

Housing Authority of the City of Pittsburgh

Procurement and Disposition Policy

Table of Contents

1 General Provisions 5

 1.1 Purpose: 5

 1.2 Application: 5

 1.3 Definition..... 6

 1.4 Terms..... 6

 1.5 Exclusions 6

 1.6 Changes in Laws and Regulations 6

 1.7 Public Access to Procurement Information..... 7

2 Procurement Authority and Administration..... 7

 2.1 Sanctions and Ethical Standards 7

 2.2 Executive Director’s Duties 7

 2.3 Board Approval of Procurement Actions 8

 2.4 Contracting Actions Requiring HUD Approvals 9

 2.4.1 Exemptions from prior HUD Approval 9

3 Procurement Methods 10

 3.1 Selection of Method..... 10

 3.2 Small Purchase Policy 10

 3.2.1 Petty Cash (less than or equal to \$100) 11

 3.2.2 Micro Purchases (less than or equal to \$3,000) 11

 3.2.3 Small Purchases of Goods and General Services (\$3,000.01-\$18,500) 11

 3.2.4 Small Purchases of Professional Services (\$3,000.01-\$25,000)..... 12

 3.3 Competitive Procurement Policies 12

 3.3.1 Sealed Bids 12

 3.3.1.1 Condition for use..... 12

 3.3.1.2 Solicitation and Receipt of Bids..... 13

 3.3.1.3 Bid Opening and Award..... 13

 3.3.1.4 Mistakes in Bids 13

3.3.1.5	Bonds	14
3.3.1.5.1	Bonds for Construction Contracts >\$10,000 and <\$100,000.....	14
3.3.1.5.2	Bonds for Construction Contracts >\$100,000.....	15
3.3.2	Competitive Proposals	15
3.3.2.1	Condition for use.....	15
3.3.2.2	Solicitation.....	15
3.3.2.3	Negotiations.....	16
3.3.2.4	Award.....	16
3.3.2.5	Architect/Engineer Services.....	16
3.3	Time and Materials Contract	156
3.4	Non-Competitive Proposals	17
3.4.1	Conditions for use	17
3.4.1.1	Sole Source or Single Source.....	17
3.4.1.2	Emergency.....	17
3.4.1.3	HUD Approval.....	17
3.4.1.4	Inadequate Competition.....	17
3.4.2	Justification	18
3.5	Cost and Price Analysis.....	198
3.5.1	Petty Cash and Micro Purchases.....	198
3.5.2	Small Purchases	198
3.5.2.1	Independent Cost Analysis.....	19
3.5.3	Sealed Bids	19
3.5.4	Competitive Proposals	19
3.6	Cancellation of Solicitations	19
3.6.1	Conditions before bids are due.....	19
3.6.2	Conditions after bids are due	19
3.6.3	Cancellation Processing	20
3.7	Cooperative Purchasing	21

4	Contractor Qualifications and Duties	21
4.1	Contractor Responsibility	21
4.1.1	Non-Responsible Contractor Procedure	21
4.2	Suspension and Debarment	221
4.3	Vendor Lists	221
5	Types of Contracts, Clauses, and Contract Administration	22
5.1	Options	22
5.2	Contract Clauses	23
5.2.1	Mandatory Contract Clauses for Small Purchases	23
5.2.1.1	Construction Contract >\$3,000 to \$18,500	23
5.2.1.2	Maintenance Contracts >\$3,000 to \$18,500	23
5.2.2	Mandatory Contract Clauses for purchases >\$18,500	23
5.2.2.1	Construction/Development Contracts	23
5.2.2.2	Non-Construction Contracts	23
5.2.2.3	Maintenance Contracts	23
5.3	Contract Administration	24
5.4	Contract Modification	24
5.4.1	Modification Register	24
6	Specifications	254
6.1	Limitations	254
7	Appeals and Remedies	25
7.1	Right to Protest	25
7.2	Filing of protest	25
7.3	Contents of protest	265
7.4	Response and reply	265
7.5	Evaluation of protest	26
7.6	Determination	26
7.7	Appeal	26
8	Assistance to Small and Other Businesses	276
8.1	Required Efforts	276

8.1.1	Compliance with MBE/WBE Goals:.....	27
8.1.2	Compliance with Section 3 requirements:.....	287
8.2	Definitions	287
8.2.1	Small business:.....	287
8.2.2	Minority-owned business:	287
8.2.3	Women’s business enterprise:	287
8.2.4	Section 3 business:.....	28
8.2.5	Labor surplus area business:.....	28
9	Ethics in Public Contracting	298
9.1	General.....	298
9.2	Conflict of Interest.....	28
9.3	Gratuities, Kickbacks and Use of Confidential Information	29
9.4	Prohibition against Contingent Fees	310
10	HACP Property Management and Disposition Policy	310
10.1	Property Management Policy.....	310
10.1.1	Cash Asset Management	310
10.1.2	Fixed Asset Management.....	310
10.1.2.1	Definition of Fixed-Asset.....	31
10.1.2.2	Fixed Asset I.D. Tags.....	31
10.1.2.3	Fixed Asset Security/Safekeeping.....	31
10.1.2.4	Fixed Asset Record Retention.....	31
10.2	Disposition Policy	332
10.2.1	Scrap	332
10.2.2	Sell.....	332
10.2.3	Transfer	332
10.2.4	Store.....	332
	Exhibit "A"	34
	Exhibit "B"	35

Established for the Housing Authority of the City of Pittsburgh, by Board action on July 22, 2010 via Resolution 36 of 2010 and revised as approved by the Board on March 23, 2012 via Resolution 9 of 2012, this Statement of Procurement Policy complies with HUD's Annual Contributions Contract (ACC), the procurement standards of 2 C.F.R. §§ 200.317 - 200.326, and the HUD Handbook 7460.8 rev2 (2007) "Procurement Handbook for Public Housing Agencies."

The Housing Authority of the City of Pittsburgh, by Board action on July 23, 2015 via Resolution 36 has self certified that this Procurement Policy complies with the essential elements of HUD's Annual Contributions Contract (ACC), the procurement standards of 2 C.F.R. §§ 200.317 - 200.326, and the HUD Handbook 7460.8 rev2 (2007) "Procurement Handbook for Public Housing Agencies."

1 General Provisions

1.1 Purpose:

The purpose of the Housing Authority of the City of Pittsburgh (HACP) Contract, Procurement and Disposition Policy is twofold. First, this policy is to heighten awareness of compliance regarding the procurement and contracting requirements established by Federal standards, HUD regulations and State and local laws. Second, to provide for the fair and equitable treatment of all persons or firms involved in purchasing by the HACP and to assure that supplies, services and construction are procured efficiently, effectively and at the most favorable prices available to the HACP. Third, to promote competition in contracting, provide safeguards for maintaining a procurement system of quality and integrity and assure that HACP procurement actions are in full compliance with applicable Federal standards, HUD regulations, State and local laws.

1.2 Application:

This Statement of Procurement Policy applies to all contracts for the procurement of supplies, services and construction entered into by HACP after the effective date of this Statement, except as excluded in 1.5 of this Policy. It shall apply to all expenditures of funds by HACP for public purchasing, including contracts which do not involve an obligation of funds (such as concession contracts). However, nothing in this Statement shall prevent HACP from complying with the terms and conditions of grant, contract, gift or bequest that is otherwise consistent with law. Where non-Federal Funding sources are utilized or where grant terms and conditions mandate specific requirements inconsistent with the HACP Procurement and Disposition policy, the Executive Director can authorize specific exceptions to the HACP Procurement and Disposition Policy, provided the requirements are consistent with Federal and State law. The term "procurement", as used in this Statement, includes both contracts

and modifications (including change orders) for construction or services, as well as purchase, lease, or rental of supplies and equipment.

1.3 Definition

The term procurement, as used in this Policy, includes the procuring, purchasing, leasing, or renting of:

- Goods, supplies, equipment, and materials,
- Construction and maintenance; consultant services,
- Architectural and Engineering (A/E) services,
- Social Services, and
- Other services.

1.4 Terms

The following terms are used throughout this Procurement Policy:

Addendum/Amendment - Written revision made to a solicitation

Modification – A written revision or change to a contract approved by the Contracting Officer

Professional Services – infrequent, technical, or unique functions performed by independent contractors or consultants whose occupation is the rendering of such services

Request for Quotations – Under the small purchase method of procurement, a brief, written request for a price quotation from potential contractors

Additional key procurement and contracting terms and definitions used throughout this policy can be found in section 1.9 Glossary of the HUD Handbook 7460.8 rev2 (2007) “Procurement Handbook for Public Housing Agencies.”

1.5 Exclusions

This policy does not govern administrative fees earned under the Section 8 voucher program, the award of vouchers under the Section 8 program, the execution of landlord Housing Assistance Payments contracts under that program, or non-program income, e.g., fee-for-service revenue under 24 CFR Part 990.

1.6 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, to the extent inconsistent with these Policies, shall supersede these policies.

1.7 Public Access to Procurement Information

Procurement information shall be a matter of public record only to the extent provided in the Pennsylvania Right-to-Know Law (P.L. 309, No. 212) and shall be available to the public as provided in that statute.

2 Procurement Authority and Administration

All procurement transactions shall be administered by the Contracting Officer(s), who shall be the Executive Director or other individual(s) he or she authorizes in writing from time to time. The original written authorization, including signature authorities, will be maintained within the Executive Office and available for review. The Executive Director shall issue operational procedures to implement this Policy, which shall be based on the HUD Handbook 7460.8. REV2 (2007)

This Policy and any later changes shall be submitted to the Board of Commissioners for approval. The Board appoints and delegates procurement authority to the Executive Director, who is responsible for ensuring that any procurement policies adopted are appropriate for HACP.

2.1 Sanctions and Ethical Standards

The Executive Director and the Board of Commissioners have established the sanctions for violation of ethical standards by employees which are included as part of the HACP's Personnel Policy. Notice and an opportunity for a hearing shall be provided before imposing any suspension or termination of employment for violation of procurement ethics standards. Civil and administrative remedies will be administered whenever employees, officials, or agents breach ethical standards including those outlined in Section 9 of this policy as well as Title 62 Section 2301.

2.2 Executive Director's Duties

The Executive Director or his/her designee shall ensure that:

- Procurement requirements are subject to an annual planning process to assure efficient and economical purchasing
- Contracts and modifications 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

- For procurements above the small purchase threshold, a minimum of fifteen (15) days is provided for preparation and submission of bids or proposals; and notice of contract awards is made available to the public
- Solicitation procedures are conducted in full compliance with Federal standards stated in 2 C.F.R. §§ 200.317 - 200.326
- An independent cost estimate (ICE) is prepared before solicitation issuance and is appropriately safeguarded for such procurement above the micro purchase limitation, and a cost or price analysis is conducted of the responses received for all procurements. The level and detail shall be commensurate with the cost and complexity of the item to be purchased.
- The records are sufficient to detail the significant history of each procurement action. The information as shown on “Exhibit A” labeled Procurement Action Documentation.
- All records should be maintained for a period of at least three years after final payment and all matters pertaining to the contract are resolved or the time period set forth in HACP’s document retention policy whichever is longer. If any claims or litigation are involved or if specific grant language requires a different timeline the records should be maintained until three years after all issues are completely resolved or the grant requirements have expired whichever is longer.
- Contract award is made to the responsive and responsible bidder offering the lowest price (for sealed bid contracts) within Ninety (90) days of bid opening. Contract award is made to the offeror whose proposal offers the greatest value to HACP, considering price, technical, and other factors as specified in the solicitation (for contracts awarded based on competitive proposals); unsuccessful firms are notified after contract award.
- There are sufficient unencumbered funds available to cover the anticipated cost of each procurement before contract award or modification (including change orders), work is inspected before payment, and payment is made promptly for contract work performed and accepted
- HACP complies with applicable HUD review requirements, as provided in operational procedures supplementing this Statement

2.3 Board Approval of Procurement Actions

HACP Board approval is required for the following procurement actions:

- Awards in excess of \$50,000

- Cumulative change orders which represent a value of 20% or more of the initial contract amount and subsequent, cumulative change orders which represent 20% or more of the initial contract
- Change orders which increase the value of the award to an amount which exceeds \$50,000
- Individual change orders which exceed \$50,000 and subsequent, cumulative change orders which exceed \$50,000

2.4 Contracting Actions Requiring HUD Approval:

Except as exempted by 2.4.1, or where expressly authorized under the Moving to Work Agreement between HACP and HUD, the following contracting actions shall require HUD approval prior to the award of a contract:

- A. Noncompetitive procurements expected to exceed the Federal small purchase threshold;
- B. Brand name only procurements expected to exceed the Federal small purchase threshold;
- C. Awards over the Federal small purchase threshold to other than the apparent low bidder under sealed bid;
- D. Proposed contract modifications that change the scope of the contract (as per the “Changes” clause in forms HUD-5370, HUD 5370-C or HUD-5370-EZ) or increasing the contract amount by more than the Federal Small Purchase threshold except for the Capital Fund Program unless required under 2.4(G) below.
- E. Use of the Qualifications Based Selection (QBS) method of procurement for the other than A/E services, joint venture partners or developers, or energy service contracts;
- F. Procurements for legal or other non-personal services in connection with litigation per HUD’s Litigation Handbook that exceed \$100,000;
- G. Procurements that exceed the amount included in (1) the HUD approved Development Cost Budget or (2) where HUD has required prior approval on a Notice of Deficiency or corrective action under the Capital Fund Program;
- H. Contracts that exceed five years, including options. To approve terms in excess of five years, Field Offices must determine there is no practical alternative;

I. Solicitations and any resulting contracts related to energy performance contracting and utility add ons per Chapter 17 of the HUD Handbook.

J. Solicitations and contracts where the procurement procedures or operations fail to comply with the procurement standards in 2 C.F.R. §§ 200.317 - 200.326.

2.4.1 Exemptions from prior HUD Approval

In the event HACP intends to award non-competitive contract in excess of Federal Small Purchase Threshold of \$150,000 or as may be amended, HACP shall obtain approval from HUD prior to awarding the contract unless either

A. HACP requests and HUD subsequently certifies, that its procurement system has been reviewed by the Field Office and has been determined that the systems meet the standards under 2 C.F.R. §§ 200.317 - 200.326 and the essential requirements of the HUD Handbooks 7460.8 REV 2 and 7485.1 or

B. HACP self-certifies that its procurement system meet the standards under 2 C.F.R. §§ 200.317 - 200.326 and the essential requirements of the HUD Handbooks 7460.8 REV 2 and 7485.1.

Any exemption from prior HUD approval must be for one year and must be renewed each year.

3 Procurement Methods

3.1 Selection of Method

If it is infeasible, or not in the best interest of HACP, to purchase goods through the cooperative purchase agreement with the state or other cooperative purchasing program, HACP will purchase the required items directly using one of the following procurement methods based on the nature and anticipated dollar value of the total requirement.

3.2 Small Purchase Policy (less than or equal to \$18,500 for goods and general services and less than or equal to \$25,000 for professional services)

Any contract for goods or general services not exceeding \$18,500 and any contract for professional services not exceeding \$25,000 may be made in accordance with the small purchase procedures authorized in this section. The thresholds referenced throughout this Policy will change as the state legal requirements change, without the requirement of Board action. At all times, it is understood that the most restrictive requirements apply. Contract requirements shall not be artificially divided so as to constitute a small purchase under this

section unless reasonably necessary to do so to afford small and minority businesses the opportunity to participate in the HACP's procurements. In such cases, the Contracting Officer should document in the contract file the reasons for breaking down larger requirements into smaller ones.

3.2.1 Petty Cash (less than or equal to \$100)

Small purchases \$100 or under which can be satisfied by local sources may be processed through the use of a petty cash account. The contracting Officer shall ensure that:

- The account is established in an amount sufficient to cover small purchases made during a reasonable period
- Security is maintained and only authorized individuals have access to the account
- The account is periodically reconciled and replenished by submission of a voucher to the HACP finance officer
- The account is periodically audited by the finance officer or designee to validate proper use and to verify that the account total equals cash on hand plus the total of accumulated vouchers

3.2.2 Micro Purchases (less than or equal to \$3,000)

For small purchases up to \$3,000 (\$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act), or as this amount may be amended, only one quotation need be solicited if the price received is considered reasonable. Such purchases will be distributed equitably among qualified sources. If practicable, a quotation shall be solicited from other than the previous source before placing a repeat order. It is the policy of HACP if a quotation is obtained orally: the quote and vendor information must be documented in writing for the file. The names, addresses, and/or telephone numbers of the offerors and persons contacted, and the date and amount of each quotation shall be recorded and maintained.

3.2.3 Small Purchases of Goods and General Services (\$3,000.01-\$18,500)

For small purchases of goods and general services in excess of \$3,000 but not exceeding \$18,500, no less than three offerors shall be solicited to submit price quotations, which may be obtained orally, by telephone, or in writing. Award shall be made to the offeror providing the lowest acceptable quotation, unless justified in writing based on price and other specified factors, such as for architect-engineer contracts. If non-price factors are used, they shall be disclosed to all those solicited. It is the policy of HACP if a quotation is obtained orally; the quote and vendor information must be documented in writing for the file. The names, addresses, and/or telephone numbers of the offerors and persons contacted, and the date and amount of each quotation shall be recorded and maintained.

3.2.4 Small Purchases of Professional Services (\$3,000.01-\$25,000)

For small purchases of Professional Services in excess of \$3,000 but not exceeding \$25,000, no less than three offerors shall be solicited to submit price quotations, which may be obtained orally, by telephone, or in writing. Award shall be made to the offeror providing the lowest acceptable quotation, unless justified in writing based on price and other specified factors, such as for architect-engineer contracts. If non-price factors are used, they shall be disclosed to all those solicited. It is the policy of HACP if a quotation is obtained orally; the quote and vendor information must be documented in writing for the file. The names, addresses, and/or telephone numbers of the offerors and persons contacted, and the date and amount of each quotation shall be recorded and maintained.

3.3 Competitive Procurement Policies (greater than \$18,500 for goods and general services and greater than \$25,000 for professional services)

A competitive method of procurement will be used for purchases above the small purchase threshold of \$18,500 for goods and general services and \$25,000 for professional services. Selection of the type of solicitation for competitive procurements will be made using the policies outlined below:

- Contracting officer will choose the method, which considering matters of economy, provides for full and open competition. Approved methods of solicitation include: advertising in newspapers or other print mediums of local or general circulations; advertising in various trade journals or publications; e-procurement; issuance of invitation for bids to bidders on the solicitation mailing list of the purchasing agency. In order to ensure objective contractor performance and to eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work and invitations for bids or requests for proposals must be excluded from competing for such procurements.
- The solicitation must be run for a period of no less than (15) days to allow preparation and submission of responses. If selected, paid print advertisements should be run not less than once each week for two consecutive weeks.

3.3.1 Sealed Bids

3.3.1.1 Condition for use

Contracts shall be awarded based on competitive sealed bidding if the following conditions are present:

- A complete, adequate, and realistic specification or 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
- The selection of the successful bidder can be made principally on the basis of price

Sealed bidding is the preferred method for construction procurements.

If sealed bids are used, the following requirements will apply:

- The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;
- All bids will be publicly opened at the time and place prescribed in the invitation for bids;
- A contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- Any or all bids may be rejected if it is in the best interest of HACP.
- Pre-Bid conferences may be used, but may not be mandatory.
- HACP shall not use alternate bids, i.e. two different systems or types of projects. If limited funding is available, HACP may specify the most expensive system as the base bid and list deductive alternates in inverse priority order. Deductive alternates must be taken in numerical order as set forth in specifications.

3.3.1.2 *Solicitation and Receipt of Bids*

An invitation for bids 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 and responsive bidder whose bid meets the requirements of the invitation for bids. The solicitation should be run for a period of time sufficient to achieve adequate competition, but when advertised should be run not less than once each week for two successive weeks. 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 bid opening. A bidder may withdraw its bid at any time prior to bid opening.

3.3.1.3 *Bid Opening and Award*

Bids shall be opened publicly and in the presence of at least one witness. An abstract of bids shall be recorded and the bid tabulation form shall be available for public

inspection. Award shall be made as provided in the invitation for bids by written notice to the successful bidder. If equal low bids are received from responsible bidders, award shall be made by drawing lots or similar random method, unless otherwise stated in the invitation for bids. 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.

3.3.1.4 *Mistakes in Bids*

Bids may be modified or withdrawn by written notice or in person by a bidder or its authorized representative if its identity is made known and a receipt for the bid is signed prior to the exact time and date set for the opening of bids. Except as provided below, withdrawals or modifications of bids received after the exact time and date specified for the opening of bids shall not be considered.

- Withdrawal of erroneous bids after bid opening but before award based on bid mistakes shall be permitted by the written determination of the contracting officer in accordance with Section 6.10 of the HUD Handbook 7460.8 rev2 (2007) "Procurement Handbook for Public Housing Agencies." The request for relief and the supporting evidence must be received by the contracting officer within (7) days after the bid opening.
- The contracting officer shall not permit a withdrawal of a bid if the withdrawal of a bid would result in the awarding of the contract on another bid of the same bidder, its partner or a corporation or business venture owned by or in which the bidder has a substantial interest. No bidder who is permitted to withdraw a bid shall supply any material or labor to or perform any subcontract or other work agreement for any person whom the contract or subcontract is awarded in the performance of the contract for which the withdrawn bid was submitted without the written approval of the Contracting Officer.

3.3.1.5 *Bonds*

In addition to the other requirements of this Policy the following surety requirements apply:

3.3.1.5.1 Construction contracts between \$10,000 and \$100,000

- A performance bond for 100% of the contract price

3.3.1.5.2 Construction contracts over \$100,000

- A bid guarantee equivalent to 5% of the bid price
- A performance bond for 100% of the contract price; and
- A payment bond for 100% of the contract price

It is the policy of HACP to accept only bid, performance and payment bonds executed by a surety company authorized to do business in this Commonwealth and acceptable to HUD. The surety must be listed on the most recently published U.S. Treasury Circular 570 (T-List). The T-List is available from the U.S. Department of the Treasury, Financial Management Service, Surety Bond Branch, Room 262 C, 401 14th Street S.W., Washington, D.C. 20227 (subject to change) or www.fms.treas.gov/c570/index.html. Alternative methods of bid and contract guaranties such as split payment and performance bonds, cash escrow and/or line of credit will not be accepted and will be indicated as such by the Contract Officer on the HUD-5369. The HACP may establish more stringent bonding requirements or apply these requirements to other categories of goods and services as determined to be in the best interest of HACP and consistent with applicable law. HACP should not return any bid bonds until the contract has been awarded and the required performance and payment bond have been furnished, until all bids have been rejected, or the time specified for acceptance of bids has expired.

3.3.2 **Competitive Proposals**

3.3.2.1 *Condition for use*

Contracts shall be awarded based on competitive proposals if any of the following conditions are present:

- The requirement cannot be described specifically enough to permit the use of sealed bidding or the work is not definite enough to accurately estimate the total cost of the contract.
- The nature of the requirement is such that the HACP needs to evaluate more than just price to be sure that the prospective contractor understands HACP's needs and can successfully complete the contract.
- The requested work lends itself to different approaches

If competitive proposals are used, the following requirements will apply:

- Requests for proposals will be publicized in the same manner as sealed bids in Section 3.3.1.2 and identify all evaluation factors and their relative importance;
- Proposals will be solicited from an adequate number of qualified sources;
- HACP will have a method for conducting technical evaluations of the proposals received and for selecting awardees;
- Awards will be made to the responsible firm whose proposal is most advantageous to HACP, with price and other factors considered; and

- HACP may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.
- Pre-submission conferences may be used, but may not be mandatory.

3.3.2.2 *Solicitation*

The request for proposals shall clearly identify the relative importance of price and other evaluation factors and sub-factors, including the weight given to each technical factor and sub-factor. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals. The proposals shall be evaluated only on the criteria stated in the request for proposals.

3.3.2.3 *Negotiations*

Unless there is no need for negotiations with any of the offerors, negotiations shall be conducted with the 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 RFP. Such offerors shall be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. The purpose of negotiations shall be to seek clarification with regard to and advise offerors of the deficiencies in both the technical and price aspects of their proposals so as to assure full understanding of the conformance to the solicitation requirements. 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. Offers shall not be directed to reduce their proposed prices to a specific amount in order to be considered for award. A common deadline shall be established for receipt of proposal revisions based on negotiations. Late responses will be treated in the same manner as late initial offers.

3.3.2.4 *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 the HACP.

The Contracting officer should notify each unsuccessful offeror and the awardee in writing.

3.3.2.5 *Architect/Engineer Services*

Architect/engineer services in excess of \$25,000 may be obtained by either the competitive proposals method or qualifications-based selection procedures. Sealed bidding, however, shall not be used to obtain architect/engineer services. Under qualifications-based selection procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to the negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. Qualifications-based selection procedures shall not be used to purchase other types of services even though architect-engineer firms are potential sources.

3.3.3 **Time and Materials Contract**

A "time and materials contract" shall mean a contract with its cost calculated by the sum of (1) the actual cost of materials; and (2) direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses and profit. HACP may use a time and materials contract only (1) after a determination that no other contract is suitable and (2) if the contract includes a ceiling price that the contractor exceeds at its own risk. HACP shall assert a high degree of oversight in awarding such a contract to obtain reasonable assurance that the contract is using efficient methods and cost controls.

3.4 **Non-Competitive Proposals**

3.4.1 **Conditions for use**

Procurement shall be conducted competitively to the maximum extent possible. Procurement by non-competitive proposal may be used only when the award of the contract is not feasible using small purchase procedures, sealed bids, or competitive proposals, and one of the following applies:

3.4.1.1 *Sole Source or Single Source*

The item is available only from a single source, based on a good faith review of available sources, or when HACP solicits offers from multiple sources through sealed bid or otherwise but receives only one.

3.4.1.2 *Emergency*

A public exigency or emergency exists that seriously threatens the public health, welfare or safety or endangers property, or would otherwise cause serious injury to the HACP, HACP residents or the public. 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 method and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency.

3.4.1.3 *HUD Approval*

HUD authorizes the use of non-competitive proposals.

3.4.1.4 *Inadequate Competition*

This is the situation where HACP solicits offers from multiple sources but receives only one response or responsible bid, or competition is otherwise determined to be inadequate. This includes a situation where HACP has sought offers on more than one occasion and received only one bid. This also includes the situation where HACP initially receives multiple offers but after a review only one is deemed responsive and responsible.

3.4.2 *Justification*

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

- Description of the requirement
- History of prior purchases and their nature (competitive vs. non-competitive)
- The specific exception from (3.4.1.1-3.4.1.4) of this policy which applies
- Statement as to the unique circumstances that require award by non-competitive proposals
- Description of the efforts made to find competitive sources (advertisement, phone calls to local suppliers, issuance of written solicitation, etc.)
- Statement as to the efforts that will be taken in the future to promote competition for the requirement
- Signature by the Contracting Officer's supervisor (or someone above the level of the Contracting Officer)
- Price reasonableness - The reasonableness of the price for all the procurements based on non-competitive proposals shall be determined by performing an analysis, as described in this policy.
- The Contracting Officer shall include the written justification and approval in the contract file.

3.5 Cost and Price Analysis

The HACP shall require assurance that, before entering into a contract, the price is reasonable, in accordance with the following:

3.5.1 Petty Cash and Micro Purchases

No formal cost or price analysis is required. Rather, the execution of a contract by the Contracting Officer (through a Purchase Order or other means) shall serve as the Contracting Officer's determination that the price obtained is reasonable, which may be based on the Contracting Officer's prior experience or other factors.

3.5.2 Small Purchases

A comparison with other offers shall be sufficient in determination of the reasonableness of price and no further analysis is required. If a reasonable number of quotes are not obtained to establish reasonableness through price competition, the Contracting Officer shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the Contracting Officer's personal knowledge at the time of purchase, comparison to the Independent Cost Estimate (ICE), or any other reasonable basis.

3.5.2.1 Independent Cost Analysis

As per Chapter 10 of the HUD Handbook 7460.8 rev2 (2007) "Procurement Handbook for Public Housing Agencies," Independent Cost Estimate documentation is required for all purchases above the Micro Purchases threshold and documentation of the ICE shall be included in the file.

3.5.3 Sealed Bids

The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, and when the bids are greater than 110% of the ICE, and where HACP cannot reasonably determine price reasonableness, the HACP will conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable.

3.5.4 Competitive Proposals

The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, the HACP must compare the price with the ICE. For competitive proposals where prices cannot be easily compared among offerors, where there is not adequate competition, or where the price is 110% greater than the ICE, the HACP will conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable.

3.6 Cancellation of Solicitations

3.6.1 Conditions before bids are due

An IFB, RFP or other solicitation may be cancelled before bids/offers are due if:

- The supplies, services or construction is no longer required
- The funds are no longer available
- Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best
- For good cause when it is in the best interest of the HACP

3.6.2 Conditions after bids are due

A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if:

- The supplies or services (including construction) are no longer required
- Ambiguous or otherwise inadequate specifications were part of the solicitation
- All factors of significance to the HACP were not considered
- Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds
- Prices were not between 75% or 110% of the ICE
- 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
- For good cause when it is in the best interest of the HACP

3.6.3 Cancellation Processing

- The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon written request
- 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
- If all otherwise acceptable bids received in response to an IFB are at unreasonable prices (not between 75% or 110% of the ICE) an analysis should be conducted to see if there is a problem in either the specifications or the HACP'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 complete the procurement by using the competitive proposal method. The Contracting Officer must determine, in

writing, that such action is appropriate. If multiple bids are received at unreasonable prices, the IFB shall be canceled as per Section 3.6.2.

3.7 Cooperative Purchasing

The HACP may enter into cooperative purchasing agreements with State and/or local government agencies 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, efficiency and a determination that such action is in the best interest of HACP. The goods and services obtained under a cooperative purchasing agreement must have been procured in accordance with 2 C.F.R. §§ 200.317 - 200.326.

When HACP utilizes cooperative purchasing via intergovernmental agreements, it is understood that the procurement policy of the entity which initiated the procurement solicitation will govern the process. The partnering agency's procurement policy may contain different criteria and requirements than those outlined in this Procurement and Disposition Policy. HACP will work with contracted firms to ensure that variations in criteria and requirements of this Procurement and Disposition Policy and the partnering agency's procurement policy are resolved to the greatest extent feasible. The Executive Director and/or his designee retains the discretion to utilize the underlying procurement provided that it was conducted in compliance with 2 C.F.R. §§ 200.317 - 200.326 and Chapter 14 of the HUD Handbook 7460.8 rev2 Procurement Handbook for Public Housing Agencies.

4 Contractor Qualifications and Duties

4.1 Contractor Responsibility

HACP will not award any contract until the prospective contractor has been determined to be responsible. A responsible bidder/offeror must:

- Have adequate financial resources to perform the contract, or the ability to obtain them
- Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all the bidder's/offer's existing commercial and governmental business commitments
- Have a satisfactory performance record as outlined in 4.1.1 of this policy
- Have a satisfactory record of integrity and business ethics
- Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them

- Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended, debarred or under a HUD-imposed Limited Denial of Participation
- Have the necessary organization, experience, accounting and operational controls and technical skills or the ability to obtain them.

4.1.1.1 *Non-responsible Contractor Procedure*

The Board has established procedures for determining a contractor non-responsible based on the contractor's past or current performance on HACP project in a form attached as Exhibit "B".

4.2 **Suspension and Debarment**

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

4.3 **Vendor Lists**

All interested, responsible and non-debarred 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.

5 **Types of Contracts, Clauses, and Contract Administration**

Any type of contract which is appropriate to the procurement and which will promote the best interest of the HACP may be used, provided the cost-plus-a-percentage-of-cost and percentage-of-construction-cost methods are not used. All solicitations and contracts shall include the clauses and provisions necessary to define the rights and responsibilities of both the contractor and HACP.

5.1 **Options**

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

- The option is contained in the solicitation.
- The option is at the unilateral right of the Authority.
- The contract states a limit on the additional quantities and the overall term of the contract. Total terms of contracts including options will not exceed (5) years without approval from HUD.

- The options are evaluated as part of the initial competition.
- The contract states the period within which the options may be exercised.
- The options may be exercised only at the price specified in or reasonably determinable from the contract.
- The options may be exercised only if determined to be more advantageous to HACP than conducting a new procurement.

5.2 Contract Clauses

All contracts should identify the contract pricing arrangements as well as other pertinent terms and conditions, as determined by the HACP and outlined below:

5.2.1 Mandatory Contract Clauses for Small Purchases

Except in the case of bid specifications and contracts for construction or maintenance work in excess of \$3,000, small purchases, including purchase orders, will contain the following clauses.

- Examination and Retention of Contractor's Records
- Right in Data and Patent Rights (Ownership and Proprietary Interest)
- Energy Efficiency
- Procurement of Recovered Materials.
 - HACP and its contractors shall be required to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

5.2.1.1 *Construction Contract greater than \$3,000 but not more than \$18,500*

The HACP will incorporate the clauses contained in the form HUD-5370-EZ or HUD-5370, General Conditions for Small Construction/Development Contracts, and the applicable Davis-Bacon wage decision.

5.2.1.2 *Maintenance Contracts greater than \$3,000 but not more than \$18,500*

The HACP will incorporate the clauses identified in 5.1.2.1 of this section as well as Section II of form HUD-5370-C, General Conditions for Non-Construction Contracts, and the applicable HUD wage decision.

5.2.2 Mandatory Contract Clauses for purchases >\$18,500

HACP will include any clauses required by Federal statutes, executive orders, and their implementing regulations, as provided in 2 C.F.R. 200.326, including but not limited to those clauses outlined below:

5.2.2.1 *Construction/Development Contracts*

The HACP will incorporate the clauses contained in form HUD-5370, General Conditions of the Contract for Construction, and the applicable Davis-Bacon wage decision.

5.2.2.2 *Non-Construction Contracts*

The HACP will incorporate the clauses contained in Section of form HUD-5370-C, General Conditions for Non-Construction Contracts

5.2.2.3 *Maintenance Contracts (including non-routine maintenance work)*

The HACP will incorporate the clauses contained in Section I and II of form HUD-5370-C, General Conditions for Non-Construction Contracts.

5.3 **Contract Administration**

The HACP 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.

5.4 **Contract Modification**

The Executive Director is authorized to approve contract modifications or change orders of less than \$50,000.00 or 20% of the original contract amount. Cumulative change orders greater than \$50,000 or 20% of the original contract amount will be presented to the Board. Change orders which cause the contract amount to exceed \$50,000 will be presented to the Board. All change orders will be in compliance with the applicable clauses, depending on the type of contract, contained in HUD-5370, 5370-C and 5370-EZ.

Modifications that increase the number of items ordered, unless part of the original bid, are not allowed. Modifications for new work beyond the scope of the original contract are not allowed. A cost or price analysis shall be performed for each modification and all modifications shall be in writing.

5.4.1 **Modification Register**

A modification register will be maintained in the contract file which will include all modifications of the contract to date. When determining the necessity to present to the Board (i.e. change is greater than 20% of contract amount), the initial contract amount will be used. Independent change orders exceeding \$50,000 will be presented to the Board. Change Orders will be aggregated in determination of necessity to present to the Board.

6 Specifications

All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying HACP needs. Specifications shall be reviewed prior to issuing any solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. Function or performance specifications are preferred. Detailed product specifications shall be avoided whenever possible. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement. Contractors funded to develop or draft specification requirements, statements of work, invitations for bid, or requests for proposals shall be excluded from competing in the procurement.

6.1 Limitations

The following type of specifications will be avoided:

- 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)
- Brand name specifications without allowing for a proposed equal product (unless the specifications list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use)

7 Appeals and Remedies

It is HACP's 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. HUD will only review protests in cases of violations of Federal law or regulations and/or violation of the HACP protest procedures for failure to review a complaint or protest.

7.1 Right to Protest

A bidder or offeror, a prospective bidder or offeror or a prospective contractor that is aggrieved in the connection with the solicitation or award of a contract, except relating to cancellation of invitation for bids or requests for proposals, may protest to the Contracting Officer in writing.

7.2 Filing of protest

With respect to construction contracts, HACP will follow the requirements of HUD-5370. With respect to contracts in which HUD-5370 does not apply, HACP shall follow the protest procedure indicated below. If the protestant is a bidder or offeror or prospective contractor, the protest shall be filed with the Contracting Officer within (7) days after the aggrieved

bidder or offeror or prospective contractor knew or should have known of the facts giving rise to the protest except that in no event may a protest be filed later than (7) days after the contract was awarded. If the protestant is a prospective bidder or offeror, a protest shall be filed with the Contracting Officer prior to the bid opening time or the proposal receipt date. If a bidder or offeror, a prospective bidder or offeror or a prospective contractor fails to file a protest or files an untimely protest, the bidder or offeror, the prospective bidder or offeror or the prospective contractor shall be deemed to have waived its right to protest of the solicitation or award of the contract in any forum. Untimely-filed protests shall be disregarded by HACP.

7.3 Contents of protest

A protest must be in writing and shall state all grounds upon which the protestant asserts that the solicitation or award of the contract was improper. The Protest shall include the name, address and phone number of the protester, solicitation number and project title, a detailed statement of the basis for the protest, supporting evidence or documents to substantiate any arguments and the form of the relief requested.

7.4 Response and reply

Within (15) days of receipt of a protest, the Contracting Officer shall submit to the protestant a response to the protest, including any documents or information he deems relevant to the protest. The protestant may file a reply to the response within (10) days of the date of response.

7.5 Evaluation of protest

The Contracting Officer shall review the protest and any response or reply and may request and review such additional documents or information he deems necessary to render a decision and may, at his or her sole discretion, conduct a hearing. The Contracting Officer shall provide to the protestant a reasonable opportunity to review and address any additional documents or information deemed necessary by the Contracting Officer to render a decision.

7.6 Determination

Upon completing an evaluation of the protest in accordance with 7.5, the Contracting Officer shall issue a written determination stating the reasons for the decision. The determination shall be issued within (60) days of the receipt of the protest unless extended by consent of the Contracting Officer and the protestant. The determination shall be the final order of HACP. If the Contracting Officer determines that the solicitation or award of the contract was contrary to law, he may enter an order authorized by Title 62 Section 1711.2.

7.7 Appeal

Within (15) days of the mailing date of a final determination denying a protest, a protestant may file an appeal with the Executive Director. Issues not raised by the protestant before the

HACP as part of the initial protest are deemed waived and may not be raised before the Executive Director.

8 Assistance to Small and Other Businesses

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

- Including such firms, when qualified, on solicitation mailing lists;
- Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
- Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
- 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 135; and
- Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed above.

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

8.1.1 Compliance with MBE/WBE Goals:

If MBE and WBE subcontractor participation has not been identified as part of a bid or proposal, best efforts to obtain such participation must be documented. “Best efforts” in compliance with MBE/WBE goals include that the contractor must verify and document with its bid or proposal that it has contacted in writing at least ten (10) certified MBE/WBE subcontractors, or lesser number with documentation that ten (10) certified MBE/WBE contractors could not be identified. Each contractor shall submit a verification stating same under penalty of perjury and shall submit the back-up documentation with its bid or proposal.

Any bid or proposal received from a contractor that does not contain such verification and back-up documentation acceptable to HACP may be deemed non-responsive by HACP.

8.1.2 Compliance with Section 3 requirements:

Bids and proposals must comply with the HACP Section 3 Policy.

8.2 Definitions

8.2.1 Small business:

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

8.2.2 Minority-owned business:

A minority-owned business is defined as a business which has been independently certified as being at least 51% owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.

8.2.3 Women's business enterprise:

A women's business enterprise is defined as a business which has been independently certified as being at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.

8.2.4 Section 3 business:

A Section 3 business concern is as defined under 24 CFR Part 135.

8.2.5 Labor surplus area business:

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 Department of Labor (DOL) in 20 CFR Part 654, Subpart A, and in the list of labor surplus areas published by the Employment and Training Administration.

9 Ethics in Public Contracting

9.1 General

Members of the Board of Commissioners, HACP employees, and any other individual serving in an official position or acting as an agent of the HACP (hereafter referred to as employees, officers, or agents) must discharge their duties impartially to ensure fair competitive access to procurement opportunities by responsible contractors. Moreover, employees, officers, and agents should conduct themselves in such a manner as to foster the public's confidence in the integrity of the HACP procurement organization and process. Any attempt to realize personal gain through HACP employment or to serve as an officer or agent of the HACP through actions inconsistent with the proper discharge of duties is a breach of public trust.

9.2 Conflicts of Interest

No HACP employee, officer, or agent shall participate in the selection, award or administration of a contract if a conflict of interest, financial or otherwise, real or apparent, would be involved. Such a conflict would arise when the employee, officer or agent, any member of his or her family as defined ("his or her relative including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half sister"); his or her partner; or an organization which employs or is about to employ any of the above, has a financial or other interest in the firm selected for the award.

In addition to any other applicable conflict of interest requirements, neither HACP nor any of its contractors or their subcontractors may enter into any contract, subcontractor, or arrangement in connection with a project under the ACC in which any of the following classes of people have interest, direct or indirect, during his or her tenure or for one year thereafter:

1. Any present or former member or officer of the governing body of the HACP, or any member of the officer's immediate family. There shall be excepted from this prohibition any present or former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the resident corporation, the HACP or a business entity.
2. Any employee of the HACP who formulates policy or who influences decisions with respect to the project(s), or any member of the employee's immediate family, or the employee's partner.
3. Any public official, member of the City Council, or State or local legislator, or any member of such individuals' immediate family, who exercises functions or responsibilities with respect to the project(s) of the HACP. *(Note: For additional important provisions see Section 19 of the ACC)*

No present or former HACP employee, officer, or agent shall engage in selling or attempting to sell supplies, services, or construction to the HACP for one year following the date such employment ceased. The term “sell” means signing a bid or proposal, negotiating a contract, contacting any HACP employee, officer, or agent for the purpose of obtaining, negotiating, or discussing changes in specifications, price, cost allowances, or other terms of a contract; settling contract disputes; or any other liaison activity with a view toward the ultimate consummation of a sale, although the actual contract is negotiated by another person.

Any parent, affiliate or subsidiary organization of the HACP shall also be required to conform to the conflict of interest provisions in this Section 9.2, including but not limited to the manner in which they select, award and administer contracts.

9.3 Gratuities, Kickbacks and Use of Confidential Information

HACP solicitations and contracts above the Federal small purchase threshold shall include clauses advising prospective contractors of the prohibitions against gratuities and kickbacks consistent with Appendix II to 2 C.F.R. Part 200, Subsection (D).

- A. **Gratuities.** HACP officers, current employees, former employees within one year of employment, or agents shall neither solicit, accept, or agree to accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.
- B. **Kickbacks and Anticompetitive Practices.** It is a breach of ethical conduct and prohibited for any payment, gratuity, or offer of employment to be made by, or on behalf of, a contractor or subcontractor under contract to the prime contractor, higher tier subcontractor, or any person associated therewith as an inducement for the award of a subcontractor order.

The Contracting Officer shall immediately report to the Executive Director, the HUD Field Office, and the appropriate State and local officials any suspected anticompetitive practices or contractors.

- C. **Use of Confidential Information.** Disclosure of confidential information to any person not authorized by the Contracting Officer to receive such information shall be a breach of ethical standards. Confidential information includes but is not necessarily limited to: the contents of a bid (prior to bid opening) or proposal (prior to contract award using competitive proposals), names of individuals or firms that submitted bids (prior to bid opening) or proposals (prior to contract award); HACP generated information related to a procurement (including HACP cost estimates, contractor selection and evaluation plans, specifications [before solicitation is issued]; and any other information the disclosure of which would have a direct bearing upon the contract award or the competitive process. It is a breach of ethical conduct

for any current or former employee, officer, or agent to knowingly use confidential information for actual or anticipated personal gain or for actual or anticipated personal gain of any other person.

9.4 Prohibition against Contingent Fees

It is a breach of ethical conduct for a person to be retained to solicit or secure a HACP contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for the retention of bona fide employees or bona fide agency established for the purpose of securing business. This prohibition includes the employment of former HACP officials and employees on a contingency basis to obtain contracts with the HACP by business seeking HACP contracts.

10 HACP Property Management and Disposition Policy

The Housing Authority of the City of Pittsburgh has established a property management and disposition policy to ensure effective control and accountability is maintained for all cash, real and personal property and other assets. HACP's policy is to adequately safeguard all such property and assure that it is used solely for authorized purposes.

10.1 Property Management Policy

10.1.1 Cash Asset Management

The Housing Authority of the City of Pittsburgh shall have a management system that will ensure proper administrative controls by setting up organizational structures that will provide the best methods to handle all cash transactions. It will ensure an adequate system of internal controls to safeguard all funds, prevent unauthorized disbursements, and proper separation of duties in the handling of cash. It will maintain an accounting system that will ensure the proper recording, classifying, and reporting cash transactions.

10.1.2 Fixed Asset Management

The Housing Authority of the City of Pittsburgh shall maintain detailed records of all of its fixed depreciable assets, defined as an HACP capital fixed asset valued at \$5,000 or above and depreciated via a schedule as defined by the HACP finance department, recorded in its fixed depreciable asset accounts. A physical inventory will be taken at least on an annual basis to establish the existence of the assets recorded in the property records and reconcile the results.

10.1.2.1 Definition of Fixed Asset (for asset tagging purposes)

Fixed assets are all items purchased by HACP for ownership (excludes leased items) with a unit cost of \$500 or more. By definition, fixed assets are tangible, cannot be easily converted into cash and are not directly sold to an agencies end user. A fixed asset may include items such as land and buildings, motor vehicles, furniture, office equipment, computers, fixtures and fittings, and plant and machinery. Fixed assets

between \$500 and \$5000 are inventoried via a sampling of not less than 10% of the items annually.

10.1.2.2 *Fixed Asset I.D. Tags*

Upon recording the appropriate fixed asset information in the property record, the Contracting Officer or his/her designee shall affix a label to the fixed asset. The label will contain a unique identification number which is permanently assigned to that specific item. The following HACP fixed assets will bear the label:

- Motor vehicles, furniture, office equipment, computers, fixtures and fittings, and plant and machinery

In addition to the fixed assets defined above, Ranges and Refrigerators whose unit cost may be less than \$500 will be tagged and inventoried on a periodic basis through operational unit inspections.

10.1.2.3 *Fixed Asset Security/Safekeeping*

Fixed assets are delivered to and accepted by the requesting department. It is the responsibility of the department to ensure the asset which was ordered via a certain purchase order was received in good condition. Upon receipt of a fixed asset, the receiving department must request and obtain an identification tag immediately from the procurement department. The responsibility of ongoing ownership and safekeeping of the fixed asset is that of the senior person, and that of the department director whom that person reports, in the receiving department.

10.1.2.4 *Fixed Asset Record Retention*

The HACP will retain in the property records the following information:

- A description of the asset
- The manufacturer's serial or model numbers, federal/national stock number or other identification number
- Source of the property
- Whether the title rests with HACP or HUD
- Acquisition date and cost
- Percentage at the end of the budget year of federal participation in the project or program for which the project was acquired
- Location, use, condition and the date the information was reported

- Date of disposal, sale price or method used to determine fair market value where appropriate
- Ultimate disposition data including date of disposal and sale price of the property

10.2 Disposition Policy

If the Contracting Officer determines that a fixed asset is no longer necessary, there are four options: 1) scrap 2) sell 3) transfer to another department within in the agency or 4) store for future use. For each option, the Contracting Officer will document their decision in writing using the applicable form and the property records will be updated accordingly.

10.2.1 Scrap

To scrap an item, there will be a determination of whether the item can be repaired or if the item is damaged/obsolete beyond reasonable use. Written documentation of the determination including a cost analysis, if applicable, is forwarded with the applicable form to the Procurement Department for the property record.

10.2.2 Sell

If the Contracting Officer decides that the item is no longer useful to the agency but of value and should be sold, the Procurement Department will assign a Fair Market Value. Based on the fair market value identified, the Procurement department will utilize competitive methods with similar thresholds as defined in Section 3 of this policy in an effort to ensure maximum value is realized through the sale of the asset and upon sale update the property records accordingly.

10.2.3 Transfer

The transfer of a fixed asset from one HACP department to another shall be reported to the Procurement Department at the time of physical transfer. The Department Director originally responsible for the asset shall approve the transfer of the asset and is responsible for notification to the Procurement Department via the applicable form. The Procurement Department will update the property record to assign the asset to the new location and responsibility of the asset to the new Department Director.

10.2.4 Store

If the asset is no longer useful to any HACP department for its original purpose, but is still functional and could be of use to HACP in the future the Contracting Officer will forward the applicable form to the Procurement Department. The Procurement Department will take control of the asset and document its storage location in the property record. After an item remains in storage for 3 years, the item will either be scrapped or sold.

EXHIBIT "A"

The following is the list of Items to be maintained pursuant to Section 22 of the HACP Procurement and Disposition Policy:

1. Original Scope of Service/Specifications
2. Independent Cost Estimate (ICE)
3. Copies of all advertisements including internet
4. Solicitation Quotes, Invitations for Bid, Request for Proposals and/or Request for Qualifications
5. Pre-Conference notes
6. Bids and/or responses
7. Bid Tab list
8. Documents supporting responses and questions raised through process
9. Correspondence related to bid process
10. Score Sheet if applicable
11. Summary of score sheet if applicable
12. HACP Board Approval; if any
13. MBE/WBE Approval; if any
14. Section 3 documentation, if applicable
15. Evidence of debarment check
16. Award Letter
17. Letters to unsuccessful bidders
18. Contracts with any addendums
19. Notice to Proceed

EXHIBIT "B"

Procedure for Non-Responsible Contractor Determination Pursuant to Section 4.1.1 of the HACP Procurement Policy

1.0 Introduction and Purpose for Non-Responsible Contractor Determination Policy

This Non-Responsible Contractor Determination Policy defines the Housing Authority of the City of Pittsburgh's policies for the determination of a non-responsible contractor. Pursuant to the HACP Procurement Policy, the Executive Director of the Housing Authority of the City of Pittsburgh has adopted the following procedures for determining a contractor to be non-responsible. If there is any conflict between this policy and laws or regulations, the laws and regulations will prevail.

2.0 Determination Official/Contracting Officer

The official who shall make the initial determination as to whether a contractor is non-responsible shall be the Contracting Officer or any designee of the Contracting Officer ("Contracting Officer"). The decision of the Contracting Officer shall be final and appealable only pursuant to the procedures contained in this policy.

3.0 Basis of Determination of Non-Responsibility

A contractor shall be deemed to be non-responsible upon the finding of the Contracting Officer of any of the following:

- 3.1** Conviction or civil judgment against the contractor for any offense relating to the services provided under contract with HACP or for any offense demonstrating lack of business integrity or business honesty so serious as to affect any HACP program;
- 3.2** A contractor's knowing violation of any law, regulation, HACP policy, or material contract term while performing services under contract with HACP.
- 3.3** A contractor's knowing concealment, embezzlement, theft, forgery, bribery, falsification or destruction of records; or
- 3.4** Gross negligence on the part of a contractor while under contract with HACP.
- 3.5** A history of failure to perform or of unsatisfactory or untimely performance of one or more contracts with the HACP.

Any basis for a non-responsible determination must be established by a preponderance of evidence during the hearing as set forth in Section 5.4, unless the contractor does not appeal the initial determination.

4.0 Initiation of Non-Responsible Contractor Determination

The process of determination of contractor non-responsibility shall be initiated at the sole discretion of the Contracting Officer.

5.0 Process of Determination of Non-Responsibility

- 5.1** Upon an initial determination of contractor non-responsibility the Contracting Officer shall notify the contractor in writing setting forth the reasons supporting the proposed determination of non-responsibility, the proposed length of debarment and shall provide information necessary for the contractor to contest the determination, including this policy.
- 5.2** The contractor shall have thirty (30) calendar days to respond in writing contesting the non-responsible determination. If the contractor does not respond within thirty days, an automatic and non-appealable determination of contractor non-responsibility shall be entered. The contractor must set forth in writing all of the arguments and evidence upon which it relies in its contest of the proposed non-responsible determination, and should include any and all relevant documentation, evidence, and statements.
- 5.3** Within thirty (30) days of receipt of the contractor's written contestation of the non-responsible determination, the Contracting Officer shall set a date, time, and location for a hearing to be held not more than sixty (60) days from the receipt of the contractor's written contestation, and shall promptly notify the contractor of such. This time line may be extended with the consent of the contractor.
- 5.4** The Contracting Officer shall hold a hearing pursuant to the Pennsylvania Local Agency Law, during which the contractor may present evidence and arguments contesting the proposed non-responsible determination including evidence and arguments provided in writing in the contractor's previously submitted written contestation, new evidence and arguments not substantially different from those previously submitted, and new evidence and arguments that only reasonably became known after the previous submission. The Contracting Officer shall not be bound by the formal rules of evidence, but shall conduct the hearing with fairness.
- 5.5** The Contracting Officer shall make a final determination and notify the contractor in writing along with relevant Findings of Fact and Conclusions of Law within thirty (30) days of the date of the Local Agency Hearing. The Contracting Officer, taking into account the severity and extent of the basis for a non-responsible finding, shall set a length of time for the non-

responsible determination to last, not exceeding three (3) years. The notice of determination to the contractor shall include the decision, findings of fact and conclusions of law setting forth the reasons for the decision, and length of time for which the contractor shall be considered non-responsible. A written determination of non-responsibility shall be placed in the contract file.

5.6 The contractor may appeal the Contracting Officer's final determination in accordance with Pennsylvania Local Agency Law.

6.0 Effect of Non-Responsible Determination

6.1 If a contractor is found to be non-responsible pursuant to these procedures, no bid or proposal made by the contractor shall be accepted by HACP during the term of the non-responsible determination. If a non-responsible contractor submits a bid during the period of the non-responsible determination, the contractor will be reminded of the determination and the bid will not be considered.

6.2 If a contractor is found to be non-responsible pursuant to these procedures while under contract with HACP, the Executive Director may, to the extent permitted by law, suspend, or cancel the contract with the non-responsible contractor, and HACP shall not be responsible to the contractor for any liabilities arising after the contractor is notified of such suspension or cancellation.

7.0 Reconsideration of Non-Responsible Determination

7.1 Contractors may appeal to the Executive Director or the Executive Director's Designee ("Executive Director") for Reconsideration of Non-Responsible Determination one time during the term of the Non-Responsible Determination by filing a "Request for Reconsideration of Non-Responsible Determination" with the Executive Director. The only issue before the Executive Director is whether the basis for the Non-Responsible Determination has been resolved.

7.2 The Request for Reconsideration of Non-Responsible Determination must set forth in writing all of the arguments and evidence upon which it relies that the basis for Non-responsible Determination has been resolved. The contractor must include any and all relevant documentation, evidence, and statements to support its contention.

7.3 Within thirty (30) days of receipt of the Request for Reconsideration of Non-Responsible Determination, the Executive Director shall set a date, time, and location for a hearing to be held not more than sixty (60) days from the

receipt of the contractor's Request for Reconsideration of Non-Responsible Determination, and shall promptly notify the contractor of such. This time line may be extended with the consent of the contractor.

- 7.4** The Executive Director shall hold a hearing pursuant to the Pennsylvania Local Agency Law, during which the contractor may present evidence and arguments to establish the reason and basis for the Non-responsible Determination has been resolved including evidence and arguments provided in writing in the contractor's previously submitted Request for Reconsideration, new evidence and arguments not substantially different from those previously submitted, and new evidence and arguments that only reasonably became known after the previous submission. The Executive Director shall not be bound by the formal rules of evidence, but shall conduct the hearing with fairness.
- 7.5** The Executive Director shall make a final determination and notify the contractor in writing along with relevant Findings of Fact and Conclusions of Law within thirty (30) days of the date of the Local Agency Hearing. The notice of determination to the contractor shall include the decision, findings of fact and conclusions of law setting forth the reasons for the decision.
- 7.6** If the contractor can establish the reason for the determination of non-responsibility has been resolved or that the Contracting Officer's initial determination was erroneous, the Executive Director may remove the non-responsible determination from any contractor and lift the suspension if the Executive Director determines this is in the best interest of HACP.
- 7.7** The contractor may appeal the Executive Director's Determination in accordance with Pennsylvania Local Agency Law.