

Housing Authority of the County of San Mateo
Capital Fund Stimulus Grant Procurement Policy
An Amendment to the Agency's current Procurement Policy

In accordance with the U.S. Department of Housing and Urban Development PIH Notice 2009-12 (HA), the Housing Authority of the County of San Mateo (HACSM) hereby amends our current procurement policy in order to expedite and facilitate the use of American Recovery and Reinvestment Act (ARRA) Capital Fund Formula Grants. **This amended policy can be used only for procurements under the ARRA Capital Fund Stimulus Grants.**

A. General Provisions

1. **Priorities:** HACSM shall give priority to Capital Fund Stimulus Grant projects that can award contracts based on bids within 120 days from February 17, 2009.
2. **State and Local:** As provided for in HUD PIH Notice 2009-12 (HA) and the ARRA, any requirements relating to the procurement of goods and services arising under state and local laws and regulations shall not apply to Capital Fund Stimulus Grants. HACSM shall follow the Code of Federal Regulations Title 24, Part 85 requirements.
3. **Noncompetitive Proposals:** According to 24 CFR 85.36(d)(4), if solicitation of a proposal is only from one source or if HACSM finds that after solicitation of a number of sources, that competition is inadequate, HACSM may award the contract noncompetitively where small purchase procedures, sealed bids or competitive proposals are infeasible and one of the circumstances in 85.36(d)(4)(i) applies. One such circumstance is public exigency that will not permit a delay resulting from competitive solicitation (85.36(d)(4)(i)(B)). If HACSM finds that other competitive methods of procurement are infeasible, it may use the public exigency circumstance based on the purpose and requirements of the Recovery Act (ARRA). Section 3 of the Recovery Act provides that these funds shall be managed and expended to achieve the purposes specified including commencing expenditures and activities as quickly as possible consistent with prudent management. Further, the Recovery Act has imposed expeditious obligation and expenditure requirements on the Capital Fund Stimulus Grants. It is necessary for HACSM to expedite and facilitate the use of these grants. HACSM may use the noncompetitive proposals method, but will do so on a contract-by-contract basis and in compliance with Part 85 requirements including the requirement for a cost analysis and the conflict of interest requirement. HACSM will ensure that the noncompetitive proposals process followed is per this policy. Further, HACSM will maintain records sufficient to detail the significant history of each contract's procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of

contract type, contractor selection or rejection, and the basis for the contract price (85.36(b)(9)). HACSM will not have a HUD pre-award review for noncompetitive proposals as stated in Section 8.4(C), Chapter 8 of HUD Handbook No. 7460.8 Rev 2. However, HACSM will make available, upon HUD's request, the HACSM Capital Fund Stimulus Grant Procurement Policy and any documents requested relating to procurement activity as stated in 24 CFR 85.36(g).

4. Force Account (In-House direct Labor where HACSM acts as general contractor): To the extent feasible, HACSM will consider employing existing or additional force account laborers on either a permanent or a temporary basis to perform Capital Fund stimulus grant work. See 24 CFR 968.105 and 968.120. Prior HUD approval will not be requested specifically for force account labor, but such work will be incorporated into the Capital Fund planning, budgeting and reporting documents.
5. Buy American: HACSM will follow Buy American requirements of section 1605 of the Recovery Act and use only iron, steel and manufactured goods produced in the United States in their projects.
6. Wage Rate Requirements: All laborers and mechanics employed by our Agency's contractors and subcontractors on projects funded under the Capital Fund Stimulus Grant shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.
7. Unless changed by this amended policy, all other provisions of our current procurement policy apply.

B. Purchasing Methods for Public Exigency Circumstances

Based upon determination that the required goods or services will be purchased directly by HACSM under public exigency circumstances, one of the following procurement methods will be chosen, based on the nature and anticipated dollar value of the total requirement.

1. Small Purchase Procedures

- a. General. Any purchase 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 in order to constitute a small purchase, thereby avoiding the more formal requirements associated with the other procurement methods discussed below, except as may be reasonably necessary to comply with Section 3, MBE, WBE, DBE, and other requirements.

- b. Micro Purchases under exigency circumstances are defined as purchases less than **\$15,000** Only one price quote is required if the quote is considered reasonable.

Quotes may be obtained orally (either in person or by phone), by fax, in writing, email or through e-procurement. Award shall be made to the qualified vendor that provides the best value to the Agency. If award is to be made for reasons other than the lowest price, the Agency shall provide documentation in the contract file.

Small purchases must be distributed among qualified sources to the extent feasible, and to promote competition.

HACSM shall not break down requirements aggregating more than the small purchase (or Micro Purchase) threshold into several purchases that are less than the applicable threshold to merely (1) allow use of the small purchases procedures or (2) avoid any requirements that apply to purchases that exceed the Micro Purchase threshold.

No formal cost or price analysis is required for petty cash or micro purchases. The Contracting Officer's execution of a contract, purchase or other means shall serve as the determination that the price obtained is reasonable, which may be based on the Contracting Officer's prior experience or other factors.

- c. Small Purchases above the Micro Purchase threshold of **\$15,000** and under **\$100,000**

HACSM shall obtain a reasonable number of quotes (preferably three).

For all purchases above the Micro Purchase threshold of \$15,000, HACSM shall prepare an Independent Cost Estimate (ICE) prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item to be purchased.

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 Independent Cost Estimate (ICE), or any other reasonable basis.

Award shall be offered, providing lowest acceptable quotation, unless justified in writing based on price and other specific factors. If non-price factors are used, they shall be made known to all those solicited.

2. Competitive Proposals

Competitive proposals are the preferred method for professional services that exceed the small purchase threshold of **\$100,000** and for purchases that are not appropriate for sealed bidding.

The competitive proposal method, unlike sealed bidding, allows:

- 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;
- revisions of proposals before the final contractor selection; and the
- withdrawal of an offer at anytime up until the point of award.

The award is usually made on the basis of the proposal that represents the best overall value to HACSM, considering price and other factors, e.g., technical expertise, past experience, quality of proposed staffing, etc., as set forth in the solicitation and not solely the lowest price.

Goods and services costing over **\$100,000** generally shall be procured on the basis of competitive proposals when there is an adequate method for evaluating proposals and the use of sealed bids is not appropriate. Purchase authorization shall be stamped or signed by the Executive Director (or designee) to indicate that sufficient and unencumbered funds are available for payment.

a. Form of Solicitation

Competitive proposals, for other than Architectural/Engineering (A/E) services, 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 sub-factors 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 in order to prevent disclosure of the number and identity of the offerors, and the contents of their proposals until **after** award. HACSM may assign a specific weight to price in the evaluation criteria or may consider price in conjunction with technical factors. In either case, the method for evaluating price shall be established in the RFP.

b. Evaluation

Proposals shall be evaluated only on the criteria stated in the RFP. HACSM shall establish an Evaluation Plan for each RFP when not apparent from the evaluation criteria. Generally, an appropriately appointed Evaluation Committee shall evaluate all RFPs. The Evaluation Committee shall be required to disclose any potential conflicts of interest and to sign a Non-Disclosure statement. An Evaluation Report that summarizes the results of the evaluation shall be prepared prior to the contract award.

c. Negotiations

Negotiations are exchanges (in either a competitive or sole source environment) between HACSM and offerors that are undertaken with the intent of allowing the offeror to revise its proposal.

Negotiations take place after establishment of the competitive range and are called discussions. The primary objective of discussions is to maximize HACSM's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation.

Discussions are tailored to each offeror's proposal and shall be conducted by the contracting officer with each offeror within the competitive range.

Negotiations may include bargaining that 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.

Negotiations shall be conducted with all offerors who submit a proposal and who are determined to have a reasonable chance of being selected for award, **unless it is determined that negotiations are not needed with any of the offerors.**

The determination is based on the relative score of the proposals as they are evaluated and rated according to the technical and price factors specified in the RFP.

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.

The contracting officer shall indicate to, or discuss with, each offeror still being considered for award; significant weaknesses, deficiencies, and other aspects of its proposal (such as cost, price, technical approach, past performance, and terms and conditions) that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposer's potential for award.

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 HACSM 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 government's price analysis, market research, and other reviews have identified as reasonable.

"Auctioning" (revealing one offeror's price in an attempt to get another offeror to lower their price) is prohibited.

d. 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 HACSM, provided that the price is within the maximum total project budgeted amount established for the specific property or activity.

Architectural/Engineering Services in excess of the small purchase limitation may be obtained by competitive proposals for non-design or design/build work. Selected offerors are subject to negotiation of fair and reasonable compensation. HACSM must contract for A/E services (e.g. design) using Qualifications Based Selection (QBS) procedures, utilizing an RFQ. Sealed bidding shall not be used for A/E solicitations. Under QBS procedures, competitor's 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, though architectural/engineering firms are potential sources.

Alternative Procurement Methods for A/E Services:

HACSM may choose other alternative procurement methods for A/E Services. However, all said alternatives will follow the Qualification Based Selection (QBS) process mandated by state law for design and/or design/build A/E services.

Alternative procurement methods may include full service, design/construction, and indefinite quantity contract approaches.

3. Sealed Bids (contracts that exceed small purchase threshold – (\$100,000))

Sealed bidding shall be used for contracts that exceed the small purchase threshold and that are not competitive proposals or non-competitive proposals, as these terms are defined in this document. Under sealed bids, HACSM publicly solicits bids and awards a firm fixed-price contract (lump sum or unit price) to the **responsible** bidder whose bid, conforming with all the material terms and conditions of the Invitation for Bid (IFB), is the lowest in price. Sealed bidding is the preferred method for procuring construction, supply, and non-complex service contracts that are expected to exceed \$100,000.

Conditions for Using Sealed Bids

HACSM 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.

Solicitation and Receipt of Bids

An Invitation for Bid (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 and place for both receiving the bids and the public bid opening. All bids received will be date and time-stamped and stored unopened in a secure place until the public bid opening. A bidder may withdraw the bid at any time prior to the bid opening.

Bid Opening and Award

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

Mistake in Bids

(1) Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the invitation for bids prior to the time set for bid opening.

(2) After bid opening, corrections in bids may be permitted only if the bidder can show by clear and convincing evidence that a mistake of a non-judgmental character was made, the nature of the mistake, and the bid price actually intended.

(3) A low bidder alleging a non-judgmental 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.

(4) After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Agency or fair competition shall be permitted.

(5) All decisions to allow correction or withdrawal of bid mistakes shall be supported by a written determination signed by the Contracting Officer.

4. Non-Competitive Proposals

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

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

2. An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the HACSM or its residents, 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;

3. HUD authorizes the use of noncompetitive proposals such as is the case of ARRA Capital Fund Stimulus Grants; or

4. After solicitation of a number of sources, competition is determined inadequate.

b. **Justification.** Each procurement based on non-competitive proposals shall be supported by a written justification for the selection of this method. The justification shall be approved in writing by the responsible Contracting Officer.

The justification, to be included in the procurement file, should include the following:

1. Description of the requirement and selection of contract types;
2. History of prior purchases and their nature (competitive vs. noncompetitive);
3. Any of the exceptions in 24 CFR 85.36(d)(4)(i)(A) through (D) described in above paragraph a.
4. A rational statement as to the unique circumstances that require award by noncompetitive proposals. **This statement may include that the ARRA Capital Fund Grants require expeditious obligation and expenditure;**
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.) and basis for contract price;
6. Identify Contractor(s) selected and/or rejected;
7. Signature by the Contracting Officer's supervisor (or someone above the level of the Contracting Officer); and
8. Price Reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing an analysis, as described in this Policy.

C. Documentation

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

1. Rationale for the method of procurement (if not self-evident);
2. Rationale of contract pricing arrangement (also if not self-evident);
3. Reason for accepting or rejecting the bids or offers;
4. Basis for the contract price;

5. A copy of the contract documents awarded or issued and signed by the Contracting Officer;
6. Basis for contract modifications; and
7. Related contract administration actions.

The level of procurement documentation should be commensurate with the value of the procurement. Records are to be retained for a period of **three years** after final payment and all matters pertaining to the contract are closed **per 24 CFR 990.325**.

D. Funding Availability

HACSM shall ensure that there are sufficient ARRA Stimulus Capital funds available to cover the anticipated cost of the contract or modification before initiating any contract.

E. Self-Certification

HACSM self-certifies this Capital Fund Stimulus Grant Procurement Policy, and HACSM's procurement system, complies with all applicable Federal regulations and, as such, it is exempt from prior HUD review and approval of individual procurement action(s).

F. Solicitation and Advertising

Methods

1. **Petty Cash and Micro Purchases** – HACSM may contact only one source if the price is considered reasonable.
2. **Small Purchases** – quotes may be solicited orally, by email, through fax, or by any other reasonable method.
3. **Sealed Bids and Competitive Proposals** – solicitation must be done publicly. HACSM must use one or more of the following methods, provided that the method used provides for meaningful competition:
 - Advertising in newspapers or other print mediums of local or general circulation.
 - Advertising in various trade journals or publications (for construction)
 - E-Procurement – HACSM may conduct its public procurements through the Internet using e-procurement systems, however, all e-procurements must

otherwise be in compliance with 24 CFR 85.36, State and local requirements, and this policy.

Time Frame

For purchases of more than \$100,000, the public notice should run not less than once each week for two consecutive weeks.

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

Time Period for Submission of Bids

Generally 30 days shall be provided for preparation and submission of sealed bids and 15 days for competitive proposals. **The Executive Director or Contracting Officer may allow for a shorter period under public exigency circumstances as provided in the purpose and requirements of the Recovery Act.**

- Solicitation procedures are conducted in full compliance with Federal standards consistent with 24 CFR 85.36.

G. Cost and Price Analysis

HACSM shall require assurance that a price is reasonable and in accordance with the following before entering into a contract. However, according to HUD Procurement Handbook 7460.8 REV 2, *“the number of times that an Agency will need to conduct a cost analysis will be limited given that most purchases will be of a commercial nature and based on adequate competition.”*

Petty Cash and Micro Purchases

Neither a formal cost or price analysis is required. 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. This determination may be based on the Contracting Officer’s prior experience or other factors.

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 is not obtained to establish reasonableness through price competition, the Contracting Officer shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the Contracting Officer's personal knowledge at the time of purchase, comparison to the Independent Cost Estimate, or any other reasonable basis.

Sealed Bids

Price reasonableness is generally established with the presence of adequate competition. HACSM must conduct a cost analysis, consistent with federal guidelines, to ensure that the price paid is reasonable if sufficient bids are not received, and when the bid received is substantially more than the Independent Cost Estimate (ICE), and when HACSM cannot reasonably determine price reasonableness.

Competitive Proposals

The presence of adequate competition is generally sufficient to establish price reasonableness. HACSM must compare the price with the ICE if sufficient bids are not received. HACSM must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable when prices cannot be easily compared among offerors, if there is inadequate competition, or when the price is substantially greater than the ICE.

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 and the amount of the contract modification will result in a total contract price in excess of \$100,000.