

Procurement Policy

Housing Authority of the City of Pittsburgh

Housing Authority of the City of Pittsburgh		
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1.0 INTRODUCTION.

1.1. **General.** Established for the Housing Authority of the City of Pittsburgh (hereinafter, “HACP”) by Action of the HACP Board of Commissioners (Board) on _____, [YEAR], this Procurement Policy (Policy) complies with the Annual Contributions Contract (ACC) between the HACP and the United States Department of Housing and Urban Development (HUD), Federal Regulations at 2 CFR 200.317 through 200.327, the procurement standards of the Procurement Handbook for Public Housing Authorities (PHAs), HUD Handbook 7460.8, REV 2, and applicable State and Local laws.

2.0 GENERAL PROVISIONS.

2.1. **General.** The HACP shall:

2.1.1. provide for a procurement system of quality and integrity;

2.1.2. provide for the fair and equitable treatment of all persons or firms involved in purchasing by the HACP;

2.1.3. ensure that supplies and services (including construction) are procured efficiently, effectively, and at the most favorable and valuable prices available to the HACP;

2.1.4. promote competition in contracting; and

2.1.5. assure that the HACP purchasing actions are in full compliance with applicable Federal standards, HUD regulations, State, and local laws.

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

2.3. **Definition.** The term “procurement,” as used in this Policy, includes the procuring, purchasing, leasing, or renting of: (1) goods, supplies, equipment, and materials, (2) construction and maintenance; consultant services, (3)

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Architectural and Engineering (A/E) services, (4) Social Services, and (5) other services.

- 2.4. **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, i.e., fee-for-service revenue under 24 CFR Part 990. These excluded areas are subject to applicable State and local requirements.
- 2.5. **Changes in Laws and Regulations.** In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with these Policies, automatically supersede these Policies.
- 2.6. **Public Access to Procurement Information.** Most procurement information that is not proprietary is a matter of public record and shall be available to the public to the extent provided in the Pennsylvania Right to Know Law (65 P.S. §§ 67.101-67.3104).

3.0 ETHICS IN PUBLIC CONTRACTING.

- 3.1. **General.** The HACP hereby establishes this code of conduct regarding procurement issues and actions and shall implement a system of sanctions for violations. This code of conduct is consistent with applicable Federal, State, and local law.
- 3.2. **Conflicts of Interest.** No employee, officer, Board member, or agent of the HACP shall participate directly or indirectly in the selection, award, or administration of any contract if a conflict of interest, either real or apparent, would be involved. This type of conflict would be when one of the persons listed below has a financial or any other type of interest in a firm competing for the award:
 - 3.2.1. An employee, officer, Board member, or agent involved in making the award;
 - 3.2.2. His/her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister);
 - 3.2.3. His/her partner; or,

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- 3.2.4. An organization which employs or is negotiating to employ or has an arrangement concerning prospective employment of any of the above.
- 3.3. **Contracting with Former HACP Employees, Board or other Parties.** 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 for one year thereafter.
- 3.3.1. 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 Board Member 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.
- 3.3.2. 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.
- 3.3.3. 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.
- 3.4. **Gratuities, Kickbacks, and Use of Confidential Information.** No officer, employee, Board member, or agent of the HACP shall ask for or accept gratuities, favors, or items of more than nominal value (i.e., inexpensive hat with logo) from any contractor, potential contractor, or party to any subcontract, and shall not knowingly use confidential information for actual or anticipated personal gain. 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.
- 3.5. **Prohibition Against Contingent Fees.** Contractors wanting to do business with the HA must not hire a person to solicit or secure a contract for a commission, percentage, brokerage, or contingent fee, except for bona fide established commercial selling agencies.

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3.5.1. 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.

4.0 PROCUREMENT PLANNING.

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

4.1.1. find patterns of procurement actions that could be performed more efficiently or economically;

4.1.2. maximize competition and competitive pricing among contracts and decrease the HACP’s procurement costs;

4.1.3. reduce the HACP administrative costs, HACP is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services, subject to contracting officer’s confirmation that such agreements comply with all HACP procurement regulations and confirmation that the contractor has capacity to provide the work, goods or services which are the subject of the contract;

4.1.4. ensure that supplies and services are obtained without any need for re-procurement (i.e., resolving bid protests); and

4.1.5. minimize errors that occur when there is inadequate lead time.

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

5.0 PROCUREMENT METHODS.

5.1. **Petty Cash Purchases.** Purchases under \$100 may be handled through the use of a petty cash account. Petty Cash Accounts may be established in an amount sufficient to cover small purchases made during a reasonable period, i.e., one month. For all Petty Cash Accounts, the HACP shall ensure that security is

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maintained, and only authorized individuals have access to the account. These accounts shall be reconciled and replenished periodically.

5.2. Small Purchase Procedures.

5.2.1. Micro Purchases (less than or equal to \$10,000)

For micro purchases up to \$10,000 (\$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.

5.2.2. Small Purchases of Goods and Professional Services (\$10,000 - \$23,200)

For small purchases of goods and general services in excess of \$10,000 but not exceeding \$23,200, 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. 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.

5.2.3. The HACP shall not break down requirements aggregating more than the small purchase threshold (or the Micro Purchase threshold) into several purchases that are less than the applicable threshold merely to: (1) permit use of the small purchase procedures or (2) avoid any requirements that applies to purchases that exceed the Micro Purchase threshold.

5.3. Sealed Bids. Sealed bidding, also known as Invitation for Bids (IFB), shall be used for all contracts that exceed the small purchase threshold and that are not competitive proposals or non-competitive proposals, as these terms are defined in this Policy. Under sealed bids, the HACP publicly solicits bids and awards a firm fixed-price contract (lump sum or unit price) to the responsive and responsible bidder whose bid, conforming with all the material terms and conditions of the IFB, is the lowest in price. Sealed bidding is the preferred

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method for procuring construction, supply, and non-complex service contracts that are expected to exceed the Small Purchase threshold set forth in Section 5.2.

5.3.1. Conditions for Using Sealed Bids. The HACP shall use the sealed bid method if the following conditions are present: a complete, adequate, and realistic statement of work, specification, or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; the contract can be awarded based on a firm fixed price; and the selection of the successful bidder can be made principally on the lowest price.

5.3.2. Solicitation and Receipt of Bids. An IFB is issued which includes the specifications and all contractual terms and conditions applicable to the procurement, and a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the solicitation. The IFB must state the time, place and method for both receiving the bids and the public bid opening. All bids received will be date and time-stamped either physically or electronically (depending on the IFB requirements) and stored unopened in a secure place until the public bid opening. The IFB may include alternative submission requirements such as DropBox or other methods of electronic submission. A bidder may withdraw the bid at any time prior to the bid opening.

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

5.3.4. 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 shall not be considered.

5.3.4.1. 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 "Procurement Handbook for Public Housing Agencies." The request for relief

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and the supporting evidence must be received by the contracting officer within (7) days after the bid.

5.3.4.2. 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.

5.4. Competitive Proposals. Unlike sealed bidding, the competitive proposal method, also known as Request for Proposals (RFP), permits consideration of technical factors other than price; discussion with offerors concerning offers submitted; negotiation of contract price or estimated cost and other contract terms and conditions; revision of proposals before the final contractor selection; and the withdrawal of an offer at any time up until the point of award. Award is normally made on the basis of the proposal that represents the best overall value to the HACP, considering price and other factors, i.e., technical expertise, past experience, quality of proposed staffing, etc., set forth in the solicitation and not solely the lowest price.

5.4.1. Conditions for Use. Where conditions are not appropriate for the use of sealed bidding, competitive proposals may be used. Competitive proposals are the preferred method for procuring professional services that will exceed the small purchase threshold. As detailed within Section 7.2.B of HUD Procurement Handbook 7460.8 REV 2, “Only under limited circumstances would construction services be procured by competitive proposals.”

5.4.2. Form of Solicitation. Other than A/E services, developer-related services and energy performance contracting, competitive proposals shall be solicited through the issuance of an RFP. The RFP shall clearly identify the importance and relative value of each of the evaluation factors as well as any subfactors and price. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals until after award. The HACP shall assign price a specific weight in the evaluation factors, or the HACP may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.

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5.4.3. Evaluation. The proposals shall be evaluated only on the factors stated in the RFP. Where not apparent from the evaluation factors, the HACP shall establish an Evaluation Plan for each RFP. Generally, all RFPs shall be evaluated by an appropriately appointed Evaluation Committee. The Evaluation Committee shall be required to disclose any potential conflicts of interest and to sign a Non-Disclosure statement. An Evaluation Report, summarizing the results of the evaluation, shall be prepared prior to award of a contract.

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

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(revealing one offeror's price in an attempt to get another offeror to lower their price) is prohibited. Offerors shall not be directed to reduce their proposed prices to a specific amount in order to be considered for an award.

5.4.5. Award. After evaluation of the revised proposals, if any, the contract shall be awarded to the responsible firm whose technical approach to the project, qualifications, price and/or any other factors considered, are most advantageous to the HACP provided that the price is within the maximum total project or task order budgeted amount established for the specific property or activity or the price is between 75%-110% of the ICE. All offerors shall be notified of the award.

5.4.6. A/E Services. The HACP may contract for A/E services using Qualifications-based Selection (QBS) procedures, utilizing a Request for Qualifications (RFQ). Sealed bidding shall not be used for A/E solicitations. Under QBS procedures, competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. QBS procedures shall not be used to purchase other types of services, other than Energy Performance Contracting and Developer services, though architectural/engineering firms are potential sources.

5.5. Noncompetitive Proposals.

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

5.5.1.1. The item is available only from a single source, based on a good faith review of available sources;

5.5.1.2. An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the HACP, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any of the other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary simply to meet the emergency; or,

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5.5.1.3. HUD authorizes the use of noncompetitive proposals; or,

5.5.1.4. After solicitation of a number of sources, competition is determined inadequate. This is the situation where HACP solicits offers from multiple sources on more than one occasion 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.

5.5.2. Justification. Each procurement based on noncompetitive proposals shall be supported by a written justification for the selection of this method. The justification shall be approved in writing by the 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:

5.5.2.1. Description of the requirement;

5.5.2.2. History of prior purchases and their nature (competitive vs. noncompetitive);

5.5.2.3. The specific exception which applies;

5.5.2.4. Statement as to the unique circumstances that require award by noncompetitive proposals;

5.5.2.5. Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);

5.5.2.6. Statement as to efforts that will be taken in the future to promote competition for the requirement;

5.5.2.7. Signature by the Contracting Officer's supervisor (or someone above the level of the Contracting Officer); and

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

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- 5.6. Cooperative Purchasing/Intergovernmental Agreements.** The HACP may enter into State and/or local cooperative or intergovernmental agreements to purchase or use common supplies, equipment, or services. The decision to use an interagency agreement instead of conducting a direct procurement shall be based on economy and efficiency. If used, the interagency agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. The HACP may use Federal or State excess and surplus property instead of purchasing new equipment and property if feasible and if it will result in a reduction of project costs. The goods and services obtained under a cooperative purchasing agreement must have been procured in accordance with 2 CFR 200.317 through 200.327. The contracting officer must certify that the Procurement Methods used meet HACP requirements.

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.

- 5.7. 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 material 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 his 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.

5.8. CONTRACT MODIFICATIONS.

5.8.1. The Executive Director or his/her designee is authorized to approve contract modifications or change orders of less than \$50,000.00 of the original contract amount. Cumulative change orders greater than \$50,000 of the original contract amount or that increase the total contract by 20% will be presented to the Board. Change orders which cause the contract amount to exceed \$50,000 will be presented to the

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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.

5.8.2. 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.

6.0 INDEPENDENT COST ESTIMATE (ICE).

6.1. General. For all purchases above the Micro Purchase threshold, HACP shall prepare an ICE prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item to be purchased.

7.0 COST AND PRICE ANALYSIS (CPA).

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

7.1.1. Petty Cash and Micro Purchases. No formal cost or price analysis is required. Rather, the execution of a contract by the 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.

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

7.1.3. Sealed Bids. The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, and when the bid received is outside of the 75% to 110% range of the ICE, and where the HACP cannot reasonably determine price reasonableness, the HACP must conduct a cost analysis, consistent with federal guidelines, to ensure that the price paid is reasonable.

7.1.4. Competitive Proposals. The presence of adequate competition should generally be sufficient to establish price reasonableness. Where

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sufficient proposals are not received, the HACP must compare the price with the ICE amount(s). For competitive proposals where prices cannot be easily compared among offerors, where there is not adequate competition, or where the price received is outside of the 75% to 110% range of the ICE, the HACP must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable.

7.1.5. Contract Modifications. A cost analysis, consistent with federal guidelines, shall be conducted for all contract modifications for projects that were procured through Sealed Bids, Competitive Proposals, or Non-Competitive Proposals, or for projects originally procured through Small Purchase procedures. Modifications that increase the number of items considered unless part of the original bid are not permitted.

8.0 SOLICITATION AND ADVERTISING.

8.1. Method of Solicitation.

8.1.1. Petty Cash and Micro Purchases. The HACP may contact only one source if the price is considered reasonable set forth in 5.1 and 5.2.1.

8.1.2. Small Purchases. Quotes may be solicited orally, through fax, E-Procurement, or by any other reasonable method as set forth in 5.2.2.

8.1.3. Sealed Bids and Competitive Proposals. Solicitation must be done publicly. The HACP must use one or more following solicitation methods, provided that the method employed provides for meaningful competition.

8.1.3.1. Advertising in newspapers. Advertising in newspapers or other print mediums of local or general circulations.

8.1.3.2. Advertising in various trade journals or publications.

8.1.3.3. E-Procurement. The HACP may conduct its public procurements through the Internet using e-procurement systems. However, all e-procurements must otherwise be in compliance with 2 CFR 200.317 through 200.326, State and local requirements, and this HACP's procurement policy.

8.2. Time Frame. For sealed bids and competitive proposals the public notice should run not less than once each week for two consecutive weeks.

8.3. Form. Notices/advertisements should state, at a minimum, the place, date, and time that the bids or proposals are due, the solicitation number, a contact

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that can provide a copy of, and information about, the solicitation, and a brief description of the needed items(s).

8.4. Time Period for Submission of Bids. A minimum of 30 days shall generally be provided for preparation and submission of sealed bids and 15 days for competitive proposals. However, the Executive Director may allow for a shorter period under extraordinary circumstances.

8.5. Cancellation of Solicitations.

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

8.5.1.1. The supplies, services or construction is no longer required;

8.5.1.2. The funds are no longer available;

8.5.1.3. Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best; or,

8.5.1.4. Other similar reasons.

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

8.5.1.6. The supplies or services (including construction) are no longer required;

8.5.1.7. Ambiguous or otherwise inadequate specifications were part of the solicitation;

8.5.1.8. All factors of significance to the HACP were not considered;

8.5.1.9. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;

8.5.1.10. There is reason to believe that bids or proposals may not have been independently determined in open competition, may have been collusive, or may have been submitted in bad faith; or

8.5.1.11. For good cause of a similar nature when it is in the best interest of the HACP.

8.5.1.12. Prices were not between 75% and 110% of ICE.

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8.5.1.13. The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request.

8.5.1.14. A notice of cancellation shall be sent to all bidders/offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any re-solicitation or future procurement of similar items.

8.5.2. If all otherwise acceptable bids received in response to an IFB are at unreasonable prices not between 75% and 110% of 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 may re-solicit using an IFP.

8.5.3. If problems are found with the specifications, the HACP should cancel the solicitation, revise the specifications, and re-solicit using an IFB.

8.6. Credit (or Purchasing) Cards. Credit card usage should follow the rules for all other small purchases. For example, the Contracting Officer may use a credit card for Micro Purchases without obtaining additional quotes provided the price is considered reasonable. However, for amounts above the Micro Purchase level, the Contracting Officer would generally need to have obtained a reasonable number of quotes before purchasing via a credit card. When using credit cards, the HACP shall adopt reasonable safeguards to assure that they are used only for intended purposes (for instance, limiting the types of purchases or the amount of purchases that are permitted with credit cards).

9.0 BONDING REQUIREMENTS.

9.1. General. The standards under this section apply to construction contracts that exceed \$10,000. There are no bonding requirements for small purchases or for competitive proposals. The HACP may require bonds in these latter circumstances when deemed appropriate; however, non-construction contracts should generally not require bid bonds.

9.1.1. Bid Bonds. For construction contracts exceeding \$100,000, offerors shall be required to submit a bid guarantee from each bidder equivalent to 5% of the bid price.

9.1.2. Performance Bonds. For construction contracts exceeding \$10,000 (Ten Thousand Dollars) A performance bond in the amount of 100% of the contract price.

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9.1.3. Payment Bonds. For construction contracts exceeding \$100,000, the successful bidder shall furnish an assurance of completion. This assurance may be any one of the following four:

9.1.3.1. A performance and payment bond in a penal sum of 100% of the contract price; or

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

10.0 CONTRACTOR QUALIFICATIONS AND DUTIES.

10.1. Contractor Responsibility.

10.1.1. The HACP shall not award any contract until the prospective contractor, i.e., low responsive bidder, or successful offeror, has been determined to be responsible. A responsible bidder/offeror must:

10.1.2. Have adequate financial resources to perform the contract, or the ability to obtain them;

10.1.2.1. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all of the bidder's/offeror's existing commercial and governmental business commitments;

10.1.2.2. Have a satisfactory performance record;

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- 10.1.2.3. Have a satisfactory record of integrity and business ethics;
- 10.1.2.4. Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
- 10.1.2.5. Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,
- 10.1.2.6. Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended, debarred or under a HUD-imposed LDP.

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

10.1.4. HACP has established procedures for determining a contractor/offeror to non-responsible based on a contractor/offeror past or current performance in the form attached as Exhibit A.

10.2. 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 (2 CFR 200.317 through 200.326) or by other Federal agencies, i.e., Department of Labor for violation of labor regulations, when necessary to protect housing authorities in their business dealings. Prior to issuance of a contract, the HACP staff shall, as detailed within Section 10.2.H.1 and 10.2.H.2 of HUD Procurement Handbook 7460.8 REV 2, conduct the required searches within the HUD Limited Denial of Participation (LDP) system and the U.S. General Services Administration (GSA) System for Award Management (SAM) and place within the applicable contract file a printed copy of the results of each such search.

10.3. Vendor Lists. All interested businesses shall be given the opportunity to be included on vendor mailing lists. Any lists of persons, firms, or products which are used in the purchase of supplies and services (including construction) shall be kept current and include enough sources to ensure competition.

11.0 CONTRACT PRICING ARRANGEMENTS.

11.1. Contract Types. Any type of contract which is appropriate to the procurement, and which will promote the best interests of the HACP may be used, provided the cost -plus-a-percentage-of-cost and percentage-of-construction-cost

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methods are not used. All solicitations and contracts shall include the clauses and provisions necessary to define the rights and responsibilities of both the contractor and the HACP. For all cost reimbursement contracts, the HACP must include a written determination as to why no other contract type is suitable. Further, the contract must include a ceiling price that the contractor exceeds at its own risk.

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

11.2.1. The option is contained in the solicitation;

11.2.2. The option is a unilateral right of the HACP;

11.2.3. The contract states a limit on the additional quantities and the overall term of the contract; Total terms of the contracts including options shall not exceed five (5) years without approval from HUD.

11.2.3.1. The options are evaluated as part of the initial competition;

11.2.3.2. The contract states the period within which the options may be exercised;

11.2.3.3. The options may be exercised only at the price specified in or reasonably determinable from the contract; and

11.2.3.4. The options may be exercised only if determined to be more advantageous to the HACP than conducting a new procurement.

12.0 CONTRACT CLAUSES.

12.1. Contract Pricing Arrangements. All contracts shall identify the contract pricing arrangement as well as other pertinent terms and conditions, as determined by the HACP.

12.2. Required Forms. Additionally, the forms HUD-5369, 5369-A, 5369-B, 5369, 5370, 5370-C, and 51915 or 51915-A, which contain HUD-required clauses and certifications for contracts of more than the threshold for sealed bidding, as well as any forms/clauses as required by HUD for small purchases, shall be used in all corresponding solicitations and contracts issued by the HA.

12.3. Required Contract Clauses. The HACP shall ensure that each contract executed by the HACP contains the required contract clauses detailed within 2 CFR 200.317 through 200.326, Appendix II.

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12.4. Additional Clauses. For all contracts greater than the Micro Purchase threshold those contracts shall include clauses that provide as follows:

12.4.1. Examination and Retention of Contractor's Records

12.4.2. Right in Data and Patent Rights (Ownership and Proprietary Interest)

12.4.3. Energy Efficiency

12.4.4. Procurement of Recovered Materials.

12.4.5. HACP and its contractors shall be required comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Reduce Conservation and Recovery Act.

12.4.6. Privacy and data security as determined by HACP.

13.0 CONTRACT ADMINISTRATION.

13.1. General. 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.

14.0 SPECIFICATIONS.

14.1. General. All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying the HACP's 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. For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

14.2. Limitation. The following types of specifications shall be avoided:

14.2.1. Geographic restrictions not mandated or encouraged by applicable Federal law (except for A/E contracts, which may include geographic location as a selection factor if adequate competition is available).

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14.2.2. Brand name specifications (unless the specifications list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use).

14.2.3. Nothing in this procurement policy shall preempt any State licensing laws. Specifications shall be reviewed to ensure that organizational conflicts of interest do not occur.

15.0 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;

15.1. 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.

15.2. 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 ten (10) calendar 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 ten (10) calendar 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.

15.3. 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.

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- 15.4. 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.
- 15.5. 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.
- 15.6. Determination.** Upon completing an evaluation of the protest in accordance with 15.5, 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 as follows:
- A. If the determination is made prior to the execution of a contract, the remedies are limited to cancellation of the solicitation or proposed award or revision of the solicitation or proposed award to comply with law.
- B. If the determination is made after the execution of a contract and the person awarded the contract has not acted fraudulently or in bad faith then the contract with the consent of all parties may be modified to comply with the law or the contract may be terminated and the person awarded the contract shall be compensated for the actual and documented expenses reasonably incurred under the contract prior to the termination. Such compensation shall not include loss of anticipated profit, loss of use of money, or administrative or overhead costs or other related items.
- C. If the determination is made after the execution of a contract and the person awarded the contract has acted fraudulently or in bad faith the contract with the consent of all parties may be modified to comply with the law or the contract may be declared void by HACP at its sole discretion.
- 15.7. 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 or his designee (“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. Any appeal will not act as a stay of the award or execution of the contract.

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- 15.8. Local Agency Hearing.** The Executive Director shall hold a hearing pursuant to the Pennsylvania Local Agency Law, regarding the protest appeal set forth in Section 15.7. The Executive Director shall not be bound by the formal rules of evidence, but shall conduct the hearing with fairness.
- 15.9. Decision.** The Executive Director shall make a final determination and notify the protestant 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.
- 15.10. Appeal.** The Protestant may appeal the Executive Director's Determination in accordance with Pennsylvania Local Agency

16.0 ASSISTANCE TO SMALL AND OTHER BUSINESSES.

- 16.1. Required Efforts.** Consistent with Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, 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:
- 16.1.1.** Including such firms, when qualified, on solicitation mailing lists;
 - 16.1.2.** Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
 - 16.1.3.** Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
 - 16.1.4.** Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
 - 16.1.5.** Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
 - 16.1.6.** Including in contracts, to the greatest extent feasible, a clause requiring contractors, to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with the project to business concerns which provide opportunities to low-income residents, as described in 24 CFR Part 135 (so-called Section 3 businesses); and

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

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

16.2.1. **Compliance with minority-owned businesses (MBE), women-owned business enterprises (WBE).** 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.

16.3. **Definitions.**

16.3.1. A small business is defined as a business that is: independently owned; not dominate 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.

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

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

16.3.4. “Section 3 business” is a business defined under 24 CFRP Part 135.

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16.3.5. A labor surplus area business is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the DOL in 20 CFR Part 654, Subpart A, and in the list of labor surplus areas published by the Employment and Training Administration.

17.0 BOARD APPROVAL OF PROCUREMENT ACTIONS.

17.1. Authority. The Board appoints and delegates procurement authority to the Executive Director and/or his or her designee in the amount not to exceed \$50,000 and the Executive Director is responsible for ensuring that any procurement policies and procedures adopted are appropriate for the HACP. All procurements that exceed \$50,000 and any Modifications which increase the total contract by 20% or the cumulative value to exceed \$50,000, must have approval from the Board prior to award and/or contract execution.

18.0 DELEGATION OF CONTRACTING AUTHORITY.

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

18.2. Procedures. Further, and in accordance with this delegation of authority, the ED shall, where necessary is the Executive Director's opinion, establish operational procedures (such as a procurement manual or standard operating procedures) to implement this Policy.

19.0 DOCUMENTATION.

19.1. Required Records. HACP must maintain records sufficient to detail the significant history of each procurement action. These records shall include, but shall not necessarily be limited to, the following:

- 19.1.1.** Original scope of service /specifications
- 19.1.2.** Independent Cost Estimate (ICE)
- 19.1.3.** Copies of all advertisements including internet
- 19.1.4.** Solicitation Quotes, Invitations for Bid, Requests for Proposals and/or Request for Qualifications
- 19.1.5.** Pre-Conference notes
- 19.1.6.** Bids and/or responses
- 19.1.7.** Bid Tab list

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- 19.1.8. Documents supporting responses and questions raised through process
- 19.1.9. Correspondence related to bid process
- 19.1.10. Score Sheet if applicable
- 19.1.11. Summary of score sheet if applicable
- 19.1.12. HACP Board of Approval; if any
- 19.1.13. MBE/WBE Approval; if any
- 19.1.14. Section 3 documentation, if applicable
- 19.1.15. Evidence of debarment check
- 19.1.16. Award Letter
- 19.1.17. Letters to unsuccessful bidders
- 19.1.18. Contracts with any addendums
- 19.1.19. Notice to Proceed

19.2. Record Retention. Records are to be retained for a period of four years after final payment and all matters pertaining to the contact are closed.

20.0 DISPOSITION OF SURPLUS PROPERTY.

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

20.2. 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.

20.2.1. 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.

20.2.2. 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.

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20.2.3. 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.

21.0 FUNDING AVAILABILITY.

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

22.0 SELF-CERTIFICATION.

22.1. General. The HACP self-certifies that this Procurement Policy is consistent with the essential elements of Federal regulations and, as such, the HACP is exempt from prior HUD review and approval of individual procurement action.

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EXHIBIT "A"

**Procedure for Non-Responsible Contractor Determination Pursuant to Section 10.1.3 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.

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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.
- 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 the 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.

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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 timeline 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

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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.