



# PROCUREMENT POLICY

**Adopted: May 23, 2023  
Resolution 2023-12**

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# PROCUREMENT POLICY

## HOUSING AUTHORITY OF NEW ORLEANS

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This Procurement Policy complies with the Annual Contributions Contract (ACC) between the Housing Authority of New Orleans (HANO) and the Housing and Urban Development (HUD) Procurement Handbook for Housing Authorities, HUD Handbook 7460.8, Rev 2.), Code of Federal Regulations, PART III, Office of Management and Budget, 2 CFR, Procurement Standards, Procurements by states § 200.317 through 200.326, and State, local laws and regulations.

Clarification to the roles and responsibilities of HANO staff, and Managing Departments is an important component of this Policy. HANO staff and Managing Departments are defined as those in the Central Office, as well as the properties and/or programs directly managed by HANO, including its subsidiaries. HANO's Affiliates (if any), third party contractors, including its Development Partners and Property Management Companies (PMCOs) are not bound to these policies unless a purchase is made by HANO on behalf of a third party asset management contractor. The policies included in this document are applicable to all HANO contractors, excluding Housing Choice Voucher Payments to contractors doing business with HANO.

### **1.0 GENERAL PROVISIONS**

#### **1.1 General**

HANO 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;
- 1.1.3** Ensure that supplies and services including construction)are procured efficiently, effectively, and are the most favorable prices available to HANO;
- 1.1.4** Promote full and open competition in contracting; and
- 1.1.5** Assure that HANO purchasing actions are in full compliance with applicable Federal standards, HUD regulations, State, and local laws; and
- 1.1.6** Assure internal controls are established to separate staff duties throughout the purchasing process.

#### **1.2 Governing Laws and Regulations**

##### **1.2.1 Applicable Laws & Regulations**

In adopting these Procurement Policies, the HANO Board of Commissioners and Executive Director/CEO affirm that the policies are in compliance with all applicable Federal, State, and local laws and regulations, which may include, but not be limited to the following:

- a) 2 CFR, Procurement Standards, Procurement by states, § 200.317-326;

- b) HUD Handbook 7460.8 REV 2, Procurement Handbook for Public Housing Agencies, dated 2/2007, as amended;
- c) HUD's Annual Contributions Contract (ACC);
- d) Louisiana Public Bid Law, Revised Statute 38:2211, et. seq. (for procurement of public works projects), as amended; and
- e) Office of Management and Budget – M – 18-18 Memorandum for Chief Financial Officers and Heads of Small Executive Agencies

Where the above laws, regulations or procurement rules conflict, the more stringent law or rule should be applied. Exceptions to following the more stringent procurement rules include:

- a) Geographic Preference: Although some States impose certain geographic reference restrictions in the evaluation of bids or proposals, 2 CFR § 200.319 prohibits the use geographic restrictions except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. Nothing in the section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- b) Wage Requirements: Federal wage determination (Department of Labor Davis-Bacon and/or HUD-Determined Wage Rates) preempt any State prevailing wage rate when the State wage is higher than the applicable Federally-imposed wage rate (2CFR § 200.320).

Per the HUD Procurement Handbook, if Local Governing Body (LGB) is required to furnish the same public facilities and services to HANO and its tenants as other dwellings, HUD requires HANO obtain a Cooperation Agreement between HANO and the LGB. The LGB is required to cooperate with HANO in the development and administration of its projects, to accept dedications of lands for roads, alleys, and sidewalks and to provide water, storm and sanitary storm services for which HANO shall pay the same amount as private owners. These arrangements may require some flexibility in complying with HANO's procurement requirements.

### **1.2.2 Changes in Laws & Regulation**

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.

## **1.3 Application**

This Procurement Policy applies to all HANO procurement actions regardless of the source of funds, except as noted under "Exclusions". However, nothing in this Policy shall prevent HANO 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.

#### **1.4 Definition**

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

- 1.4.1** Goods, supplies, equipment, and materials;
- 1.4.2** Construction, maintenance and consultant services;
- 1.4.3** Architectural and Engineering (A/E) services;
- 1.4.4** Social Services; and;
- 1.4.5** Other services.

#### **1.5 Exclusions**

This policy does not govern the following; 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, real estate purchases and sale transactions, loan transactions and documents, sub-recipient or sub-grantee agreements and related contract modifications, employment contracts, limited partnership agreements, memoranda of understanding and/or agreements with other public agencies, e.g., fee-for-service revenue under 24 CFR Part 990. These excluded areas are subject to applicable State and local requirements.

##### **1.5.1 Direct Pay**

The Direct Payments List is a list of transactions which, by the nature of the transaction, are impractical or impossible to competitively procure (bid) due to market or other conditions. These items are exempt from competitive purchasing requirements, although, still require pre-approval in accordance with the procurement threshold. These transactions do not have to be justified as a Non-Competitive Procurement but may be obtained directly by an individual staff member with the approval of authorized personnel. Depending on the item, there may or may not be a contract or Purchase Order outlining the terms and conditions. If a contract or Purchase Order is required to outline the terms and conditions, it shall be labeled "Direct Pay."

The following reoccurring items, paid for on behalf of HANO, are authorized to be on the Direct Payment List:

- a) Utility bills (Water, Sewer, Electricity, Natural Gas, landline telephone services (excluding mobile services), cable, and other regulated utility expenses).
- b) Postage and other purchases from the U.S. Postal Service.
- c) Licenses, permits, and fees from governmental or regulatory entities at the federal, state, or local level.
- d) Purchases from other governmental entities (federal, state, city, local, port districts, Public Development Authorities (PDAs), housing authorities, state colleges and universities, state hospitals, etc.) where the governmental entity provides goods or

services not available from the private sector.

- e) Emergency housing for HANO residents at motels/hotels, or as otherwise authorized by the Executive Director/CEO or authorized designee.
- f) Services or use fees paid to governmental cooperative purchasing organizations.
- g) Specific legal services such as; arbitration fees, litigation fees, expert witness fees, court costs, and related expenses (including the cost of investigations, or related matters), when approved by the General Counsel.
- h) Legal settlements of disputed matters, and judgment claims against HANO (for use only with approval by the General Counsel and Executive Director).
- i) Renewal of existing annual proprietary maintenance or support agreements, and software license renewals for computer and telecommunication-related services.
- j) All Agency advertisements for employment opportunities, purchasing and contracting solicitations, sale of surplus items, public announcements and outreach, (published in all media outlets) etc. This exception does not include printing, design, or graphic services.
- k) Freight bills, express shipping, common carriers, and delivery services.
- l) Insurance deductible(s) and or related losses (requires approval of the Legal Department).
- m) Registration fees (hotel, conferences, training), taxi, public transportation, and toll fares, mileage and incidental parking expenses.
- n) Publications and subscriptions (newspapers, magazines, books, pre-printed materials, reprints, publishers page charges, electronic publications, online subscriptions services, pre-recorded audio or video cassettes, slide presentations, tapes, CDs, diskettes often purchased from the publisher or producer; etc.)
- o) Mailing lists (print or electronic).
- p) Professional association membership dues, fees, licenses, accreditation, and certification.
- q) Royalties, broadcast rights, and film rentals from the producer or protected distributors.

The non-reoccurring items, paid for on behalf of HANO employees or residents, are authorized to be on the Direct Payment List:

- a) Credit card charges for approved expenses while traveling.
- b) Travel expenses for HANO employees, residents, program participants, volunteers, or members of the Board of Commissioners necessary to conduct HANO business.
- c) Training registration fees and tuition for pre-established, non-HANO specific, seminars, workshops, etc. for HANO employees, residents, program participants, volunteers, and members of the Board of Commissioners necessary to conduct HANO business.
- d) Testing and travel expenses of employment applicants (including relocation expenses for eligible personnel). This includes travel expenses of certain out-of-state job applicants (Travel expenses of job applicants must be approved by the Executive Director/CEO).
- e) Conferences and convention expenses and fees for HANO employees, residents, program participants, volunteers, or members of the Board of Commissioners

- conducting HANO business.
- f) Honoraria and stipends.
  - g) Entertainment such as speakers, lectures, musicians, performing artists. Only when such expenses are permitted by the grant funding the activity.

### **1.6 Contracting Officer**

The Executive Director/CEO shall be and act as HANO's Contracting Officer, unless the function is formally delegated in writing. All contract terms and conditions are reviewed and approved by the General Counsel prior to signature of the Executive Director/CEO.

If HANO needs to execute a contract prior to the next Board of Commissioners' scheduled meeting, the Executive Director/CEO shall contact the President of the Board, and provide a summary of the action and the reason for immediate execution of the contract. Once approved by the President, and executed by the Executive Director/CEO, the contract will be presented to the Board of Commissioners' at the next scheduled meeting for ratification.

### **1.7. Public Access to Procurement Information**

Procurement information that is not considered to be proprietary shall be a matter of public record, and shall be made available to the public in accordance with La. R.S. 44:1 et. seq. A per page copy charge may be assessed, which will be determined by the number of pages requested.

### **1.8 Self-Certification of Policies to HUD**

2 CFR §200.324, authorizes a housing authority to self-certify its procurement policy to HUD. Such self-certification does not limit HUD's right to survey the procurement policy.

HANO certifies its procurement policy is in compliance with 2 CFR §200.317 and all applicable laws and regulations. Furthermore, the HANO Board of Commissioners has approved the policy.

### **1.9 Approval and Adoption by Board of Commissioners**

This Procurement Policy, and any substantive policy changes, shall be approved and adopted by HANO's Board of Commissioners.

## **2.0 ETHICS IN PUBLIC CONTRACTING**

### **2.1 General**

Ethical contracting standards apply to all HANO employees, the Executive Director/CEO, HANO's Board of Commissioners, officials and agents of the authority, and contractors with whom HANO does business, pursuant to HUD Handbook 7460.8 REV 2, Procurement Handbook for Public Housing Agencies, dated 2/2007, as amended. This code of ethical contracting standards has been established and must be adhered to regarding all procurement actions. Sanctions shall be implemented for those who violate this standard.



## **2.2 Conflicts of Interest**

No employee, officer, board member, or agent of HANO 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 Ownership & Business Interests**

HANO employees shall not own or hold an interest in any contract or property, or engage in any business, transaction, or professional or personal activity that would:

- a) Be, or appear to be, in conflict with the employee's official duties, or
- b) Secure, or appear to secure, an unwarranted privilege or advantage for the employee, or
- c) Prejudice, or appear to prejudice, the employee's independence of judgment in the exercise of his or her official duties relating to HANO.

## **2.4 Gratuities, Kickbacks, and Use of Confidential Information**

No employee, officer, board member, or agent of HANO 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.

All employees shall report any suspected anticompetitive practices by contractors to their Direct Supervisor, Executive Director/CEO, Board Commissioners, HUD Field Office, and appropriate State and local officials in the order as listed.

## **2.5 Prohibition Against Contingent Fees**

Contractors doing business with the HANO 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.

## **2.6 Reporting Unethical Behavior & Actions**

All HANO employees must report all evidence of fraudulent or unethical behavior to one of the following sources as listed in order below:

- a) Direct Supervisor
- b) Executive Director/CEO
- c) General Counsel
- d) Board of Commissioners
- e) Inspector General, (if applicable)
- f) Federal Bureau of Investigations (FBI) (if applicable)

HANO management staff shall report cases of unethical procurement behavior directly to the Executive Director/CEO.

## **2.7 Disciplinary Actions**

Breaches of ethical contracting standards may result in disciplinary actions consistent with the HANO Personnel Policy.

## **2.8 Contracting With Former HANO Employees**

The following shall apply to contracts financed in whole or in part with federal funds.

### **1. Two Year Prohibition**

Within two years after an employee leaves the Agency, HANO shall not contract with such employee if the employee was responsible for formulating policy or influencing decisions with respect to the project(s) where a contract award is under consideration.

### **2. Waiver**

For good cause, the Executive Director/CEO may request HUD provide a waiver of the two year prohibition period, which must include a rational explanation for the waiver request.

### **3.0 PROCUREMENT PLANNING**

Planning is essential to managing the procurement function properly. Hence, HANO 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 HANO's procurement costs; reduce HANO 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 due to an inadequate lead time for purchasing goods or services). Consideration should be given to storage, security, and handling requirements when planning the most appropriate purchasing actions.

The Procurement Plan should serve as a sequencing mechanism to plan procurement activities. The plan should assist in the Procurement Department in preparing a spend analysis report, which can be utilized in volume purchasing through intergovernmental and cooperative purchasing agreements.

### **3.1 FUNDING AND PAYMENT**

HANO shall ensure funding is available prior to the purchase to ensure prompt payment to the contractor.

### **4.0 PROCUREMENT METHODS**

This section describes the criteria for selection of the appropriate procurement method to be employed for each procurement action.

#### **4.1 Petty Cash Purchases**

Purchases with a value of less than \$100 may be handled through the use of a petty cash account. A Petty Cash Account, in the amount of \$500, 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 HANO 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 purchase only.

#### **4.2 Micro Purchases (Less than \$10,000)**

Procurement by micro-purchase with a value of \$10,000 or less, for the purchase of materials, supplies, or services are made after obtaining one price quotation, provided the price is considered to be reasonable. In order to promote competition, micro 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 HANO. If an award is to be made for reasons other than lowest price, documentation shall be provided in the Procurement contract file.

Construction services greater than \$2,000 but not more than \$100,000 must incorporate the applicable Davis Bacon (DOL) Wage Rate, and HUD 5370-EZ, General Conditions for Small Construction/Development Contracts.

Maintenance Contracts (including non-routine maintenance work) greater than \$2,000 but not more than \$100,000 must incorporate the clauses contained in Table 5.1; Section II of form HUD-5370-C, General Conditions for Non-Construction Contracts, and the applicable HUD wage decision.

#### **4.3 Small Purchases (Greater than \$10,000 and Less than \$250,000)**

Purchases with a value of \$10,000, but not exceeding \$250,000 are considered to be small purchases. HANO will issue a Request for Quotes at a minimum to solicit prices from a minimum of at least (3) qualified sources. In order to promote competition, quotes under the small purchase procedures may be obtained in writing, via email, fax or e-procurement. Award shall be made to the qualified vendor that provides the best value to HANO. If an award is to be made for reasons other than lowest price, documentation shall be provided in the procurement contract file.

HANO shall not break down requirements into several purchases, where the aggregate of the purchase is greater than the Small Purchase Threshold, or the Micro Purchase Threshold merely to: (1) permit use of the small purchase procedures, or (2) avoid any requirements that may apply to purchases that exceed the Micro Purchase Threshold. This includes purchasing materials, supplies, or services from like commodities (vendors in the same category) on a repetitive basis to avoid the requirements of a larger solicitation.

#### **4.4 Blanket Purchase Order**

Blanket Purchase Orders may be used to procure materials, supplies, or services required on a continual basis. A Blanket Purchase Order is a contract for goods or services over a defined period of time at a pre-determined price. Funds are encumbered each fiscal year according to the departments' budgetary requirement.

#### **4.5 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 a 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 shall obtain a reasonable number of quotes before purchasing via a credit card (except for travel (e.g. HANO approved seminars, workshops or conventions) where the Contracting Officer or his/her appointed designee will pay for the expenses incurred (e.g. as airfare, hotel, and food for multiple staff personnel). All expenses must be in compliance with the HANO Travel Policy.

When using credit cards, the Contracting Officer or his/her appointed designee shall monitor all expenditures to insure expenses are reasonable, maintain all receipts are in compliance with

this policy. Original receipts must be turned in with explanation of expense along with the credit card bill to allow for processing. When using personal credit card 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 HANO Finance Department has established safeguards to assure credit cards are used only for the intended purposes and are limited to legitimate HANO Business expenses.

#### **4.6 Prohibition Against Bid Splitting**

The Contracting Officer shall not break down purchases of like commodities and requirements aggregating more than the small purchase threshold (or the Micro Purchase threshold) into multiple purchases that are less than the applicable threshold (commonly called 'bid splitting' or "unbundling") merely to permit use of the small purchase procedures or avoid any requirements that apply to purchases that exceed those thresholds. However, larger requirements may be broken into smaller ones to afford small and minority businesses the opportunity to participate in the PHA's procurements. The Contracting Officer should document in the contract file the reasons for breaking down larger requirements into smaller ones.

#### **4.7 Sealed Bids**

Procurement by sealed bids is a formal method of solicitation for contracts that are not competitive proposals or non-competitive proposals. Sealed bidding is the preferred method of procuring construction services with a value of \$250,000 or greater, defined as public works projects in accordance with Louisiana State Public Bid Law. Sealed Bids for construction services are publicly solicited. A firm fixed-price contract (fixed price or unit price), must be awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the Invitation for Bids (IFB), is the lowest in price. Construction services must be procured in accordance with LA Louisiana Public Bid Law, Revised Statute 38:2211, et. seq.

The sealed bid method is also used for the purchase of materials and supplies with a value of \$60,000 or greater and non-complex service contracts with a value of \$250,000 or greater. HANO shall issue an IFB for the purchase in accordance with LA Louisiana Public Bid Law, Revised Statute 38:2211, et. seq.

##### **4.7.1 Conditions for Use**

HANO shall use the sealed bid method (IFB) if the following conditions are present:

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

#### **4.7.2 Advertisement, Solicitation and Receipt of Bids**

The invitation for bids will be publicly advertised, and bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids. Advertisements shall be published once a week for 3 different weeks in a newspaper in the locality; the first advertisement shall appear at least 25 days before the opening of bids and not occur on a Saturday, Sunday, or other legal holiday (R.S. 38:2212(G)).

An Invitation for Bid (IFB) is prepared and issued to contractors, which includes specifications, drawings etc., and all contractual terms and conditions that are applicable to the contract. , HANO shall award a contract to the lowest responsible and responsive bidder. HANO shall include only the Louisiana Uniform Bid Form to obtain a Total Base Bid Price for all work required by the Bidding Documents (including any and all unit prices designated "Base Bid" but not alternates.

Bids may be received in one of three ways. (1) For bids hand delivered by the bidder or his agent, a written receipt shall be handed to the deliverer; (2) Alternatively, bids shall be sent by registered or certified mail with a return receipt requested; or (3) Shall be submitted electronically.

#### **4.7.3 Bid Opening and Award**

All bids will be publicly opened at the time and place prescribed in the invitation for bids. Bids prices shall be recorded on a tabulation sheet, and made available for public inspection. A contract will be awarded to the lowest responsive bidder who submits the proper documentation within ten days of the opening of the bids.

Contractor shall certify that they hold an active license to perform the requirements of the work by displaying their license number on the bid envelope at the time of submission. If the bid does not display the contractor's license number on the bid envelope, their bid shall be automatically rejected, and shall not be read aloud.

#### **4.7.4 Right to Reject Bids**

The public entity may reject any and all bids for just cause. Just cause for the purpose of the construction of public works is defined LA Rev Stat § 38:2214.

#### **4.7.5 Mistakes in Bids**

Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received by HANO in the manner 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. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of HANO or fair

competition shall not be permitted.

#### **4.8 COMPETITIVE PROPOSALS**

The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded.

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, other contract terms and conditions; revisions to a proposal prior to final selection; and withdrawal of an offer at any time up to contract award. Contract award considers technical qualifications, price, and other factors (e.g., technical expertise, past experience, approach etc.), set forth in the solicitation, and is not solely based on the lowest price. .

##### **4.8.1 Conditions for Use**

Where conditions are not appropriate for the use of sealed bidding, competitive proposals may be used. HANO shall prepare and issue a Requests for Proposals (RFP) to procure professional services.

- (1) Requests for proposals must be publicized, and identify all evaluation factors and their relative importance. Responses must be considered to the maximum extent practical;
- (2) Proposals must be solicited from an adequate number of qualified sources;
- (3) HANO must have a written method for conducting technical evaluations of the proposals received and for selecting respondents;
- (4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- (5) HANO may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

##### **4.8.2 Time Period for Submission of Proposals**

A minimum of 15 days shall be provided for preparation and submission of competitive proposals. However in this case, the Executive Director may allow for a shorter period under extraordinary circumstances.

##### **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**

The Request for Proposals (RFP) shall be advertised and published in newspapers or other print mediums of local or general circulation, and posted to HANO website, in trade journals or publications and E-Procurement. However, all E-Procurements must otherwise be in compliance with State and local requirements and HANO's procurement policy. The solicitation must be run for a period of not less than once each week for two consecutive weeks. Copies of the RFP must be made available on the first day of the advertisement and until 24 hours before the submission due date and time.

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 item(s).

### **4.8.3 Form of Solicitation**

Other than, Architectural and Engineering Services, and Developer Services, competitive proposals shall be solicited through the issuance of a RFP. The RFP shall clearly establish evaluation criteria.

### **4.8.4 Receipt of Proposals**

Proposals are to be date-time stamped when they are received and held unopened in a secure place until the established date for receipt of proposals has passed. Since proposals are submitted in confidence and may contain proprietary information (such as trade secrets or other confidential business information regarding the offeror's approach to the work), they are not opened publicly. After the closing date, all proposals received are opened and evaluated in confidence. Proposals and any changes to those proposals are shown only to HANO personnel who have been authorized by the Contracting Officer as having a legitimate interest in them on the condition that information in the proposals will not be released to anyone who has not been so authorized.

### **4.8.5 Evaluation Process**

Evaluations shall be conducted based on the evaluation factors set forth in the RFP. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established **before** the solicitation is issued. Factors not specified in the RFP shall not be considered. Initially, proposals should be evaluated on an individual basis against the requirements stated in the RFP; at this point proposals are not analyzed in comparison with each other. Also during the initial evaluation, the committee evaluates only the content of the proposals. No personal knowledge of the offeror not based on the contractor's written submission is or should be part of the written proposals' initial evaluation; however, the contractor's prior performance with HANO should be included as part of the standard review of offeror responsibility.

Where not apparent from the evaluation criteria, HANO shall establish an Evaluation Plan for each RFP. All RFP's shall be evaluated by an appropriately appointed Evaluation Committee selected by the Executive Director/CEO or authorized designee. The Evaluation Committee shall be required to disclose any potential conflicts of interest and to sign a Non-Disclosure statement. An Evaluation Report, summarizing the results of the evaluation, shall be prepared prior to award of a contract.



#### **4.8.6 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 offerors 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 HANO 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 offerors 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 HANOs 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 governments price analysis, market research, and other reviews have identified as reasonable. Auctioning (revealing one offerors price in an attempt to get another offeror to lower their price) is prohibited. After initial negotiations are complete, offerors in the competitive range shall submit their revisions in the form of a best and final offer. All offerors in the competitive range should be provided an opportunity to present a best and final offer.

#### **4.8.7 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 HANO provided that the price is within the maximum total project budgeted amount established for the specific property or activity.

**Notice to Unsuccessful Offerors.** The Contracting Officer should notify each unsuccessful offeror and the awardee price in writing. The notice should identify the successful offeror and the contract price, and the basis for the offeror not being selected for contract award.

**Debriefing Unsuccessful Offerors.** The notice to unsuccessful offerors should provide them with the opportunity to request a debriefing. The notice should state any time frame during which the request must be made (e.g., within 10 business days after receipt of notice). The debriefing should explain how the offer was unsuccessful (e.g., by comparing it to

the requirements of the RFP). The debriefing should not include a detailed point-by-point comparison with the successful offer or any other offer, and may not reveal any information about another offer that is protected from disclosure (e.g., personal information, proprietary business information).

#### **4.8.8 Architectural and Engineering (A/E) Services**

Unlike other methods, the Qualifications Based (QSB) method of procurement does not use price as an evaluation factor. HANO shall request technical qualifications statements from prospective firms, and then rank the statements according to their qualifications in accordance with the criteria outlined in the RFQ.

HANO shall issue a Request for Qualifications (RFQ) to procure architectural/engineering (A/E) professional services, or development partner services. Qualifications will be evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. QBS procedures shall not be used to purchase other types of services, though A/E firms are potential sources.

### **5.0 NON-COMPETITIVE 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:

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 HANO, 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; or
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.

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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:

1. Description of the requirement;

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

### **5.3 Requirements for Emergency Procurements**

Procurement by noncompetitive proposals (sole-source) maybe used when an emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to HANO, as may arise by reason of a flood, earthquake, epidemic, pandemic, 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 is limited to those supplies, services, or construction necessary simply to meet the emergency; When contract action is taken pursuant to telephone or other oral offers, a written confirmation of the accepted offer shall be obtained and made a part of the contract file.

In addition, whenever contract action is taken, a record shall be established which shall contain, at a minimum, the following information with respect to each offer: a) A description of the work to be performed; b) The name and address of each offeror quoting, and the performance time and terms of each offer; c) If quotations lower than the accepted quotation are received, the reasons for their rejection shall be recorded and made a part of the contract file. Such records shall be retained in accordance with all applicable laws, regulations, and HANO policies. Please refer to: LA R.S. 38:2212, et. Seq.

## **6.0 COOPERATIVE PURCHASING/INTERGOVERNMENTAL AGREEMENTS**

HANO 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 authorized the purchase on behalf of the participating agency, and shall specify an inspection, acceptance, termination, payment, and other relevant terms and conditions. Goods and services obtained under a cooperative purchasing or interagency agreement must have been procured in accordance 2 CFR Part 200.317 through 200.326.

## **7.0 COST AND PRICE ANALYSIS**

Cost Analysis - A written review and evaluation of contractor proposed costs for a contract or contract modification.

Price Analysis - A written review and evaluation of competitive prices received by HANO to determine whether the proposed price of a Contractor is reasonable when compared with prices provided by others in the market.

A cost or price analysis must be performed in connection with every procurement action above (\$10,000) in excess of the Simplified Acquisition Threshold (\$250,000) including contract modifications.

A Cost Analysis is required whenever price is not used as the only selection criterion for award of a contract.

### **7.1 INDEPENDENT COST ESTIMATE (ICE)**

For all purchases above the Micro Purchase threshold, an estimate of the anticipated costs (ICE) is required prior to issuance of a solicitation or execution of a contract or contract modification. The ICE may be prepared by HANO staff or an independent entity that assists HANO in evaluating costs.

## **8.0 Cancellation of Solicitations**

A Request for Proposals (RFP), Request for Qualifications (RFQ) or a Request for Quotes (RFQu), may be cancelled before quotes/offers are due if:

1. The supplies, services or construction is no longer required;
2. The funds are no longer available;
3. Proposed amendments to the solicitation are of such magnitude that a new solicitation must be considered; or
4. Other similar reasons.

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

1. The supplies, services, or construction are no longer required;
2. Ambiguous or otherwise inadequate specifications were part of the solicitation;
3. Factors of significance to the FHA were not considered.;
4. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
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

6. For good cause of a similar nature when it is in the best interest of HANO.

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

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 HANO's cost estimate. If both are determined adequate and if only one bid is received and the price is unreasonable, the Contracting Officer may cancel the solicitation and either: (1) Resolicit using an RFP; or (2) Complete the procurement by using the competitive proposal method. The Contracting Officer must determine, in writing, that such action is appropriate, must inform all bidders of HANO's intent to negotiate, and must give each bidder a reasonable opportunity to negotiate. If problems are found with the specifications, HANO should cancel the solicitation, revise the specifications and resolicit using an IFB

**Notice to Offerors for Cancellation.** 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 future procurement or solicitation of similar items

## 9.0 CONTRACTOR QUALIFICATIONS AND DUTIES

### 9.1 BONDING REQUIREMENTS

The standards under this section apply to construction or facility improvement contracts that exceed \$25,000, as prescribed by LA R.S. 38:2218 and 38:2241. There are no bonding requirements for other small purchases or for competitive proposals. HANO may require bonds in the latter circumstances when deemed appropriate; however, non-construction contracts should generally not require bid bonds.

HANO shall require the following for construction contracts exceeding \$25,000:

- A. Bid Bonds. A bid guarantee from each bidder equivalent to 5% of the bid price.
- B. Payment Bonds. The successful bidder shall furnish an assurance of completion. This assurance may be any one of the following four:
  - 1. A performance and payment bond in a penal sum of 100% of the contract price; or
  - 2. Separate performance and payment bonds, each for 50 % or more of the contract price; or
  - 3. A 20 % cash escrow;
  - 4. A 25 % irrevocable letter of credit.

These bonds must be obtained from guarantee or surety companies acceptable to the U. S. Government and authorized to do business in the State of Louisiana. 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.

## **9.2 Contractor Responsibility**

HANO shall not award any contract until the prospective bidders or offerors are determined to be responsible. Responsibility is determined by the following:

- Adequate financial resources to perform the contract, or the ability to obtain them;
- Ability to comply with the required or proposed delivery or performance schedule, taking into consideration all the bidders/offerors existing commercial and governmental business committee;
- Satisfactory performance record;
- Satisfactory record of integrity and business ethics;
- Necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
- Necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,
- Qualified and eligible to receive an award under applicable laws and regulations,
- 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.

Unsuccessful bidders or offerors who are determined to be non-responsible shall be notified and provided an opportunity for a hearing in accordance with LA R.S. 38:2212.

### **SUSPENSION AND DEBARMENT**

Contracts should not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined to be ineligible by HUD in accordance with HUD Regulations (24 CFR Part 24) or by other Federal agencies (e.g. Dept. of Labor for violation of labor regulations) when necessary to protect HANO in its business dealings. Prior to an award, HANO shall review the following systems to ensure that the bidders that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities are prohibited from being considered for award.

- a) U.S. General Services Administration (GSA) List of parties Excluded from Federal Procurement and Non-procurement Programs
- b) U.S. Department of Housing and Urban Development Limited Denial of Participation List
- c) State of Louisiana Secretary of State
- d) LexisNexus

## **9.3 Vendor Lists**

All interested parties shall be given the opportunity to do business with HANO, and may be included on a vendor mailing list. Vendor lists shall be kept current, include enough sources to ensure completion, and referenced prior to soliciting supplies and services (including construction).

## **9.4 Vendor Registration**

Individuals and businesses may register online via the HANO website under the Vendor Registration Portal. Vendors will be notified of upcoming solicitations based on their registered commodity.

### **9.5 Vendor Setup**

HANO will provide a Vendor Setup form to vendors/contractors who are awarded a contract or purchase order. A Contractor Setup Form and W9 must be completed for contracts awarded. The form must be reviewed and approved by the requesting Department Director, Chief Financial Officer, and the Procurement Officer prior to setup in the HANO financial database. The Department of Procurement and Contracts shall enter and maintain Vendor/Contractor data/information.

### **9.6 Vendor Maintenance**

HANO will review its Vendor Registration and Setup Database on an annual basis to ensure contractor information is current.

### **9.7 Vendor Exclusion**

This section applies to exclusion of a sole proprietor or any bidding entity if any individual partner, incorporator, director, manager, officer, organizer, or member who has at least 10% ownership in the bidding entity, for consideration for award of contracts, in accordance with LA R.S. 38:2227 for the following crimes:

1. A conviction of or plea of guilty or no contest to the following state crimes or equivalent federal crimes shall permanently bar any person or the bidding entity from bidding on public projects.
  - a) Public bribery
  - b) Corrupt Influencing
  - c) Extortion
  - d) Money laundering
  
2. A conviction of or plea of guilty or no contest to the following state crimes or equivalent federal crimes shall bar any person for the bidding entity from bidding entity from bidding on public projects for a period of five years from the date of conviction or from the date of the entrance of the plea of guilty or no contest.
  - a) Theft
  - b) Identity theft
  - c) False accounting
  - d) Issuing worthless check
  - e) Bank fraud
  - f) Forgery
  - g) Contractors: Misapplication of payments
  - h) Malfeasance in office

The five-year prohibition shall apply only if the crime was committed during the solicitation or execution of a contract or bid awarded pursuant to the provisions of LA R.S. Title 38, Chapter 10 – Public Contracts.

HANO shall not be required to perform criminal background checks on contractors, vendors or subcontractors. Each bidder shall be required to attest that he has not been convicted of, or has not entered a plea of guilty to nolo contendere to any of the crimes or equivalent crimes listed in the

preceding paragraph. It shall be the responsibility of any person, company, or entity making an allegation of false attestation to present prima facie proof to HANO supporting their claim. If evidence is presented that confirms an attestation that was submitted under false pretenses, and a project must be re-advertised or the contract cancelled, the awarded entity making the false attestation shall be responsible to HANO for costs incurred due to the rebid or cancellation of the project solicitation or contract.

Should HANO uncover information about a bidding entity that would be cause for debarment, suspension, exclusion, or determination of ineligibility for award of a contract, it shall report and submit supporting documentation to the applicable regulatory agency.

## **10.0 CONTRACT PRICING ARRANGEMENTS**

### **10.1 Contract Types**

Any type of contract which is appropriate to the procurement and which will promote the best interests of the HANO 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 HANO. For all cost reimbursement contracts, HANO must include a written determination for use of the contract type. Further, the contract must include a not to exceed amount, which if the contractor exceeds, it is done so at their own risk.

### **10.2 Contract Modifications**

#### **General.**

Occasionally, it is necessary to modify a contract or purchase order to reflect changes in the required effort, period of performance, or price. Contract and purchase order modifications shall be issued in writing in one of the following forms:

1. Unilateral modification (a modification that is signed only by the Contracting Officer, such as a change order pursuant to the Changes clause on form HUD-5370, or administrative modification, such as a change in the address of the payment office), or
2. Bilateral modification (such as a supplemental agreement in which both parties mutually agree on contract changes) that is signed by both the Contracting Officer and the contractor. Bilateral modifications are the preferred method of modifying contracts and purchase orders.

A change order is issued after the award of a contract to any of the contract terms, including specifications, completion time, description of the work, etc., within the scope of the contract. (Refer to the HUD General Conditions for Construction Contracts/Non-Construction Contracts)

### **10.3 Options**

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

1. The option is contained in the solicitation;
2. The option is a unilateral right of the Authority;
3. The contract states a limit on the additional quantities and the overall term of the contract;
4. The options are evaluated as part of the initial competition;



5. The contract states the period within which the options may be exercised;
6. The options may be exercised only at the price specified in, or reasonably determined from the contract; and
7. The options may be exercised only if determined to be more advantageous to HANO than conducting a new procurement.

#### **10.4 Contract Clauses**

All contracts should identify the contract pricing arrangement as well as other pertinent terms and conditions, as determined by the HANO. Additionally, HUD Instructions and Contract Conditions for Construction and Non-Construction forms (HUD-5369; 5369-A, 5369-B, 5369, 5370, 5370-C, and 51915A) shall be included in all solicitations. These forms contain all HUD-required clauses and certifications for contracts of more than \$100,000, and required HUD clauses for small purchases and subsequent contract awards. HANO shall ensure that each contract executed contains the required contract clauses, as outlined in 2 CFR Part 200.326, Appendix II.

Contracts for purchases that exceed \$10,000 shall include a termination for cause/convenience by HANO, the manner by which it will be effected, and the basis for settlement.

### **11.0 CONTRACT ADMINISTRATION**

HANO shall maintain a system of contract administration designed to ensure that contractors perform in accordance with terms and conditions outlined in the contract. Contract Administration shall allow for inspection of supplies, services, and construction, as well as monitoring contractor performance, status reports on projects. For cost-reimbursement contracts, costs are allowable only to the extent that they are consistent with the cost principles in HUD Handbook 2210.18.

#### **11.1 Contract Monitor**

The Executive Director/CEO will approve an employee within the user department who will be assigned to serve as the Contract Monitor ("CM") for a project via a Designation Letter. The Designation of Monitor Letter is signed at the time of contract execution. The Department CM shall serve as the project representative, and will assist with collaboration, coordination, cooperation, and communication between the contractor and HANO.

During the contract administration phase, THE Contract Monitor is the point of contact between HANO and the Contractor.

The primary purpose of contract monitoring is to ensure the Contractor is in compliance with contract terms and conditions. Effective monitoring can result in early identification of issues to improve contract performance. All monitoring efforts should be documented including; observations, disputes and final outcome(s). A complete record of all monitoring activities should be maintained by the CM.

#### **11.2 Contract Performance Evaluation**

HANO developed contractor performance evaluation forms to be used to evaluate the performance of contractors, consultants, and/or vendors doing business with HANO. Ratings on previous contracts from such a performance evaluation program may be used in evaluating when a business is responsible and capable of performing proposed work, and may also provide a mechanism for debarring businesses from contracting with HANO.

## **12.0 SPECIFICATIONS**

### **12.1 General**

All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying HANO 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.

## **13.0 APPEALS AND REMEDIES**

### **13.1 General**

It is HANO's policy to resolve all contractual issues informally and without litigation. Disputes will not be referred to HUD unless all administrative remedies have been exhausted. When appropriate, a mediator may be used to help resolve differences.

### **13.2 Informal Appeals Process**

HANO has established a process for informal appeals for contracts of \$250,000 or less. Under these procedures, the bidder/contractor may submit a request 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.

### **13.3 Formal Appeals Procedure**

A formal appeals procedure shall be established for solicitations/contracts of more than \$250,000.

### **13.4 Protests**

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 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.

### **13.5 Contractor Claims**

All Contractor claims shall be governed by HUD General Conditions for Construction and Non-Construction Contracts, "Changes" form HUD-5370, 5370-C and 5370-EZ.

## **14.0 SECTION 3 POLICY STATEMENT**

Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701, et seq.) (the "Act") requires the Housing Authority of New Orleans to ensure that employment and

other economic and business opportunities generated by financial assistance from the Department of Housing and Urban Development (“HUD”), are directed to public housing residents and other low income persons, particularly recipients of government housing assistance, and business concerns that provide economic opportunities to low and very low income persons.

With the Housing Authority of New Orleans’ (HANO) Board Resolution Number 2021-18, HANO hereby reaffirms its commitment of ensuring that all contractors and any tier subcontractors that are awarded a contract of \$100,000 or greater by HANO for work generated through the expenditure of HUD funding shall take all necessary and reasonable steps to provide meaningful, full-time, permanent employment and training to Section 3 residents. It is further reaffirmed that all vendor/contractors and any tier subcontractors that are awarded a contract for work generated through the expenditure of HUD funding shall take all necessary and reasonable steps to provide contracting opportunities to Section 3 business concerns.

To comply with the Act and Board Resolution Number 2021-18, the requirements of this policy is to obtain a reasonable level of success in the recruitment, employment, and utilization of HANO residents and other eligible persons and/or businesses by contractors working on contracts partially or wholly funded with HUD monies. HANO shall examine and consider a contractor’s potential for success in providing employment and business opportunities to those covered under Section 3 prior to acting on any proposed contract award.

In response to any Request for Proposals (RFP), Request for Qualifications (RFQ) or Invitation for Bids (IFB), HANO will require submission of the Section 3 Opportunities Plan, roster of Core Employees, and certification that the respondent will comply with the requirements of Section 3 and this policy.

HANO, in accordance with applicable laws and regulations including those published at 24 CFR Part 75 and effective on November 30, 2020, has established employment and training requirements that contractors and subcontractors are expected to meet in order to comply with Section 3 requirements.

HANO’s Section 3 requirement is that Section 3 Workers must perform 20% of all labor hours on a covered contract, and that Targeted Section 3 Workers must perform 5% of all labor hours on a covered contract.

It is the contractor’s responsibility to implement progressive efforts to attain Section 3 compliance. Failure to attain Section 3 compliance in accordance with their contract will subject contractors to penalties including, but not limited to, the withholding of payments.

Small, Minority, and Disadvantaged Business Policy Statement Consistent with Presidential Executive Orders 11625, 12138, and 12432, and as promulgated in 2 CFR Part 200 and in the Housing Authority of New Orleans’ (HANO) Board Resolution Number 2021-18, HANO hereby modifies the numerical requirements relative to contracting with Small, Minority, and Disadvantaged Business Enterprises (SMBDE). HANO also reaffirms its commitment of ensuring that all contractors and any tier subcontractors that are awarded a contract for work generated through the expenditure of HUD funding

shall take all necessary and reasonable steps to provide SDBEs with the maximum opportunity to participate in the performance of contracts awarded by HANO.

**15.0 DBE/WBE POLICY STATEMENT**

Consistent with Presidential Executive Orders 11625, 12138, and 12432, and as promulgated in 24 CFR Part 85 and in the Housing Authority of New Orleans’ (HANO) Board Resolution Number 2021-18, HANO hereby modifies the numerical requirements relative to contracting with Small, Minority, and Disadvantaged Business Enterprises (SDBEs) and Woman Business Enterprises (WBEs) and reaffirms its commitment of ensuring that all contractors and any tier subcontractors that are awarded a contract of \$100,000 or greater for work generated through the expenditure of HUD funding shall take all necessary and reasonable steps to provide qualified Small, Minority, and Disadvantaged Business Enterprises (SDBEs) and Woman Business Enterprises (WBEs) with the maximum opportunity to participate in the performance of contracts awarded by HANO. HANO’s SDBE requirement is 25% of the value of the contract will be awarded to DBEs and 5% of the value of the contract will be awarded to WBEs.

**SUMMARY OF REQUIREMENTS**

<b>Requirements</b>	<b>Targeted Section 3 Worker</b>	<b>Section 3 Worker</b>	<b>SDBE Contracting</b>	<b>WBE Contracting</b>	<b>Section 3 Contracting</b>	<b>Section 3 Training &amp; Internship</b>
	A worker employed by a Section 3 business concern or a worker who currently fits or when hired fits at least one of the following categories, as documented within the past 5 years: 1. Public Housing resident, Section 8 assisted housing managed by the PHA. 3. Youthbuild Participant 4. Labor Benchmark of 5% *Included in the 25% requirement.	Individual’s income is below the low-income limit and is less than 80% AMI. Employed by a low-income business concern. Youthbuild Participant. Labor benchmark of 25%.	25% of the value of construction contracts	5% of the value of construction contracts	10% of the value of construction contracts 3% of the value of non-construction contracts	Paid Training and Internship Spots as listed in Chart on Page 16 of HANO’s Employment, Training and Contracting Policy

**16.0 BOARD APPROVAL OF PROCUREMENT ACTIONS**

The HANO Board of Commissioners approval is not required for procurement actions up to \$250,000.00. Procurement actions above \$250,000.00 must be brought to the HANO Board of Commissioners for approval. It is the responsibility of the Contract Officer to make sure that all procurement actions are conducted in accordance with the policies contained herein.

## **17.0 DELEGATION OF CONTRACTING AUTHORITY**

The Executive Director is responsible for ensuring that HANO's procurements comply with this Policy, the Executive Director may delegate all procurement authority as is necessary and appropriate to conduct the business of the Agency. 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 Executive Director shall also establish a system of sanctions (generally covered in the HANO Personnel Policy) for violations of the ethical standards described above, consistent with Federal, State, or local law.

## **18.0 DOCUMENTATION**

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

- 20.1. Rationale for the method of procurement (if not apparent);
- 20.2. Rationale of contract pricing arrangement (if not apparent)
- 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 contract are closed.

## **19.0 FUNDING AVAILABILITY**

Prior to initiating a solicitation for contract services, HANO shall ensure sufficient funds are available to cover the anticipated cost of the contract or contract modification.

## **20.0 DISPOSITION OF PROPERTY**

HANO shall dispose of its surplus moveable property in accordance with its Fixed Assets Policy and Procedures for disposition of Surplus Moveable Property (Board Approved on February 27, 2020).

## 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 Executive Director or an official authorized by the Executive Director 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 acquisition by contract of supplies and services (including construction) with the PHA's Federal program grant funds through purchase, lease, or other means. 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/Request for Qualifications (QBS/RFQ)** — A form of procurement of architect-engineering (A/E) or development services by competitive proposals in which price is not requested in the Request for Qualifications (RFQ) or used as an evaluation factor. Instead, technical qualifications only are reviewed 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 under both the competitive or non-competitive methods of procurement. 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 HUD-imposed Limited Denial of Participation.
- 44) **Responsive Bid**- A bid that conforms exactly 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)), and must be procured in accordance with Louisiana Public Bid Law, Revised Statute 38:2211, et. seq. (for procurement of public works projects)
- 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 as dictated by the PHA's Procurement Policy, or imposed by HUD due to the 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.

**Attachment A**

**Housing Authority of  
New Orleans  
Procurement Thresholds and  
Authorizations**

The following are the various levels of signature authorization needed to allow purchase to be completed.

<b>Purchase Threshold</b>	<b>Procurement Method</b>	<b>Purchase Order</b>	<b>Purchase Signature Authorization</b>	<b>Pre-Purchase Authorization</b>	<b>Work Completion/Payment Release Authorization</b>	<b>Payment Signature Authorization</b>
<b>0.01-\$100.00</b>	Petty Cash	No PO is required	N/A	Executive Director	N/A	N/A
<b>0.1-\$10,000</b>	One Quote	PO # Required	Property Manager Department Head Executive Director	Department Head or Executive Director	Property Manager or Department Head	Procurement Officer
<b>\$10,001-\$250,000</b>	Three quotes can be obtained via RFQu in writing, email, or fax; Supplies, materials, equipment or construction projects >\$30k use IFB	PO # and Contract Required (>\$5k for Construction)	Executive Director	Executive Director	Property Manager or Department Head Capital Funds Only- Director of Real Estate Development	Executive Director/CEO
<b>\$250,000 and up</b>	Must be procured by sealed bid or proposals	PO # and Contract Required	Executive Director	Board of Commissioners	Executive Director	Board of Commissioners

