

Montgomery Housing Authority

PROCUREMENT POLICY

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PROCUREMENT POLICY

MONTGOMERY HOUSING AUTHORITY

This Procurement Policy complies with the Annual Contributions Contract (ACC) between this Montgomery Housing Authority (MHA) and the HUD, Federal Regulations at **2 CFR Part 200.317 through 200.326**, the procurement standards of the Procurement Handbook for HA's, HUD Handbook 7460.8, Rev 2, and applicable State and Local laws.

1.0 GENERAL PROVISIONS

1.1 General

The MHA shall:

- 1.1.1 Provide for a procurement system of quality and integrity;
- 1.1.2 Provide for the fair and equitable treatment of all persons or firms involved in purchasing by the MHA;
- 1.1.3 Ensure that supplies and services (including construction) are procured efficiently, effectively, and at the most favorable prices available to the MHA;
- 1.1.4 Promote competition in contracting; and
- 1.1.5 Assure that MHA purchasing actions are in full compliance with applicable Federal standards, HUD regulations, State, and local laws.

1.2 Application

This Procurement Policy applies to all procurement actions of the Montgomery Housing Authority, regardless of the source of funds, except as noted under exclusions, below. However, nothing in this Policy shall prevent the MHA 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.

1.3 Definition

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

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

1.4 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, e.g., fee-for-service revenue under 24 CFR Part 990. These excluded areas are subject to applicable State and local requirements.

1.5 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.

1.6 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 by Alabama Law (Not applicable at this time).

2.0 ETHICS IN PUBLIC CONTRACTING

2.1 General

The MHA hereby establishes this code of conduct regarding procurement issues and actions and shall implement a system of sanctions for violations.

2.2 Conflicts of Interest

No employee, officer, Board member, or agent of the MHA 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:

2.2.1 An employee, officer, Board member, or agent involved in making the award;

2.2.2 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);

2.2.3 His/her partner; or an organization which employs or is negotiating to employ or has an arrangement concerning prospective employment of any of the above.

2.3 Gratuities, Kickbacks, and Use of Confidential Information

No officer, employee, Board member, or agent shall ask for or accept gratuities, favors, or items of any value from any contractor, potential contractor, or party to any subcontract, and shall not knowingly use confidential information for actual or anticipated personal gain.

2.4 Prohibition Against Contingent Fees

Contractors wanting to do business with the MHA 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.

3.0 PROCUREMENT PLANNING

Planning is essential to managing the procurement function properly. Hence, the MHA will periodically review its record of prior purchases, as well as future needs, to: find patterns of procurement actions that could be performed more efficiently or economically; maximize competition and competitive pricing among contracts and decrease the MHA's procurement costs; reduce MHA administrative costs; ensure that supplies and services are obtained without any need for re-procurement, e.g., resolving bid protests; and minimize errors that occur when there is inadequate lead time. Consideration should be given to storage, security, and handling requirements when planning the most appropriate purchasing actions.

4.0 PURCHASING METHODS

4.1 Petty Cash Purchases

Purchases under \$100 may be handled through the use of a petty cash account. A Petty Cash Account, in the amount of \$300, will be established to cover small purchases made during a reasonable period, e.g., one month. The Petty Cash Account will be maintained in the MHA Accounting Department, where security is maintained, and only authorized individuals have access to the account. These accounts should be reconciled and replenished periodically. Receipts are required for all purchases or expenditures from this fund. Any authorized person seeking to use Petty Cash must have pre-approval. Petty Cash purchases are single purchases only.

4.2 Micro Purchases

Micro purchases are purchases under \$10,000.00. Micro Purchases requires only one quote provided the quote is considered reasonable. To the greatest extent feasible, and to promote competition, small purchases should be distributed among qualified sources. Quotes may be obtained by fax, in writing, email, or through e-procurement. Award shall be made to the qualified vendor that provides the best value to the MHA. If the award is to be made for reasons other than lowest price, documentation shall be provided in the contract file. The MHA shall not break down requirements aggregating more than the micro purchase threshold into several purchases that are less than the applicable threshold merely to:

(1) permit use of the micro purchase procedures or (2) avoid any requirements that apply to purchases that exceed the Micro Purchase threshold.

4.3 Small Purchase Procedures

For any amounts above the Micro Purchase threshold \$10,000.00, but not exceeding \$250,000.00, the MHA may use small purchase procedures. Under small purchase procedures, the MHA shall obtain a reasonable number of quotes (preferably three quotes may be obtained by fax, in writing, email, or through e-procurement. Award shall be made to the qualified vendor that provides the best value to the MHA. If the award is to be made for reasons other than lowest price, documentation shall be provided in the contract file. The MHA shall not break down requirements aggregating more than the small 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 apply to purchases that exceed the Small Purchase threshold.

4.4 Sealed Bids

Sealed bidding 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 document. Under sealed bids, the MHA 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 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 \$250,000.00.

4.4.1 Conditions for Using Sealed Bids

MHA shall use the sealed bid method if the following conditions are present:

4.4.1.1 A complete, adequate, and realistic statement of work, specification, or purchase description is available;

4.4.1.2 Two or more responsible bidders are willing and able to compete effectively for the work;

4.4.1.3 The contract can be awarded based on a firm fixed price, and;

4.4.1.4 The selection of the successful bidder can be made principally on the lowest price.

4.4.2 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 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.

4.4.3 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. If equal low bids are received from responsible bidders, selection shall be made by lottery 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, award shall not be made unless the price can be determined to be reasonable, based on a cost or price analysis.

4.4.4 Mistakes in Bids

Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written notice received in the office designated in the IFB prior to the time set for bid opening. 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 nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. 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. All decisions to allow correction or withdrawal of a bid shall be supported by a written determination signed by the Contracting Officer or his/her appointed designee. After bid opening, changes in bid prices, or other provisions of bids prejudicial to the interest of the MHA or fair competition shall not be permitted.

4.5 Competitive Proposals

Unlike sealed bidding, the competitive proposal method 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 MHA, considering price and other factors, e.g., technical expertise, past experience, quality of proposed staffing, etc., set forth in the solicitation and not solely the lowest price.

4.5.1 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.

4.5.2 Form of Solicitation

Other than A/E services, competitive proposals shall be solicited through the issuance of a 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

so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals until after award. The MHA may assign specific scoring as a method of weight in the evaluation criteria, or the MHA may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.

4.5.3 Evaluation

The proposals shall be evaluated only on the criteria stated in the RFP. Where not apparent from the evaluation criteria, the MHA 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 the award of a contract.

4.5.4 Negotiations

Negotiations shall be conducted with all offerors who submit a proposal 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. 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 MHA 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 or his/her appointed designee with each offeror within the competitive range. The primary object of discussions is to maximize the MHAs ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. The Contracting Officer or his/her appointed designee 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 or his/her appointed designee, be altered or explained to enhance materially the proposers potential for award. The scope and extent of discussions are a matter of the Contracting Officer or his/her appointed designee's judgment. The Contracting Officer or his/her appointed designee may inform an offeror that its price is considered by the HA 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.

4.5.5 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 MHA provided that the price is within the maximum total project budgeted amount established for the specific property or activity.

4.5.6 A/E Services

The MHA must contract for A/E services using Qualifications — Based Selection (QBS) procedures, utilizing an 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, though architectural/engineering firms are potential sources.

5.0 NONCOMPETITIVE PROPOSALS

5.1 Conditions for Use

Procurement by noncompetitive 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:

- 5.1.1 The item is available only from a single source, based on a good faith review of available sources;
 - 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 MHA, 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;
 - 5.1.3 HUD authorizes the use of noncompetitive proposals; or
 - 5.1.4 After solicitation of a number of sources, competition is determined inadequate.
- All noncompetitive awards must be pre-approved for award by the Contracting Officer or his/her appointed designee.

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 or his/her appointed designee. 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:

- 5.2.1 Description of the requirement;
- 5.2.2 History of prior purchases and their nature (competitive vs. noncompetitive);
- 5.2.3 The specific exception in **2 CFR Part 200.320(f)(1) through (4)** which applies;
- 5.2.4 Statement as to the unique circumstances that require award by noncompetitive proposals;
- 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.);
- 5.2.6 Statement as to efforts that will be taken in the future to promote competition for the requirement;
- 5.2.7 Signature by the Contracting Officer or his/her appointed designee's supervisor (or someone above the level of the Contracting Officer or his/her appointed designee); and
- 5.2.8 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.

6.0 COOPERATIVE PURCHASING/INTERGOVERNMENTAL AGREEMENTS

The MHA 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 MHA 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 Part 200.317 through 200.326**.

7.0 INDEPENDENT COST ESTIMATE (ICE)

For all purchases above the Micro Purchase threshold, the MHA 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.

8.0 COST AND PRICE ANALYSIS

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

8.1 Petty Cash and Micro Purchases

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

8.2 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 or his/her appointed designee shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the Contracting Officer or his/her appointed designee's personal knowledge at the time of purchase, comparison to the ICE, or any other reasonable basis.

8.3 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 substantially more than the ICE, and where the MHA cannot reasonably determine price reasonableness, the MHA must conduct a cost analysis, consistent with federal guidelines, to ensure that the price paid is reasonable.

8.4 Competitive Proposals

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

8.5 **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 and the amount of the contract modification will result in a total contract price in excess of \$50,000 or that otherwise causes the contract price to exceed a procurement threshold amount.

9.0 **SOLICITATION AND ADVERTISING**

9.1 **Method of Solicitation**

9.1.1 **Petty Cash and Micro Purchases**

The MHA may contact only one source if the price is considered reasonable.

9.1.2 **Small Purchases**

Quotes may be solicited by fax, email or by any other reasonable written method.

9.1.3 **Sealed Bids and Competitive Proposals**

Solicitation must be done publicly. The MHA must use one or more of the following solicitation methods, provided that the method employed provides for meaningful competition.

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

9.1.3.2 Advertising in various trade journals or publications (for construction).

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

9.2 **Time Frame**

Solicitations for sealed bids and competitive proposals must be run for a period sufficient to achieve effective competition, which, in the case of paid advertisements, should generally be run not less than once each week for two consecutive weeks.

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

9.4 **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 Contracting Officer or his/her appointed designee may allow for a shorter period under extraordinary circumstances.

9.5 **Cancellation of Solicitations**

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

9.5.1.1 The supplies, services or construction is no longer required;

9.5.1.2 The funds are no longer available;

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

9.5.1.4 Other similar reasons.

9.6 **Solicitation**

9.6.1 Solicitation may be cancelled and all bids or proposals that have already been

received may be rejected if:

- 9.6.1.1 The supplies or services (including construction) are no longer required;
- 9.6.1.2 Ambiguous or otherwise inadequate specifications were part of the solicitation;
- 9.6.1.3 All factors of significance to the MHA were not considered;
- 9.6.1.4 Prices exceed available funds, and it would not be appropriate to adjust quantities to come within available funds;
- 9.6.1.5 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 9.6.7 For good cause of a similar nature when it is in the best interest of the HA.

9.7 **Reasons**

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

9.8 **Notice**

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.

9.9 **Unreasonableness**

If all otherwise acceptable bids received in response to an IFB are at unreasonable prices an analysis should be conducted to see if there is a problem in either the specifications or the MHAs cost estimate. If both are determined adequate and if only one bid is received and the price is unreasonable, the Contracting Officer or his/her appointed designee may cancel the solicitation and either

9.9.1 Re-solicit using an RFP; or

9.9.2 Complete the procurement by using the competitive proposal method. The Contracting Officer or his/her appointed designee must determine, in writing, that such action is appropriate, must inform all bidders of the MHAs intent to negotiate, and must give each bidder a reasonable opportunity to negotiate.

9.10 **Specification(s) Problems**

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

9.11 **Credit (or Purchasing) Cards**

Credit Card usage should follow the rules for small purchase. For example, the Contracting Officer or his/her appointed designee may use a credit card for Micro Purchase up to \$10,000.00 without obtaining additional quotes provided the price is considered reasonable. However, for amounts above the Micro Purchase level, the Contracting Officer or his/her appointed designee would generally need to have obtained a reasonable number of quotes before purchasing via a credit card (*With exception of travel, to MHA approved seminars, workshops or conventions where the Contracting Officer or his/her appointed designee will be paying for the expenses incurred as airfare, hotel, and food or for multiple MHA staff persons*). All expenses must be in compliance with the MHA Travel Policy.

When using credit cards, the Contracting Officer or his/her appointed designee shall monitor all expenditures to ensure expenses are reasonable, and maintain all receipts are in compliance with this policy. Original receipts must be turned in with an explanation of expense along with credit card bill to allow processing. When using personal credit cards for reimbursement, original receipts must be turned in with explanation of expense along with completed check request. All reimbursement must

be approved by Contracting Officer or his/her appointed designee.

The MHA's Accounting Department has established safeguards to assure credit cards are used only for the intended purposes limited to legitimate MHA Business expenses.

10.0 BONDING and LICENSING REQUIREMENTS

The licensing requirements under this section apply to construction contracts that exceed \$50,000. The bonding requirements under this section apply to construction contracts in the amount of \$100,000 or more. With the exception of Alabama Public Works contracts in the amount of \$100,000 or more, there are no bonding requirements for small purchases or for competitive proposals. The MHA may require bonds in these latter circumstances when deemed appropriate; however, non-construction contracts should generally not require bid bonds.

10.1 Bid Bonds

For construction contracts in an amount of \$100,000 or more, refer to the requirements set forth for Public Works contracts.

10.2 Performance and Payment Bonds/Guaranties

For construction contracts in an amount of \$100,000 or more, refer to the requirements set forth for Public Works contracts.

10.3 General Contractor License

Title 34, Chapter 8, Code of Alabama, 1975, requires licensing for general contracting when the cost of the work exceeds amounts established by the State Licensing Board for General Contractors (currently \$50,000). Under this law, MHA must require each bidder to show evidence of this license before bidding. In the absence of such evidence, a bid shall not be received or considered. MHA shall reject all bids that do not contain the current license number of the general contractor submitting the bid.

MHA shall include in its invitations to bidders, including but not limited to all public and private advertisements, and their specifications a copy of Title 34, Chapter 8, Code of Alabama, 1975 or the portions thereof as are deemed necessary to convey to the invited bidder, whether he or she is a resident or nonresident of this state and whether a license has been issued to him or her or not, the information that it will be necessary for him or her to show evidence of license before his or her bid is considered.

10.4 Bonding Companies

In compliance with HUD's procurement regulations, for construction contracts in an amount of \$250,000 or more, a surety (bonding) company must be authorized to do business in Alabama and be acceptable to HUD and MHA. Specifically, the surety must be listed on the most recently published U.S. Treasury Circular 570 (often referred to as the T-List). Individual sureties are not permitted. Circular 570 is available from the U.S. Department of the Treasury, Financial Management Service, Surety Bond Branch, Room 262C, 401 14th Street, S.W., Washington, D.C. 20227. The T-List may also be accessed on the Internet at: <https://fiscal.treasury.gov/surety-bonds/list-certified-companies.html>.

11.0 CONTRACTOR QUALIFICATIONS AND DUTIES

11.1 Contractor Responsibility

MHA 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:

- 11.1.1 Have adequate financial resources to perform the contract, or the ability to obtain them;
- 11.1.2 Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all the bidders/offerors existing commercial and governmental business committee;
- 11.1.3 Have a satisfactory performance record;
- 11.1.4 Have a satisfactory record of integrity and business ethics;
- 11.1.5 Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
- 11.1.6 Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,
- 11.1.7 Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended, debarred or under a HUD-imposed Limited Denial of Participation (LDP).
- 11.1.8 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.

11.2 Suspension and Debarment

Prior to issuance of a contract, MHA 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) Excluded Parties Listing Service system and place within the applicable contract file a printed copy of the results of each such search.

11.3 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.

12.0 CONTRACT PRICING ARRANGEMENTS

12.1 Contract Types

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

12.2 Options

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

- 12.2.1. The option is contained in the solicitation;
- 12.2.2. The option is a unilateral right of the Authority;
- 12.2.3. The contract states a limit on the additional quantities and the overall term of the contract; the options are evaluated as part of the initial competition;

- 12.2.4. The contract states the period within which the options may be exercised;
- 12.2.5. The options may be exercised only at the price specified in or reasonably determinable from the contract; and
- 12.2.6. The options may be exercised only if determined to be more advantageous to HA than conducting a new procurement.

13.0 CONTRACT CLAUSES

All contracts should identify the contract pricing arrangement as well as other pertinent terms and conditions, as determined by the MHA. Additionally, the forms HUD-5369, 5369-A, 5369-B, 5369, 5370, 5370-C, and 51915A, which contain all HUD-required clauses and certifications for contracts, as well as any forms/clauses as required by HUD for small purchases, shall be used in all corresponding solicitations and contracts issued by this Authority. The MHA shall ensure that each contract executed by the MHA contains the required contract clauses detailed within 2 CFR Part 200.326 and Appendix II.

14.0 CONTRACT ADMINISTRATION

The MHA 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.

15.0 SPECIFICATIONS

15.1 General

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

15.2 Limitation

The following types of specifications shall be avoided:

15.2.1 Geographic Restrictions

Geographic restrictions are 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);

15.2.2 Brand Name Specifications

Brand name specifications (unless the specifications 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 reviewed to ensure that organizational conflicts of interest do not occur.

16.0 APPEALS AND REMEDIES

16.1 General

It is MHA 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.

16.2 Informal Appeals Procedure

The MHA has in place an informal bid protest/appeal procedure for contracts of \$100,000 or less. Under these procedures, the bidder/contractor may request to meet with the Contract Officer or his/her appointed designee within ten (10) business days from the date of the award. The Contract Officer or his/her appointed designee has fifteen (15) days to offer a written response. If the Contract Officer or his/her appointed designee does not render a decision within the required period, a formal protest may be filed.

16.3 Formal Appeals Procedure

A formal appeals procedure shall be established for solicitations/contracts of more than \$100,000.

16.3.1 Bid Protest

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

16.3.2 Contractor Claims

All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer or his/her appointed designee for a written decision. The contractor may request a conference on the claim. The Contracting Officer or his/her appointed designee decision shall inform the contractor of its appeal rights to the next higher level of authority in MHA. Contractor claims shall be governed by the Changes clause in the form HUD-5370.

17.0 ASSISTANCE TO SMALL AND OTHER BUSINESSES

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

17.1.1 Including such firms, when qualified, on solicitation mailing lists;

17.1.2 Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;

17.1.3 Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;

- 17.1.4 Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
- 17.1.5 Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
- 17.1.6 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
- 17.1.7 Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed above. Goals shall be established periodically for participation by small businesses, minority-owned businesses, women-owned business enterprises, labor surplus area businesses and Section 3 business concerns in MHA prime contracts and subcontracting opportunities

17.2 Definitions

17.2.1 A small business:

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

17.2.2 A minority-owned business:

A minority-owned business is defined as a business which is 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.

17.2.3 A women's business enterprise:

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

17.2.4 A Section 3 business:

A Section 3 business concern is as defined under 24 CFR Part 75.

17.2.5 A labor surplus area business:

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

18.0 BOARD APPROVAL OF PROCUREMENT ACTIONS

The MHA Board of Commissioners approval is not required for procurement actions up to \$100,000.00; however, all procurement action above \$100,000.00 must be brought to the MHA Board of Commissioners for approval. It is the responsibility of the Contract Officer or his/her appointed designee to make sure that all procurement actions are conducted in accordance with the policies contained herein.

19.0 DELEGATION OF CONTRACTING AUTHORITY

The CEO/President is responsible for ensuring that the MHA's procurements comply with this Policy, the CEO/President may delegate procurement authority as is necessary and appropriate to conduct the business of the Agency; however, notwithstanding the foregoing sentence, the CEO/President shall not delegate any signatory authority for execution of contracts unless specifically authorized by MHA's Board of Commissioners to do so. Additionally, nothing herein should be construed as allowing for requisite contract approvals to be modified without approval by MHA's Board of Commissioners. Further, and in accordance with this delegation of authority, the Contract Officer or his/her appointed designee shall, where necessary, establish operational procedures (such as a procurement manual or standard operating procedures) to implement this Policy. The CEO/President shall also establish a system of sanctions (generally covered in the MHA Personnel Policy) for violations of the ethical standards described above, consistent with Federal, State, or local law.

20.0 DOCUMENTATION

The MHA 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:

- 20.1. Rationale for the method of procurement (if not self-evident);
- 20.2. Rationale of contract pricing arrangement (also if not self-evident);
- 20.3. Reason for accepting or rejecting the bids or offers;
- 20.4. Basis for the contract price;
- 20.5. A copy of the contract documents awarded or issued and signed by the Contracting Officer or his/her appointed designee;
- 20.6. Basis for contract modifications; and
- 20.7. Related contract administration actions.

The level of 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 contact are closed.

21.0 FUNDING AVAILABILITY

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

22.0 DISPOSITION OF PROPERTY

- 22.1 Goods that have no real or scrap value shall be written off.
- 22.2 Goods, which have a value of up to \$500, shall be advertised and sold at fair market value, surplus shall be sold at a public sale, via internet based software (eBay, usell, etc.), and/or electronic bidding may be used to sale the goods.
- 22.3 Goods, which have become surplus obsolete or unusable and have current value of \$500.00 or more, shall not be sold or exchanged for less than their fair market value, surplus shall be sold at a public sale, via internet based software (eBay, usell, etc.), and/or electronic bidding may be used to sale the goods.
- 22.4 Property in the excess of the estimated fair value of \$1,000 shall be sold at public sale using an open bid process and/or electronic bidding. The award shall be made to the highest bidder.
- 22.5 The MHA shall maintain complete records relating to the disposition of all excess property.
- 22.6 Goods that can be written off, sold or traded must prior to disposition have Board approval.

23.0 PUBLIC WORKS

A. ALABAMA PUBLIC WORKS

Alabama's Public Works Law defines "Public Works" as: "The construction, installation, repair, renovation, or maintenance of public buildings, structures, sewers, waterworks, roads, curbs, gutters, side walls, bridges, docks, underpasses, and viaducts as well as any other improvement to be constructed, installed, repaired, renovated, or maintained on public property and to be paid, in whole or in part, with public funds or with financing to be retired with public funds in the form of lease payments or otherwise." (Ala. Code Section 39-2-1(6)).

No public work, involving a sum in excess of one hundred thousand dollars (\$100,000) shall be split into parts involving sums of one hundred thousand dollars (\$100,000) or less for the purpose of evading the requirements of this section. (Ala. Code Section 39-2-2).

B. APPLICABILITY

The requirements set forth herein apply in ADDITION to any and all applicable HUD rules or regulations. To the extent that any requirements set forth herein conflict with HUD rules/regulations, the most stringent requirements should be followed.

C. ADVERTISEMENT for BIDS

To satisfy both Alabama's Public Works Law and HUD regulations, MHA should advertise for Public Works exceeding \$100,000 at least once each week for two consecutive weeks in a newspaper of general circulation published in Montgomery, Alabama. Additionally, MHA should advertise on its website and other platforms as set forth in its Standard Operating Procedures.

The advertisement is to be prepared, and its publication arranged for by MHA or its designee. The published text of the advertisement is to be bound in the project manual. Proof of publication should be obtained from the newspaper(s) and shall be retained by the Contracting Officer. Project-specific information in the advertisement should include:

- Brief description of the scope of the work.
- Where the plans and specifications are on file for examination.
- Procedure for obtaining plans and specifications.
- Time and place in which bids shall be received and opened publicly.
- Identify whether prequalification is required or not.
- If applicable, a statement to the effect that attendance of a pre-bid conference is a mandatory prerequisite for bidding.

Emergency Projects:

- 1. Immediate Harm to Person or Property:** In case of an emergency for which a delay in remedying would cause immediate harm to a person or public property contracts may be let to the extent necessary to meet the emergency without public advertisement or bidding.
- 2. Public Health, Safety, or Convenience:** In case of an emergency affecting public health, safety, or convenience, as declared in writing by the awarding authority setting forth the nature of the danger to the public health, safety, or convenience which would result from delay, contracts may be let to the extent necessary to meet the emergency without public advertisement. This category of emergency declaration allows MHA to legally solicit proposals from at least three different contractors for any repair and/or replacement work, without advertisement for bid.
- 3.** Any action taken under subdivision (1) or (2), and the reasons for the action taken, shall immediately be made public by the awarding authority and published in writing.

When bids are solicited without advertisement, MHA should seek a minimum of three proposals and document such efforts. A tabulation of bids must also be issued.

D. PRE-BID CONFERENCE

A pre-bid conference to answer questions and allow clarifications of issues is highly recommended. The conference should be held well in advance of the bid date and at least seven days prior to the bid opening in order to provide ample time to issue addenda responding to questions raised during the conference. If MHA wishes to make attendance of the pre-bid conference a mandatory prerequisite for prime contractors to bid on the project, this requirement must be stated in the Advertisement for Bids.

E. RECEIPT and OPENING of BIDS

Bids must be received at the location, date and time stated in the Advertisement for Bids or at a location, date, and time subsequently stated in a published addendum to the bid documents. No bids shall be received after the designated time. All bids shall be opened and read publicly, whether the sealed bids are received electronically or via hardcopy.

Title 34, Chapter 8, Code of Alabama, 1975, requires licensing for general contracting when the cost of the work exceeds amounts established by the State Licensing Board for General Contractors (currently \$50,000). Under this law, when applicable, it is incumbent upon MHA to require each bidder to show evidence of this license before bidding. In the absence of such evidence, a bid shall not be received or considered. MHA shall reject all bids that do not contain the current license number of the general contractor submitting the bid.

MHA shall include in its invitations to bidders, including but not limited to all public and private advertisements, and their specifications a copy of Title 34, Chapter 8, Code of Alabama, 1975 or the portions thereof as are deemed necessary to convey to the invited bidder, whether he or she is a resident or nonresident of this state and whether a license has been issued to him or her or not, the information that it will be necessary for him or her to show evidence of license before his or her bid is considered.

Bidders must follow all requirements of the Instructions to Bidders or risk disqualification of their bid. Each bidder's compliance with the following requirements are the minimum elements to be verified upon opening of bids:

1. **a. Hardcopy Delivery Envelope:** The outside of the envelope in which a bid is delivered must bear the bidder's name and state license number for general contracting, and the envelope must be sealed. The bid must not be received in the absence of any of these features. The sum being bid may be changed by the bidder by writing the change in price, over the bidder's authorized signature and date, on the envelope; however, if the sum being bid is revealed on the envelope, the bid no longer constitutes a "sealed bid" and must not be received. No change in price may be made after the time designated for receipt of bids.
 - b. Electronic Delivery:** Sealed bids may also be solicited and submitted through electronic means including, but not limited to, electrical, digital, magnetic, optical, electromagnetic, or any other similar technology provided that the awarding authority adopts rules and policies to ensure that all electronic submissions are transmitted securely and bids remained sealed until bid opening.
2. **Bid Security:** Bid security must be furnished with bids in the amount of \$100,000.00 or more. Bid security shall be in the form of a bid bond (executed by a surety company duly authorized and qualified to make such bonds in Alabama) or a cashier's check (drawn on an Alabama bank) payable to MHA. The amount of the bid security should not be less than 5% of MHA's estimated cost of the work or of the contractor's bid but is

not required to be more than \$10,000.00.

The insurance company, bonding company, or surety company furnishing such bonds shall meet all requirements for such companies required by law.

To comply with HUD regulations, for construction contracts greater than \$250,000, the above bonds/guaranties must be obtained from guarantee or surety companies acceptable to the U. S. Government and authorized to do business in the State where the work is to be performed. 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.

After bids have been opened, the apparent low bidder may be determined. However, actual determination of the lowest responsible and responsive bidder may only be made after the bids have been tabulated, reviewed, and evaluated within the time period specified in the Instructions for Bidders or Supplemental Instructions to Bidders. All bids shall be made available for public review and inspection by all bidders at the location of the bid opening for a reasonable period of time after they are opened.

F. CERTIFIED TABULATION of BIDS

After bids have been received, the Contracting Officer or his/her appointed designee (the "Contracting Officer") shall check and tabulate all bids, certifying that the bids were received sealed, publicly opened and read aloud at the time and place advertised, and that it is a true and correct tabulation of all bids received for the project. This tabulation shall be signed by the Contracting Officer and notarized. If a bid is incomplete, qualified, or bears any condition or irregularity that may affect its responsiveness, the Contracting Officer shall note this information on the tabulation.

G. BID ERRORS, DISCREPANCIES, and MISTAKES

1. ERRORS AND DISCREPANCIES IN THE PROPOSAL FORM

"In case of error in the extension of prices in bids, the unit price will govern. In case of discrepancy between the prices shown in the figures and in words, the words will govern." (Public Works Law, §39-2-7)

2. MISTAKES WITHIN THE BID

Inherent with the competitive bid process is the possibility for mistakes in the bidder's estimate for the bid. Forcing a contractor to perform under circumstances of an obvious and significant mistake will frequently produce results that are not in the best interest of the state. The Public Works Law, §39-2-11 permits a low bidder discovering a mistake in its bid to seek withdrawal of its bid without forfeiture of its bid guaranty under the following conditions:

- a. Timely Notice:** The low bidder must notify MHA in writing, within three working days after the opening of bids, that a mistake was made. This notice may be given within this time frame whether or not award has been made.
- b. Substantial Mistake:** The mistake must be of such significance as to render the bid price substantially out of proportion to the other bid prices.
- c. Mathematical Error:** The mistake must be mathematical in nature due to calculation or clerical

error, an inadvertent omission, or a typographical error which results in an erroneous sum. Mistakes of law, judgement, or opinion are specifically excluded from this criterion.

- d. Documentary Evidence:** Clear and convincing documentary evidence of the mistake must be presented as soon as possible, but no later than three working days after the opening of bids.

MHA's decision regarding a low bidder's request to withdraw its bid without penalty shall be made within 10 days after receipt of the bidder's evidence or by the next regular meeting of MHA. Upon withdrawal of bid without penalty, the low bidder shall be prohibited from (1) doing work on the project as a subcontractor or in any other capacity and (2) bidding on the same project if it is re-bid.

H. RETURN of BID SECURITY

"All bid guaranties, except those of the three lowest bona fide bidders, shall be returned immediately after bids have been checked, tabulated, and the relation of the bids established. The bid guaranties of the three lowest bidders shall be returned as soon as the contract bonds and the contract of the successful bidder have been properly executed and approved. When the award is deferred for a period of time longer than 15 days after the opening of the bids, all bid guaranties, except those of the potentially successful bidders, shall be returned. . ." (Public Works Law, §39-2-5)

I. NEGOTIATIONS to REDUCE COST

1. If no bids or only one bid is received at the time stated in the advertisement for bids, the awarding authority may advertise for and seek other competitive bids or the awarding authority may negotiate for the work through the receipt of informal bids not subject to the requirements of this section. Where only one responsible and responsive bid has been received, any negotiation for the work shall be for a price lower than that bid.
2. When two or more bids are received, and all bids exceed available funding for the contract, the awarding authority may negotiate for the work with the lowest responsible and responsive bidder provided that the awarding authority can document the shortage of funding, that time is of the essence, and that the negotiated changes are in the public interest and do not materially alter the scope and nature of the project.

J. RETENTION of PROPOSAL FORMS

MHA must keep a permanent record of the original bid proposals, the proposal envelopes with any changes in bid prices, and in general all documents pertaining to the bids received and the award of a contract. These records shall be open to public inspection.

K. DETERMINATION of the LOWEST RESPONSIBLE and RESPONSIVE BIDDER

"The contract shall be awarded to the lowest responsible and responsive bidder, unless the Awarding Authority finds that all bids are unreasonable or that it is not in the interest of the Awarding Authority to accept any of the bids..." (Public Works Law, §39-2-6(a)) Proposals may be rejected if they contain any omissions, alterations of forms, additions not called for, conditional bids, alternate bids not called for, incomplete bids, erasures, or irregularities of any kind. However, the Awarding Authority may reject any and all proposals or waive technical errors if, in its judgement, the best interests of the Awarding Authority will be promoted.

Through the Certified Tabulation of Bids, the Contracting Officer is required to record the relationship of the bids

and any bid conditions or irregularities that may affect the responsiveness of any proposal.

1. DETERMINATION OF THE LOWEST BIDDER

When deductive bid alternates are used, the method set forth for such use of deductive bid alternates must be followed exactly. Where all, or part(s), of the planned work is bid on a unit price basis, both the unit prices and the extensions of the unit prices constitute a basis of determining the lowest bidder. In cases of error in the extension of prices of bids, the unit price will govern. Unit prices for application to potential changes in the work are not a basis for determining the lowest bidder.

2. DETERMINATION OF THE LOWEST RESPONSIVE BIDDER

As defined by Public Works Law, §39-2-6, "A responsive bidder is one who submits a bid that complies with the terms and conditions of the invitation to bids. Minor irregularities in the bid shall not defeat responsiveness."

Upon completion of the Certified Tabulation of Bids, the Contracting Officer must determine whether or not the lowest bidder is responsive. If the lowest bid is determined to be non-responsive, then a determination must be made of the second, third, etc., lowest bidders until the lowest responsive bidder is determined. In determining the lowest responsive bidder, MHA has the discretion to waive technical errors and omissions in bid proposals; but it may not waive statutory requirements or HUD rules.

a. A Bid Must Be Rejected If:

- i. It is not submitted with the required bonds/guaranties.
- ii. It does not bear an authorized signature of the bidder.
- iii. It is for more than the amount requiring licensing pursuant to Title 34, Chapter 8, Code of Alabama, 1975 and does not bear the information regarding the bidder's state license number for general contracting, bid limit, and type of work for which the contractor is licensed.

b. A Bid May Be Rejected If:

- i. It contains any omissions, alterations of forms, additions not called for, conditional bids, alternate bids not called for, incomplete bids, erasures, or irregularities of any kind.
- ii. All, or part(s), of the planned work is bid on a unit price basis and any of the unit prices are obviously unbalanced or non-competitive. This does not apply to unit prices requested for application to change orders, which may be rejected without rejecting the entire bid.

3. DETERMINATION OF RESPONSIBLE BIDDER

As defined by Public Works Law, §39-2-6, "A responsible bidder is one who, among other qualities determined necessary for performance, is competent, experienced, and financially able to perform the contract."

MHA must determine which is the lowest responsible and responsive bidder by verifying whether or not the lowest responsive bidder is properly licensed by the State Licensing Board for General Contractors and is otherwise a "responsible bidder." If the lowest responsive bidder is found not to be responsible, MHA may then consider the second, third, etc., lowest responsive bidders to determine the lowest responsible and responsive bidder. Upon any reasonable cause, the MHA has the right to reject any or all bids.

L. DISQUALIFICATION of BIDDERS

Any bidder(s) may be disqualified from consideration for contract award for the following reasons:

a. COLLUSION (Public Works Law, §39-2-6)

"Any agreement or collusion among bidders or prospective bidders in restraint of freedom of competition to bid at a fixed price or to refrain from bidding or otherwise shall render the bids void and shall cause the bidders or prospective bidders to be disqualified from submitting further bids to the Awarding Authority on future lettings."

b. ADVANCE DISCLOSURE (Public Works Law, §39-2-6)

"Any disclosure in advance of the terms of a bid submitted in response to an advertisement for bids shall render the proceedings void and require advertisement and award anew."

c. FAILURE TO SETTLE OTHER CONTRACTS

MHA may reject a proposal from a bidder who has not paid, or satisfactorily settled, all bills due for labor and material on other contracts in force at the time of letting.

M. AWARD of CONTRACT

The notice of award of a contract should state the amount for which the contract is to be awarded, clarifying which bid alternates are to be included, if any, and it should address acceptance, rejection, and/or negotiation of unit prices. The Public Works Law addresses the award of contracts under the following possible conditions:

a. NORMAL CONDITIONS

The successful bidder is to be notified by confirmed facsimile, electronic mail, or letter to the address shown on the bidder's proposal at the earliest possible date. (Public Works Law, §39-2-6)

b. DELAYED AWARD

"Should no award be made within 30 days after the opening of the bids, or such other time as specified in the bid documents, all bids shall be rejected and all guaranties returned, except for any potentially successful bidder that agrees in writing to a stipulated extension in time for consideration of its bid, in which case the Awarding Authority may permit the potentially successful bidder to substitute a satisfactory bidder's bond for the cashier's check submitted with its bid as bid security." (Public Works Law §39-2-5)

c. ONLY ONE OR NO BIDS RECEIVED

"If no bids or only one bid is received at the time stated in the advertisement for bids, the Awarding Authority may advertise for and seek other competitive bids, or ... the Awarding Authority may negotiate for the work through the receipt of informal bids not subject to the requirements of this section. Where only one responsible and responsive bid has been received, any negotiation for the work shall be for a price lower than that bid." (Public Works Law, §39-2-6)

d. TWO OR MORE BIDS RECEIVED

When two or more bids are received, and all bids exceed available funding for the contract, the awarding authority may negotiate for the work with the lowest responsible and responsive bidder provided that the awarding authority can document the shortage of funding, that time is of the essence, and that the negotiated changes are in the public interest and do not materially alter the scope and nature of the project.

e. NEGOTIATION of BID

"On any construction project on which the Awarding Authority has prepared plans and specifications, has

received bids, and has determined to do by . . . negotiation, the Awarding Authority shall make available the plans and specifications, an itemized estimate of cost, and any informal bids for review by the Department of Examiners of Public Accounts and, upon completion of the project by the Awarding Authority, the final total costs together with an itemized list of cost of any and all changes made in the original plans and specifications shall also be made available for review by the Department of Examiners of Public Accounts. Furthermore, the above-described information shall be made public by the Awarding Authority upon request.” (Public Works Law, §39-2-6)

f. PERFORMANCE BOND

For any Public Works contract for an amount of \$100,000 or more, before commencing the work, the contractor shall execute a performance bond, with penalty equal to 100 percent of the amount of the contract price.

g. PAYMENT BOND

For any Public Works contract for an amount of \$100,000 or more, before commencing the work, the contractor shall execute a bond, payable to MHA, in an amount not less than 50 percent of the contract price, with the obligation that the contractor or contractors shall promptly make payments to all persons supplying labor, materials, or supplies for or in the prosecution of the work provided in the contract and for the payment of reasonable attorney fees incurred by successful claimants or plaintiffs in civil actions on the bond.

h. RESTRICTIONS ON ASSIGNMENT

No contract awarded to the lowest responsible and responsive bidder shall be assignable by the successful bidder without written consent of the awarding authority, and in no event shall a contract be assigned to an unsuccessful bidder whose bid was rejected because he or she was not a responsible or responsive bidder. (Public Works Law, §39-2-6)

i. FINAL SETTLEMENT of CONTRACT

A final settlement shall not be made upon the contract until the expiration of 30 days after the completion of the contractor’s notice of completion of the project, which shall be published in accordance with the requirements set forth in Ala. Code Section 39-1-1(f). Proof of publication of the notice shall be made by the contractor to the authority by whom the contract was made by affidavit of the publisher or website owner and a printed copy of the notice published.

N. PROJECTS COSTING \$100,000 OR LESS

Under the Public Works Law, if the cost of a public works project is \$100,000 or less, certain provisions of that law are waived as follows:

- a. **Advertisement for Bids and Sealed Bids:** Under Alabama law, MHA may let contracts for public works involving \$100,000 or less with or without advertising, and with or without sealed bids. §39-2-2(b)(1)
- b. **Bid Bonds:** Under Alabama law, Bid Bonds are not required for contracts in amounts of less than \$100,000.
- c. **Performance and Payment Bonds:** Under Alabama law, Performance and Payment Bonds are not required for contracts in amounts of less than \$100,000. §39-1-1(e)
- d. **General Contractor’s License:** Under Alabama law, a General Contractor’s License is not required for

contracts in amounts of less than \$50,000. §34-8-1(a)

- e. **Advertisement for Completion:** Under Alabama law, advertisement for Completion shall not apply to contractors performing contracts in the amount of less than \$100,000. §39-1-1(g)

Note: All additional requirements of HUD must be met when applicable.

Glossary

The following is a list of key procurement and contracting terms and definitions used throughout this policy.

- 1) **Acceptance** —The act of an authorized representative of the PHA acknowledging that the supplies or services delivered to or received by the PHA conform to contract requirements.
- 2) **Annual Contributions Contract (ACC)** —Entered into between HUD and the PHA, setting forth terms and conditions for the operation, modernization, and development of public housing. The current version of the ACC (form HUD-53012-A, 7/95) does not actually contain any specific language governing PHA procurement activity, but incorporates by reference regulations promulgated by HUD at Title 24 of the Code of Federal Regulations, as well as all applicable laws and executive orders, and regulations.
- 3) **Amendment** —Written revision or clarification made to a solicitation.
- 4) **Anti-competitive Practices** —Actions by potential contractors that improperly reduce or eliminate competition or restrain trade. Examples are: an agreement or understanding among competitors to restrain trade, such as submitting collusive bids or proposals, rotating low bids, follow-the-leader pricing, or sharing of the business. Competition may also be wrongfully discouraged by illicit business actions that have the effect of restraining trade, such as controlling the resale price of products or an improper collective refusal to bid (2 CFR Part 200).
- 5) **Architect/Engineer (A/E)** —Person (or company) usually responsible for developing the plans and specifications of a building or development and, in some cases, supervising the construction effort.
- 6) **Bid** —The price submitted by a bidder in the sealed bidding method of procurement.
- 7) **Bidder's List** —General list of persons or firms who may be interested in contracting opportunities with the PHA. and in submitting bids in response to an Invitation for Bid.
- 8) **Change Orders** —A unilateral or bilateral modification made to the contract by the Contracting Officer under the authority of the Contract's Changes clause. Only the specific changes permitted by the particular Changes clause may be made under a change order (e.g., modify the drawings, design, specifications, method of shipping or packaging, place of inspection, delivery, acceptance, or other such contractual requirement; see form HUD-5370). All change orders must be within the scope of the contract.
- 9) **Changed Conditions** —Construction site or repair conditions that differ significantly from those indicated in the contract or from those ordinarily encountered in the performance of the specific type of work required by the contract.
- 10) **Competitive Proposals** —Also called contracting by negotiation, a method of procurement using the solicitation, evaluation, and negotiation of proposals instead of sealed bids. The competitive proposal method is used for requirements exceeding the PHA's small purchase threshold when conditions are not appropriate for sealed bidding. (Note: Under the Qualifications-Based Selection method only, a Request for Qualifications (RFQ) is used in place of the RFP.)

- 11) **Competitive Range** — Those proposals submitted in response to a RFP that, after technical evaluation by the PHA's selection panel and considering the proposed costs/prices, have a reasonable chance of being awarded the contract
- 12) **Consortia** — These are a special kind of PHA consortium where two or more agencies join together to perform planning, reporting and other administrative functions, including, importantly, the joint preparation of a PHA Plan.
- 13) **Contract** — A mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the PHA to pay for them. It includes all types of commitments that obligate an agency to an expenditure of funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include: contract awards and notices of awards; job orders or task letters issued under basic ordering agreements, requirement contracts, or definite- or indefinite- quantity contracts; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; bilateral (two-party) contract modifications; and various cooperative and interagency agreements (as described elsewhere in this Policy).
- 14) **Contracting Officer** — The CEO/President or an official authorized by the CEO/President to enter into and/or administer contracts and make related determinations and findings. For the purpose of this policy, the term includes any PHA employee designated and authorized to perform the duties of a Contracting Officer.
- 15) **Contract Administration** — All the actions taken with regard to a contract after its award. Administration includes monitoring the contractor's performance to ensure compliance with the contract requirements, and terms and conditions.
- 16) **Contract Modification** — Any written alteration to a contract executed by an authorized contracting officer.
- 17) **Contractor** — An Offeror who is awarded a contract.
- 18) **Contract Pricing Arrangements** — The arrangement, as reflected in the contract, for how the vendor will be paid for services. While there are two basic contract pricing arrangements — firm fixed-price and cost-reimbursement — there are multiple variations on these models, from indefinite quantity contracts (where the exact number of deliverable items is not known at the time of contract award but where minimum and maximum quantities are stated) to cost-plus fixed-fee (where costs are reimbursed, up to an estimated amount, plus a specified fee).
- 19) **Cost-Reimbursement Contract** — The contractor is reimbursed for his/her allowable costs of performance up to a total estimated amount specified in the contract he contract may provide for the payment of a fee (i.e., a type of profit) in addition to costs.
- 20) **Cure Notice** — A Notice delivered to a contractor informing him/her of a specific deficiency in performance and a directive to cure such condition within a set time frame.
- 21) **Excusable Delay** — A failure to perform within the contract period that is beyond the control and without fault or negligence of the contractor, as determined by the Contracting Officer.
- 22) **Federal Small Purchase Threshold** — The maximum dollar amount for individual small purchases. The threshold is currently set at \$250,000 (41 U.S.C. 403(11)). PHAs may establish lower thresholds.

- 23) **Firm Fixed Price Contract** - The contractor is paid a firm fixed-price for all required work regardless of the contractor's actual costs of performance.
- 24) **Independent Cost Estimate (ICE)** - An estimate prepared by the PHA prior to obtaining offers. The degree of analysis will depend on the size and complexity of the purchase.
- 25) **Inspection** - The examination and/or testing of supplies and services to determine conformance with the contract requirements.
- 26) **Instrumentality** - Shall mean a subsidiary branch of the PHA through which functions or policies are implemented.
- 27) **Intergovernmental or Interagency Agreement** - An agreement between a **PHA** and a Federal, State, or local government agency (including other PHAs) for the provision of supplies or services. In recent years, the terms Cooperative Agreement, Intergovernmental Agreement, Consortium Agreement, or Memorandum of Agreement have been used interchangeably and are treated the same for the purposes of this policy.
- 28) **Internal Controls** - Safeguards that ensure contracting actions will be conducted in conformity with applicable Federal and State regulations and PHA policy.
- 29) **Invitation for Bids (IFB)** - Solicitation type used under the sealed bidding method of procurement. This document explains the intended purchase and invites bids from potential contractors.
- 30) **Joint Venture Partner** - This is a participant, other than a PHA, in a joint venture, partnership, or other business arrangement or contract for services with a PHA.
- 31) **Level-of-Effort Contract** - Contract (usually cost-reimbursement) that specifies the number and type of person-hours that the contractor will use in performance of the contract requirements.
- 32) **Major Change** - Modification to an existing contract that is beyond the general scope of the contract or a change to a substantive element of the contract that is so extensive that a new procurement should be used.
- 33) **Micro Purchases** - Small purchases under \$10,000 (or lower threshold established by the **PHA**).
- 34) **Negotiation** - Discussions with offerors in the competitive range regarding technical and/or price proposals when awarding a contract using the competitive proposals method of procurement or when issuing modifications to existing contracts or other required discussion with offerors for the other methods of procurement.
- 35) **Noncompetitive Proposals** - Procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.
- 36) **Offer** - A response to a solicitation (IFB or RFP) that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called "bids" or "sealed bids", responses to requests for proposals (negotiation) are offers called proposals"; however, responses to requests for quotations (small purchases) are "quotations," not offers. Small purchases become binding contracts once the vendor accepts the order (e.g., by signature or substantial performance of the order). Offers submitted under the Qualifications-Based Selection (QBS)

method are called qualifications.

- 37) **Offeror** - The general term for the entity that submits a response to a solicitation. For the purposes of this policy, offeror may be used interchangeably with bidder, proposer, or respondent.
- 38) **Procurement** — The acquiring by purchase order or contract of supplies and services (including construction). When procuring a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations (2 CFR Part 200.317 through 200.326). Procurement begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.
- 39) **Proposal** — The offer submitted by a potential contractor in the competitive proposals' method of procurement.
- 40) **Qualification Based Selection (QBS)** — A form of procurement of architect-engineering (A/E) or development services by competitive proposals in which price is not requested in the QBS or used as an evaluation factor. Instead, technical qualifications only are reviewed, and negotiations are conducted with the best-qualified firm. Only A/E services and development partners may be procured by this method.
- 41) **Quotation** — The price or cost submitted by a vendor in the small purchase procedures method.
- 42) **Request for Proposals (RFP)** — Solicitation method used for competitive proposals. Proposal evaluation and contractor selection are based on the evaluation criteria and factors for award as stated in the RFP. Contract award is based on the best proposal responsive to the requirements of the statement of work resulting in the greatest benefit and best value to the PHA, which may not necessarily be primarily determined based on price.
- 43) **Responsible Bidder** — A bidder who is able to comply with the required or proposed delivery or performance schedule; has a satisfactory performance record; has a satisfactory record of integrity and business ethics; has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them; has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and is otherwise qualified and eligible to receive an award under applicable laws and regulations, including the fact that the bidder is not suspended, debarred or under a HUD-imposed Limited Denial of Participation.
- 44) **Responsive Bid** — A bid that conforms substantially to the requirements in the Invitation for Bids (**IFB**).
- 45) **Sanctions** — Measures that may be invoked by HUD to exclude or disqualify contractors, PHA staff or agents acting on behalf of a PHA from participation in HUD programs (such as limited denial of participation or debarment), or measures the PHA may take regarding employees, officers, agents, or others who violate the ethical standards of the policies of the PHA (such as dismissal, reassignment, removal from position, etc.). In the case of violations, HUD would exercise any available remedy under the ACC, federal regulations and statutes, and grant agreements, including the U.S. Housing Act of 1937 as amended, 2 CFR Part 200, and sections 17 and 19 of the ACC.

- 46) **Sealed Bidding** — A method of procurement inviting sealed bids. This method requires: specifications that are clear, accurate, and complete; a public bid opening; and evaluation of bids and award of the contract based on the lowest price submitted by a responsive and responsible contractor. Sealed bidding is the preferred method for construction (2 CFR 200.320 (c)).
- 47) **Small Purchase Procedure** — A simplified method for acquiring supplies, materials, and services (including construction) that do not exceed the PHA's small purchase threshold. (The Federal threshold is \$250,000; PHAs are limited to this or a lower amount as specified in applicable State or local law or dictated by the PHA's Procurement Policy or imposed by HUD due to PHA's procurement performance.) (2 CFR Part 200.320(b) through (f)).
- 48) **Small Purchase Threshold** — The per purchase dollar limit established by a PHA for small purchases. The threshold is set in the PHA's procurement policy. The threshold may not exceed the Federal small purchase threshold 2). **Solicitation** — The general term for the agency's request for offers from potential offerors. A solicitation package generally contains the proposed contract, including contract terms and conditions, instructions to potential offerors regarding the submission of an offer, and any other information needed to prepare an offer.
- 49) **Solicitation Provisions** — The instructions provided to bidders/offerors included in solicitations. The provisions include such information as how to prepare an offer, bonding requirements, date and time for submission of offers, etc. Provisions required by HUD, as applicable, are included on forms HUD-5369, Instructions for Bidders and HUD-5369-A, B and C, Representations, Certifications, etc., and HUD-5369-B for solicitations above the federal small purchase threshold.
- 50) **Specifications or Scope** — Description of the technical requirements of a contract.
- 51) **Statement of Work (SOW)** — Written description of work to be performed that establishes the standards sought for the supplies or services furnished under the contract; typically used for service contracts.
- 52) **Subsidiary** — A type of operating entity created and operated by a PHA over which it has a controlling interest. It may be wholly owned or controlled by the PHA and may be a non-profit organization.
- 53) **Supplemental Agreement** — A type of contract modification to which both parties agree.
- 54) **Termination for Cause** — Termination of a contract on a unilateral basis when the contractor fails to perform, fails to make progress so as to endanger performance, or commits a default as specified in the contract.
- 55) **Termination for Convenience** — Termination of a contract by the PHA on a unilateral basis when the product or service is no longer needed or when the PHA no longer needs or desires the supplies or services under contract or can no longer fund the procurement.
- 56) **Termination Letter** — A document sent by the Contracting Officer notifying a defaulting contractor that the contract may be terminated for default unless the contractor can provide adequate justification for not terminating within a specified time period (usually **10** days).
- 57) **Time Delay** — An interruption during which supplies are not delivered or services or work are not completed in accordance with the performance schedule stated in the contract.

58) Vendor — The term often used for a contractor or supplier.

59) Vendor List — List of persons or firms who have expressed an interest in doing business with the Agency.

60) Public works---The construction, installation, repair, renovation, or maintenance of public buildings, structures, sewers, waterworks, roads, curbs, gutters, side walls, bridges, docks, underpasses, and viaducts as well as any other improvement to be constructed, installed, repaired, renovated, or maintained on public property and to be paid, in whole or in part, with public funds or with financing to be retired with public funds in the form of lease payments or otherwise.