement Budgets for each AMP within the Designated Area for each fiscal year during the Contract term, and will submit the same to PRPHA every year. Except for prior approval of PRPHA, annual disbursements for each type of operating expenses itemized in the budgets will not exceed the amount authorized by the approved budgets. The Operating Budget will cover, on an AMP basis, all direct costs necessary for the operation of the AMP. The budget shall contain as minimum, the cost of AMP staff, their salaries and benefits, resident services and social work programs, routine and extraordinary maintenance, legal and general office expenses, maintenance contracts and professional services contracts. In each revised budget of AMP submitted by the Management Agent to PRPHA, the needs of each project assigned will be identified individually. The Management Agent will procure all the Contract, materials, supplies, work and services necessary for the AMP, following the PRPHA Procurement Manual parameters, guidelines

and thresholds at the most advantage cost to the AMPs and will secure and credit to the AMPs all discounts, rebates and commissions obtainable with respect to purchases, Service Contracts, and all other transactions on behalf of the AMP. Purchases shall only be made in accordance with PRPHA authorized Operating Budget and based on the inspections of the sites, buildings and units, as well as inventories of the tools and materials for maintenance of the common areas and other needs assessed and determined by the Management Agent. In relation to the procurement needs of the projects, the Management Agent has other duties: Collection and deposits of rents and other charges, ordinary and extraordinary maintenance and repairs, maintenance of utility property, and others. The Management Agent, as sub-recipient of federal funds allocated by HUD for the administration of the public housing developments within the Designated Area, is obligated to comply with Section 504 of the Federal Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (Public Law 101-336: Effective July 26, 1990), as amended. It is responsible for providing a certain amount of fully-accessible housing units available for persons with disabilities, according to law. Also, it shall ensure that its common-use areas, including Management Offices, are accessible to persons with disabilities. PRPHA delegates to the Management Agent the Design of all the construction work consisting of full accessibility to the

facilities. The Asset Management Strategy used in procurement, should always be based on the best interest and/or benefit to the project. The Management Agent shall develop a local protocol to help group, quantify and budget, prioritize and or identify the external resources needed, including resources from the PRPHA, including skilled labor and/or human resources with technical or expertise capacity.

Just like the PRPHA's Procurement Area (Central Building Office), when the Management Agents, including the Municipalities, execute procurement of the same services or goods, *bid splitting* should be avoided. Therefore, from the date of approval of this Manual, the Management Agents (legal and governmental entities) will inform every month to the PRPHA's Procurement and Contracting Area (Central Building Office) of all the Small Purchases issued by their Purchase or Procurement Office in this period of time, the date and purpose of the purchase or procurement, the goods or services purchased or procured, and the amount of money involved in the process. The PRPHA's Procurement and Contracting Area (Central Building Office) will receive this data and create a recordkeeping mechanism of all the Small Purchases executed by the Management Agents to assure that *bid splitting* does not happen in their Designated Areas. This precaution shall also be practiced at the central level in

relation to the purchases or procurement executed to satisfy the needs of the residents in all the public housing projects of Puerto Rico.

Both Management Agents (legal or governmental entities) , although with different structures, have the responsibility as a party in an Administrative Contract with the PRPHA and as its agent, to comply with the PRPHA's obligations with respect to the administration, operation and maintenance of the AMP or AMP's, as designated, and execute the procurement processes here described.

However, PRPHA reserves the right to invoice against any AMP located within the Designated Areas for any service, material or equipment provided by PRPHA or its Contractors or Subcontractors in connection therewith.

## **Section 2    Components' Responsibility / Procurement Planning**

It shall be the responsibility of each and every User Area, Management Agent (legal entity and Municipality) to identify the need of goods and services in the public housing projects or project within its Designated Area, based on the delegation of funds. A copy of the document stating these needs must be submitted to Central Building Office. This will be part of the procurement planning effort of the agency. The User Areas and Management Agents must comply with the provisions of this Manual, including, but not limited to, the

use of the Procurement Manual Forms (“PMFs”) provided by the Procurement Area.

## **ARTICLE VI PROCUREMENT MANUAL FORMS**

### **Section 1 General Rule**

The Procurement Manual Forms (“PMF’s”) shall be utilized by all the User Areas and the Management Agents, each and every time any type of procurement process takes place.

### **Section 2 Specific Forms**

The PMF’s will be utilized in accordance with this Manual and the written instructions on each individual form. There are forms for: Small Purchase (Informal procurement procedures), Competitive Proposals (Formal procurement procedures), and the Procurement File Internal Control Checklist. Each Procurement File must contain the appropriate PMF’s. These Forms are part of the Internal Procurement Procedures.

## **ARTICLE VII SMALL BUSINESS PARTICIPATION**

### **Section 1 General**

The PRPHA shall take appropriate affirmative action to ensure that small businesses, Minority Owned Businesses (Minority Business Enterprise, MBE), women’s businesses (Women Business Enterprise, WBE), Resident-Owned Businesses (ROB), and labor surplus area businesses have sufficient opportunity to participate in all

procurement processes financed in whole or in part with PRPHA federal funds or funds administered by the PRPHA. The PRPHA shall, consistent with applicable federal and state laws and regulations, establish goals for the participation of the above referenced businesses in the PRPHA's procurement processes.

## **Section 2      Affirmative Action Steps**

Affirmative action steps for the small business participation policy stated on Section 1 of this Article shall include:

- a. Placing qualified small and minority businesses and women's business enterprises (MBE/WBE) on solicitation lists;
- b. Assuring that small and minority businesses, and women's business enterprises (MBE/WBE) are solicited whenever they are prospective sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises (MBE/WBE);
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce, and in addition;

- f. Contacting business assistance agencies, minority contractors (MBE / WBE) associations and community organizations to inform them of contracting opportunities and requesting their assistance in identifying Section 3 businesses which may solicit bids or proposals for contracts for work in connection with Section 3 assistance.
- g. Advertising contracting opportunities by posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the common areas or other prominent areas of the housing development or developments owned and managed by the PRPHA.
- h. Contacting resident councils, resident management corporations, or other resident organizations, where they exist, and requesting their assistance.
- i. Providing written notice to all known Section 3 business concerns of the contracting opportunities. This notice should be in sufficient time to allow the Section 3 business concerns to respond to the Bid Invitations (Invitation for Bids; IFB's ) or Request for Proposals (RFP's).
- j. Following up with Section 3 business concerns that have expressed interest in the contracting opportunities by contacting them to provide additional information on the contracting opportunities.

k. Carrying out workshops on contracting procedures and specific contract opportunities in a timely manner so that Section 3 business concerns can take advantage of upcoming contracting opportunities, with such information being made available in languages other than English where appropriate.

l. Advising Section 3 business concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.

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 (Section 3 businesses);

m. Requiring the prime Contractor, if Subcontractors are to be let, to take the affirmative steps listed in this section.

## **ARTICLE VIII METHODS OF PROCUREMENT**

### **Section 1 Recognized Methods of Procurement**

Basically, the PRPHA shall use two types of procurement procedures: Informal and Formal. The Informal procurement procedures consists of the Small Purchases Method which cost estimate for acquiring goods and services is equal or less than one hundred fifty thousand



dollars (\$150,000.00). The Micro Purchases Method with a limit or threshold for acquisition of goods and services of three thousand dollars (\$3,000.00) is included in the Informal procurement procedures.

The Formal procurement procedures are those which cost of acquiring goods and services is more than one hundred fifty thousand dollars (\$150,000.00), and requires a bid process. In general, the PRPHA shall use the following methods for procuring goods, works and/or services: (i) Micro Purchases (ii) Small Purchases (Informal procurement procedures), (iii) Sealed Bidding, (iv) Competitive Proposals, including Request For Proposals (RFP) and Qualifications Based Selection (QBS) or Request for Qualifications (RFQ), for the A/E services only (Formal procurement procedures), (v) Noncompetitive Proposals, and Emergency Purchases. This last method may be an Informal or Formal procurement procedure. Procurements under the method identified in subparagraph (i) and (ii) above shall be awarded by means of Petty Cash Vouchers or Purchase Orders (Contracts), depending on the amount of the procurement, as hereinafter provided. Procurements under the methods identified in subparagraphs (iii), (iv) and (v) above shall be awarded by means of a Contract, unless otherwise provided in this Manual. When conditions are not appropriate for the use of Sealed Bids, the Method of Competitive Proposals must be used. This is the preferred method to

obtain professional services which exceed the Small Purchase Threshold. If not self-evident, the rationale for choosing Competitive Proposals rather than Sealed Bidding procedures should be documented in the Procurement File.

## **Section 2      General Rules**

All procurement processes filed with the Procurement Area shall be consistent with the procurement planning of the PRPHA or in case of an emergency or unplanned procurement, have a written justification attached to the corresponding PMF.

- a. In order to commence a procurement process, the User Area will request a certification of availability of funds from the Finance Bureau. The Finance Bureau will review said request and, if funds are allocated in the PRPHA's budget for that particular procurement process, the Finance Bureau will certify the availability of funds and code the procurement process.

Whenever applicable, the Finance Bureau shall certify or consult with the Engineering Bureau to ensure that an environmental evaluation has been completed for a proposed project /activity that could have an environmental impact.

- b. The PRPHA shall conduct all procurement processes in a manner providing for full and open competition and shall avoid any conditions that may restrict such competition.

Examples of such restrictions include, but are not limited to, the following:

1. Imposing unreasonable requirements (i.e., requirements that are not relevant to the scope of the solicitation) on proponents and bidders, which may reduce their ability to qualify to do business with the PRPHA;
  2. Requiring unnecessary experience or excessive bonding;
  3. Allowing noncompetitive pricing practices (collusion) among proponents or bidders, or among affiliated proponents or bidders;
  4. Allowing individual and/or organizational conflicts of interest;
  5. Specifying only a "brand name" product, rather than allowing an "equivalent" product to be offered by describing the expected performance or other relevant procurement requirements; or
  6. Tolerating any capricious or arbitrary action by the PRPHA personnel in any procurement process.
- c. The Contracting Officer of the PRPHA must avoid approving purchases or modifications of contracts aggregating more cost to the original Small Purchase and increasing the cost of the purchases so as to sum more than the threshold (\$150,000.00)

or the Micro Purchase threshold (\$3,000.00). As indicated before, this practice of using the Small Purchase procedures to avoid the former bid methods, denominated *bid splitting*, shall be considered incorrect, unless there is a justified reason.

- d. The Contracting Officer must comply with the minimum bonding requirements in Construction Contracts which amount exceed the Federal Small Purchase Threshold of \$150,000.00, mostly awarded using the procurement methods of Sealed Bidding Competitive and Noncompetitive Proposals. These are: Bid Bond, and any of the following four:

1. Performance Bond 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; or
5. A 10% irrevocable Letter of Credit.

The bonds may vary according to the type of Contracts and are not required in the Small Purchase Method.

- e. According to Law Number 458 of December 29, 2000, as amended, known as "Prohibition to Award Contract or Bid to Persons Convicted of Crimes Constituting Fraud, Illegal Appropriation or Misuse of Public Funds", no Executive

Director of a Government agency or instrumentality, public corporation, or Municipality, shall award any Contract or Bid of acquisition of goods or services to a person or entity that has been convicted or has plead guilty in a state or federal court or any other jurisdiction of the United States of America, or another country if the elements which constitute the crime are the same, of certain crimes constituting fraud, illegal appropriation or misuse of public funds, for a term of ten (10) years in convictions of grave crimes and five (5) years in convictions of less grave crimes. The conviction of such crimes, listed in Article 3 of the Law, will imply the automatic rescission of current Contracts with Government agencies or instrumentalities, public corporations or Municipalities. Consequently, Contracts must include a penalty clause for the refund of public funds by the person convicted or guilty.

- f. PRPHA reserves its right to negotiate with more than one Proponent at the same time and/or to award a given procurement process to more than one Proponent. These reserves must be conspicuously stated in the solicitation materials for each procurement process.
- g. In each and every case where the total sum of the Contract, Task Order, Delivery Order, modification or Change Order, to be awarded exceeds the Small Purchase Threshold of one

hundred fifty thousand dollars (\$150,000.00), the Procurement Area must obtain all required approval authorizing the procurement process before continuing with the same.

- h. The time period for solicitation in relation to paid advertisement must be sufficient to achieve effective competition, at least once each week for two consecutive weeks.
- i. The PRPHA may charge each prospective Bidder or Proponent requesting a copy of any IFB or RFP, QBS or any other solicitation materials, the actual cost of reproduction of such materials and an administrative surcharge of up to ten per cent (10%).

### **Section 3     Micro Purchases**

**Refer to the following Section: “Small Purchases Method”.**

### **Section 4     Small Purchases Method**

**General:** Any procurement not exceeding the Small Purchase Threshold or one hundred fifty thousand dollars (\$150,000.00) shall be executed in accordance with HUD’s Small Purchase procedures and as authorized in this section. Also, the Contracting Officer may 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 (*bid splitting*) merely to permit use of the Small Purchase procedures or to avoid any

requirements that apply to purchases that exceed those thresholds. However, larger requirements may be broken into smaller ones. When this occurs, the Contracting Officer or the official of the agency who has been delegated this function, should document in the Procurement File the reasons for breaking down larger requirements into smaller ones; for example: to offer small and minority businesses a better opportunity to participate in the PRPHA's procurement processes.

- a. **Petty Cash Purchases:** Within the Small Purchases Threshold, the purchases executed could refer to very small purchases of up to one hundred fifty dollars (\$150.00) or less which can be satisfied by local sources. The Administrator shall ensure that at least one (1) Petty Cash Account is established in an amount sufficient to cover petty cash purchases estimated to be made by all the User Areas during any thirty (30) days period. Security shall be maintained so that only authorized individuals appointed as Petty Cash Administrator within the Financial Bureau have access to the Petty Cash Account(s). The Petty Cash Account(s) shall be periodically audited (at least every six (6) months) by the PRPHA Compliance and Regulations Office to validate proper use of the account and that the total amount of the account is equal to the petty cash issued.

b. **Micro Purchases of \$3,000.00 or less:** Micro Purchases are purchases of supplies or services using simplified acquisition procedures, the aggregate dollar amount which does not exceed the Micro Purchase Threshold. The Micro Purchase Threshold is determined by the Code of Federal Regulations at 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which is three thousand dollars (\$3,000.00) or less, except for acquisitions of construction subject to Davis-Bacon Act, \$2,000.00 Generally, the Contracting Officer does not need to prepare an Independent Cost Estimate (ICE) for a Micro Purchase and the purchase may be awarded without soliciting competitive quotations if the price is considered reasonable. Price reasonableness normally will be based on a comparison with historical prices paid for the item, commercial catalog prices, or other offers. Only one quotation or bid may be solicited if the price received is considered reasonable and documented in the file.

c. **Purchases over \$3,000.00:** For Small Purchases in excess of three thousand dollars (\$3,000.00), but not exceeding one hundred fifty thousand dollars (\$150,000.00), price or rate quotations must be obtained from an adequate number of qualified sources. Therefore, it is established that not less than three Vendors,



Suppliers or Offers' shall be solicited to submit a price quotation or offer depending on the complexity of the procurement.

Federal and local laws and regulations require that Contracts for Small Purchases other than construction contain specific clauses, denominated "Mandatory Clauses". According to these clauses HUD is permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other changes. (Appendix to Part 200 of 2 CFR Ch. II; Table 5.1, Page 5-6 of HUD Handbook No. 7460.8, Rev. 2 as guideline) (See Article XII, Section 2 of this Manual, about CONTRACT TYPES AND CLAUSES).

In Small Purchases procurement processes, the Contracting Officer or designated official of the agency may and is encouraged to negotiate price and other terms of purchase, when appropriate, except in relation to the "Mandatory Clauses" of the Contract.

The Small Purchase Division of the Procurement Area will implement an administrative system to ensure that the items required by Contract are received in accordance with Contract terms.

## **Section 5      Sealed Bidding Method**

**General:** Sealed Bidding shall be used when the cost estimate is more than the \$150,000.00, Federal regulatory threshold or the limit specified in the PRPHA's Procurement Policy. This Method is a Formal procurement procedure and is used mostly for Construction Contracts and purchase of commodities (e.g. equipment and supplies). A fixed price Contract will be awarded to the Responsible Bidder with the Responsive Bid with the lowest price. The Invitation for Bids (IFB) must include all the terms and conditions of the solicited procurement process and indicate how price will be evaluated.

Contracts shall be awarded based on the Sealed Bidding Method if the following conditions are present:

1. A complete, adequate, and realistic Statement of Work (SOW), specification or purchase description is available;
2. Two or more Bidders are willing and able to compete requirements effectively for the business solicited;
3. The procurement lends itself to a firm-fixed price Contract and;
4. The selection of the successful Responsible Bidder can be made principally on the lowest price.

An IFB must be solicited from an adequate number of Bidders or Suppliers, providing sufficient response time prior to the date set for the opening of the Bids. The IFB will include specifications and attachments; also, an adequate description of the services solicited and the terms of the Contract to be awarded. All Bids will be opened at the time and place indicated in the IFB. This act will be public.

When necessary, and due to limited funding, PRPHA may specify the most expensive system as the base Bid and list deductive alternates in inverse priority order. This means deductive alternates such as deleting or minimizing certain services included in the Bid, may be taken in numerical order as listed until the award can be made within available funds.

#### **a. Solicitation and Receipt of Bids**

When an IFB is issued it will include specifications, 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 requirement of the solicitation. The IFB must state the time and place for both receiving the Bids and the public Bid Opening. Also, must include the date the Contracting Officer or delegated officials (Procurement Area) will hold a Pre-bid Conference. The Pre-bid Conference is held with prospective Contractors to discuss the

project requirements and details of the IFB and is normally held for large or complex procurements. The prospective Contractor must appear in the "RUL" List. The time between the advertisement of the IFB and the date of the Pre-bid Conference should be sufficient for the bidders to review the IFB and prepare for the conference. At the Pre-bid Conference, the Contracting Officer or delegated officials will state that nothing said at the Conference will change any of the terms of the IFB, except a written amendment to the solicitation. The period between the advertisement of the IFB and the date when the Bids are received by the Procurement Area also must be sufficient in order to achieve effective competition. 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.

**i. Specifications**

All the specifications must be drafted to promote an economy to the PRPHA for the intended purposes and to promote competition, to benefit the needs of the PRPHA. The specifications must be reviewed before issuing any IFB, to ensure that it is not unduly restrictive or representing duplicity. Specifications are preferred over function or compliance. Detailed specifications should be avoided over

products. For equipment, an analysis of leasing should be performed versus buying, to determine the most economic method of acquisition.

For construction or facility improvements, Contracts or Subcontracts exceeding the \$150,000.00 threshold, PRPHA must request from the Contractor the following policy for bonding requirement:

1. A Bid guarantee from each Bidder equivalent to five percent (5%) of the Contract price, from an acceptable surety company. An acceptable surety company is one which is authorized to do business in the Government of Puerto Rico and authorized by HUD and the PRPHA. The surety company must be listed on the most recently published U.S. Treasury Circular 570, often referred to as T-List. The Bid guarantee must consist of a Bid Bond, certified check, or other negotiable instrument accompanying the Bid to assure that the Bidder will execute the contractual documents as may be required within the time specified;

Or any one of the following four, or as specified by PRPHA:

1. A Payment and Performance Bond from the Contractor equivalent to one hundred percent (100%) of the Contract price, from an acceptable surety company. The purpose of

this bond is to assure the Contractor will pay, as required by law, all the persons supplying labor and material in the execution of the construction work provided for in the Contract and will fulfill all obligations under the Contract.

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; or
5. A 10% irrevocable Letter of Credit.

PRPHA may use Sealed Bidding for other types of materials and service contracts where the same bonding requirements may not apply.

**ii. Limitations**

The following specifications must be avoided:

- a. Geographical restrictions which are not required, nor promoted by the federal law, except in cases of Architects and Engineers (A/E) Contracts, which may include geographical locations such as selection factors element for adequate competition.
- b. Brand products specifications (unless the specifications list the minimum essential standards that the article must comply for the use proposed).

Nothing in this acquisitions policy will have the effect of excluding (“preempt”) the application of the laws of Puerto Rico related to professional licenses.

**b. Bid Opening and Award**

Sealed Bidding is a public process, therefore, Bids shall be publicly opened and in the presence of at least one witness. To ensure fairness in the award process, any interested parties are permitted to attend the Bid Opening. All Bids received at the date and time specified to be received must be opened and recorded in a minute at the Bid Opening and this shall be part of the Procurement File, and then made available for public inspection. If equal low Bids are received, the Bid participation in the award process shall be decided by lottery, the lottery shall be conducted by the Procurement Area. If only one Bid is received and it is a Responsive Bid from a Responsible Bidder, then, prior to any award; (i) a cost or price analysis must be conducted by the Procurement Area verifying the reasonableness of the price, and (ii) the PRPHA must secure HUD’s written approval for competitive contract publications that receive a single solicitation.

**c. Mistakes in Bids**

Correction or withdrawal of Bids may be permitted, where appropriate, before Bid Opening by written notice received in the office designated in the IFB prior to the time set for Bid Opening.

After Bid Opening, corrections in Bid 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 and 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 or the Procurement Director, as delegated official. After Bid Opening, changes in Bid prices or other provisions of Bids prejudicial to the interest of the PRPHA or fair competition shall not be permitted.

## **Section 6      Competitive Proposals Method**

**General:** The Competitive Proposal Method is also a Formal procurement procedure and permits: consideration of technical factors other than price; discussion with Offers' or Proponents concerning Offers submitted; negotiation of 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 level overall value to the PRPHA, considering price and other factors, such as technical expertise, past experience, quality of proposed



staffing, etc., set forth in the solicitation and not solely the lowest price.

**a. Conditions of 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**

Competitive Proposals shall be solicited through the issuance of a Request for Proposal (RFP). The RFP shall clearly identify the importance and relative value of each of the evaluation factors as well as any sub-factors 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 Offers', identity of the Offers', and the contents of their Proposals until after award. The PRPHA may assign price a specific weight in the evaluation criteria or the PRPHA may consider price in conjunction with technical factors.

In either case, the method for evaluating price shall be established in the RFP.

**c. Bonding requirements**

The PRPHA may require bid or performance bonds, among others, for Competitive Proposals for construction or facility improvements, when deemed appropriate; however, non-construction contracts should generally not require bid bonds.

For construction contracts exceeding the Small Purchase Threshold of \$150,000.00, the successful bidder shall furnish an assurance of completion. This assurance could be any one of the following four or as specified by the PRPHA:

1. A Performance and Payment bond with 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; or
5. A 10% irrevocable Letter of Credit.

**d. Evaluation**

The Proposals will be evaluated by an Evaluation Committee whose members, including the Chair or President who will lead the process, shall be designated by

the Administrator. The Evaluation Committee must base the evaluation of the Proposals only on the criteria stated in the RFP. Typical evaluation criteria include: demonstrated understanding of the requirement; appropriateness of the technical approach in the proposal; quality of the work plan; technical capabilities; management plan; and demonstrated experience in performing similar work.

As part of the procurement procedures, for every formal procurement procedure or action requiring an Evaluation Committee appointment, the Procurement Area will seek to:

- Ensure Evaluation Committee composition is made of three or more members, having an odd number of members (3, 5 or 7). Identify Committee member requirements and expected results.
- Provide the necessary guidance to designated Evaluation Committees members in order to support a standardized and consistent evaluation process.

**e. Negotiations**

After the Evaluation Committee has evaluated the Proposals unless negotiations are unnecessary, the

Contracting Officer may negotiate with Offers' who submitted Proposals that he or she (Contracting Officer) has determined to have a reasonable chance of being selected for award. (Offers' in "Competitive Range") This determination is based on the relative score of the Proposals as these have been evaluated and rated, in accordance with the technical and price factors specified in the RFP. These Offers' shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their Proposals. The purpose of negotiations shall be to seek clarification with regard to and advise Offers' of the deficiencies in both the technical and price aspects of their proposals so as to assure full understanding of and conformance to the solicitation requirements. No Offer or shall be provided information about any other Offer's proposal, and no Offer or 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. The scope and extent of discussions are a matter of the Contracting Officer's judgment. The Contracting Officer may inform an Offer or that its price is considered by the PRPHA to be too high, or too low, and reveal the results of the analysis

supporting that conclusion. Offers' shall not be directed to reduce their proposed prices to a specific amount in order to be considered for award.

"Auctioning" (revealing one Offer's price in an attempt to get another Offer or to lower their price) is prohibited.

**f. Award**

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

**g. Architect/Engineer (A/E) Services**

A/E professional services in excess of the Small Purchase limitation (\$150,000.00) shall be obtained by Competitive Proposal Method or Qualifications Based Selection Method. Therefore, PRPHA may use a "full-service" approach when it solicits offers using Competitive Proposal procedures or Qualification Based Selection Method (QBS) for assistance in preparing modernization plans, with options for the follow-on design and

construction phases for a specific Contract. Under Qualifications Based Selection procedures, competitors' qualifications and experience are evaluated and the most qualified competitor is selected, subject to the negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. Qualifications Based Selection procedures can only be used for A/E services or Developer's Related Contracts, or when specifically authorized by HUD. Furthermore, it shall not be used to purchase other types of services even though Architect-Engineer firms are potential sources for performing the services needed. PRPHA can even procure A/E services for more than one specific project and may solicit for an Indefinite-quantity Contract of A/E services; for example, design of various administrative or maintenance buildings, where separate orders would be placed for each building as the need occurs. Just as in QBS procedures where A/E services assistance for modernization plans may be solicited first and eventually, the option for solicitation of the services for the follow-on design and construction, the PRPHA should be careful with the terms of the Contract avoiding unfair competitive advantage in favor of one

specific A/E firm or lack of objectivity in the selection process.

A/E services are mainly solicited by PRPHA (Central Office) when extraordinary maintenance is necessary in public housing projects, although the Management Agents, mainly in charge of ordinary maintenance and repairs in the public housing projects located in their Designated Areas, can also perform, with their employees, or Sub-contracts with qualified Independent Contractors, the extraordinary maintenance and repairs, subject to prior written approval of PRPHA.

The Management Agents can also use the QBS Method, by which a “bank of qualified Respondents” is obtained.

As part of the PRPHA Implementation Plan, recurring review of the PHA planning capital needs should be performed in order to determine real effectiveness and efficiency of pursuing A/E services through QBS Method of procurement vs. contracting these services on an individual basis.

## **Section 7      Noncompetitive Proposals Method and Emergency Purchases**

**General:** Procurement by Noncompetitive Proposals may be Formal or Informal procedures, used only when the award of a contract is not feasible using Small Purchase procedures, Sealed Bids, Cooperative

Purchasing/Intergovernmental Agreement or Competitive Proposals, and if one of the following applies ("2 CFR 200.320(f)"):

1. The item is available only from a **single source**, based on a good faith review of available sources.
2. A public exigency or **emergency** exists that will not permit a delay resulting from competitive solicitation. 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. Emergency situations may be classified as follows:

**a. Critical Emergency**

A "Critical Emergency Procurement" is an emergency situation that requires the procurement of goods, work and/or services to be delivered and/or contract work must begin within twelve (12) hours, and will be addressed and evaluated by the Procurement Director and approved in writing by the Governing Board, in the most expedite manner feasible.

**b. Urgent Emergency**



An "Urgent Emergency" is an emergency situation which requires the procurement of goods, services and/or works to be delivered and/or contract work begun within seventy-two (72) hours, and will be attended to and evaluated by the Procurement Director and will be approved in writing by the Governing Board, in the most expedite manner feasible. Both Critical Emergency and Urgent Procurements will be conducted by the Procurement Area staff based on a priority basis.

Competitive procurement procedures must be followed once the emergency has been addressed.

3. HUD authorizes the use of Noncompetitive Proposals Method. However, each and every noncompetitive procurement process expected to exceed the one hundred fifty thousand dollars (\$150,000.00) threshold will require HUD's written approval; or

4. After solicitation of a number of sources, **competition is determined inadequate.**

**Justification** – Each procurement that is based on Noncompetitive Proposals or Emergency Purchase shall be supported by a written justification. 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 of any of the four indicated in “2 CFR 200.320(f)” and in Section 7 of this Article (Article VIII) above, 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; and
8. Price Reasonableness - The reasonableness of the price for all procurements based on Noncompetitive Proposals shall be determined by performing a cost or price analysis.

## **ARTICLE IX COST OR PRICE ANALYSIS**

### **Section 1 General**

A cost or price analysis shall be conducted for each procurement process or action in excess of the Small Purchase Threshold, including contract modifications. The PRPHA shall require assurance that, before entering into a contract, the cost and/or price is reasonable. The method and degree of cost or price analysis shall depend on particular facts of each procurement process.

If the particular procurement process is Sealed Bidding, where only one responsive bid is received, or if it concerns an QBS procurement of A/E services, or if it is a Noncompetitive Proposal procurement, or if it is a Modification, or a Termination Agreement, the particular Bidder, Offer or, or the Contractor, as applicable, shall submit to the Procurement Area the following:

1. An itemized breakdown of projected costs and profits; and
2. Commercial pricing and sales information, sufficient to enable the PRPHA to verify the reasonableness of the proposed costs and prices, such as, among others, a catalog, or other evidence of the market price of a commercial product sold in substantial quantities to the general public, or documentation showing that the offered price is set by law or regulation.

## **Section 2      Cost Analysis**

- a. The User Area is responsible for the preparation and delivery of a cost estimate (Independent Cost Estimate; ICE) to the Procurement Area in all procurement processes in excess of the Small Purchase Threshold or the amount of \$150,000.00. The Procurement Area will return a PMF or procurement request to the User Area, if a cost estimate is required as attachment. The cost estimate should consider the main categories of costs, including direct costs, such as labor, equipment, materials, subcontracts and others, taking into consideration cost principles set forth in Subpart E of "2 CFR Part 200". The cost estimate should also take into consideration costs such as administrative expenses and fixed overhead.
- b. Whenever a cost analysis is required, it shall be performed by the Procurement Area staff, with the assistance of the User Area requesting the procurement, and shall focus on the individual cost elements of the particular request. ("2 CFR 200.323") The PRPHA shall have the right to audit the Offeror's or Bidder's books and records related to such costs, and profits shall be analyzed separately. Costs shall be allowed only to the extent that they are consistent with the applicable federal cost principles. The PRPHA's staff shall always consult the Procurement Handbook 7460.8 REV-2, known as the *"Procurement Handbook for Public*

*Housing Agencies"*, issued in February 2007, and other regulatory references. Chapter 10, Section 10.3, C .of the Procurement Handbook 7460.8 REV-2, establishes that a cost analysis must be conducted if one or more of the following conditions apply: (1.) All sole sources and noncompetitive proposals; (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, for example, labor, materials, overhead, profit or others; (5.) When there is a Contract Modification, the only exception to this rule is a Contract Modification based on pricing terms already established in the Contract document, (6.) When making Contract termination payments; termination of any type of Contract (Fixed-price or cost-reimbursement) for convenience, or termination of a cost-reimbursement contract for cause, requires the PHA to 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.

- c. In establishing profit, the Procurement Area shall consider factors such as the complexity and risk of the work involved, in the investment and productivity of the proponent or bidder, the amount of subcontracting, the quality of past performance, and the margin of profit in the industry in the area of Puerto Rico for similar work. (“2 CFR 200.323”)
- d. For the preparation of a cost analysis, the Procurement Area must answer the following questions:
  - 1. State the total costs of the procurement process, modification or termination, including a copy of the cost breakdown submitted by the Offer or, Bidder, or Contractor, as applicable;
  - 2. What was the User Area cost estimate for the procurement process prior the solicitation or **sole source** action? If this is an Emergency Contract, did the Procurement Director or Area conduct a cost analysis? If so, attach a copy.
  - 3. If this procurement process is a **sole source** or an Emergency Contract, either before or after the award, based on the cost estimate prepared by the User Area, the Procurement Area must determine the difference between the current and the proposed cost and how much it would have cost if a

Competitive Procurement Method was used. If the proposed or actual cost exceeds the estimated cost by ten per cent (10%), the Director of the User Area must explain the variance in writing.

4. Is the cost estimate: (i) established by law, rules or regulations, (ii) based on previous contracts, (iii) based on current catalogue/price lists, (iv) based on the Independent Cost Estimate prepared by the User Area or on its behalf?

Attach copy, if applicable.

### **Section 3     Price Analysis**

- a. A price analysis is the review and evaluation of the price proposed by a Vendor, Offer or, Bidder, or Contractor, as applicable, in order to determine its reasonableness, without evaluating separate cost elements, i.e., without doing a cost analysis. In the case of Small Purchases and in most Sealed Bidding processes, except as otherwise hereinabove provided, the PRPHA shall perform a comparison between the prices received and the Independent Cost Estimate (ICE) prepared by the User Area, to ensure that the selected price is reasonable.
- b. The Procurement Area shall conduct an analysis of price using one or more of the following procedures:
  1. Compare proposed prices received in response to the solicitation.

2. Compare proposed prices with current prices on Contracts awarded during the last two (2) fiscal years and other current proposed prices for the same goods, work or services equal or similar.
3. Apply simple yardsticks measures (such as dollars per pound, per square foot, or other units) to highlight significant inconsistencies that warrant additional pricing inquiries.
4. Compare competitive pricing lists, published market prices of commodities and similar indexes, and inquire about discount or rebate arrangements.
5. Compare proposed prices with Independent Cost Estimate prepared by the User Area.

## **ARTICLE X CANCELLATION OF SOLICITATIONS**

### **Section 1 Prior to Deadline to Receive Offers**

A Small Purchase, an IFB, RFP, RFQ, or any other solicitation may be cancelled before the deadline in which the offers must be submitted or received in the PRPHA if:

- a. The PRPHA no longer required the goods, services or construction works solicited; or
- b. The PRPHA can no longer or reasonably expected to fund the procurement process until the Contract or Purchase Order is closed out;



- c. Amendments proposed to the initial solicitation are material and the PRPHA determines that a new solicitation would be most advantageous for the agency; or
- d. For just cause, when it is in the best interest of the PRPHA.

**Section 2      After the Deadline for Submitting Offers**

A Small Purchase, an IFB, RFP, RFQ, or any other solicitation may be cancelled after the advertised deadline for submission of Offers and all Offers received may be returned if:

- a. The PRPHA no longer required the goods, services or construction works solicited; or
- b. Ambiguous or otherwise inadequate specifications were included in the solicitation; or
- c. The solicitation did not include all the selection or evaluation factors that are significant for the PRPHA; or
- d. The projected cost exceeds available funds and it is not appropriate to adjust the solicited quantities to come within available funds; or
- e. There is reason to believe that Offers are not *bona fide*, or may not have not been prepared separately through open competition, or may be collusive; or
- f. For just cause, when it is in the best interest of the PRPHA.

### **Section 3      Cancellation Notice**

The reason for cancellation of the solicitation shall be set forth in writing by the Administrator, and will be included in the Procurement File and notified to all Suppliers, Offers' and Bidders who participated in the process. The Cancellation Notice will inform the Supplier, Proponent or Bidder that an opportunity will be given to compete in any other process thereto or any purchase of similar items.

### **Section 4      Unreasonable Prices**

In the event of an IFB, if all otherwise Responsive Bids are at unreasonable prices, or only a Responsive Bid has been received and the price is unreasonable, the PRPHA should conduct an analysis to determine if there is a problem in the specifications or the Independent Cost Estimate as in a previous circumstance and may cancel the IFB and/or complete the procurement process using other Competitive or Noncompetitive Methods established in this Manual, provided that all of the following occur:

- a. the Administrator issued a determination in writing to such effect, with his/her signature and the Governing Board authorization;
- b. All Bidders are informed of the PRPHA's intent to negotiate; and
- c. Each Bidder has a reasonable opportunity to negotiate.

## ARTICLE XI OFFICIAL RECORDS

The PRPHA shall keep a record (the "Procurement File") of each procurement process, which will be the official record of the PRPHA for said procurement process and shall document in detail the significant history of the same, as required by 2 C.F.R 200.318 (i).

Each Procurement File shall include, without limitation, the following information and documents concerning each procurement process:

- a. A document explaining the rationale for the method of procurement used and for the selection of the Contract type;
- b. A document explaining on the rationale for the selection or rejection of the Contractor;
- c. The basis for the Contract price;
- d. Any and all advertisements related to actions taken by the PRPHA and/or any procedures;
- e. Any and all determinations, interlocutory or final, taken by the PRPHA, any User Area, Management Agent (MA) or Municipality (MUN), the Procurement Director, the Procurement Staff, the Evaluation Committee, the Administrator, the Secretary, the Bid Board, and/or the Bid Revision Board;
- f. Any and all motions, allegations, questions, comments, petitions or requirements filed with the PRPHA or the Department by any person or entity;

- g. Any and all documents or information requested, received or considered by the PRPHA, its agents and/or the Department; and,
- h. Any and all memoranda drafted by any PRPHA or Department Official.

The Procurement File shall constitute the exclusive basis for actions by the PRPHA in the award of any Contract or Purchase Order, as applicable, and for any subsequent administrative and/or judicial proceedings or review related thereto.

The Procurement File shall be a public record, except for those documents and/or information which the Administrator determines, in writing, to be privileged and/or confidential under applicable laws. Except as otherwise provided herein, after the award of each Contract or Purchase Order, the Procurement File shall be available for public inspection. The Procurement File shall be kept by the PRPHA for a period of three (3) years after the date final payments are made and/or the Contract or Purchase Order is closed out (2 CFR 200.333), or for a longer term as may be provided in any State laws, rules and regulations concerning access to government documents.

The Administrator shall sign a Contract with a private entity to assist the Procurement Area in the filing of each and every Procurement File upon close out.

## ARTICLE XII CONTRACT TYPES AND CLAUSES

### Section 1 Contract Types

In every particular procurement process, the PRPHA will use the type of Contract that will serve its best interests. The preferred types of Contracts are Firm Fixed-Price Contracts and Requirement Contracts. The PRPHA shall not use the "Cost-Plus Percentage of Cost" or "Percentage of Construction" cost. However, other types of Contracts may be used. The HUD Procurement Handbook can be used as a guide in this matter.

Among all types of Contracts, the most used are the following:

#### **a. Fixed-Price Contract (Firm Fixed-Price and Fixed-price with economic price adjustment)**

This type of Contract is used when the Contractor is paid a firm fixed-price for all required work, regardless of the Contractor's actual cost of performance. It is appropriate for use when fair and reasonable prices can be established at time of award. It 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.

## **b. Cost-Reimbursement Contracts**

In the case of Cost-reimbursement Contracts, each file should have, beside the abovementioned, one written determination of why other types of Contracts are not appropriate. The Contract shall also include a ceiling price and point out that if the maximum price is exceeded; it will be at the Contractor's own risk without refund by the PRPHA.

The Contracts may include options for additional quantities to the original price or extension of the compliance period, subject to the following conditions:

1. the option is specifically contained in the procurement method;
2. the option is a unilateral right of the PRPHA;
3. the Contract provides a limit on the additional quantities for the period of duration or complete duration of the Contract;
4. the options are evaluated as part of the initial evaluation (initial competition);
5. the Contract provides the period of time within which the options may be executed;
6. the options may be exercised only at the price specified in or reasonably determinable in the Contract and;

7. the option may be exercised only in cases where it is determined to be more beneficial to the PRPHA instead of making a new Contract.

**c. Indefinite-delivery Contracts**

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 the Contract award.

- 1. Definite-quantity Contracts**

These 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 the following factors can be determined in advance:

- (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.

## **2. Requirements Contracts**

### **(a.) Origin of the Contract**

The Requirements Contract is a type of Indefinite-delivery Contract. A procurement process for the award of a Requirements Contract may be initiated by any User Area or the Procurement Area, whichever first identifies the requirements for repeatedly purchased goods, services and/or construction work. Depending on the aggregate sum of the proposed Requirements Contract, an IFB, RFP, or Small Purchases Procurement Method will be used for the award of the Requirements Contract. The Procurement Area, along with the User Area, will have the discretion to determine whether any goods, construction work and/or services are to be purchased using a Requirements Contract, based upon the procurement planning or the frequent use of



goods, work and/or services not already covered by a Requirements Contract.

**(b.) Procedures**

The PRPHA shall issue an IFB, RFP, or use the Small Purchases Procurement Method, as applicable, and shall establish a Requirements Contract for each category of repeatedly purchased goods, work and/or services required by the PRPHA. The Procurement Area shall assign a Requirements Contract number and each approved Task Order and/or Delivery Order thereunder will be cross-referenced to such Requirements Contract number.

The User Area requesting any goods, work and/or services covered by a Requirements Contract shall submit a Task Order or Delivery Order request, as applicable, to the Procurement Area, which will evaluate the request and the Procurement Director shall issue the Task Order or the Delivery Order, as applicable, by signing it and referring to the Requirements Contract number. Copies of the Task Order or Delivery Order, as applicable, shall be sent to the Finance

Bureau and the User Area requesting the same. The Procurement Area, the Finance Bureau, and each User Area will be responsible for monitoring the total dollar amount of Requirements Contracts to ensure that neither the Contractor nor the User Areas exceed the face amount of the same, unless and until the parties agree to modify the face amount of the Requirements Contract.

### **3. Indefinite-quantity Contracts**

#### **(a.) Origin of the Contract**

A procurement process for the award of an Indefinite Quantity Contract (IQC) may be initiated by any User Area or the Procurement Area, whichever first identifies the need for such a Contract and its compliance with the applicable requirements. Depending on the aggregate amount of the proposed IQC, an IFB, RFP or Small Purchases Procurement Method will be used for the award of the same. The Procurement Director, along with the Director of the User Area, has the discretion to determine if any goods and/or services are to be purchased

using an IQC, based on the procurement planning or the frequent use of the goods, work, and/or services not already covered by an IQC or Requirements Contract.

**(b.) Procedures**

The PRPHA shall use an IFB, RFP or a Small Purchases Procurement Method, as applicable, depending on the complexity of the project to be procured. The procurement must require that the PRPHA order and the Contractor furnish at least a stated minimum amount of supplies or services, and, if ordered by the PRPHA, the Contractor must furnish any additional quantities, not exceed a stated maximum amount. The Procurement Area or the User Area requesting the IQC, as applicable, shall establish a reasonable maximum and a minimum amount, which must be more than a nominal amount, but not more than the amount that the PRPHA is reasonably certain to order. The User Area requesting any goods, work and/or services covered by an IQC, shall submit a Task Order or Delivery Order request, as

applicable, to the Procurement Area, which will evaluate the request and the Procurement Director shall issue such Task Order or Delivery Order, as applicable, by signing it with reference to the IQC number. Copies of the Task Order or Delivery Order, as applicable, shall be sent to the Finance Bureau and the User Area requesting the same. The Procurement Area, the Finance Bureau, and each User Area will be responsible for monitoring the total dollar amount of IQC's to ensure that neither the Contractor nor the User Areas exceed the face amount of the same, unless and until the parties agree to modify the face amount of the IQC.

**d. Cooperative Purchasing / Intergovernmental**

**Agreements for Procurement Activities**

The acquisitions based on this method will be acquired in the following form: The PRPHA can be part in Cooperative or Intergovernmental Agreements, federal or local, for the procurement and use of common supplies and services. If services required by the PRPHA, are provided through this method and are part of a government's normal duties or responsibilities, it is permissible for the PRPHA to share the

services and cost of staff under an agreement. The determination of using a Cooperative Agreement instead of any other direct procurement should be based in criteria of economy and efficiency. If this method is used, the Cooperative Agreement should establish who is the person authorized to buy or procure in representation of the contracting parts and should detail the inspection, acceptance, termination, payment and other relevant terms and conditions of the Agreement. The PRPHA can use local and federal excesses and properties in excess instead of purchasing new property or equipment, if possible, and if this results in the reduction of costs of the project. The procurement of goods and services by means of Cooperative Agreements must be done according to 2 C.F.R. 200.318 (e).

**e. Energy Performance Contracting (EPC)**

Energy Performance Contracting is a financing technique that uses energy/utility cost savings from reduced energy consumption to repay the cost of installing Energy Conservation Methods (EMC's). The PRPHA will employ innovative approaches such as

EPC's to achieve programmatic efficiency and reduce utility costs, particularly as PRPHA's transition to asset management.

When using HUD's conservation incentives, the PRPHA will

assume the performance risks for the implemented ECM's.

(Notice: PIH-2011-36 (HA), issued on July, 8, 2011)

PRPHA will include in every Procurement File a document that will indicate the reason why a particular method of procurement and type of Contract is used.

## **Section 2      Contract Clauses**

All Contracts shall contain, among others, a clause identifying the type of Contract, and all the mandatory clauses contained on the latest released HUD forms, as applicable to the Contract type. HUD Forms include but are not limited to: 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" or HUD-5369 (C), "Certifications and Representations of Offerors Non-Construction Contract"; HUD-5370, "General Conditions of the Contract for Construction"; HUD-5370 (C), "General Conditions for Non-Construction Contracts"; and HUD-51915, "Model Form of Agreement Between Owner and Design Professional". These Forms are used depending on the type of Contract. Each Contract shall also include all other clauses required by federal and state laws, rules and regulations (2 CFR Ch. II, Appendix II to Part 200, and other regulations), including, without limitation:

- a. Termination for cause and convenience in all Contracts in excess of \$10,000.00 including manner by which the agency will be effected and the basis for settlement;
- b. Except as otherwise provided under 41 CFR Part 60, compliance with Equal Opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, signed and issued by the President of the United States, entitled "Equal Employment Opportunity", as amended and supplemented in U.S. Department of Labor regulations;
- c. Compliance with Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime Construction Contracts in excess of \$2,000.00 awarded by PRPHA must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148), as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts covering Federally Financed and Assisted Construction"). A clause for compliance of the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations, must also be included ;
- d. Compliance with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by PRPHA in excess of \$150,000.00, that involve the

employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by U.S. Department of Labor regulations (29 CFR Part 5);

- e. Advertisement of HUD requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such Contract.(37 CFR Section 401.2 (a) and 37 CFR Part 401).
- f. Compliance with all applicable standards, orders, or requirements issued under the Clean Air Act, (42U.S.C.7401-7471q and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- g. Compliance with mandatory standards and policies relating to energy efficiency which are contained in the Commonwealth of Puerto Rico's energy conservation plan, issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201) ;
- h. Compliance with orders and requirements relating to Debarment and Suspension (OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 at 3 CFR Part 1986 Comp. , p. 189 and 12689 at 3 CFR Part 1989 Comp., p. 235; 2 CFR 180.220 establishes that a Contract award may not be made to parties listed



on the government-wide Excluded Parties List System in the System for Award Management (SAM);

- i. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) – Contractors that apply or bid for an award of \$100,000.00 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal grant or any other award covered by 31U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.
- j. Retention of Contractor's records by PRPHA, HUD or Comptroller General of the United States, or any of their duly authorized representatives, until three (3) years after final payment under the Contract. If any claims or litigation are involved, the records shall be retained until all issues are satisfactorily resolved. Grant of access and right to the authorities named above to examine any documents, papers or records related to the Contract;
- k. Advertisement of HUD requirements and regulations pertaining to right in data and patent rights (Ownership and proprietary interest) of PRPHA in relation to all information, materials, and documents

discovered or produced by Contractor pursuant to the terms of the Contract.

- l. Compliance of the Contractor with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000.00 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.00; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- m. Award Protests and Contract Claims;
- n. Value Engineering: Systemic and organized approach to analyze functions of systems, equipment, facilities, services and materials to ensure they achieve their essential functions at the lowest cost consistent to life cycle in execution, reliability, quality and safety;
- o. Payment of Funds to Influence Certain Federal Transactions;
- p. MBE/WBE and Section 3 requirements, and  
Drug-Free Workplace Act.

### **ARTICLE XIII      CONTRACTING WITH RESIDENT OWNED BUSINESSES**

Pursuant to 24 C.F.R. Part 963, the PRPHA may solicit and achieve contracting with Resident-Owned Businesses (ROB) for the procurement of goods, services and/or construction work by following the applicable method of procurement, as set forth in 2 C.F.R. 200.320, with solicitation limited to the ROB's. An award shall not be made if the Contract or Purchase Order exceeded the price normally paid for goods, services and/or construction work in the area of the ROB's housing project. The eligibility requirements set forth in 24 C.F.R. § 963.10 shall apply to any and all of the procurement processes under this Article including, but not limited to, the following:

#### **a. Qualifications**

1. The ROB shall demonstrate that it is a legally formed business: a.) The ROB shall submit certified copies of the Government of the of Puerto Rico or Municipality licenses which authorize it to engage in the type of business activity for which it was formed; b.) In case the business is a corporation, the ROB also shall submit a certified copy of its corporate charter or other organizational document, that verifies that the

business was properly formed in accordance with local law.

(24 CFR 963.10 (a));

2. The ROB shall submit a certification that it is a Resident Owned Business as defined in this Article. Also, it shall disclose all owners of the business, and each owner's percentage of ownership interest in the business. The business must also disclose all individuals who possess the power to make the day-to-day decisions on matters of management, policy, and operations (management officials). and that the operations of the business are controlled by, at least fifty-one percent (51%) of the voting stock-owned by one or more persons or entities composed of persons who are residents of the PRPHA public housing project (24 CFR 963.10 (b)). The owners must present evidence that they are actual PRPHA public housing residents by submitting copies of their lease contracts, duly signed. (24 CFR 963.10(b))

3. The ROB must be registered with the PRPHA's Economic Development Division of the Residents and Community Programs Area as an ROB (24 CFR 963.10 (b)) and if it participates in a Formal bid procurement process, must be registered in the "RUL List.

b. Ability to Complete the Work

1. In a Formal bid procedure process, the Administrator, the Procurement Director, the Evaluation Committee and/or the Bid Board, as applicable, will evaluate the integrity of the Proponent, the record of its past performance and compliance with public policy, and its financial and technical resources to deliver the goods, construction works or services requested in the particular procurement process (24 CFR 963.10 (c));
2. Completion of courses in business administration or finance management, proof of job training or apprenticeship in a particular trade, business, or profession is encouraged (24 CFR 963.10 (c));
3. The ROB must have the required insurance, and payment and performance bonds (where required), as any other Proponent. However, the PRPHA, at its discretion, may adjust any of those insurance requirements in the procurement process in order to permit ROB participation.

c. Procedures

The PRPHA shall follow the Small Purchases, Sealed Bidding, Competitive Proposals, or Noncompetitive procurement methods, depending on the nature of the procurement process, but will limit solicitation among ROB's. Generally, the PRPHA will prepare an Independent Cost Estimate (ICE); select the appropriate method of procurement, as mentioned above; receive Quotations or Offers

from one or more Resident Owned Businesses which are included in the ROB's registry and the "RUL" List. Joint Ventures between a ROB and a private person or entity or another ROB are permitted, but the private person or entity or the other ROB must meet, individually, the PRPHA requirements for a Responsible Offer or Bidder.

At all times, the selected ROB must own and control, at least fifty-one percent (51%) of the joint venture and receive at least a fifty-one percent (51%) of the profits of any and all operations of the joint venture. The ROB will submit a certification as to the number of Contracts and/or Purchase Orders awarded to it and/or to any joint ventures under this Article, stating the total amount in dollars of each of such contracts and/or purchase orders awarded.

A ROB is not eligible to participate in a procurement process under this Article if the ROB has been awarded Contracts, Purchase Orders, Task Orders, or Delivery Orders with a total combined dollar value of one million dollars (\$1,000,000.00) or more. See 24 C.F.R. § 963.10 (d).

## **ARTICLE XIV CONTRACT MODIFICATIONS AND CHANGE ORDERS**

### **Section 1 General**

- a. As an exception, it may be necessary for the PRPHA to modify an awarded and executed Contract (includes a construction contract)

or Purchase Order during its performance in order to address (i) unforeseeable or unpreventable changes required by the PRPHA or (ii) to revise the performance of the Contractor.

- b. Prior to initiating any modification, the User Area must determine, in writing that the proposed change is within the scope of the Contract or Purchase Order. Unilateral modifications must be authorized according to the Changes Clause contained in the original Contract or Purchase Order. Bilateral modifications must be agreed upon by the PRPHA and the Contractor. Any modification outside the general scope of the Contract or Purchase Order must be considered for a new procurement process, and will be conducted as a separate procurement process.
- c. In the case of unilateral modifications, the PRPHA will issue a Change Order describing the required modification and formalizing such unilateral modification with the Contractor's assertion as part of the Contract. Purchase Orders or Change Orders must be signed by the Administrator or the President of PRPHA's Governing Board depending on the amount of the Contract and the Contract modification and if these Contracts are simply purchases of goods and services or are Contracts of Professional and Technical Services, subject to PRPHA internal norms. For example, in the case of a unilateral modification or Change Order of a construction contract which amount exceeds

the Small Purchase Threshold, the Contractor must assert with the modification or submit a claim, both of which must be presented in writing to the Contracting Officer. According to the "Changes Clause" in HUD Form 5370 (Item 29(a)), the Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a Change Order, make changes in the work within the general scope of the Contract including changes:

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) PHA-furnished facilities, equipment, materials, services, or site; or,
- (4) Directing the acceleration in the performance of the work.

Also, according to Item 29(b) of the same Clause: "Any other written order, includes direction, instruction, interpretation, or determination from the Contracting Officer that causes a change shall be treated as a Change Order.

In the case of bilateral amendments, a written Contract modification will be prepared by the PRPHA, signed by the Contracting Officer (Administrator) and the Contractor, and shall describe the modification as set forth and the agreed upon cost,



schedule, or other revisions to the Contract or original Purchase Order.

## **Section 2      Contract Forms and Term**

Bilateral modifications of a Contract, such as Purchase Orders for the purchase of goods and services shall be written in a specific form only used for this particular Contract by PRPHA's Procurement Staff. Other Contracts may vary in form. All Contracts shall always be signed by both parties of the Contract. A Contract modification should include a detailed description of the change or modification and include costs and schedule, if applicable.

The term of a Contract shall not exceed a period of five (5) years, including options for renewal or extension. Contracts other than Energy Performance Contracts, with terms and extensions that exceed a total of five (5) years, are viewed as threatening to the principle of "full and open competition" of federal regulations. HUD Field Office may approve Contracts in excess of a five (5) year term if it determines there is no other alternative. Energy Performance Contracts may be for a period not to exceed twenty (20) years, according to 24 C.F.R. 990.185 about "Utilities expense level: Incentives for energy conservation/rate reduction".

## **Section 3      Procedures**

- a. Depending on whether it is a unilateral or bilateral modification, the User Area will prepare a written request for Change Order or

Contractual modifications, in consultation with the Procurement Area, which will include the following:

1. A detailed description of the proposed modification, including the new projected delivery date;
  2. A reference to the applicable specifications, drawings, or qualifications upon under which the Contract or Purchase Order was originally developed and awarded, as applicable;
  3. Modified architectural drawings, as applicable;
  4. A detailed cost estimate, including a fixed price for, or the maximum price of, the modification;
  5. The Contractor's (and Subcontractors, as applicable) itemized breakdown of the proposed costs of the modification, if available;
  6. Certification of the Finance Bureau on the availability of funds;
  7. A written justification for the modification;
  8. A certification that the modification is within the original scope of the Contract or Purchase Order; and
  9. In the case of unilateral modifications, a certification that such modification shall be executed according to the Changes Clause contained in the original Contract or Purchase Order.
- b. Extraordinary modifications, that is, modifications where the User Area is requesting a change in the Contract or Purchase Order by

seven per cent (7%) or more, or the time of completion by thirty (30) days or more, will require, in addition to the aforementioned documents, an Explanatory Memorial (“Memorial Explicativo”) signed by the Director of the User Area. The Explanatory Memorial (“Memorial Explicativo”) shall: (i) describe the circumstances that make it necessary to modify, (ii) that such circumstances were not reasonably foreseeable at the time when the Contract or Purchase Order was solicited, awarded and executed; (iii) cite the federal, state, legal, administrative or contractual clause according to which the modification is being requested, and (iv) certify that the modification is in the best interests of the PRPHA.

- c. Depending on whether it is a unilateral or bilateral modification, a Change Order or written Contract modification request shall be prepared for each case once the corresponding document is complete, it shall be signed by the Director of the User Area and forwarded to the Procurement Area, which will evaluate it and approve specifications, all contractual terms and conditions, and any Exhibits applicable to the modification. In the case of bilateral modifications, for example, a Change Order of a construction project, the Representatives of the PRPHA in the User Area, Engineer staff, shall conduct any negotiation necessary to reach an agreement with the Contractor that best serves the

PRPHA's mission of providing decent, safe and sanitary housing to the residents of public housing projects. The User Area or The Procurement Staff shall prepare a draft of the document formalizing the modification, which clearly describes the scope of the modification to the Contract or Purchase Order, and shall identify the price and all other components of the same.

- d. The Procurement Director shall evaluate the above documentation and shall sign his/her approval on said draft, and forward the same to the Administrator, with his/her recommendation, including the reasons therefore.
- e. The Administrator, upon the written recommendation of the Procurement Director, shall approve the modification and forward it to the Governing Board for its approval. Upon the Administrator's and Governing's Board approval: (i) in the case of unilateral modifications, a copy of the Change Order shall be delivered to the Contractor, who upon its receipt, must start working on the requested change; or (ii) in the case of bilateral modifications, the Contractor shall receive an advertisement stating the date, time and place for the execution of the written Contract modification mutually agreed upon by and between the PRPHA and the Contractor. A Contract modification is not binding for the PRPHA unless it is signed by the Administrator and includes the Governing Board authorization, if applicable.

#### **Section 4      Records**

The Procurement File shall include all documents related to each and every modification to the original procurement, including the following:

- a. Any additional Contract or Purchase Order requirements resulting from the modification;
- b. Funding, coding and authorization number from the Finance Bureau;
- c. Proof of insurance in effect covering the modification and acceptance thereof by the Insurance Division;
- d. To the extent applicable, HUD's Field Office written approval of the modification;
- e. Number and description of each and every modification to the Contract or Purchase Order; and
- f. Itemized and aggregate cost of all modifications to the Contract or Purchase Order.

### **ARTICLE XV    CONTRACTOR QUALIFICATIONS AND DUTIES**

#### **Section 1      Determination of Responsibility - Responsible Contractor**

Contracts and/or Purchase Orders shall be awarded to and executed only with Responsible Contractors, that is, those who have:

- a. Financial resources and capability;

- b. Ability to comply with the required or proposed delivery or performance schedule;
- c. A satisfactory performance record and compliance with public policy of PRPHA or other state or governmental agencies;
- d. A record of proven integrity and business ethics;
- e. The necessary organization, experience, accounting and operational controls, the technical skills, or the ability to obtain them;
- f. The necessary production, construction, and technical equipment and facilities, or the ability to obtain them;
- g. Other qualifications under applicable law and regulations, including none suspended, debarred or under a HUD- imposed “Limited Denial of Participation (LDP)”. This type of HUD determination will automatically classify the Contractor as ineligible for an award of a Contract.

Based on the above, the Procurement Area shall prepare a written Determination of Responsibility or Non-Responsibility, as applicable, including the reasons therefore, and shall include such Determination, in the Procurement File.

The PRPHA reserves its right to not enter into a Contract or Purchase Order with a person, organization or entity against

whom a Determination of Non-Responsibility has been previously made by the PRPHA or other governmental agency.

## **ARTICLE XVI REQUIRED DOCUMENTS FOR AWARD – OFFICIAL BIDDER’S LIST**

Before awarding a Contract or Purchase Order, the PRPHA shall use as reference the Official Bidder’s List created by the General Services Administration of the Government of Puerto Rico (“Registro Único de Licitadores, RUL”). This is a mandatory registry of all the persons and organizations or corporations interests in doing business with the Government of Puerto Rico. The Vendor, Supplier, Offer or Bidder included in the Official Bidder’s List (“RUL”), has been evaluated by the government agency mentioned with objective criteria, through the presentation of certifications and documents. When a Vendor, Supplier, Offer or Bidder is included in the Official Bidder’s List it means that he, she or it has the ability to perform as part in a Contract with the Government. PRPHA’s Procurement Staff shall use the “RUL” Certification issued by the General Services Administration to the Vendor, Supplier, Offer or Bidder before awarding a Contract in both, Small Purchases and Former Bid processes.

## **ARTICLE XVII     CONTRACT ADMINISTRATION AND MONITORING**

### **Section 1     General**

- a. Contract administration consists of the actions taken by the PRPHA after the award of a Contract, to ensure it is successfully performed in accordance with the terms and conditions agreed by the parts in writing. The PRPHA must administer the execution of the Contract from the date the Contractor begins to offer its services (Construction Contract – “Notice to Proceed”), to the date the Contract is terminated or the goods and services are finally delivered (Non-construction Contract); and in both cases, the date the last payment is approved and issued. The User Area assists the PRPHA’s Procurement Staff in this function, specifically with the monitoring of the Contract. In a Construction Contract, for example, the User Area (Engineer Staff) will administer a Pre-construction Conference before the Contractor begins the work agreed; execute progress meetings to verify the work performed, including inspections, correction of deficiencies, compliance with construction schedule and labor standards, in order for the PRPHA to issue payments on time. In a Non-construction Contract, the User Area will administer a Post-award Conference to ensure that the Contractor understands the performance requirements of the Contract; establish a system for receiving supplies, equipment, and services; monitor and



inspect supplies and services; enforce specifications and timelines and labor standards, in order for the PRPHA to establish control of the payments. The PRPHA must administer the Contract to ensure the Contractor's performance and the Contract results, including any modifications, achieve the goals of the Agency with respect to the particular procurement and that the process remains in the best interests of the PRPHA.

- b. The requesting User Area has the crucial responsibility of monitoring the Contractor's performance under the Contract and to enforce applicable bonds and/or warranties with the assistance of the Procurement Area until the closeout of the Contract.
- c. If the Contractor is not satisfactorily performing under the terms and conditions of the Contract, the User Area shall notify the Procurement Area, in writing. The Procurement Area will refer the situation to the Office of the Legal Advisor who will assess it and decide whether to terminate the Contract for default, send a Cure Notice, and enforce applicable bonds and/or warranties, or any other feasible alternative.
- d. Upon satisfactory completion of the Contract, the Procurement Area in conjunction with the User Area will close out the Contract. All Contract records must be kept by each Contractor and the PRPHA for a minimum of three (3) years after final payment and/or the Contract's closeout.

## **Section 2      Details of the User Area's Responsibilities**

- a. The User Area will not authorize or issue any Change Order.
- b. The User Area is responsible for monitoring each Contractor's performance and for reporting, in writing if possible, to the Procurement Area any and all incidents of non-compliance with the terms and conditions of the Contract. If there is any doubt as to whether an incident is noncompliant, the User Area must contact the Procurement Area.
- c. The User Area is responsible for promptly inspecting, accepting, rejecting or taking any and all necessary action with respect to delivery of conforming or non-conforming goods, construction work and/or services, and is responsible for supervising the performance of the same. The PRPHA is not obligated to accept or pay for the goods or services until the User Area has had the opportunity to inspect them. The inspection must take place within a reasonable time after delivery of goods, construction work and/or services. If the Procurement Area fails to specify a particular defect because of failure of the User Area to adequately inspect when the defect could have been found through a reasonable inspection, the PRPHA may be deemed to have waived its right to rejection based on that particular defect.

### **Section 3      Acceptance or Rejection of Goods and Services**

Acceptance shall take place by the User Area. Upon receipt of evidence of acceptance, the Finance Bureau will pay to the Contractor according to provisions of the Contract for all goods, services and/or construction works accepted, within the time allotted by the Finance Bureau for payment of invoices.

When goods or services do not conform to the Contract, the User Area shall inform the Procurement Area, who shall:

1. Reject defective goods, construction works and/or services, in which case, the Contractor may be declared in default, unless it can furnish conforming items within the Contract delivery schedule; or
2. Issue a Cure Notice requiring the Contractor to cure the defective goods, construction works and/or services within a special delivery schedule.

If the Contractor fails to cure the defects, the Procurement Area may accept the goods, construction works and/or services and negotiate a reduction in the Contract price or refer the Contract to the Office of the Legal Advisor of the PRPHA to terminate the Contract for default.

### **Section 4      Suspension and Debarment**

Purchase Orders or Contracts shall not be awarded to debarred, suspended, Non-Responsible or ineligible Contractors. Contractors may be suspended or debarred by HUD in accordance with the

debarment procedures determined by HUD pursuant to 24 C.F.R. Part 24 as in effect on the date thereof and as the same may be amended from time to time.

The Management Agents (legal and governmental entities) must also create a system to administer and monitor the execution of the Contracts; make sure the Contractor understands the performance requirements of the Contract; establish a system for receiving supplies, equipment, and services; monitor and inspect supplies and services; enforce specifications, timelines, labor standards and other Contract requirements, as established in HUD Procurement Handbook 7460.8 REV-2.

**ARTICLE XVIII SECTION 3: LOW AND VERY LOW- INCOME PERSONS  
OR FIRMS PARTICIPATION**

**Section 1 General**

The purpose of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1710 (u) (hereinafter "Section 3") is to ensure that the employment and other economic opportunities generated by HUD assistance or HUD assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

PRPHA and its agents (Management Agents, including Municipalities), all administrate public housing projects in Puerto Rico and will comply with HUD's regulations set forth in 24 CFR Part 135, which implement Section 3. The Management Agents certify in their Contract with PRPHA, to be under no contractual or other impediment that will prevent them from complying with 24 CFR Part 135 regulations.

## **Section 2      Affirmative Action**

PRPHA will make efforts and outreach to individuals (low or very low-income persons) or firms located in or owned substantially by residents, women or persons who are part of minority groups in the public housing projects or the area where the public housing project is located, to comply with Section 3. This outreach is made mainly through the Economic Development Division of the Residents and Community Programs Area. The PRPHA will offer employment and training opportunities not only to its employees, but also to residents, women, minority or persons with low or very low-income in the public housing projects or the area where the public housing project is located, who would like to participate in this process and are qualified for the positions. The Resident Councils in the public housing projects and PRPHA's agents will help identify these persons or firms. PRPHA will post information of job opportunities at Central Office for all persons interested, including residents, women, minority

or persons with low or very low-income in the public housing projects or the area where the public housing project is located.

PRPHA will include the Section 3 clause in every Contract or Subcontract subject to compliance with regulations in 24 CFR Part 135. Noncompliance with HUD's regulations 24 CFR Part 135 will result in the termination of the Contract or Subcontract. The Management Agents will do the same.

The Management Agents will also offer employment and training opportunities to residents, women or persons with low or very low-income in the public housing projects or the area where the public housing project is located. These agents, according to the Contract signed with PRPHA, agree to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization workers or representative of its commitments under Section 3 clause, and shall post copies of this notice in conspicuous places at the AMP's site where both employees and applicants for training and employment positions can see the notice.

The Management Agents, according to the Contract indicated above, also agree to include this Section 3 clause in every Contract and Subcontract subject to compliance with regulations in 24 CFR Part

135. Noncompliance with HUD's regulations, 24 CFR Part 135, will result in the termination of the Contract or Subcontract.

The Management Agent shall pay not less than the wages prevailing in the locality, as determined by and adopted by the Secretary of HUD, to all architects, technical engineers, draftsmen, and technicians, as established in Section 12 of the Housing Act, 42 U.S.C. 1437 (j). These agents also have the commitment to give employment preference to former employees of the former agent of the Designated Area. For this purpose, the agents will create and maintain a hiring preference list including all former employees of the former agent of the Designates Area.

In the Procurement Area, PRPHA will develop procedures to assess and evaluate proposals received by Section 3 Resident-Owned Participant Vendors, Women Business Enterprise (WBE) and Minority Business Enterprise (MBE) programs. These procedures will be, but are not limited to, the following:

- a. In determining the responsibility of potential Contractors, consider their record of Section 3 compliance based on past actions and current plans related to the pending Contract.
- b. Contacting business assistance agencies, minority Contractors (MBE/WBE) associations and community organizations to inform them of contracting opportunities

and requesting their assistance in identifying Section 3 businesses which may solicit bids or proposals for Contracts for work in connection with Section 3 covered assistance.

- c. Advertising contracting opportunities by posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the administrative offices of the projects.
- d. Contacting resident councils and other resident organizations and requesting their assistance in identifying business concerns.
- e. Providing written notice to all known Section 3 businesses or businesses concerns about contracting opportunities, with sufficient time to participate in the Invitation for Bids or Request for Proposal.
- f. Informing Section 3 businesses or businesses concerns in pre-bid meetings about future opportunities of contracting.
- g. Carrying out workshops on contracting procedures and specific Contract opportunities in a timely manner so that Section 3 business concerns can take advantage of upcoming contracting opportunities.



- h. Advise Section 3 business concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.
- i. Where appropriate, breaking out Contract work items into economically feasible units to facilitate participation by Section 3 business concerns.
- j. Contacting agencies administering HUD Youth Programs, and notifying these agencies of the contracting opportunities.
- k. Developing a list of eligible Section 3 business concerns.
- l. Establishing or sponsoring programs designed to assist residents of public housing in the creation and development of Resident Owned Businesses.
- m. Supporting businesses which provide economic opportunities to low income persons by linking them to the support services available through the Small Business Administration (SBA), and other local agencies.
- n. Encouraging financial institutions, in carrying out their responsibilities under the Community Reinvestment Act, to provide no or low interest loans for providing working capital and other financial needs.
- o. Actively supporting joint ventures with Section 3 business concerns and other businesses that assist them.

PRPHA's Procurement Area shall also provide a preference of five (5) points in the evaluation criteria of the method of rating, for mayor participation of Section 3 businesses concerns in the Formal Bid procurement process.

## **ARTICLE XIX      ETHICS IN PUBLIC CONTRACTING**

**Section 1      General:** Since the awarding of a Contract or Purchase Order involves the disbursement of taxpayers' funds, PRPHA officials, agents and employees, as well as the Contractors involved in each procurement process, both owe a fiduciary duty to the PRPHA. Therefore, no PRPHA official, agent or employee shall participate directly or indirectly in the selection, award, administration or monitoring of any Contract or Purchase Order if a conflict of interest, real or apparent, results. All PRPHA officials, agents, employees, and Contractors shall maintain an exemplary degree of honesty, integrity and impartiality when procuring, directly or indirectly, goods, work and/or services, and in the execution and/or performance of Contracts or Purchase Orders for the agency. It is mandatory that each and every official, employee and agent adheres strictly to the ethical standards in public contracting as set forth in 2 C.F.R. 200.318(c) (1), the HUD Procurement Handbook 7460.8 REV-2 as a Guide Book, Law Number 1, approved on January 3<sup>rd</sup>, 2012, known as "Puerto Rico's Government Ethics Act", this Manual, and all

applicable federal and state laws and regulations in force now or as they may be amended in the future.

## **Section 2      Prohibitions**

All provisions contained in the Puerto Rico Government Ethics Act of 2011 (Law Number 1, approved on January 3<sup>rd</sup>, 2012), shall be deemed applicable to this Manual. Whenever the Law mentions the phrase “public servant”, in terms of PRPHA, it refers to “PRPHA officials and employees”. Whenever the Law mentions “appointing authority” and “Executive Director”, in terms of PRPHA, it refers to “Governing Board and/or Administrator”. Most of the prohibitions that apply to PRPHA officials and employees, shall be interpreted to also apply to PRPHA agents and contractors due to their fiduciary duty to the PRPHA.

# **ARTICLE XX   ADMINISTRATIVE AND APPELATE REMEDIES**

## **Section 1      General**

It is the PRPHA’s public policy to informally resolve all issues related to a Contract arising under a Purchase Order or a Contract at the administrative level without recourse to the judicial forum.

When the amount of the Purchase Order or Contract is equal or less than the Small Purchase Threshold or \$150,000.00, the Supplier or Contractor shall have the opportunity to assert with the Contracting Officer or present a claim which will be solved by the Contracting

Officer in a determined period of time according to internal rules. The Supplier or Contractor will always be informed of its right to be heard.

Disputes, Bid protests and other Contractor claims related to Bids or Contracts which amounts exceed the Small Purchase Threshold or \$150,000.00 shall be handled in accordance with the applicable local provisions of Regulation Num. 6106, Bid Board Regulation of the Department and its affiliated Agencies of February 25, 2000 and Regulation Num. 6793, Regulations of the Bid Review Board of March 29, 2004, and to the extent modified by this Manual. Both regulations are based on the administrative procedures established in Law Number 170, approved August 12th, 1988, as amended, known as the “Law of Administrative Uniform Procedures” of Puerto Rico, particularly Section 3.19 of this Law which refers to the administrative procedures of Bids. HUD will retain jurisdiction for review over claims of violations of federal laws and regulations after all administrative remedies at the local level have been exhausted.

## **Section 2      Administrative Procedure (Request for Reconsideration and Judicial Review)**

Any person, party or entity that considers itself having been adversely affected by an award determination of the Bid Board made under the provisions of this Manual, may file a petition for reconsideration (Request for Reconsideration) with the Department’s Bid Review

Board within twenty (20) days from the date on which a copy of the Award Notice or Resolution was duly notified in accordance with Section 3.19 of Law Number 170, *supra*. Simultaneously, with the filing of the Request for Reconsideration, said person, party or entity shall submit a copy of the Request to all the parties in the procedure and to the Puerto Rico Housing Department. Alternatively, a petition for review may be filed before the General Services Administration of the Government of Puerto Rico Review Board.

The mere presentation of a Request for Reconsideration will not have the effect of paralyzing the contested award.

The Bid Review Board may or may not consider the Request for Reconsideration. The terms in relation to this action or lack of action, as well as its Judicial review, if any, shall be those established in Law No. 170, *supra*.

### **Section 3      Management Agent's Procurement Process— Judicial Review**

In the Management Agent's procurement process, any person or party which considers itself adversely affected by a Bid Award of the Management Agent's Bid Board, may file a petition for Judicial Review before the Court of Appeals within twenty (20) days from the date on which a copy of the Award Notice or Resolution was duly notified in accordance with Section 3.19 of Law Number 170, *supra*. The mere filing of a petition for review shall not have the effect of paralyzing the contested award.

#### **ARTICLE XXI      REPEALING CLAUSE**

Any circular, Administrative Order, rule or regulation inconsistent with the provisions of this Manual is hereby repealed or modified accordingly. This Manual revokes Regulation No. 6405 of the Housing Department of Puerto Rico, adopted on March 12, 2002, known as *“Puerto Rico Public Housing Administration Procurement Manual”*.

#### **ARTICLE XXII      SEVERABILITY CLAUSE**

If any provision of this Manual is held to be unconstitutional or void by any court with jurisdiction, such judgment will not affect, impair or invalidate the remaining provisions of this Handbook.

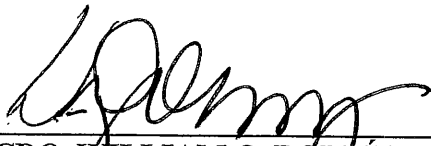
#### **ARTICLE XXIII      PREVAILING VERSION**

This Manual is originally adopted in the English Language, therefore a translation to the Spanish language is included. In case of any inconsistency between both versions, the English version will prevail.

#### **ARTICLE XXIV      EFFECTIVE DATE**

This Manual shall take effect immediately upon its filing with the Department of State of the Government of Puerto Rico.

APPROVED in San Juan, Puerto Rico, on the 15 day of March, 2017.



**LCDO. WILLIAM O. RODRÍGUEZ RODRÍGUEZ**  
**DEPUTY ADMINISTRATOR**



**LCDO. FERNANDO GIL ENSEÑAT**  
**SECRETARY AND CHAIRMAN**  
**OF THE GOVERNING BOARD**