

HOUSING AUTHORITY OF THE COUNTY OF SAN MATEO

PROCUREMENT POLICY

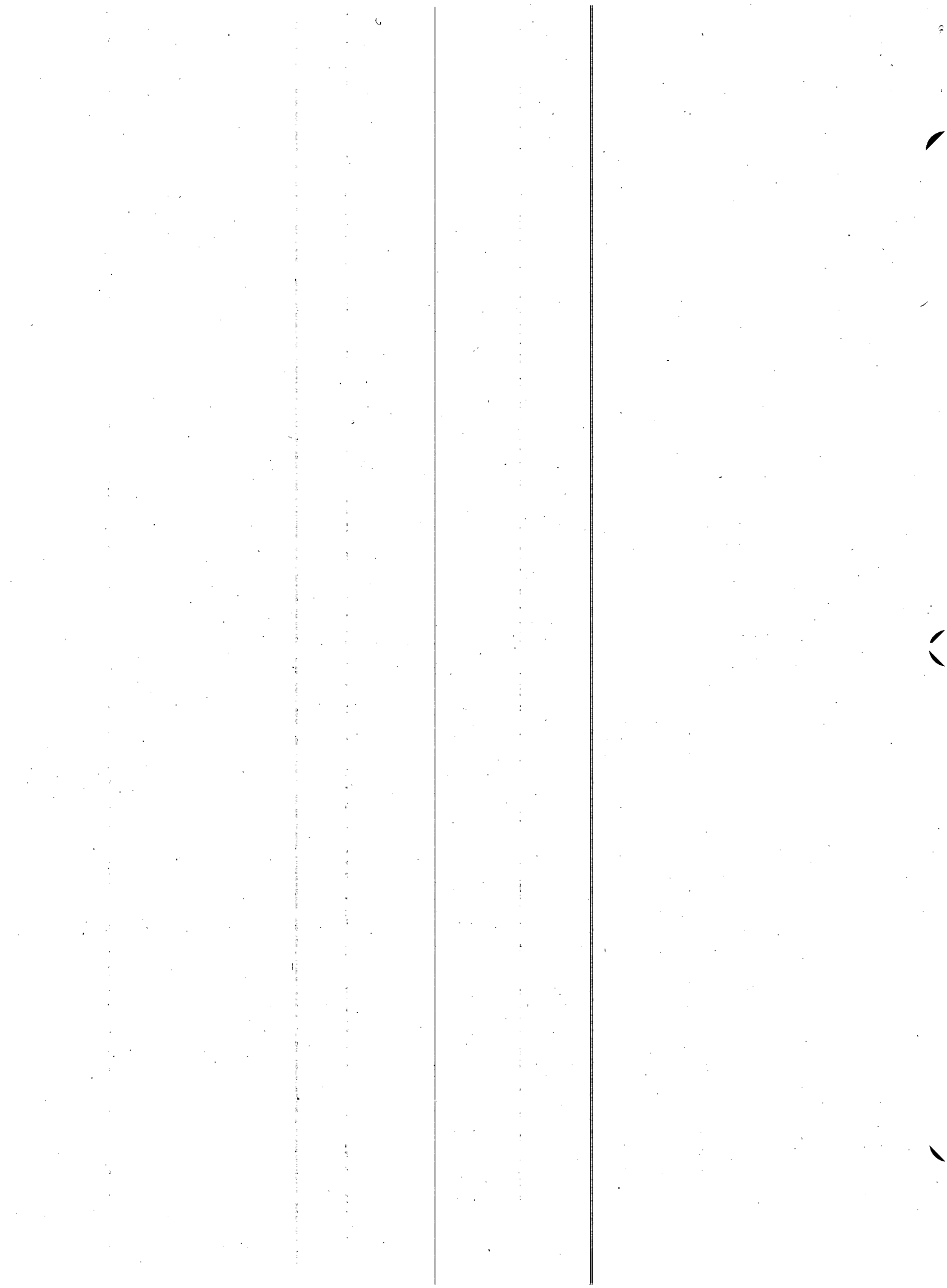


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I. POLICY STATEMENT

It is the policy of the Housing Authority of the County of San Mateo that all contracts for services and/or materials shall be in accordance with the Federal Procurement Requirements of 24 CFR (Code of Federal Regulations) Parts 85.36 and 941 Subpart F, State, and Local Laws and Regulations that are applicable to this Housing Authority.

II. GENERAL PROVISIONS

A. Purpose

The purpose of this Procurement Policy is to:

- 1) Provide for the fair and equitable treatment of all persons or firms involved in purchasing by the Housing Authority of the County of San Mateo (HACSM);
- 2) Assure that supplies, services and construction are procured efficiently, effectively and at the most favorable prices available to the HACSM;
- 3) Promote competition in contracting;
- 4) Provide safeguards for maintaining a procurement system of quality and integrity; and
- 5) Assure that HACSM's purchasing actions are in full compliance with applicable federal standards, HUD regulations and state and local laws.

B. Application

This Procurement Policy applies to all contracts for the procurement of supplies, services and construction entered into by the HACSM after the effective date of this Policy. It shall apply to every expenditure of funds by the HACSM for public purchasing, irrespective of the source of funds, including contracts which do not involve an obligation of funds (such as concession contracts); however, nothing in this Policy shall prevent the HACSM from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with law. The term "procurement", as used in this Policy, includes both contracts and modifications (including change orders) for construction or services, as well as purchase, lease or rental of supplies and equipment.

C. Public Access to Procurement Information

Procurement information shall be a matter of public record to the extent provided in the Public Information Act, and shall be available to the public as provided in that statute.

III. PROCUREMENT AUTHORITY AND ADMINISTRATION

A. All Procurement

The Executive Director is to be appointed and designated as the Contracting and Procurement Officer of the Housing Authority of the County of San Mateo. Any later changes to this policy shall be submitted annually to the Board of Commissioners of the Housing Authority of the County of San Mateo for their review and approval along with the Annual Agency Plan.. The Executive Director shall issue operational procedures to implement this Policy. The Executive Director shall also establish a system of sanctions for violations of the ethical standards described in Section X below, consistent with State Law.

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

- 1) Procurement requirements are subject to an annual planning process to assure efficient and economical purchasing;
- 2) 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;
- 3) For procurement other than small purchases:
 - a. Public notice is given of each upcoming procurement at least fifteen (15) days before solicitation is issued;
 - b. Responses to such notices are honored to the maximum extent practical;
 - c. A minimum of fifteen (15) days is provided for preparation and submission of bids or proposals; and
 - d. Notice of contract award is made available to the public;

- 4) Solicitation procedures are conducted in full compliance with Federal Standards stated in 24 CFR 85.36, or state and local laws that are more stringent, provided they are consistent with 24 CFR 85.36;
- 5) An independent cost estimate is prepared before solicitation issuance and is appropriately safeguarded for each procurement above the small purchase limitation, and a cost or price analysis is conducted of the responses received for all procurements;
- 6) Contract award is made to the responsive and responsible bidder, offering the lowest price (for sealed bid contracts) or contract award is made to the offer or whose proposal offers the greatest value to HACSM, considering price, technical and other factors as specified in the solicitations (for contracts awarded based on competitive proposals); unsuccessful firms are notified within ten working days after contract award;
- 7) 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; and
- 8) The HACSM complies with applicable HUD review requirements.

C. Changes

Any later changes to this policy shall be submitted annually to the Board of Commissioners of the Housing Authority of the County of San Mateo for their review and approval along with the Annual Agency Plan.

IV. PROCUREMENT METHODS

A. Selection Method

If it has been decided that the HACSM will directly purchase the required items, one of the following procurement methods shall be chosen, based on the nature and anticipated dollar value of the total requirement.

B. Small Purchase Procedures**1) General**

Any contract not exceeding \$100,000 may be made in accordance with the small purchase procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section (except as may be reasonably necessary to comply with Section 8 of this Policy).

2) Petty Cash Purchases

Small purchases under \$100.00 which can be satisfied by local sources may be processed through the use of a petty cash account. The Contracting Officer shall ensure that:

- a. The account is established in an amount sufficient to cover small purchases made during a reasonable period;
- b. Security is maintained and only authorized individuals have access to the account;
- c. The account is periodically reconciled and replenished by submission of a voucher to the HACSM finance officer; and
- d. 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) Small Purchases of \$2,500 or Less

For small purchases below \$2,500, only one quotation need be solicited if the price received is considered reasonable. Such purchases must be distributed equitably among qualified sources. If practicable, a quotation shall be solicited from other than the previous source before placing a repeat order.

4) Small Purchases over \$2,500

For small purchases in excess of \$2,500 but not exceeding \$100,000, no fewer than three offerors shall be solicited to submit price quotations, which may be obtained orally, by telephone or in writing, as allowed by state or local laws.

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. 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 as a public record.

C. Sealed Bids

1) Conditions for Use

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

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

Sealed bidding is the preferred method for construction procurement. For procurements under the Capital Funds Program (CFP), sealed bidding shall be used for all construction and equipment contracts exceeding the small purchase limitation. For professional services contracts, sealed bidding should not be used.

2) Solicitation and Receipt of Bids

- a. 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.
- b. The invitation for bids shall state the time and place for both the receipt of bids and the public bid opening.

- c. All bids received shall be time-stamped but not opened and shall be stored in a secure place until bid opening.
- d. A bidder may withdraw its bid at any time prior to bid opening.

3) Bid Opening and Award

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

4) Mistakes in Bids

- a. Correction or withdrawal of inadvertently erroneous bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the invitation for bids prior to the time set for bid opening.
- b. After bid opening, correction in bids shall be permitted only if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake and the bid price actually intended.
- c. A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear, or the bidder submits convincing evidence that a mistake was made.

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

5) Bonds

In addition to the other requirements of the Policy, the following requirements apply:

- a. For construction contracts exceeding \$100,000, other than those in 5b and 5c below, contractors shall be required by state or local laws or regulations:
 - 1) A bid guarantee from each bidder equivalent to 5% of the bid price;
 - 2) A performance bond for 100% of the contract price; and
 - 3) A payment bond for 100% of the contract price.
- b. In the case if construction of conventional development projects funded pursuant to the US Housing Act of 1937, the contractor shall be required to submit the following, unless otherwise required by state or local laws or regulations:
 - 1) A bid guarantee from each bidder equivalent to 5% of the bid price; and
 - 2) One of the following:
 - i) A performance and payment bond for 100% of the contract price;
 - ii) A 20% cash escrow; or
 - iii) A 25% irrevocable letter of credit.
- c. In the case of construction under the Capital Funds Program (CFP) funded pursuant to the US Housing Act of 1937, for any contract over \$25,000 the contractor shall be required to submit the following, unless otherwise required by state or local laws or regulations.

- 1) A bid guarantee from each bidder equivalent to 5% of the bid price; and
- 2) One of the following:
 - i) A performance and payment bond for 100% of the contract price;
 - ii) Separate performance and payment bonds, each for 50% or more of the contract price;
 - iii) A 20% cash escrow; or
 - iv) A 25% irrevocable letter of credit.

D. Competitive Proposals

1) Conditions for Use

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

2) Solicitation

- a. The Request for Proposals (RFP) 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.
- b. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued.
- c. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals.
- d. The proposals shall be evaluated only on the criteria stated in the request for proposals.

3) Negotiations

- a. Unless there is no need for negotiations with any of the offerors, negotiations shall be conducted with offerors who

submit proposals determined to have a reasonable chance of being selected for award, based on evaluation against the technical and price factors as specified on the RFP.

- b. Such offerors shall be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals.
- c. 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, and conformance to, the solicitation requirements.
- d. No offeror shall be provided information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal. Offerors shall not be directed to reduce their proposed prices to a specific amount in order to be considered for award.
- e. A common deadline shall be established for receipt of proposal revisions based on negotiations.

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 most advantageous to the HACSM.

5) Architect-Engineer Services

- a. Architect-engineer services in the excess of the small purchase limitation may be obtained by either competitive proposal method or qualifications-based selection procedures, unless state law mandates the specific method.
- b. Sealed bidding, however, shall not be used to obtain architecture-engineer services.
- c. Under qualifications-based selection procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiations of fair and reasonable compensation. Price is not used as a selection factor under this method.

- d. Qualifications-based selection procedures shall not be used to purchase other types of services even though architect-engineer firms are potential sources.

E. Noncompetitive Proposals

1) Conditions for Use

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

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

2) Justification

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

3) Price Reasonableness

The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing a cost analysis, as described in paragraph IV F below.

F. Cost and Price Analysis

1) General

A cost or price analysis shall be performed for all procurement actions, including contract modifications. The method of analysis shall be determined as follows. The degree of analysis shall depend on the facts surrounding each procurement.

2) Submission of Cost or Pricing Information

If the procurement is based on noncompetitive proposals, or when only one offer is received, or for other procurements as deemed necessary by the HACSM (e.g. when contracting for professional, consulting or architecture-engineering services) the offeror shall be required to submit:

- a. A cost breakdown showing projected costs and profit;
- b. Commercial pricing and sales information, sufficient to enable the HACSM to verify the reasonableness of the proposed price as a catalog or market price of a commercial product sold in substantial quantities to the general public; or
- c. Documentation showing that the offered price is set by law or regulation.

3) Cost Analysis

Cost analysis shall be performed if an offeror/contractor is required to submit a cost breakdown as part of its proposal. When a cost breakdown is submitted:

- a. A cost analysis shall be performed of the individual cost elements;
- b. The HACSM shall have a right to audit the contractor's books and record pertinent to such costs; and
- c. Profit shall be analyzed separately.

Costs shall be allowable to the extent that they are consistent with applicable federal cost principles (for commercial firms, Subpart 31.2 of the Federal Acquisitions Regulations, 48 CFR Chapter 1). In establishing profit, the HACSM shall consider factors such as:

- a. The complexity and risk of the work involved;
- b. The contractor's investment and productivity;
- c. The amount of subcontracting, the quality of past performance; and
- d. Industry profit rates in the area for similar work.

4) **Price Analysis**

A comparison of prices shall be used in all cases other than those described in Section IV F 3 (Cost Analysis) above.

G. Cancellation of Solicitations

- 1) An invitation for bids, request for proposals, or other solicitation may be canceled before offers are due if:
 - a. The HACSM no longer requires the supplies, services, or construction;
 - b. The HACSM can no longer reasonably expect to fund the procurement;
 - c. Proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable; or
 - d. Similar reasons.
- 2) A solicitation may be canceled and all bids or proposals that have already been received may be rejected if:
 - a. The supplies, services, or construction are no longer required;
 - b. Ambiguous or otherwise inadequate specifications were part of the solicitation;
 - c. The solicitation did not provide for consideration of all factors of significance to the HACSM;

- d. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
 - e. There is reason to believe that bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or
 - f. For good cause of a similar nature when it is in the best interest of the HACSM.
- 3) The reason for cancellation shall be documented in the procurement file and the reason for cancellation and/or rejection shall be provided upon request to any offeror solicited.
 - 4) A notice of cancellation shall be sent to all 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.
 - 5) If all otherwise acceptable bids received in response to an invitation for bids are at unreasonable prices, or only one bid is received and the price is unreasonable, the HACSM shall cancel the solicitation and either:
 - a. Re-solicit using a request for proposal; or
 - b. Complete the procurement by using the competitive proposals method following Section IV D 3 and IV D 4 above (when more than one otherwise acceptable bid has been received), or by using the noncompetitive proposals method and following Section IV E 2 (when only one bid is received at an unreasonable price); provided that the Contracting Officer determines in writing that such action is appropriate, all bidders are informed of the HACSM's intent to negotiate, and each responsible bidder is given a reasonable opportunity to negotiate.

H. Cooperative Purchasing

The HACSM may enter into state and local intergovernmental agreements or may use existing state and local contracts to purchase or use common goods and services.

The decision to use an intergovernmental agreement or conduct a direct procurement shall be based on economy and efficiency. If used, the intergovernmental agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions.

V. CONTRACTOR QUALIFICATIONS AND DUTIES

A. Contractor Responsibility

- 1) Procurements shall be conducted only with responsible contractors, i.e., those who have the technical and financial competence to perform and who have a satisfactory record of integrity.
- 2) Before awarding a contract, the HACSM shall review the proposed contractor's ability to perform the contract successfully, considering factors such as:
 - a. The contractor's integrity (including a review of the List of Parties Excluded from Federal Procurement and Non-procurement Programs established by the US General Services Administration);
 - b. Compliance with public policy;
 - c. Record of past performance (including contacting previous clients of the contractor, such as other Public Housing Agencies); and
 - d. Financial and technical resources.
- 3) If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the contract file, and the prospective contractor shall be advised of the reasons for the determination.

B. Suspension and Debarment

Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined ineligible by HUD in accordance with HUD regulations (24 CFR Part 24) when necessary to protect the HACSM in its business dealings.

C. Qualified Bidder's List

- 1) Interested business shall be given an opportunity to be included on qualified bidder's list.
- 2) Any pre-qualified lists of persons, firms, or products which are used in the procurement of supplies and services shall be kept current and shall include enough qualified sources to ensure competition.
- 3) Firms shall not be precluded from qualifying during the solicitation period.
- 4) Solicitation mailing lists of potential contractors shall include, but not be limited to, such pre-qualified suppliers.

VI. TYPES OF CONTRACTS, CLAUSES, AND CONTRACT ADMINISTRATION

A. Contract Types

- 1) Any type of contract which is appropriate to the procurement and which will promote the best interest of the HACSM may be used, provided that the cost-plus-a-percentage-of-cost and percentage-of-construction-cost methods are prohibited.
- 2) All procurement shall include the clauses and provisions necessary to define the rights and responsibilities of the parties.
- 3) A cost reimbursement contract shall not be used unless it is likely to be less costly or it is impracticable to satisfy the HACSM's needs otherwise, and the proposed contractor's accounting system is adequate to allocate costs in accordance with applicable cost principles (for commercial firms, Subpart 31.2 of the Federal Acquisitions Regulations (FAR), found in 48 CFR Chapter 1).
- 4) A time and material contract may be used only if a written determination is made that no other contract type is suitable, and the contract includes a ceiling price that the contractor exceeds at its own risk.

B. Options

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

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

C. Contract Clauses

In addition to containing a clause identifying the contract type, all contracts shall include any clauses required by federal statutes, executive orders, and their implementing regulations as provided in 24 CFR 85.36 (i), such as the following:

- 1) Termination for convenience;
- 2) Termination for default;
- 3) Equal opportunity employment;
- 4) Anti-Kickback Act;
- 5) Davis-Bacon Act;
- 6) Contract Work Hours and Safety Standards Act, reporting requirements;
- 7) Patent rights;
- 8) Rights in data;

- 9) Examination of records by Comptroller General, retention of record for three years after closeout;
- 10) Clean air and water;
- 11) Energy efficiency standards;
- 12) Bid protest and contract claims;
- 13) Value engineering; and
- 14) Payment of funds to influence certain Federal transactions.

The operational procedures required by Section 2a of this Policy shall contain the text of all clauses and required certifications (such as required non-collusive affidavits) used by the HACSM.

D. Contract Administration

A contract administration system designed to insure that contractors perform in accordance with their contracts shall be maintained. The operational procedures required by Section III A above shall contain guidelines for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on construction contracts, and similar matters. For cost reimbursement contracts with commercial firms, costs are allowable only to the extent that they are consistent with the cost principles in FAR Subpart 31.2.

VII. SPECIFICATIONS

A. General

- 1) All specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying the HACSM's needs.
- 2) Specifications shall be reviewed prior to solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items.

- 3) Functional 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 (but see section IX, Assistance to Small and Other Businesses below).
- 4) For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form or procurement.

B. Limitations

The following specification limitations shall be avoided:

- 1) Geographic restrictions not mandated or encouraged by applicable federal law (except for architect/engineer contracts, which may include geographic locations as a selection factor if adequate competition is available);
- 2) Unnecessary bonding or experience requirements;
- 3) Brand name specifications (unless a written determination is made that only the identified item will satisfy the HACSM's needs); and
- 4) Brand name or equal specifications (unless they list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use).

Nothing in this Procurement Policy shall preempt any state licensing laws. Specifications shall be scrutinized to ensure that organizational conflicts of interest do not occur (for example, having a consultant perform a study of the HACSM's computer needs and then allowing that consultant to compete for the subsequent contract for computers).

VIII. APPEALS AND REMEDIES

A. General

- 1) It is the HACSM's policy to resolve all contractual issues informally at the administrative level, without litigation. Disputes shall not be referred to HUD until all administrative remedies have been exhausted.

- 2) When appropriate, the HACSM may consider the use of informal discussions between the parties by individuals who did not participate substantially in the matter in dispute, to help resolve the differences.
- 3) HUD will only review protests in cases of violations of federal law or regulations and failure of the HACSM to review a complaint or protest.

B. Bid Protests

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

C. Contract Claims

All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer or designee for a written decision. The contractor may request a conference on the claim. The Contracting Officer's decision shall inform the contractor of its appeal rights to the Board of Commissioners.

IX. ASSISTANCE TO SMALL AND OTHER BUSINESSES

A. Required Efforts

- 1) Consistent with Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, the HACSM shall make efforts to ensure that small and minority owned businesses, women's business enterprises, labor surplus area businesses, and

individuals or firms located in or owned in substantial part by persons residing in the area of a HACSM project are used when possible. Such efforts shall include, but shall not be limited to:

- a. Including such firms, when qualified, on solicitation mailing lists;
 - b. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
 - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
 - d. Establishing delivery schedules, where the requirement permits, which encourages participation by such firms;
 - e. Using the services and assistance of Small Business Administration and the Minority Business Development Agency of the Department of Commerce;
 - f. Including in contracts a clause requiring contractors, to the greatest extent feasible, to provide opportunities for training and employment for lower income residents of the project area and to award subcontractors for work in connection with the project to business concerns which are located in, or owned in substantial part by persons residing in the area of the project, as described in 24 CFR 135; and
 - g. Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed in **A 1 a** through **A 1 f** above.
- 2) Goals may be established by the HACSM periodically for participation by small businesses, minority owned businesses, women's business enterprises, labor surplus area businesses, and business concerns which are located in, or owned in substantial part by persons residing in the area of the project, in the HACSM's prime contracts and subcontracting opportunities.

B. Definitions

- 1) A small business is defined as a business which is:
 - a. Independently owned;

- b.* Not dominant in its field of operation; and
- c.* Not an affiliate or subsidiary of a business dominant in its field of operation.

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

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

Minority group members include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.
- 3) A women's business enterprise is defined as a business that is at least 51% owned by a woman or women who are US citizens and who also control or operate the business.
- 4) A labor surplus area business is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the US Department of Labor in 20 CFR 654, Subpart A, and in lists of labor surplus areas published by the Employment and Training Administration.
- 5) A business concern located in the area of a project, is defined as an individual or firm:
 - a.* Located within the relevant Section 3 covered project area, as determined pursuant to 24 CFR 135.15;
 - b.* Listed on HUD's registry of eligible business concerns; and

- c. Meeting the definition of small business above.

A business concern owned in substantial part by persons residing in the area of the project is defined as a business concern which is:

- a. 51% or more owned by persons residing with the Section 3 covered project;
- b. Owned by persons considered by the US Small Business Administration to be socially or economically disadvantaged
- c. Listed in HUD's registry of eligible business concerns; and
- d. Meeting the definition of small business above.

X. ETHICS IN PUBLIC CONTRACTING

A. General

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

B. Conflict of Interest

No employee, officer, or agent of HACSM shall participate directly or indirectly in the selection or in the award or administration of any contract if a conflict of interest, real or apparent, would be involved. Such conflict would arise when a financial or other interest in a firm selected for award is held by:

- 1) An employee, officer or agent involved in making the award (Participating Employee);
- 2) A relative of a Participating Employee (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, stepdaughter, stepson, stepmother, stepfather, stepbrother, stepsister, half brother, half sister);
- 3) The business partner or a domestic partner of a Participating Employee; or
- 4) An organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

C. Gratuities, Kickbacks, and Use of Confidential Information

HACSM officers, employee or agents shall not solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors or parties to subcontractors, and shall not knowingly use confidential information for actual or anticipated personal gain.

D. Prohibition Against Contingent Fees

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

