

HOUSING AUTHORITY CITY OF KENNEWICK
(Kennewick Housing Authority – KHA)

PROCUREMENT POLICY

(Resolution #1040 – Amendment to Resolution #694 – January 26, 2010)

This Procurement Policy complies with the Annual Contributions Contract (ACC) between the Housing Authority City of Kennewick (Kennewick Housing Authority – KHA) and U.S. Department of Housing and Urban Development (HUD), Federal Regulations at **24 CFR 85.36**, the procurement standards of the Procurement Handbook for Public Housing Authorities (PHA's), HUD Handbook 7460.8, Rev 2, and applicable State and Local laws.

1. GENERAL PROVISIONS

A. General

The KHA shall: provide for a procurement system of quality and integrity; provide for the fair and equitable treatment of all persons or firms involved in purchasing by the KHA; ensure that supplies and services (including construction) are procured efficiently, effectively, and at the most favorable prices available to the KHA; promote competition in contracting; and assure that KHA purchasing actions are in full compliance with applicable Federal standards, HUD regulations, State, and local laws.

B. Application

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

C. Definition

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

D. Exclusions

This policy does not govern administrative fees earned under the Section 8 voucher program, the award of vouchers under the Section 8 program, the execution of landlord Housing Assistance Payments contracts under that program, or non-program income, e.g., fee-for-service revenue under 24 CFR Part 990. These excluded areas are subject to applicable State and local requirements.

E. Changes in Laws and Regulations

In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with these Policies, automatically supersede these Policies.

F. 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 Washington State Freedom of Information Act.

2. ETHICS IN PUBLIC CONTRACTING

A. General

The KHA hereby establishes this code of conduct regarding procurement issues and actions and shall implement a system of sanctions for violations. This code of conduct, etc., is consistent with applicable Federal, State, or local law.

B. Conflicts of Interest

No KHA employee, officer, Board member, or agent of the KHA shall participate directly or indirectly in the selection, award, or administration of any contract if a conflict of interest, either real or apparent, would be involved. This type of conflict would be when one of the persons listed below has a financial or any other type of interest in a firm competing for the award:

- i. An employee, officer, Board member, or agent involved in making the award;
- ii. 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);
- iii. His/her partner; or
- iv. An organization which employs or is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

C. Gratuities, Kickbacks, and Use of Confidential Information

No KHA officer, employee, Board member, or agent shall ask for (or) accept gratuities, favors or items from any contractor, potential contractor, or party to any subcontract and shall not knowingly use confidential information for actual or anticipated personal gain.

D. Prohibition Against Contingent Fees

Contractors wanting to do business with the KHA 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.

3. PROCUREMENT PLANNING

Planning is essential to managing the procurement function properly. Hence, the KHA will periodically review its record of prior purchases, as well as future needs, to: find patterns of procurement actions that could be performed more efficiently or economically; maximize competition and competitive pricing among contracts and decrease the KHA's procurement costs; reduce KHA 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.

4. PURCHASING METHODS

A. Petty Cash Purchases

Purchases under \$100.00 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 KHA shall ensure that security is maintained and only authorized individuals have access to the account. These accounts should be reconciled and replenished periodically.

B. Small Purchase Procedures

For any amounts above the Petty Cash ceiling, but not exceeding \$75,000.00, the KHA may use small purchase procedures. Under small purchase procedures, the KHA shall obtain a reasonable number of quotes (preferably three); however, for purchases of less than \$2,000, also known as “Micro Purchases”, only one quote is required provided the quote is considered reasonable. To the greatest extent feasible, and to promote competition, small purchases should be distributed among qualified sources.

- Quotes may be obtained orally (either in person or by phone), by fax, in writing, or through e-procurement.
- Award shall be made to the qualified vendor that provides the best value to the KHA.
- If award is to be made for reasons other than lowest price, documentation shall be provided in the contract file.
- The KHA shall not break down requirements aggregating more than the small purchase threshold (or the “Micro Purchase” threshold – less than \$2,000.00) 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.

C. Sealed Bids

Sealed bidding shall be used for all contracts that exceed the small purchase threshold and that are not competitive proposals or non-competitive proposals, as these terms are defined in this document. Under sealed bids, the KHA publicly solicits bids and awards a “firm fixed-price” contract (lump sum or unit price) to the responsible bidder whose bid, conforming with all the material terms and conditions of the Invitation For Bids (IFB), is the lowest in price. Sealed bidding is the preferred method for procuring construction, supply, and non-complex service contracts that are expected to exceed \$75,000.00.

i. Conditions for Using Sealed Bids

KHA shall use the sealed bid method if the following conditions are present:

- A complete, adequate, and realistic statement of work, specification, or purchase description is available;
- Two or more responsible bidders are willing and able to compete effectively for the work;
- The contract can be awarded based on a firm fixed price; and
- The selection of the successful bidder can be made principally on the lowest price.

ii. **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.

iii. **Bid Opening and Award**

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

iv. **Mistakes in Bids**

Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the IFB prior to the time set for bid opening. After bid opening, corrections in bids may be permitted only if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made. All decisions to allow correction or withdrawal of a bid shall be supported by a written determination signed by the Contracting Officer. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the KHA or fair competition shall not be permitted.

D. **Competitive Proposals**

Unlike sealed bidding, the competitive proposal method permits:

- Consideration of technical factors other than price;
- Discussion with offerors concerning offers submitted;
- Negotiation of contract price or estimated cost and other contract terms and conditions;
- Revision of proposals before the final contractor selection; and –
- The withdrawal of an offer at any time up until the point of award. Award is normally made on the basis of the proposal that represents the best overall value to the KHA, 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.

i. **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.

ii. **Form of Solicitation**

Other than Architectural & Engineering (A/E) services, competitive proposals shall be solicited through the issuance of a Request For Proposals (RFP). The RFP shall clearly identify the importance and relative value of each of the evaluation factors as well as any sub factors and price. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established **before** the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals until after award. The KHA may assign price a specific weight in the evaluation criteria or the KHA may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.

iii. **Evaluation**

The proposals shall be evaluated **only** on the criteria stated in the RFP. Where not apparent from the evaluation criteria, the KHA 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.

iv. **Negotiations**

Negotiations shall be conducted with all offerors who submit a proposal determined to have a reasonable chance of being selected for award, unless it is determined that negotiations are not needed with any of the offerors. This determination is based on the relative score of the proposals as they are evaluated and rated in accordance with the technical and price factors specified in the RFP. These offerors shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their proposals. No offeror shall be given any information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal. A common deadline shall be established for receipt of proposal revisions based on negotiations. Negotiations are exchanges (in either competitive or sole source environment) between the PHA and offerors that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract or other terms of a proposed contract. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions. Discussions are tailored to each offeror's proposal, and shall be conducted by the contracting officer with each offeror within the competitive range. The primary object of discussions is to maximize the KHA's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. The contracting officer shall indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as cost, price, technical approach, past performance, and terms and conditions) that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposer's potential for award. The scope and extent of discussions are a matter of the contracting officer's judgment. The contracting officer may inform an offeror that its price is considered by the PHA to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible to indicate to all offerors the cost or price that the government's price analysis, market research, and other reviews have identified as reasonable. "Auctioning" (revealing one offeror's price in an attempt to get another offeror to lower their price) is prohibited.

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

vi. **Architectural & Engineering (A/E) Services**

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

E. **Noncompetitive Proposals**

i. **Conditions for Use**

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

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

ii. **Justification**

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

1. Description of the requirement;
2. History of prior purchases and their nature (competitive vs. noncompetitive);
3. The specific exception in **24 CFR 85.36(d)(4)(i)(A)** through **(D)** which applies;
4. Statement as to the unique circumstances that require award by noncompetitive proposals;
5. Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);
6. Statement as to efforts that will be taken in the future to promote competition for the requirement;

7. Signature by the Contracting Officer's supervisor (or someone above the level of the Contracting Officer); and
8. Price Reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing an analysis, as described in this Policy.

F. Cooperative Purchasing/Intergovernmental Agreements

The KHA 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 KHA may use Federal or State excess and surplus property instead of purchasing new equipment and property if feasible and if it will result in a reduction of project costs. The goods and services obtained under a cooperative purchasing agreement must have been procured in accordance with **24 CFR 85.36**.

5. INDEPENDENT COST ESTIMATE (ICE)

For all purchases above the Micro Purchase threshold, the KHA 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.

6. COST AND PRICE ANALYSIS

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

A. 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.

B. 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.

C. 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 KHA cannot reasonably determine price reasonableness, the KHA must conduct a cost analysis, consistent with federal guidelines, to ensure that the price paid is reasonable.

D. Competitive Proposals

The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, the KHA 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 KHA must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable.

E. 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 \$75,000.00.

7. SOLICITATION AND ADVERTISING

A. Method of Solicitation

i. Petty Cash and Micro Purchases

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

ii. Small Purchases

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

iii. Sealed Bids and Competitive Proposals

Solicitation must be done publicly. The KHA must use one or more following solicitation methods, provided that the method employed provides for meaningful competition.

1. Advertising in newspapers or other print mediums of local or general circulations.
2. Advertising in various trade journals or publications (for construction).
3. E-Procurement. The KHA may conduct its public procurements through the Internet using e-procurement systems. However, all e-procurements must otherwise be in compliance with **24 CFR 85.36**, State and local requirements, and the Authority's procurement policy.

B. Time Frame

For purchases of more than \$75,000.00, the public notice should run not less than once each week for two consecutive weeks.

C. 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 items(s).

D. Time Period for Submission of Bids

A minimum of twenty (20) days shall generally be provided for preparation and submission of sealed bids and fifteen (15) days for competitive proposals. However, the Executive Director may allow for a shorter period under certain and extraordinary circumstances.

E. Cancellation of Solicitations

- i. 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.
- ii. A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if:
 1. The supplies or services (including construction) are no longer required;
 2. Ambiguous or otherwise inadequate specifications were part of the solicitation;
 3. All factors of significance to the KHA were not considered;
 4. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
 5. There is reason to believe that bids or proposals may not have been independently determined in open competition, may have been collusive, or may have been submitted in bad faith; or
 6. For good cause of a similar nature when it is in the best interest of the KHA.
- iii. The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request.
- iii. 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.
- iv. 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 KHA's cost estimate. If both are determined adequate and if only one bid is received and the price is unreasonable, the Contracting Officer may cancel the solicitation and either:
 1. Re-solicit using an RFP; or –
 2. Complete the procurement by using the competitive proposal method. The Contracting Officer must determine, in writing, that such action is appropriate, must inform all bidders of the KHA's intent to negotiate, and must give each bidder a reasonable opportunity to negotiate.
- v. If problems are found with the specifications, KHA should cancel the solicitation, revise the specifications and re-solicit using an IFB.

F. Credit (or Purchasing) Cards

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

When using credit cards, the KHA should adopt reasonable safeguards to assure that they are used only for intended purposes (for instance, limiting the types of purchases or the amount of purchases that are permitted with credit cards).

8. BONDING REQUIREMENTS

The standards under this section apply to construction contracts that exceed \$100,000.00. There are no bonding requirements for small purchases or for competitive proposals. The KHA may require bonds in these latter circumstances when deemed appropriate; however, non-construction contracts should generally not require bid bonds.

A. Bid Bonds

For construction contracts exceeding \$100,000.00, offerors shall be required to submit a bid guarantee from each bidder equivalent to 5% of the bid price.

B. Payment Bonds

For construction contracts exceeding \$100,000.00, the successful bidder shall furnish an assurance of completion. This assurance may be any one of the following four:

1. A performance and payment bond in a penal sum of 100% of the contract price; or
2. Separate performance and payment bonds, each for 50 % or more of the contract price; or
3. A 20 % cash escrow; or
4. A 25 % irrevocable letter of credit.

C. These bonds must be obtained from guarantee or surety companies

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

9. CONTRACTOR QUALIFICATIONS AND DUTIES

A. Contractor Responsibility

KHAs 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:

- i. Have adequate financial resources to perform the contract, or the ability to obtain them;
- ii. 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;
- iii. Have a satisfactory performance record;
- iv. Have a satisfactory record of integrity and business ethics;
- v. Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;

- vi. Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,
- vii. Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended, debarred or under a HUD-imposed LDP.

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

B. Suspension and Debarment

Contracts shall not be awarded to debarred, suspended or ineligible contractors. Contractors may be suspended, debarred or determined to be ineligible by HUD in accordance with HUD regulations (**24 CFR Part 24**) or by other Federal agencies, e.g., Dept of Labor for violation of labor regulations, when necessary to protect housing authorities in their business dealings.

C. 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.

10. CONTRACT PRICING ARRANGEMENTS

A. Contract Types

Any type of contract which is appropriate to the procurement and which will promote the best interests of the KHA 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 KHA.

For all cost reimbursement contracts, KHA 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.

B. Options

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

- i. The option is contained in the solicitation;
- ii. The option is a unilateral right of the Authority;
- iii. The contract states a limit on the additional quantities and the overall term of the contract;
- iv. The options are evaluated as part of the initial competition;
- v. The contract states the period within which the options may be exercised;
- vi. The options may be exercised only at the price specified in or reasonably determinable from the contract; and
- vii. The options may be exercised only if determined to be more advantageous to FHA than conducting a new procurement.

11. CONTRACT CLAUSES

All contracts should identify the contract pricing arrangement as well as other pertinent terms and conditions, as determined by the KHA.

Additionally, the forms HUD-5369, 5369-A, 5369-B, 5369, 5370, 5370-C, and 51915-A , which contain all HUD-required clauses and certifications for contracts of more than \$100,000, as well as any forms/clauses as required by HUD for small purchases, shall be used in all corresponding solicitations and contracts issued by this Authority.

12. CONTRACT ADMINISTRATION

The KHA 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.

13. SPECIFICATIONS

A. General

All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying KHA 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.

B. Limitation

The following types of specifications shall be avoided:

- i. 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);
- ii. Brand name specifications (unless the specifications list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use).
Nothing in this procurement policy shall preempt any State licensing laws. Specifications shall be reviewed to ensure that organizational conflicts of interest do not occur.

14. APPEALS AND REMEDIES

A. General

It is KHA 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.

B. Informal Appeals Procedure

The KHA shall adopt an informal bid protest/appeal procedure for contracts of \$75,000.00 or less. Under these procedures, the bidder/contractor may request to meet with the appropriate Contract Officer.

C. Formal Appeals Procedure

A formal appeals procedure shall be established for solicitations/contracts of more than \$75,000.00.

i. **Bid Protest.**

Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy. Any protest against a solicitation must be received before the due date for the receipt of bids or proposals, and any protest against the award of a contract must be received within ten (10) calendar days after the contract receives notice of the contract award, or the protest will not be considered. All bid protests shall be in writing, submitted to the Contracting Officer or designee, who shall issue a written decision on the matter. The Contracting Officer may, at his/her discretion, suspend the procurement pending resolution of the protest if the facts presented so warrant.

ii. **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 KHA. Contractor claims shall be governed by the Changes clause in the form HUD-5370.

15. ASSISTANCE TO SMALL AND OTHER BUSINESSES

A. Required Efforts

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

- i. Including such firms, when qualified, on solicitation mailing lists;
- ii. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
- iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- iv. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
- v. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
- vi. Including in contracts, to the greatest extent feasible, a clause requiring contractors, to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with the project to business concerns which provide opportunities to low-income residents, as described in **24 CFR Part 135** (so-called Section 3 businesses); and

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

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

B. Definitions

i. Small Business

Is defined as a business that is: independently owned; not dominant in its field of operation; and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in **13 CFR Part 121** should be used to determine business size.

ii. 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.

iii. 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.

iv. "Section 3 Business Concern"

Is as defined under **24 CFR Part 135**.

v. 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.

16. BOARD APPROVAL OF PROCUREMENT ACTIONS

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

17. DELEGATION OF CONTRACTING AUTHORITY

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

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

18. DOCUMENTATION – FILE RETENTION REQUIREMENTS – 24 CFR 85.42(A)(B):

- A. The KHA 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:
 - i. Rationale for the method of procurement (if not self-evident);
 - ii. Rationale of contract pricing arrangement (also if not self-evident);
 - iii. Reason for accepting or rejecting the bids or offers;
 - iv. Basis for the contract price (as prescribed in this handbook);
 - v. A copy of the contract documents awarded or issued and signed by the Contracting Officer;
 - vi. Basis for contract modifications; and
 - vii. Related contract administration actions.
- B. The level of documentation should be commensurate with the value of the procurement.
- C. Records are to be retained for a period of three (3) years after final payment and all matters pertaining to the contact are closed exempt where litigation is involved.
- D. HUD and also with funds awarded under ARRA Act 2009 maintain the right to audit all records and documents and will periodically review the procurement function of KHA in order to determine the functionality and compliance of procurement policy.

19. DISPOSITION OF SURPLUS PROPERTY

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

20. FUNDING AVAILABILITY

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

21. SELF-CERTIFICATION

The KHA self-certifies that this Procurement Policy, and the KHA's procurement system, complies with all applicable Federal regulations and, as such, the KHA is exempt from prior HUD review and approval of individual procurement action.

**22. AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) 2009 –
CAPITAL FUND FORMULA GRANTS PIH 2009-12 NOTICE PROCEDURES FOR
PROCESSING ARRA 2009 FUNDS:**

The KHA will comply with all aspects to the federal requirements and provisions under PIH 2009-12 Notice Procedures for Processing American Recovery and Reinvestment Act (ARRA) Capital Fund Formula Grants that provides guidance and established requirements to Public Housing Agencies (PHA) HUD Field Offices with information and procedures for processing additional

amount of Fiscal Year 2009 Public Housing Program Capital Fund Program (CFP) Grants being provided in accordance with the ARRA Act (“the recovery act”). Requirements apply to PHA’s who receive either Capital Fund Formula and/or a Replacement Housing Factor (RHF) Fund Grant in FY 2008 under the Public Housing Program Capital Fund Program (CFP).

***See Attachment #1 – PIH 2009-12 Notice to KHA’s Procurement Policy.

23. “BUY AMERICAN” REQUIREMENTS OF THE AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) 2009 – SECTION 1605 OF TITLE XVI AND PIH 2009-31 NOTICE:

The KHA will comply will all aspects of the federal requirements and provisions under Section 1605 of Title XVI of The American Recovery and Reinvestment Act (ARRA) 2009 and in PIH 2009-12 Notice Procedures for Processing American Recovery and Reinvestment Act (ARRA) regarding “Buy American”.

Provisions require Public Housing Agencies (PHA’s) who receive ARRA funds obligated and/or expended for procurement expended for the procurement of goods and services. The required provision states PHA’s will only use iron, steel, and manufactured goods produced in the United States in their funded projects.

In general, any material or services procured by KHA or by vendors performing a service for KHA must make a “good faith” effort to ensure that all of the materials procured are of American manufacture. This includes all iron, steel, and manufactured goods. The provision also specifies the grounds under which an exemption may be made or certain requirements waived, some examples would be materials that can not be consistently procured on a given project, materials required that are of inferior quality, if the intended procurement is contrary to the public interest, and materials that are cost prohibitive. It is noted in the Buy American provision that most of these requirements are generally applicable to ARRA 2009 funds intended for construction, alteration development, modernization and non- routine maintenance. In all circumstances, prevailing wage rules will apply, including Davis Bacon.

In order to assure compliance with 1605 Title XVI of the ARRA Act of 2009, the following clause **must be included in KHA contracts** and within KHA’s Procurement Policy used for procurement:

“The Contractor acknowledges he/ she understands, has reviewed, and will comply with the requirements outlined in section 1605 Title XVI of the ARRA act, herein referred to as the Buy American” provision which states that ALL iron, steel, and manufactured goods and services provided by the contractor are produced in the United States.

The Contractor hereby warrants that ALL of the iron, steel and manufactured goods used, or will be used, on this project have been produced in the United States in a manner that is compliant with the Buy American requirement. The Contractor will provide any further verified information, certification, or assurance of compliance, or information necessary to support an exception to the Buy American requirement.

Any failure to comply with this requirement by the Contractor shall permit KHA to recover as damages against the Contractor any loss, expense or cost, including attorney's fees, incurred by KHA due to the non-compliance of the Contractor".

***See Attachment #2 - PIH 2009-31 Notice to KHA's Procurement Policy.

24. EXCLUSION OF STATE AND LOCAL LAWS RELATING TO PROCUREMENT - REQUIREMENTS OF THE AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) 2009 – PIH 2009-12 NOTICE PROCEDURES FOR PROCESSING ARRA 2009 FUNDS AND 24 CFR 85:

The KHA will comply will all aspects of the federal requirements and provisions under The American Recovery and Reinvestment Act (ARRA) 2009 and in PIH 2009-12 Notice Procedures for Processing American Recovery and Reinvestment Act (ARRA) and 24 CFR 85 regarding "Exclusion of State and Local Laws Relating to Procurement"

In accordance to PIH 2009-12 Notice relating to ARRA Act 2009 Capital Funds Formula Grants provides that "Requirements relating to goods and services arising under state and local laws and regulations shall not apply to the CFP assistance provided by this agreement".

The HUD Procurement Handbook, states under the section titled changes in laws and regulations that any State or local laws that are inconsistent with 24 CFR 85 are superseded by the Federal standard.

Section 85.36 (c)(2), for example, prohibits the use of imposed requirements for geographical preferences in the evaluation of bids or proposals except in the case where Federal statutes expressly mandate or encourage geographic preference. Another example is where Federal wage determinations (Davis Bacon) will preempt state prevailing wage laws if the Federal wage is higher.

KHA is required under this ruling to establish administrative procedures for the settlement of ALL contractual and administrative issues arising out of procurements, including protest procedures. Federal regulations do not supersede or interfere with state and local laws in these instances.

PIH Notice 2009-12, Section IV, Procurement, Paragraphs 2 and 3 state "Any requirements relating to the procurement of goods and services arising under state laws and regulations shall NOT apply to Capital Fund Stimulus Grants". This section requires any standards that are in conflict with 24 CFR 85 or the ARRA Act, and where permitted by Part 85, including the bid protest procedures and conflict of interest, be removed and replaced by KHA's own procedures so long as they are not contrary to the purposes of the Recovery Act to expedite and facilitate the use of the funds.

***See Attachment #1 – PIH 2009-12 Notice to KHA's Procurement Policy.

APPENDIX 2. PROCUREMENT FILE CHECKLIST

The following table lists the types of documentation that generally should be included in the contract file for each procurement. Note, however, that the circumstances of each procurement will dictate the documentation required. For example, an RFP for Property Management Services would not necessarily require a separate cost analysis if there were an ample number of price proposals and the costs (management fees) were within the range established in the ICE. Similarly, for small purchases, the issuance of a purchase order will likely serve as a Notice to Proceed; however, for some very technical services acquired under small purchases, the PHA might want to hold a post-award meeting and then issue a Notice to Proceed. In all, the contract file should contain all significant documentation relating to the specific procurement. Any shaded item would generally not apply for that type of purchase.

| Item | Micro Purchase | Small Purchase | Sealed Bid | Competitive Proposals | Non-Competitive Proposals |
|---|----------------|----------------|------------|-----------------------|---------------------------|
| Pre-Solicitation | | | | | |
| Independent Cost Estimate | | | | | |
| Individual Procurement Plan | | | | | |
| Rationale for Contract Method (if not apparent) | | | | | |
| Rationale for Contract Type (if not apparent) | | | | | |
| Evaluation Plan | | | | | |
| Solicitation | | | | | |
| Sources (mailing lists, advertisements, etc.) | | | | | |
| Solicitation Notice and Amendments | | | | | |
| IFB/RFP | | | | | |
| Notes of Pre-Bid/Proposal Conferences | | | | | |
| IFB/RFP Correspondences | | | | | |
| Record of Bids/RFPs Requested | | | | | |
| Quotes, Bids or Proposals Received | | | | | |
| Justification for Other than Full/Open Competition | | | | | |
| Evaluation | | | | | |
| Bid Opening | | | | | |
| Evaluation Panel Disclosures and Ethics Statement | | | | | |
| Technical Evaluation | | | | | |
| Price Evaluation | | | | | |
| Competitive Range Determinations | | | | | |
| Evaluation Report | | | | | |
| Memo of Negotiation and Selection Decision | | | | | |
| Pre-award Survey and Responsibility Determinations | | | | | |
| Award | | | | | |
| Contract and Award Documents | | | | | |
| Notification to Unsuccessful Bidders | | | | | |
| Appeals (all correspondence) | | | | | |
| Post-Award and Contract Administration | | | | | |
| Insurance and Bonding Requirements | | | | | |
| Records of Post-Award Conferences | | | | | |
| Notice to Proceed | | | | | |
| Contract Modifications and Supporting Documentation | | | | | |
| Receiving Reports | | | | | |
| General Contract Correspondence | | | | | |
| Payment Record/Documentation | | | | | |
| Inspections and Field Reports | | | | | |
| Completion Certificate | | | | | |

| Cost Proposal | Cost Principle |
|---------------------------------------|--------------------|
| For-Profit or commercial organization | FAR Part 31 |
| State or local governments | OMB Circular A-87 |
| Private, non-profit organizations | OMB Circular A-122 |
| Educational institutions | OMB Circular A-21 |

APPENDIX 3. SAMPLE ADVERTISEMENT

The **Felton Housing Authority (FHA)** invites sealed bids from contractors for the snow removal at **Vandross Manor, located at 56 Music Lane, Felton, USA, 56789**. The work consists of the replacing toilets at all 150 units in accordance with the documents prepared by Maurice Plumbing.

Bids are subject to State Law.

Bids will be received until **2:00 P.M.** on **MM/DD/YY** and publicly opened, forthwith at Felton Housing Authority, Property Management Division, 727 Robin Place, Felton, USA 56789. General bids shall be accompanied by a bid deposit that is not less than five (5%) of the greatest possible bid amount (considering all alternates), and made payable to the Felton Housing Authority.

A bid package will be available for pick-up from _____ at 727 Robin Place after **2:00 p.m., MM/DD/YY**. Cost of plans and specifications is **\$25.00**. Company checks are required.

THE JOB SITE AND/OR EXISTING BUILDING WILL BE AVAILABLE FOR A WALK THROUGH ON MM/DD/YY AT 10:00 A.M. AT VANDROSS MANOR, 56 MUSIC LANE, FELTON, USA. PROSPECTIVE BIDDERS SHOULD MEET AT THE ABOVE-MENTIONED ADDRESS.

APPENDIX 4. SAMPLE IFB COVER SHEET

IFB Number: _____

Date of Issuance: _____

Sealed bids will be accepted at the Felton Housing Authority (FHA), Property Management Division, until the date and time noted below. Bids will be publicly opened and recorded immediately thereafter in the Conference Room, 727 Robin Place, Felton, USA, 56789.

Snow Removal at Vandross Manor

Pre-Bid Meeting will be held: _____ (date) _____ (time)

Bid Opening: _____ (date) _____ (time)

Property Management Division

727 Robin Place

Felton, USA 56789

Point of Contact: Mary Jane (987) 654-3210

Table of Contents:

- A. Bid/Price Form
- B. Specifications/Scope of Work
- C. Instructions to Bidders
- D. Required Certifications
- E. General Contract
- F. Other Attachments

APPENDIX 5. SAMPLE SOLICITATION AMENDMENT

**FELTON HOUSING AUTHORITY PROPERTY MANAGEMENT DIVISION 727 ROBIN PLACE
FELTON, USA 56789**

1. Amendment number:

2. Issued by:

3. Amendment of solicitation number: _____ dated: _____

4. The hour and date specified for receipt of bids/proposals is _____ is not _____ extended to the following new hour and date:

5. The above-numbered solicitation is amended as set forth below. Bidders/offerors must acknowledge receipt of this amendment prior to the hour and date specified for receipt of bids/proposals, by signing this form below or by completing the acknowledgement on the form titled "Solicitation, Bid/Proposal and Award."

6. Description of amendment:

{Cite specific sections and/or pages of the solicitation that are being amended.}

Except as provided herein, all terms and conditions of the solicitation remain unchanged and in full force and effect.

7. Name and title of signer:

Signature and date:

APPENDIX 6. SAMPLE CONTRACT AWARD

**FELTON HOUSING AUTHORITY PROPERTY MANAGEMENT DIVISION 727 ROBIN PLACE
FELTON, USA 56789**

1. Contract Number: _____ 2. Effective Date: _____

3. Solicitation Number/ Project Title: _____

4. Name & Address of Contractor: _____

5. Contract Amount: \$ _____

6. Accounting Code: _____

7. Table of Contents:

[X] SECTION Description [Pages] [X] SECTION Description [Pages]

A CONTRACT AWARD FORM 1 F DELIVERIES OR PERFORMANCE

B SUPPLY/SERVICE & PRICES G CONTRACT ADMINISTRATION DATA

C STATEMENT OF WORK/SPECS H SPECIAL CONTRACT REQUIREMENTS

D PACKAGING & MARKING I CONTRACT CLAUSES

E INSPECTION & ACCEPTANCE J LIST OF ATTACHMENTS

8. **Award:** Your bid/offer on Solicitation Number _____ including additions or changes made by you, which additions or changes are set forth in full within the sections listed above, is hereby accepted as to the items listed in Section B and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the PHA's solicitation, (b) your bid/offer, and (c) this award document/contract. No further contract document is necessary.

9. **Name of Contracting Officer:** _____

Signature of Contracting Officer: _____

Date Signed: _____

10. **Name/Title of Authorized Signer/Contract Representative:**

Signature of Contracting Representative: _____

Date Signed: _____

APPENDIX 7. SAMPLE NOTICE TO UNSUCCESSFUL BIDDERS

(Letterhead)

Re: IFB# _____

1. Receipt of your bid is acknowledged in response to our invitation for bid referenced above.
2. The contract was awarded after competition by sealed bidding to the lowest responsive and responsible bidder. The total amount of the awarded contract was \$ _____. The award was made to:

(Insert Bidder Name)

3. Enclosed is the bid bond your company submitted for the above-referenced solicitation.
4. The Felton Housing Authority appreciates your time and effort in preparing and submitting your bid. We hope that your firm will participate in future solicitations.

Name _____
Contracting Officer Date _____

APPENDIX 8. SAMPLE PROCEDURES FOR EVALUATION COMMITTEES (FOR AMOUNTS ABOVE THE FEDERAL SMALL PURCHASE THRESHOLD)

INTRODUCTION

This document establishes the procedures for the evaluation review process and shall apply to the evaluation of all competitive proposals. The evaluation process must be impartial, consistent and fair.

Establishment of an Evaluation Panel

- A. A committee will be appointed by the Contracting Officer to evaluate technical proposals in accordance with a written evaluation plan. The Contracting Officer may serve as a panel member.
- B. A minimum of three persons (or a larger group having an odd number of designated voting members) must be selected.
- C. A designated chairperson shall be responsible for the deliberations of the committee and other duties as outlined below. The Contracting Officer may serve as Chairperson.
- D. Panel members who have a conflict of interest or relationship, financial or otherwise, or that may be construed as a conflict of interest, must disclose the existence of the conflict and, if necessary, excuse themselves from the panel.

Establishment of a Written Plan

Prior to the issuance of the RFP, a written plan for evaluating technical and cost proposals should be established. However, where practical, the evaluation criteria set forth in the RFP can serve as the written plan for the evaluation.

The evaluation criteria as set forth in the RFP shall be the basis for all evaluations. Factors not specified in the RFP shall not be considered.

Conduct of Evaluation

Prior to a formal meeting to discuss the proposals and evaluations, the Contracting Officer shall provide each evaluator with a copy of each qualified proposal, a rating sheet and a nondisclosure certificate, which must be executed by the panel member and returned to the Chairperson. The rating sheet will list each evaluation criterion and the weights assigned to it, as reflected in the RFP. The rating sheets should require the evaluator to assign both an adjectival rating for each evaluation criterion and a narrative justification to support the ratings given.

The evaluation committee will then meet to discuss the proposals. Initially the proposals should be compared on an individual basis, separately, against the requirements stated in the RFP, not analyzed in comparison with each other. During the evaluation, the committee members should only evaluate the content of the proposals; personal knowledge that is not based on the proposer's written submission, except for relevant past performance information should not be part of the initial technical evaluation.

The evaluation committee members will perform the following functions: 1) review all of the proposals using as the standard the evaluation criteria as set forth in the RFP; 2) meet to discuss the evaluations, the ratings of each evaluator and the reasons for such ratings; and 3) complete the ratings sheet including both an adjectival and narrative justifications for each proposal submitted.

The chairperson is responsible for collecting the individual rating sheets from each committee member, preparing a summary rating sheet which reflects an overall adjectival rating for each rating criterion, and preparing a formal written report to the Contracting Officer regarding the evaluation committee meeting and discussions (such as the minutes from the evaluation committee meeting). This written report shall rank the proposers and shall describe how the scores were determined. The chairperson shall then forward the individual rating sheets, the summary rating sheet and the written narrative report to the Contracting Officer.

Negotiations

If necessary, negotiations will be conducted with all proposers in the competitive range. The extent of involvement of committee members in these negotiations will be determined by the Contracting Officer. These negotiations will be conducted in accordance with applicable agency policies/procedures.

Disclosure of Information

The evaluators shall not disclose any information included in any of the proposals (such as the names and number of proposers or rating scores) to anyone during the solicitation and evaluation period. Proposers submit proposals in confidence and expect their proposals and proprietary information contained therein to be protected from disclosure to other proposers or individuals. At the appropriate time, the Contracting Officer and/or his designee shall discuss information regarding the solicitation and award.

**APPENDIX 9. CERTIFICATION OF NONDISCLOSURE
(FOR USE IN COMPETITIVE PROPOSALS METHOD OF PROCUREMENT)**

As a condition of serving as an evaluator of offers under _____ [*insert solicitation number or other identification, e.g., task order number*], I hereby certify that I will:

- (1) Use the information provided to me for the intended evaluation purposes only and will not disclose this information to any individual outside of the evaluation panel, including my supervisor or manager, without the express authorization of the evaluation panel chairperson or the Contracting Officer;
- (2) Not solicit or accept any information other than that provided to me by the evaluation panel chairperson or the Contracting Officer;
- (3) Report to the evaluation panel chairperson or the Contracting Officer any attempt by other parties to obtain from or provide to me any information described in this certification;
- (4) Honor any authorized restrictive legends placed on the information by prospective contractors or subcontractors or by the PHA and apply them to any reproductions or abstracts I may make or order to be made; and,
- (5) Return all copies of the information whether originally provided to me by the HA or made or ordered by me in the course of my evaluation, and any abstract thereof, to the evaluation panel chairperson.

I understand that my unauthorized release of information may result in the termination of my participation in this procurement and/or administrative, civil and criminal penalties. I also understand that this certification will be made part of the source selection record and the official contract file and does not relieve me of the responsibility for any other disclosure or certification required by law, regulation or other directive.

Typed or Printed Name

Signature

Date

Information includes but is not limited to the acquisition strategy, acquisition timeline, source selection criteria, evaluation plan, identity and number of offers, contents of offers, evaluation results and other documentation resulting from the evaluation process.

**APPENDIX 10. SAMPLE CHECKLIST FOR
DETERMINATION OF CONTRACTOR RESPONSIBILITY**

Public Housing Agency Name: _____

Solicitation Number: _____

Contractor Name and Address: _____

Circle all applicable statements:

1. A review of the GSA and HUD websites data dated _____ has been conducted and the contractor does/ does not appear as suspended, debarred or operating under a LDP.

2. The Contractor has/ has not performed satisfactorily on other contract(s) awarded by this PHA.

3. A survey of other agencies and companies doing business with the contractor was performed. Adverse/ no adverse information has been received that would bring the contractor's present responsibility and technical capability into question. List the agencies/companies contacted, dated contacted and person providing information.

4. A review of the Contractor's financial and technical resources indicates/ does not indicate that it is capable of performing the contract. List documentation reviewed.

5. State/local government agencies were contacted, and the contractor does/ does not have a record of any outstanding code violations, improper business practices, or similar history of non-compliance with public policy. List agencies contacted.

6. Other pertinent information received does/ does not affect the Contractor's responsibility. List parties contacted and results of contact (e.g., Better Business Bureau, Business Licenses, Dunn and Bradstreet, other credit agencies).

In accordance with **24 CFR 85.36 (b)(8)**, the contractor is considered to be responsible/ non-responsible and possesses/ does not possess the ability to successfully perform under the terms and conditions of this contract.

Name
Contracting Officer

Signature

Date

APPENDIX 11. SAMPLE LEGAL SERVICES ENGAGEMENT LETTER

The United States Department of HUD urges inclusion of the following provisions into all legal services contracts executed and/or administered by PHAs, unless no federally provided funds will be used to administer the contract.

ADDENDUM TO ENGAGEMENT AGREEMENT

1. The [name of PHA] and [name of legal service individual or firm] Legal Service Personnel (LSP) engaged to provide professional legal services to the PHA in connection with [briefly and precisely describe the nature, scope and limits of the legal services to be provided by the LSP] agree that the provisions of this Addendum to the Engagement Agreement are hereby incorporated into PHA and LSP's engagement agreement as if they had been set forth at length therein.
2. During the pendency of the legal services engagement, LSP shall not, without HUD approval, represent any officer or employee of PHA, in her/his individual capacity, in connection with potential civil liability or criminal conduct issues related to PHA operations.
3. LSP has an obligation not to, and shall not, interfere with, disrupt, or inappropriately delay or hinder any authorized monitoring, review, audit, or investigative activity of HUD (including the Office of Inspector General), the General Accounting Office (GAO), or the officers and employees of HUD and GAO. Any and all representation by LSP cannot be inconsistent with the foregoing obligation. Specifically, LSP shall not deny access to HUD, GAO, or the officers and employees of HUD and GAO, to PHA records in response to document demands by HUD, GAO, or the officers and employees of HUD and GAO, notwithstanding possible discovery privileges that would otherwise be available to PHA. HUD requires PHAs to provide HUD, GAO, or the officers and agents of HUD and GAO, with "full and free" access to all their books, documents, papers and records. See **24 CFR 85.42(e)(1)**.
4. PHA and LSP shall make available for inspection and copying, by HUD (including the Office of Inspector General), GAO, and the officers and employees of HUD and GAO, all invoices, detailed billing statements, and evidence of payment thereof relating to LSP's engagement. Such records constitute "PHA records" and are subject to section 3, above.
5. If HUD or PHA determines that LSP is violating any provision of this Addendum to the Engagement Agreement, it shall timely notify LSP of such violation. LSP will have 48 hours following its receipt of the notice of violation to cease and desist from further violation of the addendum. If LSP fails to adequately cure the noticed violation within 48 hours: (A) HUD, in its discretion, may demand that PHA terminate the professional legal services engagement for breach, or, henceforth, satisfy all costs associated with the engagement with non-Federal funds; and/or (B) PHA, in its discretion, may terminate the professional legal services engagement for breach. Additionally, HUD may sanction LSP pursuant to **24 CFR Part 24**.
6. Should any part, term, or provision of this Addendum to the Engagement Agreement be declared or determined by any court of competent jurisdiction to be illegal or invalid, the validity of the remaining parts, terms, and provisions shall not be affected.

Date: [Enter date]

[Enter name of PHA Exec. Dir.]

[Enter name of LSP key partner]

APPENDIX 12. GUIDELINES FOR CONDUCTING COST ANALYSIS

A cost or price analysis must be performed in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation. An independent estimate must be made before receiving bids or proposals.

- When evaluating competitive proposals;
- When there is a sole source (or non-competitive proposal);
- When after soliciting bids, only one bid is received, the PHA does not have sufficient data on costs to establish price reasonableness (such as prior purchases of similar nature), and the PHA is considering making an award to the sole bidder;
- When negotiating modifications to contracts that impact the price or estimated cost;
- When terminating a contract and the contractor is entitled to payment of reasonable costs incurred as a result of termination; or
- When awarding a cost-reimbursement contract.

The following lists the basic steps in conducting a cost analysis (please refer to chapter 10 for more when a cost analysis is required):

- A. Verify cost and price information, including:
 1. The necessity for, and reasonableness of, the proposed cost;
 2. Technical evaluation or appraisal of the proposed direct cost elements;
 3. Application of audited or pre-negotiated indirect cost rates, direct labor rates, etc.;
- B. Evaluate the effect of the offeror/contractor's current practices on future costs;
- C. Compare costs proposed by the offeror/contractor with the following:
 1. Actual costs previously incurred by the same firm;
 2. Previous cost estimates from the same firm or other firms for the same or similar items;
 3. The methodology to be used to perform the work (are the costs consistent with the technical approach being proposed?);
 4. The independent cost estimate (ICE).
- D. Verify that the offeror/contractor's cost proposal complies with the appropriate cost principles;
- E. Verify that costs are allowable, allocable, and reasonable.

The major categories of costs are:

A. Direct Costs, which include:

1. Direct Labor (personnel)
2. Equipment
3. Supplies
4. Travel and Per Diem
5. Subcontractors
6. Other Direct Costs

B. Indirect Costs, which includes:

1. Overhead
2. General and Administrative Expenses
3. Profit (or Fee)

In the process of analyzing costs, profit should be analyzed separately. In analyzing profit, consideration should be given to:

- A. Complexity of the work to be performed;
- B. Contractor's risk in performing the contract;
- C. Contractor's investment in the contracted effort;
- D. Amount of subcontracting;
- E. Contractor's record of past performance; and
- F. Industry profit rates in the general area for similar work.

Remember: The objective is to establish overall cost reasonableness and not individual components.

APPENDIX 13. SAMPLE NOTICE TO PROCEED

PHA NAME: _____

DATE: _____

To: Contractor name and address

Re: Contract Number

Project name/description

A. NOTICE TO PROCEED

Pursuant to the terms of the above contract, you are hereby notified to commence work at the start of business on **(date)**. The time for completion, including the starting day, as established by the contract, is **(date)**.

It is the responsibility of the contractor to meet the schedule as set forth and in accordance with the terms and conditions of the contract. Failure to comply with the schedule will result in the enforcement of the liquidated damages stated in the contract.

Please note carefully and fulfill the requirements of the contract regarding the submittal and approval of Workmen's Compensation and Manufacturers' and Contractors' Public Liability Insurance.

The contractor shall also contact the PHA in writing within three days prior to mobilization on the project to enable the PHA to coordinate this work with others.

The contractor shall within ten days after receipt of this notice send to the PHA copies of all required permits for work to be performed under this contract. Failure to comply with these instructions shall constitute a breach of contract.

Your cooperation on this construction to its conclusion is of the utmost importance to the PHA.

Sincerely,

Contracting Officer

cc: Contract File

Other PHA Files

APPENDIX 14. SAMPLE CONTRACT MODIFICATION

1. Modification Number: _____

2. Effective Date: _____

3. Contract Number: _____ Dated: _____

4. This Modification Modifies The Contract As Described Below:

This Change Order Is Issued Pursuant To:

(Cite Contract Clause) _____

The Contract Is Modified To Reflect The Following Administrative Changes (E.G., Changes In Payment Office)

This Supplemental Agreement Is Entered Into Pursuant

To: _____

(Cite Contract Clause Or Mutual Agreement Of The Parties)

Other (Specify Type Of Modification And Authority):

5. The contractor ___[is] or ___[is not] required to sign this document and return ____ copies to the Contracting Officer.

6. Description Of Modification: (Include Section, Clause, Page Number, And Subject Matter)

Except As Provided Herein, All Terms And Conditions Of The Contract Remain Unchanged And In Full Force And Effect.

7. Name And Title Of Signer: _____

Date: _____

8. Name And Title Of Contracting Officer: _____

Date: _____

APPENDIX 15. INTERGOVERNMENTAL AGREEMENT FOR SUPPLEMENTAL COMMUNITY POLICING SERVICES

A. General

This Agreement, between the Felton Housing Authority (FHA) and the Felton Police Department, is for the purpose of providing supplemental community policing services at Turner Towers, a 150-unit family property owned and managed by the FHA. This Agreement is made pursuant to the authority in **24 CFR 85.36** [and any other applicable law or regulation].

B. Services

In consideration of the mutual promises contained in this Agreement, the parties agree as follows:

1. This agreement does not affect the normal, baseline services provided to the FHA through its Cooperation Agreement with the City of Felton .
2. This community policing program will consist of the assignment of (the equivalent of) one full-time police officer to Turner Towers.
3. To the extent practical, the hours of the community policing program will be from 11:00 a.m. to 7:00 p.m., Monday-Friday. However, the days and times may change based on the needs of the property, as authorized by the Housing Manager.
4. To the extent possible, and to allow for continuity, the GPD will try to maintain regularity in the personnel assigned to this program.
5. The primary emphasis of the program will be on crime prevention and youth intervention.

C. Compensation

For the services rendered, the FHA will compensate the GFD an amount equal to \$49,400 annually. This amount covers all costs associated with the assignment of the equivalent of one full-time officer. It includes, for example, the cost of the officer's vehicle.

D. Invoicing and Payment

The GPD shall invoice the FHA monthly. The invoice should include a listing of the hours worked, by personnel, and along with a summary of monthly activities. Invoices should be sent to:

Housing Manager Turner Towers 999 Taylor Place Felton, USA 56789

The FHA will process invoices within two weeks of receipt.

E. Term

The parties may bilaterally modify this Agreement in writing at anytime.

This agreement shall be in effect for one year, from _____ (date) until _____ (date).

Either party may withdraw from this Agreement at any time upon written notice to the other party with 30 days notice.

IN WITNESS WHEREOF, the parties to this Memorandum have caused their names to be affixed hereto by their proper officers this _____ day of _____ 20____.

Felton Housing Authority

By _____

City of Felton Police Department

Attest: _____ By: _____

APPENDIX 16. DISADVANTAGED BUSINESS ENTERPRISE RESOURCE LIST

- **Small Business Development Centers (SBDC)**

SBDC provide businesses with management, marketing and financial counseling. The centers assist in the development of business and marketing plans, improving business ownership skills, financial analysis of businesses, accessing specialized services including export and government marketing and other business management needs.

- **Women's Business Centers (WBC)**

Each Women's Business Center provides assistance and/or training in finance, management, marketing, procurement and the internet, as well as addressing specialized topics such as home-based businesses corporate executive downsizing and welfare-to-work. All provide individual business counseling and access to the SBA's programs and services; a number of centers are also intermediaries for the SBA's Microloan and Loan Prequalification programs. Each WBC tailors its programs to the needs of its constituency; many offer programs and counseling in two or more languages.

- **Minority Business Development Centers (MBDC)**

The MBDC's provide business development services to aid in the creation, expansion and preservation of minority-owned businesses. It is MBDC's largest client services program and is structured to cover areas that contain approximately 80% of the country's minorities.

- **Native American Business Development Centers**

The Minority Business Development Agency established the Native American Program (NAP) to address the special problems of the Native American firms and individuals interested in entering, maintaining, or expanding their efforts in the competitive marketplace.

- To view a list of over 800 Trade Associations and similar organizations, visit the HUD OSDBU website at: www.HUD.gov/offices/OSDBU
- To locate local SBA District/Field offices, SBDC and other resources, visit SBA's website at: www.SBA.gov/regions/states.html
- To locate local MBDA regional offices, MBDCs and other resources, visit MBDA's website at: www.MBDA.gov
- The SBA, DOD, the Office of Management & Budget and GSA created an integrated database of small businesses called Central Contractor Registration (CCR). CCR can provide you with listings of small businesses that offer the products and services that you procure. Visit www.ccr.gov
- To facilitate searches for small businesses in particular industries, refer to the North American Industry Classification System (NAICS). Visit the website at: <http://naics.com>
- To assist you in advertising your contracting opportunities, include your upcoming contracting requirements in MBDA's "Opportunity Database" called Phoenix. Phoenix matches MBE's with contracts and other business opportunities via e-mail at: www.MBDA.gov

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