

# MINNEAPOLIS PUBLIC HOUSING AUTHORITY PROCUREMENT POLICY

Adopted: 12/16/2015

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## 1.0 INTRODUCTION AND SCOPE

- 1.1 **General.** Established for the Minneapolis Public Housing Authority (the Agency) by Action of the Agency Board of Commissioners (Board) on November 18, 2015, this Procurement Policy (Policy) complies with the Annual Contributions Contract (ACC) between the Agency and the United States Department of Housing and Urban Development (HUD), Federal Regulations at 2 CFR § 200.317 through § 200.326, the procurement standards of the Procurement Handbook for Public Housing Authorities (PHAs), HUD Handbook 7460.8, REV 2, and applicable State and Local laws.
- 1.2 **Scope.** This Policy does not enlarge the Agency's duty under any law, regulation or ordinance. If this Policy conflicts with applicable law, regulation or ordinance, the applicable law, regulation or ordinance shall prevail.

## 2.0 GENERAL PROVISIONS

- 2.1 **General.** The Agency shall:
  - 2.1.1 Provide for a procurement system of quality and integrity;
  - 2.1.2 Provide for the fair and equitable treatment of all persons or firms involved in purchasing by the Agency;
  - 2.1.3 Ensure that supplies and services (including construction) are procured efficiently, effectively, and at favorable and valuable prices to the Agency;
  - 2.1.4 Promote competition in contracting; and
  - 2.1.5 Ensure that Agency purchasing actions are compliant with applicable federal standards, HUD regulations, state, and local laws.
- 2.2 **Application.** This Policy applies to all procurement actions of the Agency, regardless of the source of funds. However, nothing in this Policy shall prevent the Agency from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with the law. When both HUD and non-Federal grant funds are used for a project, the work to be accomplished with the funds should be separately identified prior to procurement so that appropriate requirements can be applied, if necessary. If it is not possible to separate the funds, HUD procurement regulations should be applied to the total project. If funds and work can be separated and work can

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be completed by 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, means using MPHA funds for the procuring, purchasing, leasing, or renting of: (1) goods, supplies, equipment, and materials; (2) construction and maintenance; (3) consultant services; (3) Architectural and Engineering (A/E) services; (4) Social Services; and (5) other services.
- 2.4 Changes in Laws and Regulations.** In the event an applicable ordinance, law or regulation is modified, eliminated or adopted, the revised ordinance, law or regulation shall, to the extent inconsistent with these Policies, automatically supersede these Policies.
- 2.5 Public Access to Procurement Information.** Most procurement information shall be available to the public to the extent provided by applicable federal law and in the Minnesota Government Data Practices Act, Minn. Stat. § 13, et. al.

## 3.0 ETHICS IN PUBLIC CONTRACTING

- 3.1 General.** The Agency hereby establishes this code of conduct regarding procurement issues and actions. This code of conduct is consistent with applicable Federal, State, or local law.
- 3.2 Conflicts of Interest.** No employee, officer, Board member, or agent of the Agency shall participate in the selection, award, or administration of any contract if a conflict of interest, either real or apparent, would be involved. This type of conflict would be when one of the persons listed below has a financial or other type of interest in a firm competing for the award:
- 3.2.1** An employee, officer, Board member, or agent involved in making the award;
  - 3.2.2** His/her immediate family;
  - 3.2.3** His/her partner; or
  - 3.2.4** An organization which employs or is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.
- 3.3 Gratuities, Kickbacks, and Use of Confidential Information.** No officer, employee, Board member, or agent of the Agency shall ask for or accept gratuities, favors, or items of more than nominal value (i.e. inexpensive hat with logo) from any contractor, potential contractor, or party to any

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subcontract, and shall not knowingly use confidential information for actual or anticipated personal gain.

- 3.4 Prohibition against Contingent Fees.** Contractors wanting to do business with the Agency must not hire a person to solicit or secure a contract for a commission, percentage, brokerage, or contingent fee, except for bona fide established commercial selling agencies.

## 4.0 PROCUREMENT PLANNING

- 4.1 General.** The Agency will periodically review its record of prior purchases, as well as future needs, to:

- 4.1.1 Find patterns of procurement actions that may be performed more efficiently or economically;
- 4.1.2 Maximize competition and competitive pricing among contracts and decrease the Agency's procurement costs;
- 4.1.3 Reduce Agency administrative costs;
- 4.1.4 Ensure that supplies and services are obtained without any need for re-procurement (i.e., resolving bid protests); and
- 4.1.5 Minimize errors that occur when there is inadequate lead time.

The Agency may consider storage, security, handling requirements and other factors when planning the most appropriate purchasing actions.

## 5.0 PROCUREMENT METHODS

- 5.1 Petty Cash Purchases.** Purchases under \$35 may be handled through the use of a petty cash account. Petty Cash Accounts may be established in an amount sufficient to cover small purchases made during a reasonable period, e.g., one month. For all Petty Cash Accounts, the Agency shall ensure that security is maintained and only authorized individuals have access to the account. These accounts shall be reconciled and replenished periodically.
- 5.2 Small Purchase Procedures.** For any amounts above the Petty Cash ceiling, but not exceeding \$100,000 (except for procurements for services, which are set at \$150,000), the Agency may use small purchase procedures. Thus, any contract for the sale or purchase of supplies, materials, equipment or the rental thereof, or the construction, alteration, repair or maintenance of real or

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personal property, is subject to the \$100,00 ceiling unless otherwise amended by applicable law or regulation.

Under small purchase procedures, the Agency shall obtain a reasonable number of quotes (preferably three); however, for purchases of less than \$3,000 (except for construction procurements which are set at \$2,000), also known as Micro Purchases, only one quote is required provided the quote is reasonable. Quotations for Small Purchases (QSP), or quotes, may be obtained orally (either in person or by phone), by fax, in writing, or through e-procurement. Award shall be made to the responsive and responsible vendor that submits the lowest cost to the Agency. If award is to be made for reasons other than lowest price, documentation shall be provided in the contract file. The Agency shall not break down requirements aggregating more than the small purchase threshold (or the Micro Purchase threshold) into several purchases that are less than the applicable threshold merely to: (1) permit use of the small purchase procedures or (2) avoid any requirements that applies to purchases that exceed the Micro Purchase threshold.

**5.3 Sealed Bids.** Sealed bidding, also known as Invitation for Bids (IFB), shall be used for all contracts that exceed the small purchase threshold and that are not competitive proposals or non-competitive proposals, as these terms are defined in this Policy. Under sealed bids, the Agency publicly solicits bids and awards a firm fixed-price contract (lump sum or unit price) to the responsive and responsible bidder whose bid, conforming with all the material terms and conditions of the IFB, is the lowest in price. Sealed bidding is the preferred method for procuring construction or supply contracts that are expected to exceed \$100,000, or non-complex service contracts that are expected to exceed \$150,000, unless these amounts are amended by applicable law or regulation.

**5.3.1 Conditions for Using Sealed Bids.** The Agency may use the sealed bid method if the following conditions are present: a complete, adequate, and realistic statement of work, specification, or purchase description is available; three or more responsible bidders are willing and able to compete effectively for the work; the contract can be awarded based on a firm fixed price; and the selection of the successful bidder can be made principally on the lowest price.

**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. The IFB must state the time and place for both receiving the bids and the public bid opening. All bids

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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, which shall then be made available for public inspection. If equal low bids are received from responsible bidders, selection shall be made by drawing lots or other similar random method. The method for doing this shall be stated in the IFB. If only one responsive bid is received from a responsible bidder, award shall not be made unless the price can be determined to be reasonable, based on a cost or price analysis.

**5.3.4 Mistakes in Bids.** Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the IFB prior to the time set for bid opening. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the Agency or fair competition shall not be permitted.

**5.4 Competitive Proposals.** Unlike sealed bidding, the competitive proposal method, also known as Request for Proposals (RFP), permits: consideration of technical factors other than price; discussion with offerors concerning offers submitted; negotiation of contract price or estimated cost and other contract terms and conditions; revision of proposals before the final contractor selection; and the withdrawal of an offer at any time up until the point of award. Award is normally made on the basis of the proposal that represents the best overall value to the Agency, 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.

**5.4.1 Conditions for Use.** Where conditions are not appropriate for the use of sealed bidding, competitive proposals may be used. Competitive proposals are the preferred method for procuring professional services that will exceed the small purchase threshold. As detailed within Section 7.2.B of HUD Procurement Handbook 7460.8 REV 2, "Only under limited circumstances would construction services be procured by competitive proposals;" accordingly, construction services will most typically be procured utilizing the sealed bid (IFB) or small purchase procedures (QSP).

**5.4.2 Form of Solicitation.** Other than A/E services, developer-related services and energy performance contracting, competitive proposals

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shall be solicited through the issuance of an RFP. The RFP shall identify the importance and relative value of each of the evaluation factors as well as any subfactors and price. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors and the identity of offerors until the time and date specified in the solicitation that proposals are due. Proposals shall be handled so as to prevent disclosure of the contents of the proposals until completion of the evaluation process. "Completion of the evaluation process" means that the Agency has completed negotiating the contract with the selected vendor. Trade secret data as defined by Minnesota Statutes shall be private and not disclosed. The Agency may assign price a specific weight in the evaluation factors or the Agency may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.

- 5.4.3 Evaluation.** The proposals shall be evaluated on the factors stated in the RFP. Where not apparent from the evaluation factors, the Agency shall establish an Evaluation Plan for each RFP. Generally, all RFPs are evaluated by an appropriately appointed Evaluation Committee. An Evaluation Report, summarizing the results of the evaluation, shall be prepared prior to award of a contract.
- 5.4.4 Negotiations.** Negotiations may 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 with respect to any opportunity for negotiation and revision of their proposals. No offeror shall be given any information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal. A common deadline shall be established for receipt of proposal revisions based on negotiations. Negotiations are exchanges (in either competitive or sole source environment) between the Agency 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



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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 objective of discussions is to maximize the Agency's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. The Agency may indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as technical approach, past performance, and terms and conditions) that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposer's potential for award. The scope and extent of discussions are a matter of the contracting officer's judgment. The Agency may inform an offeror that its price is considered by the Agency to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible to indicate to all offerors the cost or price that the Agency'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.

**5.4.5 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 Agency provided that the price is within the maximum total project budgeted amount established for the specific property or activity.

**5.4.6 A/E Services.** The Agency may contract for A/E services using Qualifications-based Selection (QBS) procedures, utilizing a Request for Qualifications (RFQ). Sealed bidding are not used for A/E solicitations. Under QBS procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Price is not a selection factor under this method. QBS procedures are not used to purchase other types of services, other than Energy Performance Contracting and Developer services, though architectural/engineering firms are potential sources.

## **5.5 Noncompetitive Proposals.**

**5.5.1 Conditions for Use.** Procurement by noncompetitive proposals (sole- or single-source) may be used when the award of a contract is not

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feasible using small purchase procedures, sealed bids, cooperative purchasing, or competitive proposals, and if one of the following applies:

5.5.1.1 The item is available only from a single source, based on a good faith review of available sources;

5.5.1.2 A public emergency or exigency exists. These are events that seriously threaten the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the Agency, 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 to meet the emergency;

5.5.1.3 HUD authorizes the use of noncompetitive proposals; or

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

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

5.5.2.1 Description of the requirement;

5.5.2.2 History of prior purchases and their nature (competitive vs. noncompetitive);

5.5.2.3 The specific exception in 2 CFR §200.320(f)(1)-(4) which applies;

5.5.2.4 Statement as to the unique circumstances that require award by noncompetitive proposals;

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- 5.5.2.5 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.);
- 5.5.2.6 Statement as to efforts that will be taken in the future to promote competition for the requirement;
- 5.5.2.7 Signature by the Contracting Officer; and
- 5.5.2.8 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 Cooperative Purchasing/Intergovernmental Agreements.** The Agency may enter into State and/or local cooperative or intergovernmental agreements to purchase or use common supplies, equipment, or services. The decision to use an interagency agreement instead of conducting a direct procurement shall be based on economy and efficiency. If used, the interagency agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. The Agency 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 CFR §200.317 through §200.326.

## 6.0 INDEPENDENT COST ESTIMATE (ICE)

**6.1 General.** For all purchases above the Micro Purchase threshold, the Agency 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.

## 7.0 COST AND PRICE ANALYSIS (CPA)

**7.1 General.** The Agency shall require assurance that, before entering into a contract, the price is reasonable, in accordance with the following instructions.

**7.1.1 Petty Cash and Micro Purchases.** No formal cost or price analysis is required. Rather, the execution of a contract by the Agency through a Purchase Order or other means shall serve as the determination

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that the price obtained is reasonable, which may be based on prior experience or other factors.

- 7.1.2 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 Agency shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the Agency's personal knowledge at the time of purchase, comparison to the ICE, or any other reasonable basis.
- 7.1.3 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 the Agency cannot reasonably determine price reasonableness, the Agency must conduct a cost analysis, consistent with federal guidelines, to ensure that the price paid is reasonable.
- 7.1.4 Competitive Proposals.** The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient proposals are not received, the Agency must compare the price with the ICE. For competitive proposals where prices cannot be easily compared among offerors, where there is not adequate competition, or where the price is substantially greater than the ICE, the Agency must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable.
- 7.1.5 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 \$100,000, or an amount amended by applicable law or regulation.

## 8.0 SOLICITATION AND ADVERTISING

### 8.1 Method of Solicitation.

- 8.1.1 Petty Cash and Micro Purchases.** The Agency may contact only one source if the price is reasonable.

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- 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 in accordance with HUD requirements. The Agency must use one or more following solicitation methods, provided that the method employed provides for meaningful competition.
  - 8.1.3.1 Advertising in newspapers or other print mediums of local or general circulations.
  - 8.1.3.2 Advertising in various trade journals or publications (for construction).
  - 8.1.3.3 E-Procurement. The Agency may conduct its public procurements through the Internet using e-procurement systems. However, all e-procurements must comply with 2 CFR §200.317 through §200.326, State and local requirements, and the Agency's procurement policy.
- 8.2 **Time Frame.** For purchases of more than \$100,000, or an amount amended by applicable law or regulation, the public notice should run not less than once each week for two consecutive weeks.
- 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 who can provide a copy of, and information about, the solicitation, and a brief description of the needed items(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.
- 8.5 **Cancellation of Solicitations.**
  - 8.5.1 An IFB, RFP, or other solicitation may be cancelled before bids/offers are due if:
    - 8.5.1.1 The supplies, services or construction are no longer required;

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- 8.5.1.2 The funds are no longer available;
  - 8.5.1.3 Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best; or
  - 8.5.1.4 Other reasons.
- 8.5.2 A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if:
  - 8.5.2.1 The supplies, services or construction are no longer required;
  - 8.5.2.2 Ambiguous or otherwise inadequate specifications were part of the solicitation;
  - 8.5.2.3 All factors of significance to the Agency were not considered;
  - 8.5.2.4 Prices exceed available funds;
  - 8.5.2.5 There is reason to believe that bids or proposals may not have been independently determined in open competition, may have been collusive, or may have been submitted in bad faith; or
  - 8.5.2.6 For good cause.
- 8.5.3 The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request.
- 8.5.4 A notice of cancellation shall be sent to all bidders/offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any re-solicitation or future procurement of similar items.
- 8.5.5 If all otherwise acceptable bids received in response to an IFB are at unreasonable prices an analysis should be conducted to see if there is a problem in either the specifications or the Agency'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

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8.5.5.1 Re-solicit using an RFP; or

8.5.5.2 Complete the procurement by using the competitive proposal method. The Agency must determine, in writing, that such action is appropriate, must inform all bidders of the Agency's intent to negotiate, and must give each bidder a reasonable opportunity to negotiate.

8.5.6 If problems are found with the specifications, the Agency may cancel the solicitation, revise the specifications and re-solicit using an IFB.

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

## 9.0 BONDING REQUIREMENTS

9.1 **General.** The standards under this section apply to construction contracts that exceed \$100,000, or as amended by applicable law or regulation. There are no bonding requirements for small purchases or for competitive proposals. The Agency may require bonds in these latter circumstances when deemed appropriate; however, non-construction contracts should generally not require bid bonds. Bid bonds and payment bonds must be separate.

9.1.1 **Bid Bonds.** For construction contracts exceeding \$100,000, or as amended by applicable law or regulation, offerors shall be required to submit a bid guarantee from each bidder equivalent to 5% of the bid price. See 2 CFR § 200.325.

9.1.2 **Performance and Payment Bonds.** For construction contracts exceeding \$100,000, or as amended by applicable law or regulation, the successful bidder shall furnish a performance bond and payment bond for 100% of the contract price each.

## 10.0 CONTRACTOR QUALIFICATIONS AND DUTIES

10.1 Contractor Responsibility

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**10.1.1** The Agency 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:

**10.1.1.1** Have adequate financial resources to perform the contract, or the ability to obtain them;

**10.1.1.2** Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all of the bidder's/offeror's existing commercial and governmental business commitments;

**10.1.1.3** Have a satisfactory performance record;

**10.1.1.4** Have a satisfactory record of integrity and business ethics;

**10.1.1.5** Comply with Minn. Stat. § 16C.285 Responsible Construction Contractor Requirement and sign a Responsible Construction Contractor Verification Form;

**10.1.1.6** Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;

**10.1.1.7** Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and

**10.1.1.8** Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended, debarred or under a HUD-imposed LDP.

**10.1.2** If a prospective contractor is 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 Suspension and Debarment.** Contracts shall not be awarded to debarred, suspended, or ineligible contractors or contractors who have not complied with Minn. Stat. § 16C.285. Contractors may be suspended, debarred, or determined to be ineligible by HUD in accordance with HUD regulations (2 CFR §200.317 through §200.326) or by other Federal agencies, e.g., Department of Labor for violation of labor regulations. Prior to issuance of a contract, the Agency shall



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conduct the required searches within the HUD Limited Denial of Participation (LDP) system and the U.S. General Services Administration System for Award Management (SAM) and place within the applicable contract file a printed copy of the results of each such search. See Section 10.2.H.1 and 10.2.H.2 of HUD Procurement Handbook 7460.8 REV 2.

- 10.3 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, services and construction shall be updated and include enough sources to ensure competition, if available.

## 11.0 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 the Agency 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 the Agency. The Agency may use time and material contracts only after the Agency makes a written determination why no other contract type is suitable. Further, the contract must include a ceiling price that the contractor exceeds at its own risk. The cost is the sum of actual cost of materials and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses and profit. See 2 CFR § 200.318(j).

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

**11.2.1** The option is contained in the solicitation;

**11.2.2** The option is a unilateral right of the Agency;

**11.2.3** The contract states a limit on the additional quantities and the overall term of the contract;

**11.2.4** The options are evaluated as part of the initial competition;

**11.2.5** The contract states the period within which the options may be exercised;

**11.2.6** The options may be exercised only at the price specified in or reasonably determinable from the contract; and

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- 11.2.7 The options may be exercised only if determined to be more advantageous to the Agency than conducting a new procurement.

## 12.0 CONTRACT CLAUSES

- 12.1 **Contract Pricing Arrangements.** All contracts shall identify the contract pricing arrangement and other terms and conditions, as determined by the Agency.
- 12.2 **Required Forms.** Additionally, the forms HUD-5369; 5369-A; 5369-B; 5369; 5370; 5370-C (Sections I and II); 51915; and 51915-A, which contain HUD-required clauses and certifications for contracts of more than \$150,000, and forms/clauses as required by HUD for small purchases, shall be used, as applicable, in all corresponding solicitations and contracts issued by the Agency.
- 12.3 **Required Contract Clauses:** The Agency shall ensure that each contract executed by the Agency contains the required contract clauses, as applicable, in 2 CFR §200.326 and Appendix II.

## 13.0 CONTRACT ADMINISTRATION

- 13.1 **General.** The Agency 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.

## 14.0 SPECIFICATIONS

- 14.1 **General.** All specifications shall be drafted so as to promote economy and to encourage competition in satisfying the Agency's 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.
- 14.2 **Limitation.** The following types of specifications shall be avoided:
- 14.2.1 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);

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

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

## 15.0 APPEALS AND REMEDIES

- 15.1 **General.** It is Agency policy to resolve all contractual issues informally and without litigation. When appropriate, a mediator may be used to help resolve differences.

- 15.2 **Appeals Procedure.** The Agency shall adopt a bid protest/appeal procedure for all contracts.

- 15.2.1 **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. The Contracting Officer must receive any protest against a solicitation before the due date for the receipt of bids or proposals, and any protest against the award of a contract within ten 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 who shall issue a written decision on the matter. The Contracting Officer may suspend the procurement pending resolution of the protest.

- 15.2.2 **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 authority in Agency. Contractor claims shall comply with the Changes clause in the relevant form HUD-5370.

## 16.0 ASSISTANCE TO SMALL AND OTHER BUSINESSES

- 16.1 **Required Efforts.** Consistent with Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, Agency will take all necessary affirmative steps to ensure that small and minority-owned businesses, women's business enterprises, and labor surplus area firms are used when possible. Such efforts shall include:

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- 16.1.1 Including such firms, when qualified, on solicitation mailing lists;
  - 16.1.2 Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
  - 16.1.3 Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
  - 16.1.4 Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
  - 16.1.5 Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
  - 16.1.6 Including in contracts the Section 3 Clause in 24 CFR §135; and
  - 16.1.7 Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed above.
- 16.2 Goals.** May be established periodically for participation by small businesses, minority-owned businesses, women-owned business enterprises, labor surplus area businesses, and Section 3 business concerns in Agency prime contracts and subcontracting opportunities. All such goals shall have a reasonable basis.
- 16.3 Definitions.**
- 16.3.1 A small business is defined as a business that is: independently owned; not dominant in its field of operation; and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in 13 CFR §121 should be used to determine business size.
  - 16.3.2 A minority-owned business is defined as a business which is at least 51% owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.

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

**16.3.4** A "Section 3 business concern" is as defined under 24 CFR §135.

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

## 17.0 BOARD APPROVAL OF PROCUREMENT ACTIONS

**17.1 Authority.** The Board appoints and delegates procurement authority to the Executive Director (ED) in the amount not to exceed \$500,000 in any twelve-month period or \$1 million over the life thereof, and approves change orders to a contract that will increase the amount to more than \$500,000 in any twelve-month period, or more than \$1 million over the life thereof.

## 18.0 DELEGATION OF CONTRACTING AUTHORITY

**18.1 Delegation.** While the ED is responsible for ensuring that the Agency's procurements comply with this Policy, the ED may delegate in writing all procurement authority as is necessary and appropriate to conduct the business of the Agency.

**18.2 Procedures.** Further, and in accordance with this delegation of authority, the ED shall, where necessary, establish operational procedures (such as a procurement manual or standard operating procedures) to implement this Policy.

## 19.0 DOCUMENTATION

**19.1 Required Records.** The Agency must maintain records sufficient to detail the significant history of each procurement action. These records shall include the following:

**19.1.1** Rationale for the method of procurement (if not self-evident);

**19.1.2** Rationale of contract pricing arrangement (if not self-evident);

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- 19.1.3 Reason for accepting or rejecting the bids or offers;
- 19.1.4 Basis for the contract price;
- 19.1.5 A copy of the contract documents awarded or issued and signed by the Contracting Officer;
- 19.1.6 Basis for contract modifications; and
- 19.1.7 Related contract administration actions.

**19.2 Level of Documentation.** The level of documentation should be commensurate with the value of the procurement.

**19.3 Record Retention.** The Agency shall retain records for a period of three years after final payment and all matters pertaining to the contract are closed, or in compliance with the Agency's Record Retention Policy, whichever is longer.

## 20.0 DISPOSITION OF SURPLUS PROPERTY

**20.1 General.** Property no longer necessary for the Agency's purposes (non-real property) shall be transferred, sold, or disposed of in accordance with applicable federal, state, and local laws, regulations and ordinances.

## 21.0 FUNDING AVAILABILITY

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