



## **PROCUREMENT POLICY AND PROCEDURES**



## TABLE OF CONTENTS

General Provisions .....	1
Ethics in Public Contracting .....	3
Board Approval of Procurement Actions .....	4
Procurement Authority .....	4
Procurement Planning .....	4
Independent Cost Estimates (ICE) .....	4
Procurement Methods and Requirements	
Petty Cash Purchases (\$50 or less).....	5
Micro Purchases (greater than \$50 but not exceeding \$3,000).....	5
Small Purchases (over \$3,000 but not exceeding \$50,000) .....	6
Sealed Bidding (contracts over \$50,000) .....	7
Competitive Proposals .....	11
Non-Competitive Proposals .....	15
Cancellation of Solicitations .....	17
Contractor Qualifications and Duties .....	18
Contract Pricing Arrangements .....	19
Contract Clauses .....	20
Contract Administration .....	20
Specifications .....	21
Contract Modifications .....	22
Appeals and Remedies .....	22
Cooperative Purchasing/Intergovernmental Agreements .....	23
Credit (or Purchasing) Cards .....	23

Assistance to Small and Other Businesses .....	24
Documentation .....	26
Disposition of Surplus Property .....	27
Funding Availability .....	27
Definitions .....	27

## **PROCUREMENT POLICY**

Established for the El Paso County Housing Authority in the City of Fabens, Texas by action of the Board of Commissioners on the 29<sup>th</sup> day of October, 2015. This Procurement Policy complies with the Annual Contributions Contract (ACC), HUD Handbook 7460.8 "Procurement Handbook for Public Housing Agencies," the procurement standards of 2 CFR 200.317 - 200.326, and State of Texas Purchasing and Contracting Laws applicable to Local Governments.

### **GENERAL PROVISIONS**

#### **A. Definition of Procurement**

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
- 5) Other services

#### **B. Purpose**

The purpose of this Procurement Policy is to

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

### **C. Application**

- 1) 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 990. These are subject to applicable State and local requirements.
- 2) This Procurement Policy applies to all contracts for the procurement of supplies, services and construction entered into by the PHA after the effective date of this Policy.
- 3) It shall apply to every expenditure of funds by the PHA for public purchasing, irrespective of the source of funds, including contracts which do not involve an obligation of funds (such as concession contracts); however, nothing in this Policy shall prevent the PHA from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with law.
- 4) When both HUD and non-Federal grant funds are used for a project, the work to be accomplished with the funds will be separately identified prior to procurement so that appropriate requirements can be applied, if necessary.
  - a. If it is not possible to separate funds, HUD procurement regulations shall be applied to the total project.
  - b. If funds and work can be separated and work can be completed by a new contract, then regulations applicable to the funding source may be followed.

### **D. 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 Texas Public Information Act.

### **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 this Policy, automatically supersede this Policy.

## **ETHICS IN PUBLIC CONTRACTING**

### **A. General**

EPCHA shall adhere to the following code of conduct, consistent with applicable state or local law.

### **B. Conflict of Interest**

No employee, officer, or agent of EPCHA shall participate directly or indirectly in the selection or in the award or administration of any contract if a conflict, real or apparent, would be involved. Being in a rural area, all potential awardees should disclose relationships to the Board. Such conflict would arise when a financial or other interest in a firm selected for award is held by:

- 1) an employee, officer or agent involved in making the award;
- 2) a relative or extended family member
- 3) his/her partner; or
- 4) an organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

### **C. Gratuities, Kickbacks, and Use of Confidential Information**

EPCHA officers, employees or agents shall not solicit or accept gratuities, favors, or items of more than \$25 in value from contractors, potential contractors or parties to subcontractors, and shall not knowingly use confidential information for actual or anticipated personal gain.

### **D. Prohibition Against Contingent Fees**

Contractors shall not retain a person to solicit or secure an EPCHA contract for a commission, percentage, brokerage, or contingent fee, except for bona fide employees or bona fide established commercial selling agencies.

## **BOARD APPROVAL OF PROCUREMENT ACTIONS**

It is the responsibility of the Executive Director to make sure that all procurement actions are conducted in accordance with the policies contained herein. Board Approval is required for any purchase or proposed purchase in excess of \$25,000.00

## **PROCUREMENT AUTHORITY**

While the Executive Director is responsible for ensuring that EPCHA'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. The person responsible for procurement will be referred to as the Contracting Officer.

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

## **PROCUREMENT PLANNING**

Planning is essential to managing the procurement function properly. Hence, the PHA will periodically review its record of prior purchases, as well as future needs, to:

- A. find patterns of procurement actions that could be performed more efficiently or economically;
- B. maximize competition and competitive pricing among contracts and decrease the PHA's procurement costs;
- C. reduce EPCHA administrative costs;
- D. ensure that supplies and services are obtained without any need for re-procurement, e.g., resolving bid protests; and
- E. minimize errors that occur when there is inadequate lead time.

Consideration will be given to storage, security and handling requirements when planning the most appropriate purchasing actions

## **INDEPENDENT COST ESTIMATES**

For all purchases above the Micro Purchase threshold, EPCHA shall prepare an Independent Cost Estimate (ICE) prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item to be purchased.

## PROCUREMENT METHODS AND REQUIREMENTS

### A. Petty Cash Purchases (\$50 or less)

#### 1) General

- a. Purchases under \$50 may be handled through the use of a Petty Cash account.
- b. Petty Cash Accounts may be established in an amount sufficient to cover small purchases made during a reasonable period, e.g., one month.
- c. For all Petty Cash Accounts, EPCHA shall ensure that security is maintained and only authorized individuals have access to the account.
- d. These accounts will be reconciled and replenished periodically.

#### 2) Cost Analysis

No formal cost or price analysis is required. Rather, the execution of a purchase 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.

#### 3) Solicitation

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

### B. Micro Purchases (greater than \$50 but not exceeding \$3,000--(\$2,000 for construction-related procurements)

#### 1) General

- a. For any amounts above the Petty Cash ceiling, but not exceeding \$3,000, only one quote is required provided the quote is considered reasonable.
- b. To the greatest extent feasible, and to promote competition, small purchases should be distributed among qualified sources.

- c. Award shall be made to the qualified vendor that provides the best value to EPCHA.
- d. EPCHA shall not break down requirements aggregating more than 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.

2) Cost Analysis

No formal cost or price analysis is required. Rather, the execution of a purchase 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.

3) Solicitation

Quotes may be obtained orally (either in person or by phone), by fax, in writing, e-mail or E-Procurement.

**C. Small Purchases** (over \$3,000 (\$2,000 for construction-related procurements) but not exceeding \$50,000)

1) General

- a. PHA shall obtain a reasonable number of quotes, preferably three.
- b. To the greatest extent feasible, and to promote competition, small purchases should be distributed among qualified sources.
- c. Award shall be made to the qualified vendor that provides the best value to EPCHA. If award is to be made for reasons other than lowest price, documentation shall be provided in the contract file.
- d. EPCHA shall not break down requirements aggregating more than the Small 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.

2) Cost Analysis

- a. A comparison with other offers shall generally be sufficient determination of the reasonableness of price and no further analysis is required.
- b. If a reasonable number of quotes is 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, or any other reasonable basis.

3) Solicitation

Quotes may be obtained orally (either in person or by phone), by fax, in writing, e-mail or E-Procurement.

For any purchase or construction contract that exceeds \$50,000.00 in total value (in a single contract or aggregate amount). The Board shall consider and approve the contracting method desired and which provides the best value to EPCHA from the options set forth below.

**D. Sealed Bidding (contracts over \$50,000)**

Sealed Bidding (also known as Invitation for Bid (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, EPCHA 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 Bid (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 \$50,000. Sealed Bidding will be used for Architectural and Engineering (A/E) services.

1) Conditions for Use

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

- a. a complete, adequate and realistic specification or purchase description is available;
- b. two or more responsible bidders are willing and able to compete effectively for the work;

- c. the procurement lends itself to a firm fixed price contract; and
- d. the selection of the successful bidder can be made principally on the lowest price.

2) Solicitation and Receipt of Bids

- a. An Invitation for Bids (IFB) shall be issued including specifications and all contractual terms and conditions applicable to the procurement, including a statement that award will be made to the lowest responsible, responsive bidder whose bid meets the requirements of the IFB.
- b. The IFB shall state the time and place for both the receipt of bids and the public bid opening.
- c. All bids received shall be time-stamped but not opened and shall be stored in a secure place until bid opening.
- d. A bidder may withdraw its bid at any time prior to bid opening.

3) Bid Opening and Award

- a. Bids shall be opened publicly and in the presence of at least one witness.
- b. An abstract of bids shall be recorded and the bids shall be available for public inspection.
- c. Award shall be made as provided in the IFB by written notice to the successful bidder.
- d. If equal low bids are received from responsible bidders, award shall be made by drawing lots or similar random method stated in the IFB.
- e. If only one responsible bid is received from a responsible bidder, award shall not be made unless a cost or price analysis verifies the reasonableness of the price.

4) Mistakes in Bids

- a. 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.

- b. 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.
- c. 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.
- d. All decisions to allow correction or withdrawal of a bid shall be supported by a written determination signed by the Contracting Officer.
- e. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the PHA or fair competition shall be permitted.

5) Cost and Price Analysis

- a. The presence of adequate competition should generally be sufficient to establish price reasonableness.
- b. Where sufficient bids are not received, and when the bid received is substantially more than the Independent Cost Estimate (ICE), and where EPCHA cannot reasonably determine price reasonableness, EPCHA must conduct a cost analysis, consistent with federal guidelines, to ensure that the price paid is reasonable.

6) Method of Advertising

- a. Solicitation must be done publicly.
- b. EPCHA 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, not less than once each week for two consecutive weeks.
  - 2) Advertising in various trade journals or publications (for construction)

- 3) E-Procurement. EPCHA may conduct its public procurements through the Internet using e-procurement systems. However, all e-procurements must otherwise be in compliance with 2 CFR 200.317 - 200.326, State and local requirements, and this Policy.
- c. Notices/advertisements should state, at a minimum
    - 1) the place, date and time that the bids are due. A minimum of 30 days shall generally be provided for preparation and submission of sealed bids. The Executive Director may allow for a shorter period under extraordinary circumstances.
    - 2) the solicitation number
    - 3) a contact who can provide a copy of and information about the solicitation
    - 4) a brief description of the needed items
- 7) Bonds (required for construction contracts that exceed \$50,000)
    - a. offerors shall be required to submit a bid guarantee from each bidder equivalent to 5% of the bid price.
    - b. 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 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.

## E. Competitive Proposals

Competitive Proposal (also known as Request for Proposal (RFP)) is the preferred method for procuring professional services that will exceed the Small Purchase threshold. Award is normally made on the basis of the proposal that represents the best overall value to EPCHA, 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.

- 1) Permits
  - a. Consideration of technical factors other than price
  - b. Discussion with offerors concerning offers submitted
  - c. Negotiation of contract price or estimated cost and other contract terms and conditions.
  - d. Revision of proposals before the final contractor selection
  - e. Withdrawal of an offer at any time up until the point of award

### 2) Conditions for Use

Competitive Proposals (including turn-key proposals for development) may be used if there is an adequate method of evaluating technical proposals and where EPCHA determines that conditions are not appropriate for the use of sealed bids. An adequate number of qualified sources shall be solicited.

### 3) Solicitation Method - Request for Proposal (RFP)

- a. The Request for Proposal (RFP) shall clearly identify the relative importance of price and other evaluation factors and subfactors, including the weight given to each technical factor and subfactor.
- b. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued.
- c. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals.

- d. PHA may assign price a specific weight in the evaluation criteria or EPCHA may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.
- 4) Advertising
- a. Solicitation must be done publicly.
  - b. EPCHA 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, not less than once each week for two consecutive weeks.
    - 2) Advertising in various trade journals or publications (for construction)
    - 3) E-Procurement. EPCHA may conduct its public procurements through the Internet using e-procurement systems. However, all e-procurements must otherwise be in compliance with 2 CFR 200.317 - 200.326, State and local requirements, and this Policy.
  - c. Notices/advertisements should state, at a minimum
    - 1) the place, date and time that the bids are due. A minimum of 15 days shall generally be provided for preparation and submission of Competitive Proposals. The Executive Director may allow for a shorter period under extraordinary circumstances.
    - 2) the solicitation number
    - 3) a contact who can provide a copy of and information about the solicitation
    - 4) a brief description of the needed items
- 5) Evaluation
- a. The proposals shall be evaluated only on the criteria stated in the RFP.
  - b. Where not apparent from the evaluation criteria, EPCHA shall establish an Evaluation Plan for each RFP.

- c. 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.
- d. An Evaluation Report, summarizing the results of the evaluation, shall be prepared prior to award of a contract.

6) Negotiations

Negotiations are exchanges (in either competitive or sole source environment) between EPCHA 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.

- a. 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.
- b. These offerors shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their proposals.
- c. 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.
- d. A common deadline shall be established for receipt of proposal revisions based on negotiations.
- e. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions.
  - 1) Discussions are tailored to each offeror's proposal, and shall be conducted by the Contracting Officer with each offeror within the competitive range.

2) The primary object of discussions is to maximize EPCHA's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation.

3) 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.

4) The scope and extent of discussions are a matter of the Contracting Officer's judgment.

5) The Contracting Officer may inform an offeror that its price is considered by EPCHA to be too high, or too low, and reveal the results of the analysis supporting that conclusion.

6) 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.

7) Cost and Price Analysis

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

8) Award

Award shall be made on the basis of the proposal that represents the best overall value to EPCHA, 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, and provided that the price is within the maximum total project budgeted amount established for the specific property or activity.

9) Architect-Engineer Services

- a. EPCHA must contract for A/E services using Qualification Based Selection (QBS) procedures, utilizing a Request for Qualifications (RFQ).
- b. Sealed Bidding shall be used for A/E solicitations.
- c. Under QBS procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.
- d. Price is not used as a selection factor under this method.
- e. QBS procedures shall be used to purchase other types of services, other than Energy Performance Contracting and Developer services.

**F. Non-Competitive Proposals**

1) Conditions for Use

Procurement by Non-Competitive Proposals (sole-source) may be used **only** when the award of a contract is not feasible using Small Purchase procedures, Sealed bidding, cooperative purchasing, or Competitive Proposals, **and** if one of the following applies:

- a. the item is available from only a single source, based on good faith review of available sources;
- b. an emergency exists that seriously threatens the public health, welfare, or safety of the property, or would otherwise cause serious injury to EPCHA, 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 other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency;

- c. HUD authorizes the use of Non-Competitive Proposals; or
- d. after solicitation of a number of sources, competition is determined inadequate.

2) Justification

- a. Each procurement based on Non-Competitive Proposals shall be supported by a written justification for the selection of this method.
- b. The justification shall be approved in writing by the responsible Contracting Officer.
- c. Poor planning or lack of planning is not justification for emergency or sole-source procurements.
- d. 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. Non-Competitive );
  - 3) The specific exception in **2 CFR 200.320(f)(1)-(4)** which applies;
  - 4) Statement as to the unique circumstances that require award by Non-Competitive 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 Non-Competitive Proposals shall be determined by performing an analysis, as described in this Policy.

## CANCELLATION OF SOLICITATIONS

- A. Before Bids/Offers Due:** An IFB, RFP, or other solicitation may be cancelled before bids/offers are due if:
- 1) The supplies, services or construction activities are no longer required;
  - 2) The funds are no longer available;
  - 3) Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best; or
  - 4) Other similar reasons.
- B. After Bids/Proposals Received:** A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if:
- 1) The supplies, services or construction activities are no longer required;
  - 2) Ambiguous or otherwise inadequate specifications were part of the solicitation;
  - 3) All factors of significance to the PHA 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 PHA.
- C. Reasons:** The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request.
- D. Notice of Cancellation:** 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.

- E. Bids Unreasonable:** 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 PHA'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 PHA's intent to negotiate, and must give each bidder a reasonable opportunity to negotiate.
- F. Problems with Specs:** If problems are found with the specifications, PHA should cancel the solicitation, revise the specifications and re-solicit using an IFB.

## **CONTRACTOR QUALIFICATIONS AND DUTIES**

### **A. Contractor Responsibility**

PHA 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:

- 1) Have adequate financial resources to perform the contract, or the ability to obtain them;
- 2) 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;
- 3) Have a satisfactory performance record;
- 4) Have a satisfactory record of integrity and business ethics;
- 5) Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
- 6) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,
- 7) 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 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. Prior to issuance of a contract, PHA staff shall, as detailed in Section 10.2H1 and 10.2.H2 of HUD Handbook 7460.8 REV 2, conduct the required searches within the HUD Limited Denial of Participation (LDP) system and the U. S. General Services Administration System for Award Management (SAM) and place within the applicable contract file a printed copy of the results of each such search.

## **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.

# **CONTRACT PRICING ARRANGEMENTS**

## **A. Contract Types**

- 1) Any type of contract which is appropriate to the procurement and which will promote the best interests of the PHA may be used, **provided the cost-plus-a-percentage-of-cost and percentage-of-construction-cost methods are not used.**
- 2) All solicitations and contracts shall include the clauses and provisions necessary to define the rights and responsibilities of both the contractor and EPCHA.
- 3) For all cost reimbursement contracts, EPCHA must include a written determination as to why no other contract type is suitable.
- 4) 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:

- 1) The option is contained in the solicitation;
- 2) The option is a unilateral right of EPCHA;
- 3) The contract states a limit on the additional quantities and the overall term of the contract;
- 4) The options are evaluated as part of the initial competition;
- 5) The contract states the period within which the options may be exercised;
- 6) The options may be exercised only at the price specified in or reasonably determinable from the contract; and
- 7) The options may be exercised only if determined to be more advantageous to EPCHA than conducting a new procurement.

## CONTRACT CLAUSES

**A. Terms:** All contracts should identify the contract pricing arrangement as well as other pertinent terms and conditions, as determined by EPCHA.

**B. Forms/Clauses:** Additionally, the forms HUD-5369, 5369-A, 5369-B, HUD-5370, 5370-C Sect. I and II, HUD-51915 and 51915-A , which contain all HUD-required clauses and certifications for contracts of more than \$50,000, as well as any forms/clauses as required by HUD for small purchases, shall be used in all corresponding solicitations and contracts issued by EPCHA.

**C. Required Contract Clauses:** EPCHA shall ensure that each contract executed by EPCHA contains the required contract clauses detailed within 2 CFR 200.326 Appendix II.

## CONTRACT ADMINISTRATION

EPCHA 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.

## **SPECIFICATIONS**

### **A. General**

- 1) All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying needs.
- 2) Specifications shall be reviewed prior to issuing any solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items.
- 3) Function or performance specifications are preferred.
- 4) Detailed product specifications shall be avoided whenever possible.
- 5) Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase.
- 6) 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:

- 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);
- 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).
- 3) Nothing in this Procurement Policy shall preempt any State licensing laws.
- 4) Specifications shall be reviewed to ensure that organizational conflicts of interest do not occur.

## **CONTRACT MODIFICATIONS**

A cost analysis, consistent with federal guidelines, shall be conducted for all contract modifications for projects that were procured through Sealed Bidding, 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 \$50,000.

## **APPEALS AND REMEDIES**

### **A. General**

It is PHA 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 PHA shall adopt an informal bid protest/appeal procedure for contracts of \$50,000 or less. Under these procedures, the bidder/contractor may request to meet with the appropriate Contracting Officer.

### **C. Formal Appeals Procedure**

A formal appeals procedure shall be established for solicitations/contracts of more than \$50,000.

#### **1) Bid Protest**

- a. Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy.
- b. 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.
- c. All bid protests shall be in writing, submitted to the Contracting Officer or designee, who shall issue a written decision on the matter.

- d. The Contracting Officer may, at his/her discretion, suspend the procurement pending resolution of the protest if the facts presented so warrant.

2) **Contractor Claims**

- a. All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer for a written decision.
- b. The contractor may request a conference on the claim.
- c. The Contracting Officer's decision shall inform the contractor of its appeal rights to the next higher level of authority in the PHA.
- d. Contractor claims shall be governed by the Changes clause in the form HUD-5370.

## **COOPERATIVE PURCHASING/INTERGOVERNMENTAL AGREEMENTS**

The PHA 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 PHA 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 - 200.326**.

## **CREDIT (OR PURCHASING) CARDS**

Credit card usage will 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, EPCHA will 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).

## 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 project are used when possible. Such efforts shall include, but shall not be limited to:

- 1) Including such firms, when qualified, on solicitation mailing lists;
- 2) Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
- 3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- 4) Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
- 5) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
- 6) 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
- 7) Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed above.
- 8) Establishing goals periodically for participation by small businesses, minority-owned businesses, women-owned business enterprises, labor surplus area businesses, and Section 3 business concerns in prime contracts and subcontracting opportunities.

## B Definition

- 1) A small business is defined as a business which is:
  - a. independently owned;
  - b. not dominant in its field of operation; and
  - c. not an affiliate or subsidiary of a business dominant in its field of operation.

The size standards in 13 CFR 121 shall be used, unless the PHA determines that their use is inappropriate.

- 2) A minority owned business is defined as a business which is:
  - a. at least 51% owned by one or more minority group members;  
or
  - b. in the case of a publicly owned business, one in which at least 51% of its voting stock is owned by one or more minority group members and whose management and daily business operations are controlled by one or more such individuals.

Minority group members include, but are not limited to, African Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.

- 3) A women's business enterprise is defined as a business that is at least 51% owned by a woman or women who are US citizens and who also control or operate the business.
- 4) A labor surplus area business is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the US Department of Labor in 20 CFR 654, Subpart A, and in lists of labor surplus areas published by the Employment and Training Administration.
- 5) A business concern located in the area of a project, is defined as an individual or firm:
  - a. located within the relevant Section 3 covered project area, as determined pursuant to 24 CFR 135.15;

- b. listed on HUD's registry of eligible business concerns; and
  - c. meeting the definition of small business above.
- 6) A business concern owned in substantial part by persons residing in the area of the project is defined as a business concern which is:
- a. 51% or more owned by persons residing with the Section 3 covered project;
  - b. owned by persons considered by the US Small Business Administration to be socially or economically disadvantaged;
  - c. listed in HUD's registry of eligible business concerns; and
  - d. meeting the definition of small business above.

## **DOCUMENTATION**

- A. Record Content:** EPCHA 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:
- 1) Rationale for the method of procurement (if not self-evident);
  - 2) Rationale of contract pricing arrangement (also if not self-evident);
  - 3) Reason for accepting or rejecting the bids or offers;
  - 4) Basis for the contract price;
  - 5) A copy of the contract documents awarded or issued and signed by the Contracting Officer;
  - 6) Basis for contract modifications; and
  - 7) Related contract administration actions.
- B. Level of Documentation** should be commensurate with the value of the procurement.
- C. Retention:** Records are to be retained for a period of three years after final payment and all matters pertaining to the contact are closed.

## DISPOSITION OF SURPLUS PROPERTY

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

## FUNDING AVAILABILITY

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

## DEFINITIONS

The following is a list of key procurement and contracting terms and definitions used throughout this Policy.

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

**Annual Contributions Contract (ACC)** – Entered into between HUD and EPCHA setting forth terms and conditions for the operation, modernization, and development of public housing.

**Amendment** – Written revision or clarification made to a solicitation.

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

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

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

**Bidder's List** – General list of persons or firms who may be interested in contracting opportunities with EPCHA, and in submitting bids in response to an Invitation for Bid.

**Change Order** – A unilateral modification made to the contract by the Contracting Officer under the authority of the contract’s Changes clause. Only the specific changes permitted by the particular Changes clause may be made under a change order (e.g., modify the drawings, design, specifications, method of shipping or packaging, place of inspection, delivery, acceptance, or other such contractual requirement; see form HUD-5370). All change orders must be within the scope of the contract.

**Changed Conditions** – Construction site or repair conditions that differ significantly from those indicated in the contract or from those ordinarily encountered in the performance of the specific type of work required by the contract.

**Competitive Proposals** – Also called contracting by negotiation, a method of procurement using the solicitation, evaluation, and negotiation of proposals instead of sealed bids. The competitive proposal method is used for requirements exceeding the PHA’s Small Purchase threshold when conditions are not appropriate for Sealed Bidding. (Note: Under the Qualifications-Based Selection method only, a Request for Qualifications (RFQ) is used in place of the RFP.)

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

**Consortia** – These are a special kind of consortium where two or more agencies join together to perform planning, reporting and other administrative functions, including, importantly, the joint preparation of an EPCHA Plan.

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

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

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

**Contract Modification** – Any written alteration to a contract executed by an authorized Contracting Officer

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

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

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

**Cure Notice** – A document originated by the Contracting Officer and sent to notify the contractor that the contract may be terminated for default unless performance is corrected within a specified number of days.

**Excusable Delay** – A failure to perform within the contract period that is beyond the control and without fault or negligence of the contractor, as determined by the Contracting Officer.

**Firm Fixed Price Contract** – The contractor is paid a firm fixed-price for all required work regardless of the contractor's actual costs of performance.

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

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

**Instrumentality** - Shall mean a subsidiary branch of the PHA through which functions or policies are implemented.

**Intergovernmental or Interagency Agreement** – An agreement between a PHA and a Federal, State, or local government agency (including other PHAs) for the provision of supplies or services.

**Internal Controls** – Safeguards that ensure contracting actions will be conducted in conformity with applicable Federal and State regulations and policy.

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

**Joint Venture Partner** – This is a participant, other than a PHA, in a joint venture, partnership, or other business arrangement or contract for services with a PHA.

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

**Major Change** – Modification to an existing contract that is beyond the general scope of the contract or a change to a substantive element of the contract that is so extensive that a new procurement should be used.

**Micro Purchases** – Small purchases under \$3,000 (except in the case of construction procurement, \$2,000)

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

**Non-Competitive Proposals** – Procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

**Offer** – A response to a solicitation (IFB or RFP) that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (Sealed Bidding) are offers called “bids” or “sealed bids”, responses to requests for proposals (negotiation) are offers called “proposals”; however, responses to requests for quotations (small purchases) are “quotations,” not offers. Small purchases become binding contracts once the vendor accepts the order (e.g., by signature or substantial performance of the order). Offers submitted under the Qualifications-Based Selection (QBS) method are called “qualifications”.

**Offeror** - The general term for the entity that submits a response to a solicitation. For the purposes of this Policy, offeror may be used interchangeably with bidder, proposer, or respondent.

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

**Proposal** – The offer submitted by a potential contractor in the competitive or Non-Competitive Proposals method of procurement.

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

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

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

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

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

**Sanctions** – Measures that may be invoked by HUD to exclude or disqualify contractors, staff or agents acting on behalf of a PHA, from participation in HUD programs (such as limited denial of participation or debarment), or measures the PHA may take regarding employees, officers, agents, or others who violate the ethical standards of the policies of EPCHA (such as dismissal, reassignment, removal from position, etc.). In the case of violations, HUD would exercise any available remedy under the ACC, federal regulations and statutes and grant agreements.

**Sealed Bidding** – A method of procurement inviting sealed bids. This method requires: specifications that are clear, accurate, and complete; a public bid opening; and evaluation of bids and award of the contract based on the lowest price submitted by a responsive and responsible contractor. Sealed Bidding is the preferred method for construction.

**Show Cause Letter** – A document sent by the Contracting Officer notifying a defaulting contractor that the contract may be terminated for default unless the contractor can provide adequate justification for not terminating within a specified time period (usually 10 days).

**Small Purchase Procedure** – A simplified method for acquiring supplies, materials, and services (including construction) that do not exceed EPCHA's Small Purchase threshold. (The State threshold, by which PHAs have to abide in Texas, is \$50,000)

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

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

**Specifications or Scope** – Description of the technical requirements of a contract.

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

**Subsidiary** – A type of operating entity created and operated by EPCHA over which it has a controlling interest. It may be wholly owned or controlled by EPCHA and may be a non-profit organization.

**Supplemental Agreement** – A type of contract modification to which both parties agree.

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

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

**Time Delay** – An interruption during which supplies are not delivered or services or work are not completed in accordance with the performance schedule stated in the contract.

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

**Vendor List** – List of persons or firms qualified to do business with EPCHA.