



PROCUREMENT POLICY

These Policy Requirements were adopted by Resolution # 319 on the 13th day of February 2003.

AHA POLICIES. The Housing Authority of the City of Aurora (AHA) has adopted a series of administrative and management Policies. These Policies are formally adopted by the AHA and, until revised or changed by formal action, the Board and staff are required to follow them. Some of the provisions of these Policies, but not all, are reflective of the requirements of the federal public housing program as well as state law. The Board may in certain unique circumstances formally waive some Policy requirements on an individual basis, but in order to do so the Waiver procedure identified later in this Policy must be followed. AHA may have also elected by formal resolution to establish alternative policies. Such alternative policies are not subject to this Policy. Furthermore, AHA's Executive Director will from time to time adopt other rules, requirements, and procedures to administer its programs but all of these practices must comply with AHA Policies.

THE PURPOSE OF THIS POLICY. The purpose of this Procurement Policy is to provide for the fair and equitable treatment of all persons or firms involved in purchasing, contracting, acquisition and disposition with AHA; assure that quality supplies, services, and construction are procured efficiently, effectively and at the most favorable prices available to AHA; promote competition in contracting; provide safeguards for maintaining a procurement system of quality and integrity; and assure that AHA purchasing actions are in full compliance with applicable federal housing standards and state laws. This Policy also addresses disposition of AHA assets and property.

WAIVERS. The Policy is intended to apply in all cases. However, where warranted in rare and unique circumstances a special Waiver of a particular requirement can be considered and approved by AHA's Board. Such a Waiver may be made only if (1) Board Members with personal direct or indirect interests abstain from and are not present for both the Board's deliberations and decision, (2) full and complete public disclosure of a Waiver request occurs before, during, and after a vote, (3) a two-thirds (2/3) favorable vote of all Board Members is obtained, and (4) the waived Policy requirement is not required by federal housing programs or state law

DEFINITIONS.

- **“Equipment”** includes tangible, non-expendable, personal property having a useful life of more than one year.
- **“Procurement”** includes both contracts and modifications for construction or services, as well as purchase, lease, or rental of materials, supplies and equipment.
- **“Supplies”** includes all tangible personal property other than equipment.
- **“Disposition”** means to get rid of or dispose, to sell, give away or convey.

REQUIREMENTS.

I. APPLICATION AND ADMINISTRATION:

A. This Procurement Policy applies to all purchasing and contracts for the procurement of supplies, services, and construction entered into by AHA after the effective date of this Policy. It shall apply to every expenditure of funds by AHA for purchasing, irrespective of the source of funds, including contracts which do not involve an obligation of funds (such as a concession contract); however, nothing in this Policy shall prevent AHA from complying with the terms and conditions of any grant, contract, gift, or bequest that is otherwise consistent with law. This policy also has a section that applies to disposition of AHA property.

B. Procurement transactions shall be administered by a Contracting Officer, who shall be the Executive Director or other individual he or she has authorized in writing. Procurement transactions and related procedures shall conform to the provisions of this Policy and its attachments.

C. GUIDELINES

The Executive Director and the Contracting Officer (if they are different) or his/her designees shall ensure that:

1. procurement requirements are subject to an annual planning process to assure efficient and economical purchasing;
2. contracts and modifications (except for Exempt Purchases) are in writing, clearly specifying the desired supplies, services, or construction, and are supported by sufficient documentation regarding the history of the procurement, including as a

minimum the method of procurement chosen, the selection of the contract type, the rationale for selecting or rejecting offers, and the basis for the contract price;

3. comply with applicable regulations, specifically 24 CFR Parts 85, 941 and 970 when and where applicable. Proper notice of procurement shall be given when solicitation procedures are conducted in full compliance with applicable federal law;

4. there are sufficient unencumbered funds available to cover the anticipated cost of each procurement before contract award or modification (including anticipated change orders), work or services performed are inspected and reviewed before payment, and payment is made promptly for contract work performed and accepted;

5. procurement awards will only be made to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

D. AUTHORITY

The Board appoints and delegates procurement authority to the Executive Director including authority to sign contracts that are either (1) not in excess of \$200,000, or (2) are part of an AHA activity already approved by the Board and whose funding is contained in an AHA budget.

E. COMPETITION

All procurement transactions will be conducted in a manner providing full and open competition and shall be consistent with the standards of 24 CFR Part 85 when and where applicable.

II. PROCUREMENT METHODS

A. SELECTION OF METHOD

When satisfying its needs by procurement of individual items or services or for possible indefinite quantity purchases over a subsequent period of no more than 3 years, AHA shall use one of the following procurement methods, based on the nature and anticipated dollar value of the total requirement. When differing funding sources are used for a project, the work to be accomplished with each source of funds should be separately identified and treated as separate physical parts of a project when possible and when not feasible or determined desirable funding restrictions most stringent shall apply to the entire project.

B. OPTIONAL OR ALTERNATIVE SMALL PURCHASE PROCEDURE

Any procurement not exceeding \$100,000 may be conducted in accordance with the small purchase procedures authorized in this section.

1. Exempt Purchases of \$2,000 or less. Small purchases under \$2,000 may be processed by the Executive Director or Department Director without following any of the other procedures in this small purchase procedure. However, a written notice to the procurement or finance departments should always be provided and a written record of the purchase, as well as who approved it, shall be maintained. They shall ensure that fund security is maintained and only authorized individuals have access to the account

2. Procedures for Other Small Purchases of \$100,000 or Less.

a. Obtaining Quotes. AHA shall solicit price quotations by phone, letter, or other informal procedure that allows participation by a reasonable number of competitive sources. Quotes may be requested as (1) a price quotation when price is the primary factor or (2) by rating criteria when factors other than price are being considered. When soliciting quotations, the AHA shall inform the sources solicited of the specific item or service being procured, whether the procurement is a price quotation only or an evaluation of rating criteria and stating such rating criteria, the time by which quotations must be submitted, and the information required to be submitted with each quotation. The names, addresses, and/or telephone numbers of the persons or entities contacted, and the date and amount of each quotation or other information provided shall be recorded.

b. Competition. AHA shall attempt to obtain quotations from a minimum of three qualified sources and document the procurement file with a justification whenever it has been unable to obtain at least three quotations. Solicitation of fewer than three sources is acceptable if the AHA has attempted but has been unable to obtain a sufficient number of quotations. The sole quotation received may be accepted only in unusual circumstances (for example, in an emergency).

c. Award.

(1) Award Based on Price. For small purchases awarded based on price and fixed specifications and, not subject to negotiation AHA shall award to the qualified and responsible source with the lowest responsive quotation.

(2) Award Based on Factors Not Limited to Price. For small purchases awarded based on factors that not just limited to price, a solicitation (request for proposals or request for quotations) shall be issued, including evaluation factors and a rating system using assignment of points to evaluate each proposal or quotation. The solicitation shall identify all evaluation factors, including cost or prices. Award shall be made to the best proposal or quotation as represented by the highest points in accordance with the stated evaluation factors and rating system.

C. STANDARD SEALED BID (INVITATION FOR BIDS) PROCEDURE

This is the required procurement procedure for all contracting and purchasing over \$100,000 and where price is the only factor. It may also be used in smaller contracting and purchase at the discretion of the Executive Director. This sealed bidding process is often used for conventional construction contracts though other forms of construction contracting may be used by AHA. This method may be used when complete, adequate, and determinable specifications or a purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; the procurement lends itself to a firm fixed price contract; and the selection of the successful bidders will be made on the basis of price after bidder is determined qualified and responsible for the work requested.

1. Solicitation and Receipt of Bids.

a. Issuance and Amendment. Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all material terms and conditions of the invitation for bids, is the lowest in price and is within the project budget. The invitation for bids shall be issued and publicly advertised and shall include specifications or pertinent attachments defining the items or services so that bidders may respond, and all contractual terms and conditions applicable to the procurement. Any amendments to the invitation shall be in writing, and if it is necessary to issue an amendment at least five (5) calendar days prior to the bid opening, and the bid opening may be postponed at AHA's sole discretion. The invitation for bids shall state the time and place for both the receipt of bids and the public bid opening. All bids received shall be time-stamped but not opened and shall be stored in a secure place until the bid opening. A bidder may withdraw its bid any at time prior to bid opening by providing written notice of such withdrawal to AHA prior to bid opening.

2. Bid Opening. Bids shall be opened publicly and in the presence of at least one witness. An abstract of bids shall be recorded and unless AHA has determined special circumstances dictate otherwise all portions of the bids shall be available for public inspection.

3. Award. Award shall be made as provided in the invitation for bids by written notice to the successful bidder, as follows:

a. Unrestricted Solicitations. An award shall be made to the lowest responsible, responsive bidder, but

b. any and all bids may be rejected if AHA determines there is a sound reason.

4. Mistakes in Bids.

a. Correction or withdrawal of inadvertently erroneous bids may be permitted, where appropriate, before bid opening by written notice received by hand delivery or fax in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, corrections in bids shall only be permitted at the discretion of AHA.

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

D. STANDARD COMPETITIVE PROPOSALS (REQUESTS FOR PROPOSALS/RFPs) PROCEDURE

Competitive proposals may be used in professional services as well as in other procurement, including in some cases construction contracting, where factors in addition to price will be considered in the award.

1. Solicitation.

a. General. The Request for Proposals (RFP) shall be publicly solicited. Proposals shall be handled so as to prevent disclosure of the number of offers, identity of the proposers, and the contents of their proposals prior to their consideration.

b. Evaluation Factors. The Request For Proposals shall set forth a rating system that provides for the assignment of points for the relative merits of submitted proposals, clearly identifying the relative importance of price and other evaluation factors and sub-factors, and the relative importance given to each technical factor and sub-factor. The rating criteria and their relative importance shall be made available to all interested

proposers. The proposals shall be evaluated only on the criteria outlined in the Request for Proposals.

2. Negotiations. In those situations where negotiations are deemed necessary in a Request For Proposals process, negotiations shall be conducted with offerors who submit proposals determined to have a reasonable chance of being selected for award, based on evaluation against the technical and price factors as specified in the Request For Proposals. Such offerors shall be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. No offeror shall be provided 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. Offerors shall not be directed to reduce their proposed prices to a specific amount in order to be considered for award.

3. Award. After evaluation of proposal revisions, if any, the contract shall be awarded to the responsible firm whose qualifications, price and other factors considered, are the most advantageous to AHA according to points or all proposals shall be rejected. If AHA receives only one proposal, AHA may accept the sole proposal received, in unusual circumstances, such as when AHA determines that the delays caused by re-soliciting would cause higher costs, or where AHA determines that the proposal is fair and reasonable.

4. Any and all proposals may be rejected if in the determination of AHA there is a sound reason.

E. NONCOMPETITIVE PROPOSALS PROCEDURE

1. Conditions for Use. Procurements shall be conducted competitively to the maximum extent possible. Procurement by noncompetitive proposals may be used only when the Contracting Officer and the Executive Director or Contracting Officer (if they are different) determines in writing that the award of a contract is not feasible using small purchase procedures, sealed bids, or competitive proposals, and one of the following applies conditions:

a. An emergency exists. 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; or

b. Only one source of supply is available, and the Contracting Officer so certifies in writing; or

c. After solicitation of a number of sources, competition is determined inadequate;
or

d. AHA and the U.S. Department of Housing and Urban Development specifically authorizes the use of noncompetitive proposals.

2. Justification. Each procurement based on noncompetitive proposals shall be supported by a written justification for using such procedures. The justification shall be approved in writing by the Contracting Officer and the Executive Director.

3. Price Reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing a cost analysis, as described below.

F. COST AND PRICE ANALYSIS

Prior to any solicitation and award, a cost or some other price analysis shall be performed for all procurement actions, including contract modifications, except as limited below. The degree of analysis shall depend on the facts surrounding each procurement.

1. Cost Analysis. Where federal housing program assistance exists, cost analysis shall be performed and costs shall be done in a manner that is consistent with applicable federal cost principles where required. With respect to the application of cost principles, see 24 CFR part 85 to determine where and how these federal regulations are set out.

2. Price Analysis. A price analysis will be used in all other instances, but only if the cost or price exceeds or is expected to exceed \$50,000.

G. CANCELLATION OF SOLICITATIONS

Any and all bids may be rejected or the solicitation may be cancelled if there is a sound documented reason. If bids are over the AHA estimate, AHA may, but is not required to, reject all bids.

1. The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request to any solicited offeror.

2. A notice of cancellation shall be sent to all solicited offerors.

H. COOPERATIVE PURCHASING

AHA may enter into state and local intergovernmental agreements to purchase or use common goods and services. The decision to use an intergovernmental agreement or conduct a direct procurement shall be based on economy and efficiency. If used, the

intergovernmental agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. AHA may use federal or state excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs.

III. CONTRACTOR QUALIFICATIONS AND DUTIES

A. CONTRACTOR RESPONSIBILITY

Procurements shall be conducted only with *responsible* contractors and suppliers, meaning they have the technical and financial competence to perform the work or provide the materials required and who have a satisfactory record of integrity. Before awarding a contract, AHA shall review the proposed contractor or supplier's ability to perform the contract successfully, considering factors such as the integrity (including a review of the List of Parties Excluded from Federal Procurement and Non-procurement Programs published by the U.S. General Services Administration), compliance with public policy, record of past performance (including contacting previous clients of the contractor or supplier), and financial, administrative, and technical capability to perform contract work of the size and type involved and within the time provided under the contract. If a prospective contractor or supplier is found to be not *responsible*, a written determination shall be prepared and included in the contract file, and the prospective contractor or supplier shall be advised in writing of the determination.

B. SUSPENSION AND DEBARMENT

Contracts shall not be awarded to federally debarred or suspended contractors when using federal funds, nor shall it award to an ineligible contractor. AHA may itself suspend or debar a contractor up to five (5) years but only if it establishes written debarment or suspension procedures.

C. CONSTRUCTION BONDS

1. Construction and Facility Improvement Contracts. Construction and facility improvement projects bidders shall, except for small purchase contracting of less than \$200,000 or where turnkey development is employed, be required to submit, accompanying a bid, a bid guarantee in the form of a bid bond, certified check, or other negotiable instrument equivalent to 5% of the bid price and, in accordance with the approved method set forth in the solicitation, provide, within ten (10) days after the prescribed contract forms are presented for signature, a performance and a payment bond, each for 100% of the total contract price.

AHA may allow in certain contracting, at its discretion, the following performance and payment bond alternatives to be used in accordance with federal housing program regulations:

a. a cash escrow deposited with AHA of not less than 20% of the total contract price, subject to reduction during the warranty period commensurate with potential risk; or

b. an irrevocable letter of credit for 25% of the total contract price, unconditionally payable upon demand of AHA, subject to reduction during the warranty period commensurate with potential risk; or

c. an irrevocable letter of credit for 10% of the total contract price, unconditionally payable upon demand of AHA, subject to reduction during the warranty period commensurate with potential risk, and compliance with the procedures for monitoring of disbursements by the contractor.

The solicitation packet shall indicate which of the above assurances is required.

2. Smaller Purchase Procurement. For smaller purchase procurements of less than \$200,000 or certain turnkey development, AHA may establish in lieu of bonds other requirements for bid guarantee other than the above and for assurance of payment and performance on a contract-by-contract basis but only when AHA determines it is practical and necessary to protect the interest of AHA and to secure obligations of performance to AHA.

IV. TYPES OF CONTRACTS, CLAUSES, AND CONTRACT ADMINISTRATION

A. CONTRACT FORM

Any type of contract which is appropriate to the procurement and which will promote the best interests of AHA may be used, with the exception that cost-plus-a-percentage-of-cost and percentage of construction cost methods may not be used on federal housing program funded projects. All procurements shall include the clauses and provisions necessary to define the rights and responsibilities of the parties. A time and material contracts may be used only if a determination is made that no other contract type is suitable, and the contract includes a ceiling price that the contractor exceeds at its own risk.

B. CONTRACT CLAUSES

Contracts shall include those clauses imposed or required by federal statutes, executive orders, and their implementing regulations and state law if they do not conflict with federal housing program law. Some or all of these and other AHA contracting clauses may be deleted on contracts that are less than \$2,500 in value. The following clauses are often required and set out in written AHA procurement and contract documents:

1. termination for convenience (see also the provisions of 24 CFR part 85.44)
2. termination for default,
3. Equal Employment Opportunity,
4. Anti-Kickback Act,
5. Davis-Bacon Act (wage rates),
6. Contract Work Hours and Safety Standards Act,
7. reporting requirements,
8. patent rights,
9. rights in data,
10. examination of records by Comptroller General,
11. retention of records for three years after closeout,
12. clean air and water,
13. energy efficiency standards,

C. CONTRACT ADMINISTRATION

Grantees and subgrantees will maintain a contract administration system, which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

D. JURISDICTION AND APPLICABILITY OF LAW

Consideration should always be given to whether to provide a clause in AHA contracts that prescribe jurisdiction and applicability of law.

VI. SPECIFICATIONS

A. GENERAL

All specifications or detailed scope of work shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying AHA's needs. In any review of specifications prior to solicitation AHA shall ensure that the specifications are not unduly restrictive or represent unnecessary or duplicative items. Functional or performance specifications are preferred. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. For equipment purchases, a lease versus purchase analysis may be performed to determine the most economical form of procurement.

B. LIMITATIONS

The following specification limitations shall be avoided: geographic restrictions not mandated or allowed by applicable federal law (except for contracts which may include geographic location as a selection factor); unnecessary bonding or experience requirements; in most cases brand name specifications (unless they list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use), and noncompetitive awards to consultants that are on retainer contract. Nothing in this procurement policy shall preempt any state licensing law nor is AHA prohibited in non-construction from purchasing a named product or equipment to create a uniformed product to ease maintenance.

VII. APPEALS AND REMEDIES

A. GENERAL: It is AHA's policy to try to resolve all contractual issues informally at the AHA level. If appropriate, alternative dispute resolution methods may be utilized by AHA and even prescribed in contracting documents. When appropriate, AHA may consider the use of informal discussions between the parties by individuals who did not participate substantially in the matter in dispute, to help resolve the differences.

B. BID PROTESTS: Any prospective contractor protesting the solicitation or award of a contract for serious violations of the principles of this Policy will be entitled to have that protest reviewed by AHA. Any protest against a solicitation shall be received before the due date for receipt of bids or proposals and any protest against the award of a contract shall be

received within ten (10) calendar days after contract award. All bid protests shall be in writing, submitted to the Contracting Officer who shall issue a written decision on the matter. The Contracting Officer may, at his or her discretion, suspend the procurement pending resolution of the protest but is in no way obligated to do so.

VIII. ASSISTANCE AND CERTAIN PREFERENCES IN PROJECTS IN LOW INCOME AREAS

A. REQUIREMENTS

When assistance to a project exceeds \$200,000 and is in a low income area AHA shall to the greatest extent feasible ensure that local area individuals and firms are used, as well as make the determination who is qualified for this preference. Such efforts shall include, but shall not be limited to:

1. Trying to include such firms, when qualified, on solicitation mailing lists;
2. Encouraging their participation through direct solicitation of bids or proposals when they are potential sources;
3. Considering 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;
6. Including in contracts a clause requiring contractors, to the greatest extent feasible, 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 businesses which are located in, or owned in substantial part by persons residing in the area of the project, as described in federal regulations; and
7. Requiring prime contractors, when subcontracting is anticipated, to take one or more of the steps listed in A.1 through 6 above.

IX. ETHICS IN PROCUREMENT

A. GENERAL

No employee, officer or agent of AHA shall participate in the selection, or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: (1) the employee, officer or agent, (2) any member of his or her immediate family, (3) his or her partner, or (4) an organization which employs or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

If AHA has adopted an Ethical and Standards of Conduct Policy, it shall also be complied with in all procurement and contracting activities.

B. GRATUITIES, KICKBACKS, AND USE OF CONFIDENTIAL INFORMATION

Any AHA Ethical Standards of Conduct Policy should establish, among other things, specific AHA standards regarding gifts, kickbacks, and use of confidential information. But in no case shall AHA officers or employees solicit or accept a gift from a contractor or supplier in exchange for any promised action or inaction involving AHA procurement and contracting.

C. PROHIBITION AGAINST CONTINGENT FEES

AHA contractors and suppliers shall not retain a person to solicit or secure an AHA contract for a commission, percentage, brokerage, or contingent fee.

X. DISPOSITION

A. When disposing of AHA assets, equipment and property that is no longer needed, AHA should get the best return possible. The dollar price for the asset may be just one of the factors used in determining that return.

B. Excluded from the disposition requirement of this Policy are sale or transfer of properties to AHA tenants, homebuyers, and program participants pursuant to an AHA program.

C. A written disposition analysis of the fair market value and the possible and actual return obtained is required in the disposition of all assets with a fair market value of \$5,000 or more.

D. A written record of a disposition shall be made and kept when the asset has a fair market value of \$500 or more.

E. Approval of federal agencies, such as the U.S. Department of Housing and Urban Development, may be required when 1) an asset or property was purchased using certain federal funds and 2) its fair market value is in excess of \$5,000.

F. When feasible, reasonable, and appropriate, AHA will publicly advertise when it is disposing of assets or property with a fair market value of at least \$25,000 or more and then sell or exchange that asset or property to the best bid or proposal.

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