

# Albuquerque Housing Authority Procurement Policy

2016 Revised Edition



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ALBUQUERQUE HOUSING AUTHORITY

*"Empowering people in our community through affordable housing and self sufficiency opportunities."*

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## 1 Introduction

This Procurement Policy (Policy) complies with the Annual Contributions Contract (ACC) between the United States Department of Housing and Urban Development (HUD) and the City of Albuquerque, Albuquerque Housing Services (AHS) Division, the predecessor-in-interest to the Albuquerque Housing Authority (AHA), federal regulations at **2 CFR §200**, the procurement standards of the HUD Handbook 7460.8 Revision 2, Procurement Handbook for Public Housing Agencies, and applicable state of New Mexico and local laws.

## 2 General Provisions

### 2.1 General

AHA establishes this Policy to:

1. provide for a procurement system of quality and integrity;
2. provide for the fair and equitable treatment of all persons or firms involved in purchasing by AHA;
3. ensure that supplies and services (including construction) are procured efficiently, effectively, and the
4. most favorable prices available to AHA;
5. promote competition in contracting; and
6. assure that AHA purchasing actions are in full compliance with applicable federal standards;
7. HUD regulations, and state, and local laws.

### 2.2 Application

This Policy applies to all procurement actions of AHA, regardless of the source of funds, except as noted under “exclusions,” below. However, nothing in this Policy shall prevent AHA from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with all applicable law. When both HUD and non-Federal funds are used for a project, the work to be accomplished with the funds should be separately identified prior to procurement so that appropriate requirements can be applied, if necessary. If it is not possible to separate the funds, HUD procurement regulations shall be applied to the total project. If funds and work can be separated and work can be completed with a new contract, then regulations applicable to the source of funding may be followed.

### 2.3 Definition

The term “procurement,” as used in this Policy, includes the procuring, purchasing, leasing, or renting of: (1) goods, supplies, equipment, and materials; (2) construction and maintenance; (3) consultant services; (4) Architectural and Engineering (A/E) services; (5) Social Services; and (6) other services.

## 2.4 Exclusions

This Policy does not govern administrative fees earned under the Section 8 Housing voucher program, the award of housing assistance vouchers under the Section 8 program, the execution of landlord Housing Assistance Payments (HAP) contracts under that program, or non-program income, e.g., fee-for-service revenue under 24 CFR Part 990. Additionally, competitive procurement is not required for purchases of publicly provided or publicly regulated gas, electricity, water, fuel, oil and/or water (HUD Procurement Handbook 17.4 “Utility Purchasing”). These excluded areas are subject to applicable state and local requirements.

## 2.5 Exemptions from the New Mexico Procurement Code

The provisions of the New Mexico Procurement Code 13-1-98 list various exemptions from the New Mexico Procurement Code. Some of these exemptions that may apply to goods and services procured by AHA include:

1. Procurement of items of tangible personal property or services by a state agency or a local public body from a state agency, a local public body or external procurement unit except as otherwise provided in Section 13-1-135 through 13-1-137 NMSA 1978;
2. Purchases of publicly provided or publicly regulated gas, electricity, water, sewer and refuse collection services;
3. Purchase of books, periodicals and training materials in printed or electronic format from the publishers or copyright holders thereof;
4. Purchases not exceeding ten thousand dollars (\$10,000) consisting of magazine subscriptions, web- based or electronic subscriptions, conference registration fees and other similar purchases where prepayments are required;
5. Travel or shipping by common carrier or by private conveyance or to meals and lodging;
6. Contracts and expenditures for legal subscription and research services and litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including experts, mediators, court reporters, process servers and witness fees, but not including attorney contracts;
7. Procurement of services from community rehabilitation programs or qualified individuals pursuant to the State Use Act (13-1C-1 through 13-1C-7 NMSA 1979).

Although these are exemptions to New Mexico Procurement Code, they may not be exemptions under HUD Federal Regulations. In these cases staff must follow any HUD regulations that still apply.

## 2.6 Changes in Laws and Regulations

If an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with this Policy, automatically supersede this Policy.

## **2.7 Public Access to Procurement Information**

Most procurement information that is not proprietary is a matter of public record and shall be available to the public to the extent provided in the New Mexico Inspection of Public Records Act (IPRA).

# **3 Ethics in Public Contracting**

## **3.1 General**

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

## **3.2 Principles**

Members of the Board of Housing Commissioners, AHA employees, and any others serving in an official position or acting as an agent of AHA (hereafter referred to as employees, officers, or agents) must discharge their duties in compliance with applicable laws and regulations and in an impartial manner to ensure fair competitive access to procurement opportunities by responsible Contractors. Moreover, employees, officers and agents should conduct themselves in such a manner as to foster the public's confidence in the integrity of AHA procurement organization and process and to avoid the formation of an actual conflict of interest in the procurement process, or even the mere appearance of a conflict of interest. Any attempt to realize personal gain through AHA employment or to serve as an officer or agent of AHA through actions inconsistent with the proper discharge of duties is a breach of public trust.

## **3.3 Conflict of Interest**

Albuquerque Housing Authority (AHA) must observe the following conflict of interest prohibitions.

- A. No AHA employee, officer, board member or agent shall participate in the selection, award or administration of a contract supported by Federal/State/County/City funds if a conflict of interest, financial or otherwise, real or apparent, would be involved. Such a conflict would arise when the employee, officer or agent, any member of his or her immediate family; his or her partner; or an organization which employs or is about to employ any of the above, has a financial or other interest in the firm selected for the award.
- B. In addition to any other applicable conflict of interest requirements, neither AHA nor any its Contractors or their subcontractors may enter into any contract, subcontract, or arrangement in connection with a project under the Annual Contributions Contract (ACC) in which any of the following classes of people have an interest, direct or indirect, during his or her tenure or for one year thereafter:
  1. Any present or former member or officer of the governing body of AHA (the Board of Housing Commissioners), or any member of the officer's immediate family. There shall

- be excepted from this prohibition any present or former resident commissioner who does not serve on the governing body of a resident management corporation, and who otherwise does not occupy a policymaking position with the resident management corporation, AHA or a business entity of AHA.
2. Any employee of AHA who formulates policy or who influences decisions with respect to the project(s), or any member of the employee's immediate family, or the employee's partner.
  3. Any public official, member of the local governing body (the City Council of the City of Albuquerque), or state or local legislator, or any member of such individuals' immediate family, who exercises functions or responsibilities with respect to the project(s) of AHA.
- C. No present or former AHA employee, officer, board member or agent shall engage in selling or attempting to sell supplies, services or construction to AHA for one year following the date such employment ceased (see Sections 515 of the old ACC, form HUD-53011, dated 11/1969, and Section 19 of the new ACC, form HUD-53012A, dated 7/1995). The term "sell" means signing a bid or proposal, negotiating a contract, contacting any AHA employee, officer, or agent for the purpose of obtaining, negotiating, or discussing changes in specifications, price, cost allowances, or other terms of a contract;; settling contract disputes; or any other liaison activity with a view toward the ultimate consummation of a sale, although the actual contract is negotiated by another person.
- D. Description of immediate family is as follows:
1. His/her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister); or
  2. His/her domestic partner.

### 3.4 Gratuities, Kickbacks, and Use of Confidential Information

AHA solicitations and contracts above the small purchase threshold shall include clauses advising prospective Contractors of the prohibitions against gratuities and kickbacks (2 CFR 200.318 and Appendix II). These rules are designed to protect the integrity of the procurement system and to ensure that contracts are awarded fairly, based on merit, without improper influence.

- A. **Gratuities (2 CFR 200.318 (c) (1) and Section 19 of the ACC).** AHA officers, current employees, former employees within one year of employment, or agents shall neither solicit, accept, or agree to accept gratuities, favors, or anything of monetary value from Contractors, potential Contractors, or parties to sub-agreements. Exceptions may be made where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.
- B. **Kickbacks and Anticompetitive Practices.** It is a breach of ethical conduct and prohibited for any payment, gratuity, or offer of employment to be made by, or on behalf of, a Contractor or subcontractor under contract to the prime Contractor, higher tier

subcontractor, or any person associated therewith as an inducement for the award of a subcontractor order.

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

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

### 3.5 Prohibition Against Contingent Fees

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

## 4 Procurement Planning

Planning is essential to managing procurement functions properly. Hence, AHA will periodically review its record of prior purchases, as well as future needs, to: find patterns of procurement actions that could be performed more efficiently or economically; maximize competition and competitive pricing among contracts and decrease AHA procurement costs; reduce AHA administrative costs; ensure that supplies and services are obtained without any need for re-procurement, e.g., resolving bid protests; and minimize errors that occur when there is inadequate lead time. Consideration should be given to storage, security and handling requirements when planning the most appropriate purchasing actions.

## **5 Purchasing Methods**

### **5.1 Micro Purchases**

Micro Purchase is an acquisition of supplies or services using simplified acquisition procedures, the aggregate (total) amount of which does not exceed the Micro Purchase threshold. Micro Purchase threshold includes procurement of goods through petty cash, purchase cards (p-cards) and reimbursement of expenses within the micro-purchase threshold (up to \$3,000, or \$2,000 in the case of acquisitions for construction subject to Davis Bacon).

#### **5.1.1 Petty Cash Purchase**

Purchases fewer than one hundred dollars (\$100) may be handled through the use of a petty cash account. The petty cash account may be established in an amount sufficient to cover small purchases made during a reasonable period of time, e.g., one month. For the petty cash account, AHA shall ensure that security is maintained and only authorized individuals have access to the account. These accounts are reconciled and replenished once a month. Typical petty cash expense includes but not limited to expenses under \$100.00 such as court fees, filing fees, parking fees, reimbursement for supplies not under contract. The petty cash account for AHA shall be managed by the AHA Fiscal Department and shall be reconciled once a month.

#### **5.1.2 Purchase Cards (p-cards)**

The Albuquerque Housing Authority (AHA) has implemented a Purchasing Card Program to serve as an alternative and more efficient method for purchasing micro dollar goods and services. With the Card, an authorized Cardholder can place an order directly with a vendor. Use of the Card delegates responsibility for Micro Purchase dollar goods and services to AHA departments.

Credit card usage should follow the rules for all other small purchases. For example, the Contracting Officer may use a credit card for Micro Purchases without obtaining additional quotes provided the price is considered reasonable. However, for amounts above the Micro Purchase level, the Contracting Officer would generally need to have obtained a reasonable number of quotes before purchasing via a credit card. Emergency purchases would need approval by the Chief Procurement Officer (CPO).

#### **5.1.3 Reimbursement of Expense with Receipt**

Reimbursement of expenses may occur when goods and services are needed, the expense is under the Micro Purchase threshold and no contract or agreement exists for the goods or services being purchased, with the exception of an emergency situation. Business expenses may be reimbursed if an individual paid the expense from personal funds. However, AHA prefers that business expenses are paid directly by the purchaser through other appropriate AHA buying and paying methods. This policy establishes the three components required for

reimbursement of allowable non-compensation business expenses:

- An allowable business expense
- Substantiation of the expense with receipts
- Approval of the expense by the direct Supervisor

## **5.2 Small Purchase Procedures**

For any amounts above the Petty Cash account amount, but not exceeding \$60,000 excluding applicable state gross receipts taxes, AHA may use the small purchase procedure. Under the Small Purchase Procedure, AHA shall obtain three (3) quotes. However, for purchases of less than \$3,000, also known as Micro Purchases (or \$2,000 in the case of acquisitions for construction subject to Davis Bacon), only one quote is required provided the quote is one that meets the required criteria and is considered reasonable. To the greatest extent feasible, and to promote competition, small purchases should be distributed among qualified sources. Quotes may be obtained by fax, in writing or through e-procurement. Award shall be made to the qualified Vendor that provides a qualifying quote at the lowest cost to AHA. If award is to be made for reasons other than lowest price, documentation shall be provided in the contract file. AHA shall not break down requirements aggregating more than the Small Purchase Threshold (or the Micro Purchase threshold) into several purchases that are less than the applicable threshold merely to: (1) permit use of the Small Purchase Procedure or (2) avoid any requirements that applied to purchases that exceed the Micro Purchase threshold.

### **5.2.1 Award and Preference for Section 3 Business Concerns**

Where a section 3 covered contract is to be awarded under the Small Purchase Procedure and based upon the lowest price, the contract shall be awarded to the qualified section 3 business concern with the lowest qualifying quote, if it is reasonable and no more than ten (10) percent higher than the lowest qualifying quote from any qualified Vendor. If no qualifying quote by a qualified section 3 business concern is within 10 percent of the lowest qualifying quote from any qualified Vendor, the award shall be made to the source with the lowest qualifying quotation.

## **5.3 Sealed Bids**

Sealed bids shall be used for all contracts that exceed the Small Purchase Threshold and that are not Competitive Proposals or Non-Competitive proposals. Under sealed bids, AHA publicly issues an Invitation for Bids (IFB) and awards a firm fixed-priced contract (lump sum or unit price) to the responsible bidder whose bid, conforming to all the material terms and conditions of the IFB, is the lowest in price. Sealed bids are the preferred method for procuring construction, supply, and non-complex service contracts that are expected to exceed \$60,000.

### 5.3.1 Conditions for Using Sealed Bids

AHA shall use sealed bids if the following conditions are present a complete, adequate, and realistic statement of work, specification, or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; a contract can be awarded based on a firm fixed price; and the selection of the successful bidder can be made principally on the lowest price.

### 5.3.2 Solicitation and Receipt of Bids

An IFB is issued which includes the specifications and all contractual terms and conditions applicable to the procurement, and a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the solicitation. An IFB must state the time and place for both receiving the bids and public bid opening. All bids received will be date and time- stamped and stored **unopened** in a secure place until the public bid opening. A bidder may withdraw the bid at any time prior to the bid opening.

### 5.3.3 Bid Opening and Award

Bids shall be opened publicly. All bids received shall be recorded on an abstract (tabulation) of bids, and then made available for public inspection. If equal low bids are received from responsible bidders, selection shall be made by drawing lots or other similar random method. The method for doing this shall be stated in the IFB. If only one responsible bid is received from a responsible bidder, award shall **not** be made unless the price can be determined to be reasonable, based on a cost or price analysis.

### 5.3.4 Award and Preference for Section 3 Business Concerns

Where a section 3 covered contract is to be awarded under an IFB process, the contract shall be awarded to the qualified section 3 business concern with the highest priority ranking and with the lowest responsive bid, if it is reasonable, within the maximum total contract price established in AHA's budget for the specific project for which bids are being taken, and no more than a pre- designated percentage higher than the total bid of the lowest responsive bid from any responsible bidder. The percentage will be established based on the amount of the lowest responsive bid, ranging from 1 1/2% to 10%, with the percentage being lower for higher bid amounts. If no responsive bid by a qualified section 3 business concern meets the requirements of this paragraph, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

### 5.3.5 Mistakes in Bids

Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written or fax notice received in the office designated in the IFB prior to the time set for bid opening. After bid opening, corrections in bids may be permitted only if the bidder can show by clear and convincing evidence that a mistake of a non-judgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident

on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made. All decisions to allow correction or withdrawal of a bid shall be supported by a written determination signed by the Contracting Officer. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of AHA or fair competition shall not be permitted.

#### **5.4 Design and Build Projects Authorized**

Pursuant to NMSA 1978 Section 13-1-119.1, a design and build project delivery system may be authorized when the Contracting Officer makes a determination in writing if appropriate and in the best interest of AHA to use the system on a specific project. The determination shall be issued only after the Contracting Officer has taken into consideration the following criteria, which shall be used as the minimum basis in determining when to use the design and build process:

1. The extent to which the project requirements have been or can be adequately defined;
2. Time constraints for delivery of the project;
3. The capability and experience of potential teams with the design and build process;
4. The suitability of the project for use of the design and build process as concerns time, schedule costs and quality; and
5. The capability of the using agency to manage the project, including experienced personnel or outside consultants, and to oversee the project with persons who are familiar with the design and build process.

#### **5.5 Competitive Proposals**

Unlike sealed bids, a Competitive Proposal permits: consideration of technical factors other than price; discussion with Offerors concerning offers submitted; negotiation of contract price or estimated cost and other contract terms and conditions; revision of proposals before the final Contractor selection; and the withdrawal of an offer at any time up until the point of award. Award is normally made on the basis of the proposal that represents the best overall value to AHA, considering price and other factors, e.g., technical expertise, past experience, quality of proposed staffing, etc., set forth in the solicitation and not solely the lowest price.

##### **5.5.1 Conditions for Use**

Where conditions are not appropriate for the use of sealed bids, competitive proposals may be used. Competitive proposals are the preferred method for procuring professional services.

##### **5.5.2 Form of Solicitation**

Other than in limited circumstances, competitive proposals shall be solicited through the issuance of an RFP (Request for Proposal). 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 Offerors, identify of the Offerors, and the contents of their proposals until after the award. AHA may assign price a specific weight in the evaluation criteria or AHA may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.

### 5.5.3 Evaluation

The proposals shall be evaluated only on the criteria stated in the RFP. Where not apparent from the evaluation criteria, AHA shall establish an evaluation plan for each RFP. Generally, all RFPs shall be evaluated by an appropriately appointed evaluation committee. The evaluation committee shall be required to disclose any potential conflicts of interest and to sign a non-disclosure statement. An evaluation report, summarizing the results of the evaluation, shall be prepared prior to award of a contract.

### 5.5.4 Award and Preference for Section 3 Business Concerns

Where a section 3 covered contract is to be awarded under the RFP process one of the evaluation factors shall address both the preference for section 3 business concerns and the acceptability of the strategy for meeting the greatest extent feasible requirement (section 3 strategy), as disclosed in proposals submitted by all business concerns (section 3 and non-section 3 business concerns). This factor shall provide for a range of 10 to 20 percent of the total number of available points to be set aside for the evaluation of these two components.

The component of this evaluation factor designed to address the preference for section 3 business concerns must establish a preference for these business concerns in the order of priority ranking as described in 24 CFR 135.36.

With respect to the second component (the acceptability of the section 3 strategy), the RFP shall require the disclosure of the contractor's section 3 strategy to comply with the section 3 training and employment preference, or contracting preference, or both, if applicable. A determination of the contractor's responsibility will include the submission of an acceptable section 3 strategy.

The contract award shall be made to the responsible firm (either section 3 or non-section 3 business concerns) whose proposal is determined most advantageous, considering price and all other factors specified in the RFP.

### 5.5.5 Negotiations

Negotiations shall be conducted with all Offerors who submit a proposal determined to have a reasonable chance of being selected for award, unless it is determined that negotiations are not needed with any of the Offerors. This determination is based on the relative score of the proposals as they are evaluated and rated in accordance with the technical and price factors specified in the RFP. These Offerors shall be treated fairly and equally with respect to any

opportunity for negotiation and revision of their proposals. No Offeror shall be given any information about any Offeror's proposal, and no Offeror shall be assisted in bringing its proposal up to the level of any other proposal. A common deadline shall be established for receipt of proposal revisions based on negotiations. Negotiations are exchanges (in either competitive or sole source environment) between AHA and Offerors that are undertaken with the intent of allowing the Offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract or other terms of a proposed contract. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions. Discussions are tailored to each Offeror's proposal, and shall be conducted by the Contracting Officer with each Offeror within the competitive range. The primary object of discussions is to maximize AHA's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. The Contracting Officer shall indicate to, or discuss with, each Offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as cost, price, technical approach, past performance, and terms and conditions) that could, in the opinion of the Contracting Officer, be altered or explained to enhance materially the proposer's potential for award. The scope and extent of discussions are a matter of the Contracting Officer's judgment. The Contracting Officer may inform an Offeror that its price is considered by AHA to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible to indicate to all Offerors the cost or price that AHA's price analysis, market research, and other reviews have identified as reasonable. "Auctioning" (revealing one Offeror's price in an attempt to get another Offeror to lower their price) is prohibited.

#### **5.5.6 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 AHA provided that the price is within the maximum total project budgeted amount established for the specific property or activity. The Contracting Officer should notify each unsuccessful Offeror and provide them with the opportunity to request a debriefing.

#### **5.5.7 Debriefing**

The purpose of a debriefing meeting between AHA and an Offeror is to discuss that Offeror's proposal. The debriefing gives Offerors an opportunity for feedback regarding their proposals and the entire source selection process. The objective of the debriefing is for the Offeror to leave the debriefing with the belief that AHA fully understood and fairly evaluated their proposal. All debriefings must be requested in writing within the time frame designated in the notice. The debriefing may be conducted in a face-to-face setting. The Offeror shall be asked for a list of Offeror personnel who will attend the debriefing to ensure

the AHA provides adequate space in the debriefing room. The Contracting Officer is responsible for chairing debriefings; however the same individuals who conducted the evaluations may attend the debriefing and provide support to the Contracting Officer as needed. The debriefing should not include a comparison with any other offer or reveal any information about another offer that is protected from disclosure.

#### 5.5.8 Architect/Engineering (A/E) and Development Services

AHA may contract for A/E or Developer services using QBS (Qualification Based Selection) procedures, utilizing an RFQ (Request for Quote). Sealed bidding shall not be used for A/E or Developer solicitations. Under QBS procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. QBS procedures **shall not** be used to purchase other types of services, even though architectural/engineering firms are potential sources.

### 5.6 Noncompetitive Proposals

#### 5.6.1 Conditions for Use

Procurement by noncompetitive proposals (sole-source) may be used **only** when the award of a contract is not feasible using small purchase procedures, sealed bids, cooperative purchasing, or competitive proposals, **and** if one of the following applies:

1. The item is available only from a single source, based on a good faith review of available sources;
2. An emergency exists that seriously threaten the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to AHA, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any of the other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary simply to meet the emergency;
3. HUD authorized the use of noncompetitive proposals; or
4. After solicitation of a number of sources, competition is determined inadequate.

#### 5.6.2 Justification

Procurement based on noncompetitive proposals shall be supported by a written justification for the selection of this method. The justification shall be approved in writing by the responsible Contracting Officer. Poor planning or lack of planning is not justification for emergency or sole- source procurements. The justification, to be included in the procurement file, should include the following information:

1. Description of the requirement;

2. History of prior purchases and their nature (competitive vs. noncompetitive);
3. The specific exception in 2 CFR 200.320 (f) which applies;
4. Statement as to the unique circumstances that require award by noncompetitive proposals;
5. Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc);
6. Statement as to efforts that will be taken in the future to promote competition for the requirement;
7. Signature by the Contracting Officer's supervisor (or someone above the level of the Contracting Officer); unless Contracting Officer is the Executive Director;
8. Price Reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing an analysis, as described in this Policy.

### 5.6.3 Notice Requirements

As required by NMSA 1978 section 13-1-126 through 13-1-128, at least thirty days prior to the award of a sole source procurement contract or within three business days of awarding an emergency procurement contract, the AHA shall post on its website as a public record the following information:

1. the contractor's name and address;
2. the amount and term of the contract;
3. a listing of the services, construction or items of tangible personal property procured under the contract;
4. whether the contract was a sole source or emergency procurement contract; and
5. the justification for the procurement method.

This information shall be maintained as a public record at the AHA office for a period of at least three years.

## 5.7 Cooperative Purchasing/Intergovernmental Agreements

AHA may enter into state and/or local cooperative or intergovernmental agreements to purchase or use common supplies, equipment, or services. The decision to use an interagency agreement instead of conducting a direct procurement shall be based on economy and efficiency. If used, the interagency agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. AHA may use federal, state, tribal and/or local government 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 procured in accordance with **2 CFR 200.318(e)**.

### **5.8 Prohibition Against Bid Splitting**

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

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

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

## **7 Cost & Price Analysis**

AHA shall require assurance that, before entering into a contract, the price is reasonable, in accordance with the following instruction.

### **7.1 Petty Cash and Micro Purchases**

No formal cost or price analysis is required. Rather, the execution of a contract by the Contracting Officer (through a purchase order or other means) shall serve as the Contracting Officer’s determination that the price obtained is reasonable, which may be based on the Contracting Officer’s prior experience or other factors.

### **7.2 Small Purchases**

A comparison with other offers shall generally be sufficient determination of the reasonableness of price and no further analysis is required. If a reasonable number of quotes are not obtained to establish reasonableness through price competition, the Contracting Officer shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the Contracting Officer’s personal knowledge at the time of purchase, comparison to the ICE, or any other reasonable basis.

### **7.3 Sealed Bids**

The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, and when the bid received is substantially more than the ICE, and where AHA cannot reasonably determine price reasonableness, AHA must conduct a cost

analysis, consistent with federal guidelines, to ensure that the price paid is reasonable.

#### **7.4 Competitive Proposals**

The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, AHA must compare the price with the ICE. For competitive proposals, where prices cannot be easily compared among Offerors, where there is not adequate competition, or where the price is substantially greater than the ICE, AHA must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable.

#### **7.5 Contract Modifications**

A cost analysis, consistent with federal guidelines, shall be conducted for all contract modifications for projects that were procured through Sealed Bids, Competitive Proposals, or Non-Competitive Proposals, or for projects originally procured through Small Purchase procedures and the amount of the contract modification will result in a total contract price in excess of \$60,000.

## **8 Solicitation & Advertising**

### **8.1 Method of Solicitation**

#### **8.1.1 Petty Cash and Micro Purchases**

AHA may contact only one source if the price is considered reasonable.

#### **8.1.2 Small Purchases**

Quotes may be solicited orally, through fax, e-procurement, or by any other reasonable method.

#### **8.1.3 Sealed Bids and Competitive Proposals**

Solicitation must be done publicly. AHA must use the solicitation methods in paragraph 1, and may use the solicitations methods in paragraphs 2 and 3, provided that the method employed provides for meaningful competition. Paragraphs 2 and 3 are optional.

1. Advertising in newspapers of local or general circulations as well as a listing of solicitations on the AHA website. The website must also provide the Contractors with the link to any electronic platform utilized for issuance of solicitations.
2. Advertising in various trade journals or publications (for construction).
3. E-Procurement. AHA may conduct its public procurements through the Internet using e-procurement systems. However, all e-procurements must otherwise be in compliance with 2 CFR 200 State and local requirements, and AHA's procurement policy.

## 8.2 Time Frame

For purchases of more than \$60,000, the public notice should run not less than once and at least ten calendar days prior to the date set forth for the opening of bids.

## 8.3 Form

Notices/advertisements should state, at a minimum, the place, date, and time that the bids or proposals are due, the solicitation number, a contact that can provide a copy of, and information about, the solicitation, and a brief description of the needed item(s).

## 8.4 Time Period for Submission of Bids

A minimum of 30 days shall generally be provided for preparation and submission of sealed bids and 15 days for competitive proposals. However, the Executive Director may allow for a shorter period under extraordinary circumstances.

## 8.5 Cancellation of Solicitations

- A. An IFB, RFP, or other solicitation may be cancelled before bids/offers are due if:
  1. The supplies, services or construction is no longer required;
  2. The funds are no longer available;
  3. Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best; or
  4. Other similar reasons.
- B. A solicitation may be cancelled and all bids or proposals that have been already been received may be rejected if:
  1. The supplies or services (including construction) are no longer required;
  2. Ambiguous or otherwise inadequate specifications were part of the solicitation;
  3. All factors of significance to AHA were not considered;
  4. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
  5. There is a reason to believe that bids or proposals may not have been independently determined in open competition, may have been collusive, or may have been submitted in bad faith; or
  6. For good cause of a similar nature when it is in the best interest of AHA.
- C. The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request.
- D. A notice of cancellation shall be sent to all bidders/Offerors solicited and, if appropriate, shall explain that they will be given an opportunity to complete on any re-solicitation or future procurement of similar items.
- E. If all otherwise acceptable bids received in response to an IFB are at unreasonable prices an analysis should be conducted to see if there is a problem in either the specifications or

AHA's cost estimate. If both are determined adequate and if only one bid is received and the price is unreasonable, the Contracting Officer may cancel the solicitation and either

1. Re-solicit using an RFP; or
  2. Complete the procurement by using the Competitive Proposal Method. The Contracting Officer must determine, in writing, that such action is appropriate, must inform all bidders of AHA's intent to negotiate, and must give each bidder a reasonable opportunity to negotiate.
- F. If problems are found with the specifications; AHA should cancel the solicitation, revise the specifications and re-solicit using an IFB.

## **9 Bonding Requirements**

The standards under this section apply to construction contracts that exceed \$25,000. There are no bonding requirements for small purchases or for competitive proposals. Nonetheless, AHA may require bonds in these latter circumstances when deemed appropriate; however, non-construction contracts should generally not require bid bonds.

### **9.1 Bid Bonds**

For construction contracts exceeding \$25,000, Offerors shall be required to submit a bid bond guarantee from each bidder equivalent to 5% of the bid price.

### **9.2 Performance and Payment Bonds**

For construction contracts exceeding \$25,000, the successful bidder shall furnish an assurance of completion. This assurance may be any of one of the following option:

1. A performance and payment bond in a penal sum of 100% of the contract price; or
2. Separate performance and payment bonds, each for 100% or more of the contract price;

These bonds must be obtained from guarantee or surety companies acceptable to the U.S. Government and authorized to do business in New Mexico. Individual sureties shall not be considered. U.S. Treasury Circular Number 570 lists companies approved to act as sureties on bonds securing government contracts, the maximum underwriting limits on each contract bonded, and the states in which the company is licensed to do business. Use of companies on this circular is mandatory.

When a construction contract is between the range of \$25,000 and \$60,000 AHA may elect to reduce the amount of the performance bond and/or payment bond required prior to solicitation to not less than fifty percent of the contract price if it is determined that it is in the best interest of the housing authority to do so. In these cases the housing authority is essentially taking the risk for the uninsured

portion of the contract. The Executive Director must approve any such exceptions made to bond amount.

## **10 Contractor Qualifications & Duties**

### **10.1 Contractor Responsibility**

AHA shall not award any contract until the prospective Contractor, i.e., low responsive bidder, or successful Offeror, has been determined to be responsible. A responsible bidder/Offeror must:

- A. Have adequate financial resources to perform the contract, or the ability to obtain them;
- B. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all the bidder's/Offeror's existing commercial and governmental business commitments;
- C. Have a satisfactory performance record;
- D. Have a satisfactory record of integrity and business ethics;
- E. Have the necessary organization, experience, accounting and operational controls, and technical skills, or ability to obtain them;
- F. Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,
- G. Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended, debarred or under a HUD-imposed Limited Denial of Participation.

If a prospective Contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the official contract file, and the prospective Contractor shall be advised of the reasons for the determination.

### **10.2 Authority to Debar or Suspend**

Pursuant to NMSA 1978 Section 13-1-177, the procurement office under the AHA Fiscal Department, after reasonable notice to the business involved, shall have authority to recommend to the Board of Housing Commissioners the suspension or debarment of a business for cause from consideration for award of contracts, other than contracts for professional services. The debarment shall not be for a period of more than three (3) years, and a suspension shall not exceed three (3) months. The authority to debar or suspend shall be exercised by the Board in accordance with procedures which shall provide for reasonable notice and a fair hearing prior to suspension or debarment.

### 10.3 Causes for Debarment or Suspension; Time Limit

Pursuant to NMSA 1978 Section 13-1-178, the causes for debarment or suspension occurring within three years of procurement include but are not limited to the following:

- A. Conviction of a bidder, Offeror or Contractor for commission of a criminal offense related to obtaining or attempting to obtain a public or private contract, subcontract, or in the performance of such contract or subcontract.
- B. Conviction of a bidder, Offeror or Contractor under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records or receiving stolen property.
- C. Conviction of a bidder, Offeror or Contractor under state or federal antitrust statutes arising out of the submission of bids or proposals;
- D. Violation by a bidder, Offeror or Contractor of contract provisions, as set forth in this subsection, of a character which is reasonably regarded by the Fiscal Department to be so serious as to justify suspension or debarment action:
  1. Willful failure to perform in accordance with one or more contracts, provided that this failure has occurred within a reasonable time preceding the decision to impose debarment; or
  2. A history of failure to perform, or of unsatisfactory performance of, one or more contracts, provided that this failure or unsatisfactory performance has occurred within a reasonable time preceding the decision to impose debarment and provided further that failure to perform or unsatisfactory performance caused by acts beyond the control of the Contractor shall not be considered to be a basis for debarment.
- E. Any other cause occurring within three years of a procurement which the Fiscal Department determines to be so serious and compelling as to affect responsibility as a Contractor; or
- F. For a willful violation by a bidder, Offeror or Contractor of the provisions of the New Mexico Procurement Code [NMSA 1978 Sections 13-1-1 through 13-1-199] (“Procurement Code”) within three years of a procurement.

### 10.4 Debarment or Suspension; Determination

Pursuant to NMSA 1978 Section 13-1-179, the Board shall issue a written determination to debar or suspend. The determination shall:

- A. State the reasons for the action taken; and
- B. Inform the debarred or suspended business involved of its rights to judicial review pursuant to [NMSA 1978 Section 13-1-183 of the Procurement Code.

### 10.5 Debarment or Suspension; Notice of Determination

Pursuant to NMSA 1978 Section 13-1-180, a copy of the determination for suspension or debarment made under NMSA 1978 Section 13-1-179 of the Procurement Code shall immediately be mailed to the debarred or suspended business.

### 10.6 Suspension and Debarment

Contracts shall not be awarded to debarred, suspended, or ineligible Contractors. Contractors may be suspended, debarred, or determined to be ineligible by AHA in accordance with NMSA 1978 Section 13-1-177 or HUD in accordance with HUD regulations (**24 CFR Part 24**) or by other federal agencies, e.g., U.S. Department of Labor (DOL) for violation of labor regulations, when necessary to protect public housing authorities in their business dealings.

### 10.7 Vendor Lists

All interested businesses shall be given the opportunity to be included on vendor mailing lists. Any lists of persons, firms, or products which are used in the purchase of supplies and services (including construction) shall be kept current and include enough sources to ensure competition.

## 11 Contract Pricing Arrangements

### 11.1 Contract Types

Any type of contract which is appropriate to the procurement and which will promote the best interests of AHA may be used, **provided the cost – plus – a – percentage – of – cost and percentage – of – construction – cost methods are not used.** All solicitations and contracts shall include the clauses and provisions necessary to define the rights and responsibilities of both the Contractor and AHA.

For all cost reimbursement contracts, AHA must include a written determination as to why no other contract type is suitable. Further, the contract must include a ceiling price that the Contractor exceeds at its own risk.

### 11.2 Options

Options for additional quantities or performance periods may be included in contracts, provided that:

- A. The option is contained in the solicitation;
- B. The option is a unilateral right of AHA;
- C. The contract states a limit on the additional quantities and the overall terms of the contract;
- D. The options are evaluated as part of the initial competition;

- E. The contract states the period within which the options may be exercised;
- F. The options may be exercised only at the price specified in or reasonably determinable from the contract; and
- G. The options may be exercised only if determined to be more advantageous to AHA than conducting a new procurement.

## **12 Contract Clauses**

All contracts should identify the contract pricing arrangement as well as other pertinent terms and conditions, as determined by AHA. Additionally, the forms HUD-5369, 5369-A, 5369-B, 5369-C, 5370, 5370-C, and 51915-A, which contain all HUD –required clauses and certifications for contracts of more than \$60,000 , as well as any forms/clauses as required by HUD for small purchases, shall be used in all corresponding solicitations and contracts issued by AHA.

The Agency shall ensure that each contract executed by the Agency contains the required contract clauses detailed within 2 CFR §200.326 and Appendix II.

## **13 Contract Administration**

AHA shall maintain a system of contract administration designed to ensure that Contractors perform in accordance with their contracts. These systems shall provide for inspection of supplies, services, or construction, as well as monitoring Contractor performance, status reporting on major projects including construction contracts, and similar matters. For cost-reimbursement contracts, costs are allowable only to the extent that they are consistent with the cost principles in HUD Handbook 2210.18.

## **14 Contract Specifications**

### **14.1 General**

All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying AHA needs. Specifications shall be reviewed prior to issuing any solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. Function or performance specifications are preferred. Detailed product specifications shall be avoided whenever possible. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

## 14.2 Limitation

The following types of specifications shall be avoided:

- A. Geographic restrictions not mandated or encouraged by applicable federal law (except for A/E Contracts, which may include geographic location as a selection factor if adequate competition is available);
- B. Brand name specifications (unless the specifications list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use).

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

## 15 Appeals & Remedies

### 15.1 General

It is AHA policy to resolve all contractual issues informally and without litigation. Disputes will not be referred to HUD unless all administrative remedies have been exhausted. When appropriate, a mediator may be used to help resolve differences.

### 15.2 Informal Appeals Procedure

AHA shall adopt an informal bid protest/appeal procedure for contracts of \$60,000 or less. Under these procedures, the bidder/Contractor may request to meet with the appropriate Contracting Official.

### 15.3 Formal Appeals Procedure

A formal appeals procedure shall be established for solicitations/contracts of more than \$60,000.

#### 15.3.1 Bid Protest

Any actual or prospective Contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy. Any protest against a solicitation must be received before the due date for the receipt of bids or proposals, and any protest against the award of a contract must be received within fifteen (15) calendar days after the contract receives notice of the contract award, or the protest will not be considered. All bid protests shall be in writing, submitted to the Contracting Officer or designee, who shall issue a written decision on the matter. The Contracting Officer may, at his/her discretion, suspend the procurement pending resolution of the protest if the facts presented so warrant.

#### 15.3.2 Contractor Claims

All claims by a Contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer for a written decision. The Contractor may request a conference

on the claim. The Contracting Officer's decision shall inform the Contractor of its appeal rights to the next higher level of administrative authority in AHA. Contractor claims shall be governed by the changes clause in the form HUD-5370.

### **15.3.3 Denials**

The Contracting Officer will notify the protestor in writing of AHA's decision and state the basis for the denial. The notification shall apprise the protestor of any appeal rights in accordance with AHA's protest procedures.

### **15.3.4 Appeal Procedures**

AHA's protest procedures shall provide for hearing appeals by unsuccessful protestors including, but not limited to: requirements for written appeals, designation of appeal official(s) and timeframes for submitting and resolving appeals. Appeals should contain a statement of the factual and legal grounds on which reversal or modification of the decision is deemed warranted, specifying any errors of law made or information not previously considered.

### **15.3.5 Documentation**

The Contracting Officer shall fully document the protest decision in writing in the contract file. AHAs protest procedures should describe the requirements for such documentation.

## **16 Assistance to Small & Other Businesses**

### **16.1 Required Efforts**

Consistent with Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, all feasible efforts shall be made to ensure that small business enterprises (SBE), minority-owned business enterprises (MBE), women-owned businesses enterprises (WBE), and other individuals or firms located in or owned in substantial part by persons residing in the area of AHA project are used when possible. Such efforts shall include, but shall not be limited to:

- A. Including such firms, when qualified, on solicitation mailing lists;
- B. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- D. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
- E. Using the services and assistance of the Small Business Administration (SBA), and the Minority Business Development Agency (MBDA) of the U.S. Department of Commerce;
- F. Including in contracts, to the greatest extent feasible, a clause requiring Contractors, to provide opportunities for training and employment for lower income residents of the project area (including all low and very-low income residents of the City of Albuquerque and all of the

Albuquerque Metropolitan Statistical Area) and to award subcontracts for work in connection with the project to business concerns which provide opportunities to low-income residents, as described in **24 CFR Part 135** (so-called Section 3 businesses); and

- G. Requiring prime Contractors, when subcontracting is anticipated, to take the positive steps listed above.

Goals shall be established periodically for participation by small business enterprises (SBE), minority-owned business enterprises (MBE), women-owned business enterprises (WBE), labor surplus area businesses, and Section 3 business concerns in AHA prime contracts and subcontracting opportunities.

## 16.2 Definitions

- A. A **small business enterprise (SBE)** is defined as a business that is: independently owned; not dominant in its field of operation; and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in **13 CFR Part 121** should be used to determine business size.
- B. A **minority-owned business enterprise (MBE)** is defined as a business which is at least 51% (U.S. Citizens) owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to African Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.
- C. A **women's business enterprise (WBE)** is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.
- D. A **Section 3 business concern** is as defined under **24 CFR Part 135**.
- E. A **labor surplus area business** is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the DOL in **20 CFR Part 654**, Subpart A, and in the list of labor surplus areas published by the Employment and Training Administration.

## 17 Board Approval of Procurement Actions

### 17.1 Authority

The Board of Housing Commissioners appoints and delegates procurement authority to the Executive Director (ED) in the amount not to exceed \$500,000 and is responsible for ensuring that any procurement policies and procedures adopted are appropriate for AHA. All procurements that exceed \$500,000 must have approval from the Board prior to award and/or contract extension.

Other than approval of this Policy, approval by the Board of Housing Commissioners is not required for any procurement action, as permitted under state and local law. Rather, it is the responsibility of the Executive Director, and her or his designees, to make sure that all procurement actions are conducted in accordance with the policies contained in this policy.

## 18 Delegation of Contracting Authority

While the Executive Director is responsible for ensuring that AHA's procurements comply with this Policy, the Executive Director may delegate any procurement authority as is necessary and appropriate to conduct the business of AHA.

Further, and in accordance with this delegation of authority, the Executive Director shall, where necessary, establish operational procedures (such as a procurement manual or standard operating procedures) to implement this Policy. The Executive Director shall also establish a system of sanctions for violations of the ethical standards, consistent with Federal, State, and local law.

## 19 Documentation

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

- A. Rationale for the method of procurement (if not self-evident);
- B. Rationale of contract pricing arrangement (also if not self-evident);
- C. Reason for accepting or rejecting the bids or offers;
- D. Basis for the contract price (as prescribed in this policy);
- E. A copy of the contract documents awarded or issued and signed by the Contracting Officer;
- F. Basis for contract modifications; and
- G. Related contract administration actions.

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

Records are to be retained for a period of at least three (3) years after final payment and all matters pertaining to the contract are closed.

## 20 Disposition of Surplus Property

All property dispositions will be in accordance with applicable State and Federal requirements and the AHA Disposition Policy.

## 21 Funding Availability

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

## 22 Severability Clause

If any section, paragraph, sentence, clause, word or phrase of this policy is for any reason held to be invalid or unenforceable in any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Policy. The AHA Board of Housing Commissioners hereby declares that it would have adopted this Policy and each part, section, paragraph, sentence, clause, phrase or word thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

## 23 Glossary

The following is a list of key procurement and contracting terms and definitions.

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

**Annual Contributions Contract (ACC)** – Entered into between HUD and the AHA, setting forth terms and conditions for the operation, modernization, and development of public housing. The current version of the ACC (form HUD – 53012-A, 7/1995) does not actually contain any specific language governing PHA procurement activity, but incorporates by reference regulations promulgated by HUD at Title 24 of the Code of Federal Regulations (CFR), as well as all applicable laws and executive orders, and regulations.

**Anti-competitive Practices** – Actions by potential Contractors that improperly reduce or eliminate competition or restrain trade. Examples are: an agreement or understanding among competitors to restrain trade, such as submitting collusive bids or proposals, rotating low bids, follow-the-leader pricing, or sharing of the business. Competition may also be wrongfully discouraged by illicit business actions that have the effect of restraining trade, such as controlling the resale price of products or an improper collective refusal to bids (2 CFR 200.319).

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

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

**Competitive Proposal** – A method of procurement using the solicitation, evaluation, and negotiation of proposals instead of sealed bids. The competitive proposal method is used for

requirements exceeding the AHA's Small Purchase Threshold when conditions are not appropriate for sealed bids. (Note: Under the Qualifications-Based Selection (QBS) method only, a Request for Qualifications (RFQ) is used in place of the Request for Proposals (RFP).)

**Competitive Range** – Those proposals submitted in response to a Request For Proposal that, after technical evaluation by the AHA's selection panel and considering the proposed costs/prices, have a reasonable chance of being awarded the contract.

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

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

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

**Contract Modification** – Any written alteration to a Contract executed by the Contracting Officer.

**Contractor** – An Offeror who is awarded a Contract.

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

**Cost-Reimbursement Contract** – The Contractor is reimbursed for allowable costs of performance up to a total estimated amount specified in the Contract. The Contract may provide for the payment of a fee (i.e., a type of profit) in addition to costs.

**Federal Small Purchase Threshold** – The maximum dollar amount for individual small purchases. The threshold is currently set at \$150,000 by federal law (41 U.S.C. 403(11)). The AHA may establish a lower threshold

**Firm Fixed Price Contract** – The Contractor is paid a firm fixed-price for all required work regardless of the Contractor’s actual costs of performance (see HUD Handbook 7460.8 REV 2 Chapter 10, Section 10.1, for detailed guidance on fixed-price contracts).

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

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

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

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

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

**Micro Purchase Threshold** – Small purchases under \$3,000 or \$2,000 in the case of acquisitions for construction subject to the Davis Bacon Act.

**Negotiation** – Discussions with Offerors in the competitive range regarding technical and/or price proposals when awarding a Contract using the Competitive Proposals Method of procurement or when issuing modifications to existing contracts or other required discussion with Offerors for the other methods of procurement.

**Non-competitive Proposals** – Procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. This includes emergency purchases over the micro-purchase threshold (>\$3,000).

**Offer** – A response to a solicitation that, if accepted, would bind the Offeror to perform the resultant Contract. Responses to invitation for bids (Sealed Bidding) are offers called “Bids” or “Sealed Bids”, responses to Requests For Proposals (negotiation) are offers called “Proposals”; however, responses

to requests for quotations (small purchases) are “quotations,” not offers. Small Purchases become binding Contracts once the Vendor accepts the order (e.g., by signature or substantial performance of the order). Offers submitted under the Qualification Based Selection method are called “qualifications”.

**Offeror** – The general term for the person or entity that submits a response to a Solicitation. For the purposes of this policy, Offeror may be used interchangeably with bidder, proposer, or respondent.

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

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

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

**Quotation** – The price or cost submitted by a Vendor in the Small Purchase method.

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

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

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

**Sanctions** – Measures that may be invoked by HUD to exclude or disqualify Contractors, AHA staff or agents acting on behalf of the AHA from participation in HUD programs (such as limited denial of participation (LDP) or debarment), or measures the AHA may take regarding employees, officers, agents, or other who violate the ethical standards of the policies of the AHA (such as dismissal, reassignment, removal from position, etc.). In the cases of violations, HUD would exercise any available remedy under the Annual Contributions Contract, federal regulations and statutes, and grant agreements, including the U.S. Housing Act of 1937 as amended, 2 CFR 200 , and sections 17 and 19 of the Annual Contributions Contract.

**Sealed Bids** – A method of procurement inviting sealed bids; this method required: specifications that are clean, accurate, and complete; a public bid opening; and evaluation of bids and award of the contract based on the lowest price submitted by a responsive and responsible Contractor. Sealed bids is the preferred method for construction (2 CFR 200.320 (c)).

**Small Purchase Procedures** – A simplified method for acquiring supplies, materials, and services (including construction) that do not exceed the AHA’s small purchase threshold under State and Federal law.

**Small Purchase Threshold** – The per purchase dollar limit established by the AHA for small purchases. The threshold is set in the AHA’s procurement policy. The threshold may not exceed the State and Federal small purchase threshold.

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

**Solicitation Provisions** – The instructions provided to Bidders/Offerors included in a solicitations. The provisions include such information as to how to prepare an offer, bonding requirements, date and time for submission of offers, etc. Provisions required by HUD, as applicable, are included on forms HUD-5369, Instructions for Bidders and HUD-5369-A, B and C., Representations, Certifications, etc., and HUD-5369-B for solicitations above the Federal Small Purchase Threshold.

**Specification or Scope** – Description of the technical requirements of a Contract.

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

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

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

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

**Vendor List** – List of persons or entities qualified to do business with the AHA.

**24 Self-Certification**

AHA self-certifies that this Policy, complies with all applicable federal regulations and, as such, AHA is exempt from prior HUD review and approval of individual procurement action.

AHA certifies that this revised edition of the Procurement Policy replaces and supersedes all prior versions of the AHA Procurement Policy. AHA certifies that use and implementation this 2016 revised edition of the AHA Procurement Policy was approved by adoption of a policy Resolution by the AHA Board of Housing Commissioners.

PASSED and ADOPTED this 20<sup>th</sup> day of April, 2016.  
BY A VOTE OF 5 FOR, AND 0 AGAINST.

Members Absent: \_\_\_\_\_

Members voting against: \_\_\_\_\_

ALBUQUERQUE HOUSING AUTHORITY  
BOARD OF HOUSING COMMISSIONERS

By:   
Stephen J. Vogel, Chairperson of the Board

ATTEST:

  
\_\_\_\_\_

Linda Bridge, Secretary to the Board and Executive Director