



PROCUREMENT POLICY

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1.0 INTRODUCTION AND SCOPE

- 1.1 General.** Established for the Minneapolis Public Housing Authority (MPHA) by Action of the MPHA Board of Commissioners (Board), this Procurement Policy (Policy) complies with the MPHA's MTW Agreement, to the extent required and as modified by the MTW Agreement, the Annual Contributions Contract (ACC) between the MPHA and the United States Department of Housing and Urban Development (HUD), and as applicable the Federal Regulations at 2 CFR § 200.317 through § 200.326, and applicable state and local laws.
- 1.2 Scope.** This Policy does not enlarge the MPHA'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 MPHA 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 MPHA;
 - 2.1.3** Ensure that supplies and services (including construction) are procured efficiently, effectively, and at favorable and valuable prices to the MPHA;
 - 2.1.4** Promote competition in contracting;
 - 2.1.5** Ensure that MPHA purchasing actions are compliant with applicable federal standards, HUD regulations, and state and local laws; and
 - 2.1.6** Encourage new opportunities, other economic approaches for residents, resident employment, resident owned businesses, and/or MBE/WBE firms, and create partnerships with other non-profits operating in the city that advance educational and other economic opportunities for MPHA families.
- 2.2 Application.** This Policy applies to all MPHA procurement actions, funded in whole or in part from Federal sources, exclusive of Section 8 and related funding sources. However, nothing in this Policy shall prevent the MPHA 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 be completed by a new contract, then regulations or requirements applicable to the source of funding may be followed.

2.3 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.

2.4 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 MPHA 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 MPHA 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.

Other conflict of interest laws may also apply.

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

- 3.4 Prohibition against Contingent Fees.** Contractors who wish to do business with the MPHA may 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 MPHA 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 MPHA's procurement costs;
 - 4.1.3** Reduce MPHA 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 MPHA 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 \$75 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 MPHA 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 the higher ceiling of \$150,000), the MPHA 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 personal property, is subject to the \$100,000 ceiling unless otherwise amended by applicable law or regulation.

Under small purchase procedures, the MPHA shall obtain a reasonable number of quotes (up to three); however, for purchases of less than \$3,500 (except for construction procurements which are set at the lower threshold of \$2,000), only one quote is required provided the quote is reasonable. This type of small purchase is also known as a Micro Purchase. Quotations for Small Purchases (QSP), or quotes, may be obtained orally (either in person or by phone), electronically, in writing, or through e-procurement. Award shall be made to the responsive and responsible vendor that submits the lowest cost to the MPHA. If award is to be made for reasons other than lowest price, documentation shall be provided in the contract file. The MPHA 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 apply 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 MPHA publicly solicits bids and awards a 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 MPHA 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; two or more responsible bidders are willing and able to compete effectively for the work; the contract can be awarded based on a firm fixed price; and the selection of the successful bidder can be made principally on the lowest price.

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 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, the award can be made when the price can be determined to be reasonable, based on a cost or price analysis, conducted by MPHA or a third party not associated with the bid

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 MPHA 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 MPHA, 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.

5.4.2 Form of Solicitation. Other than A/E services, developer-related services and energy performance contracting, competitive proposals 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 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 and the identify 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 MPHA has completed negotiating the contract with the selected vendor. Trade secret data as defined by Minnesota Statutes shall be private and not disclosed. The MPHA may assign price a specific weight in the evaluation factors or the MPHA 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 MPHA 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 Discussions. Discussions may be conducted with all offerors who submit a proposal determined to have a reasonable chance of being selected for award. 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. 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. 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 MPHA's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. The MPHA may discuss with each offeror significant weaknesses, deficiencies, and other aspects of its proposal that could be altered or explained to enhance the proposer's potential for award. The scope and extent of discussions are a matter of the Contracting Officer's judgment. The MPHA may inform an offeror that its price is considered by the MPHA 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 MPHA'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 MPHA provided that the price is within the maximum total project budgeted amount established for the specific property or activity. Either a fixed-price contract or cost-reimbursement contract will be awarded.

5.4.6 A/E, Developer, Energy Performance and related services. The MPHA may contract for A/E services using Qualifications-based Selection (QBS) procedures, utilizing a Request for Qualifications (RFQ). Sealed bidding is not used for A/E solicitations. Under QBS procedures, an evaluation of qualifications is conducted and the award is made to the most qualified vendor, subject to negotiation of fair and reasonable compensation. Price is not a selection factor under this method.

5.5 Noncompetitive Proposals and Use of Non-Federal Funds.

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 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 endanger property, or would otherwise cause serious injury to the MPHA, by reason of a flood, tornado, 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 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;

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 MPHA 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 MPHA 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 Simplified Acquisition Threshold or \$150,000, the MPHA 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 MPHA 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 MPHA through a Purchase Order or other means shall serve as the determination 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 MPHA shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the MPHA's personal knowledge at the time of purchase, 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 MPHA cannot reasonably determine price reasonableness, the MPHA 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 MPHA 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 MPHA 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 greater than the Simplified Acquisition Threshold 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 MPHA may contact only one source if the price is reasonable.

8.1.2 Small Purchases. Quotes may be solicited orally, electronically, through an e-procurement system, 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 MPHA must use one or more of the 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 MPHA 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 MPHA's procurement policy.

8.2 Time Frame. For purchases of more than \$100,000 (or \$150,000 for services), or an amount amended by applicable law or regulation, the public notice should run once per 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 21 days shall generally be provided for preparation and submission of sealed bids and 15 days for competitive proposals. However, the Contracting Officer may allow for a shorter period.
- 8.5 Cancellation of Solicitations.**
- 8.5.1** A solicitation may be cancelled if:
 - 8.5.1.1** The supplies, services or construction are no longer required;
 - 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;
 - 8.5.1.4** Ambiguous or otherwise inadequate specifications were part of the solicitation;
 - 8.5.1.5** All factors of significance to the MPHA were not considered;
 - 8.5.1.6** Prices exceed available funds;
 - 8.5.1.7** 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
 - 8.5.1.8** 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.

- 8.6 Purchasing Cards and Credit Cards.** The MPHA may establish a purchasing card program to provide a more efficient, cost-effective alternative for departments and sites to make qualified purchases. Any such program shall be administered according to written purchasing card procedures and usage should follow the rules for small purchases as outlined in this policy. The MPHA may also permit the use of agency credit cards, following the same rules for other small purchases as outlined herein. The MPHA shall adopt reasonable safeguards to assure that purchasing cards and credit cards are used only as intended. Card purchases will be reviewed monthly by MPHA staff; at least once each year MPHA will hire an outside firm to review a representative sample of card purchases and provide a report on the use of the purchasing cards and 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 MPHA 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, bidders shall be required to submit a bid guarantee 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 performance and payment bonds; each equal to the total value of the contract.

10.0 CONTRACTOR QUALIFICATIONS AND DUTIES

10.1 Contractor Responsibility

10.1.1 The MPHA 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 Limited Denial of Participation (LDP).

10.1.2 If a prospective contractor is non-responsible, a written determination of non-responsibility shall be prepared and included in the 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., the Department of Labor for violation of labor regulations. Prior to issuance of a contract, the MPHA shall conduct the required searches in the HUD LDP system and the U.S. General Services Administration System for Award Management (SAM) and document the search in the contract file.

10.3 Vendor Lists. All interested businesses shall be given the opportunity to be included on vendor solicitation 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 MPHA, 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 MPHA. The MPHA may use time and material contracts only after the MPHA determines 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 MPHA;

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 in 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

11.2.7 The options may be exercised only if determined to be more advantageous to the MPHA 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 MPHA.

12.2 Required Forms. HUD-funded contracts issued by MPHA must include the applicable HUD forms and certifications listed in Appendix A. Copies of the forms shall also be made available on the MPHA Website.

12.3 Required Contract Clauses. The MPHA shall ensure that each contract executed by the MPHA contains the applicable required contract clauses in 2 CFR § 200.326 and 2 CFR § 200 Appendix II.

13.0 CONTRACT ADMINISTRATION

13.1 General. The MPHA 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 with the intent to promote economy and to encourage competition. 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);

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 MPHA 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 MPHA 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 contractor 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. 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, MPHA 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:

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 MPHA 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 MPHA prime contracts and subcontracting opportunities, and in accordance with 24 CFR §135.40 (a), (b) and (c). In addition to contracting and subcontracting opportunities, MPHA may undertake efforts to provide low-income persons with other economic opportunities in addition to training, employment and contract awards. Other opportunities may include other business related economic opportunities, including but not limited to the formation of section 3 joint ventures and financial support for affiliating with franchise development. MPHA may also provide incentives to non-section 3 businesses to utilize such methods to provide other economic opportunities to low-income persons. 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.
 - 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. A list of counties in Minnesota that qualify as “labor surplus areas,” in other words, areas of high unemployment (as defined by federal law), can be found at <http://www.mmd.admin.state.mn.us/lalist.htm> or by contacting the Minnesota Office of Management and Budget.

17.0 BOARD APPROVAL OF PROCUREMENT ACTIONS

17.1 Authority. The MPHA Board of Commissioners appoints and delegates procurement authority to the Executive Director (ED) in the amount not to exceed \$500,000 per contract in any twelve-month period, or \$1 million over the life of the contract. The ED must also receive Board approval for 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 MPHA’s procurements comply with this Policy, the ED may delegate in writing all procurement authority as is necessary and appropriate to conduct the MPHA’s procurement activity.

18.2 Procedures. Further, and in accordance with this delegation of authority, the ED may designate contracting officers and establish operational procedures (such as a procurement manual or standard operating procedures) to implement this Policy.

19.0 DOCUMENTATION

19.1 Required Records. The MPHA 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);

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

20.0 DISPOSITION OF SURPLUS PROPERTY

20.1 General. Property no longer necessary for the MPHA'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 MPHA shall ensure that sufficient funds are available to cover the anticipated cost of the contract or modification.

Appendix A: HUD-Required Contract Forms and Certifications

1. HUD 5369 Instructions to Bidders
2. HUD 5369-A Representations, Certifications, and Other Statements of Bidders
3. HUD 5369-B Instructions to Offerors Non-Construction
4. HUD 5369-C Certifications and Representations of Offerors Non-Construction
5. HUD 5370 General Conditions of the Contract for Construction
6. HUD 5370-C General Contract Conditions Non-Construction (Sections I and II)
7. HUD 5370-EZ General Contract Conditions Small Construction/Development
8. HUD 51915 and 51915A Agreement Between Owner and Design Professional
9. HUD 52158 Maintenance Wage Decision
10. Davis-Bacon and Related Acts Wage Determination
11. HUD 50071 Certification of Payments to Influence Federal Transactions
12. SF-LLL Disclosure of Lobbying Activities