

AKRON METROPOLITAN HOUSING AUTHORITY

PROCUREMENT POLICY



Approved by the Akron Metropolitan Housing Authority Board of Trustees
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PROCUREMENT POLICY

SECTION 1.0 - INTRODUCTION

- I. **General.** This Procurement Policy complies with the Annual Contributions Contract (ACC) between the Akron Metropolitan Housing Authority (AMHA) and the U.S. Department of Housing and Urban Development (HUD), Federal Regulations at 2 CFR §200.317 - §200.326, the procurement standards of the Procurement Handbook for Public Housing Authorities, HUD Handbook 7460.8, Rev 2, and applicable State and Local Laws.

SECTION 2.0 - GENERAL PROVISIONS

- I. **General.** The AMHA shall:
 - A. Designate authority and administrative oversight of the procurement processes to the Executive Director or his/her designee;
 - B. Provide for a procurement system of quality and integrity;
 - C. Provide for the fair and equitable treatment of all persons or firms involved in purchasing by the AMHA;
 - D. Ensure that supplies and services (including construction) are procured efficiently, effectively, and at the most favorable prices available to the AMHA;
 - E. Promote competition in contracting; and
 - F. Assure that AMHA purchasing actions are in full compliance with applicable Federal standards, HUD regulations, State, and local laws.
- II. **Application.** This Procurement Policy applies to all procurement actions of AMHA, regardless of the source of funds, except as noted under “exclusions” below. However, nothing in this Policy shall prevent the AMHA 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.
- III. **Definition.** The term “procurement” as used in this Policy, includes the procuring, purchasing, leasing, or renting of (1) goods, supplies, equipment, and materials, (2) construction and maintenance; (3) consultant services, (4) Architectural and Engineering (A&E) services, (5) social services, and (6) other services.
- IV. **Exclusions.** This policy does not govern procurements paid for using administrative fees earned under the Housing Choice Voucher Program (HCVP), the award of vouchers under HCVP 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 §990, procurements. These excluded areas are subject to applicable State and local requirements.

- V. **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 this Policy, automatically supersede this Policy. This includes, but is not limited to, changes to the simplified acquisition threshold published by HUD and the State of Ohio. AMHA's policy would update to the more restrictive of the two.
- VI. **Public Access to Procurement Information.** Information about AMHA procurement is subject to and, upon request, will be provided in accordance with the Ohio Public Records Act. Information about pending competitive bids or proprietary bidder information may be exempt from disclosure.

SECTION 3.0 - ETHICS IN PUBLIC CONTRACTING

- I. **General.** The AMHA hereby establishes this code of conduct regarding procurement issues and actions and shall implement a system of sanctions for violations. This code of conduct, etc., is consistent with applicable Federal, State or local law.
- II. **Conflicts of Interest.** No employee, officer, Board member, or agent of the AMHA 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:
 - A. An employee, officer, Board member, or agent involved in making the award;
 - B. 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, stepdaughter, stepbrother, stepsister, stepbrother, half brother, or half sister);
 - C. His/her partner; or
 - D. An organization which employs or is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.
 - E. No present or former employee, officer, or agent of the AMHA or any member of his or her immediate family shall engage in selling or attempting to sell supplies, services, or construction to the AMHA for one (1) year following the date such employment ceased.
- III. **Gratuities, Kickbacks, and Use of Confidential Information.** No officer, employee, former employee within one (1) year of employment, Board member, or agent of AMHA, shall neither solicit, accept, or agree to accept gratuities, favors, or anything of monetary value, which may or could be perceived to manifest a substantial and improper influence, from any contractor, potential contractor.

- IV. **Interest of Members, Officers, or Employees and Former Members, Officers or Employees.** No member, officer, or employee of AMHA, no member of the governing body of the locality in which the project is situated, no member of the governing body in which MHA was activated, and not other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall during his or her tenure, or for one (1) year thereafter, have any interest, direct or indirect, in the contracts or proceeds thereof.
- V. **Confidential Information.** The AMHA expressly prohibits the disclosure of confidential information not authorized by the Executive Director or Designee to receive such confidential information. Confidential information includes but is not limited to:
- A. the contents of bids (prior to bid opening) or proposals (prior to contract award);
 - B. names of individuals or firms that submitted bids (prior to bid opening) or proposals (prior to contract award);
 - C. AMHA-generated information related to a procurement (including AMHA cost estimates, contractor selection and evaluation plans, or specifications (before solicitation is issued); and
 - D. any other information the disclosure of which would have a direct bearing upon the contract award or the competitive process.
- It is a breach of ethical conduct for any current or former AMHA employee, officer, or agent to knowingly use confidential information for actual or anticipated personal gain or for actual or anticipated personal gain of any other person.
- VI. **Prohibition Against Contingent Fees.** Contractors/Vendors wanting to do business with the AMHA must not hire a person to solicit or secure a contract for commission, percentage, brokerage, or contingent fee, except for bona fide established commercial selling agencies.

SECTION 4.0 - PROCUREMENT PLANNING

- I. **General.** Planning is essential to managing the procurement function properly. Hence, the AMHA will periodically review its record of prior purchases, as well as future needs, to:
- A. Find patterns of procurement actions that could be performed more efficiently or economically;
 - B. Maximize competition and competitive pricing among contracts and decrease the AMHA's procurement costs;
 - C. Reduce AMHA administrative costs;
 - D. Ensure that supplies and services are obtained without any need for re-procurement, e.g., resolving bid protests; and
 - E. 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.

SECTION 5.0 - PROCUREMENT METHODS

- I. **Petty Cash** (up to \$50.00). Purchases up to \$50.00 may be made from the petty cash fund and must be supported by receipts. A credit card may also be used for these purchases. Purchases exceeding \$50.00 from petty cash must have prior authorization from the Finance Director. Security must be maintained for all Petty Cash accounts to ensure that only authorized individuals have access to the accounts. These accounts shall be reconciled and replenished periodically.
- II. **Micro Purchases** (\$50.00 - \$10,000.00). Purchases between \$50.00 and \$10,000.00 may be made from a vendor via telephone, email, mail or fax, where prices are known to be competitive without the necessity of further shopping. Purchases, when practical, are to be distributed between known competitive vendors to “spread the wealth”. A credit card is to be used for these purchases whenever possible. Credit cards are to be used only for their intended purposes and certain types of purchases are prohibited. Safeguards shall be in place to ensure that credit cards are used properly.
- III. **Small Purchases (Informal Bidding)** (\$10,000.01 - \$100,000.00). Purchases between \$10,000.01 and \$100,000.00 may be made by obtaining a minimum of three (3) written quotes via email, mail or fax, utilizing AMHA’s bidders list, or other known contractor/vendor listings, to obtain that product or service. AMHA’s bidders list is located on the shared drive and is periodically updated. Award shall be made to the qualified vendor that provides the best value to AMHA. If award is to be made for reasons other than lowest price, documentation must be provided in the procurement file. The procurement file must be documented with the justification if fewer than three (3) quotes can be acquired. A file shall be kept with an abstract of invitations made and quotes received. AMHA shall not break down requirements aggregating more than the small purchase threshold in order to circumvent bid requirements.
- IV. **Procurement for Construction/Maintenance Projects Exceeding \$2,000.00 (Low Income Public Housing (LIPH))**. Regardless of the method of procurement used, all construction and certain maintenance projects where cost exceeds \$2,000.00 are subject to HUD labor standard provisions, including the payment of prevailing wage rates. At the time of procurement, AMHA shall provide all prospective bidders/proposers with the applicable labor standard provisions and requirements including the prevailing wage determination. Prior to award, confirmation that the bid complies with prevailing wage requirements should be verified by AMHA.
- V. **Sealed Bids (>\$100,000.00)**. 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 Policy. Under sealed bids, the AMHA 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 (Invitation for Bids) is the lowest in price. Sealed bidding is the preferred method for procuring construction, supply, and non-complex service contracts that are expected to exceed \$100,000.00
 - A. **Conditions for Using Sealed Bids**. AMHA shall use the sealed bid method if the following conditions are present:
 - (i) a complete, adequate, and realistic statement of work,
 - (ii) specification, or purchase description is available;

- (iii) two or more responsible bidders are willing and able to compete effectively for the work;
- (iv) the contract can be awarded based on a firm fixed price (lump sum or unit price); and
- (v) the selection of the successful bidder can be made principally on the lowest price.

B. Sufficient Time Allowed for Bid Preparation. Sufficient time must be allowed for bidders to submit their bids to AMHA. Generally, a minimum of 30 days shall be provided for preparation and submission of sealed bids. AMHA shall advertise in a newspaper of general circulation in the political subdivision in which the project is to be developed, a minimum of once each week for two consecutive weeks. The date set for opening bids shall be a minimum of eight days from the date of the last advertisement date. However, if an addendum is issued within seven calendar days of the bid deadline date, the bid opening shall be postponed for at least seven calendar days from the date of the addendum.

C. Solicitation and Receipt of Bids. An IFB (Invitation for Bids) 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.

D. 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 in a timely manner. If equal low bids are received from responsible bidders, selection shall be made by drawing lots or other similar random method. The method for doing this shall be stated in 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. Fax bids will not be considered. Bidders and other persons properly interested may be present, in person or by representative.

Bids received after the time specified for submission should be classified as late bids and returned unopened to the bidder. A record of the time, date and person receiving the late bid should be made on the outside of the envelope. No responsibility will be attached to an officer for the premature opening of a bid not properly addressed and identified. Unless specifically authorized, electronic bids will not be considered.

E. 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 Procurement Officer, AMHA Legal Counsel and the Executive Director. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the AMHA or fair competition shall not be permitted.

- VI. Competitive Proposals.** Unlike sealed bidding, the competitive proposal method, also known as Request for Proposal (RFP) or Request for Qualifications (RFQ), 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 AMHA, 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.
- A. Conditions for Use.** Where conditions are not appropriate for the use of sealed bidding, competitive proposals may be used. Competitive proposals are the preferred method for procuring professional services that will exceed the small purchase threshold. As detailed within Section 7.2.B of the HUD Procurement Handbook 7460.8 REV 2, “Only under limited circumstances would construction services be procured by competitive proposals.”
- B. Form of Solicitation.** Other than A/E services, developer-related services and energy performance contracting, competitive proposals are to be solicited through the issuance of a Request for Proposal (RFP). The RFP shall clearly identify the importance and relative value of each of the evaluation factors as well as any subfactors and price. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established **before** the solicitation 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 AMHA may assign price a specific weight in the evaluation criteria or the AMHA may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.
- C. Evaluation.** The proposals shall be evaluated only on the criteria stated in the RFP. Where not apparent from the evaluation criteria, the AMHA shall establish an Evaluation Plan for each RFP. Generally, all RFP’s shall be evaluated by an appropriately appointed Evaluation Committee. The Evaluation Committee shall be required to disclose any potential conflicts of interest and to sign a Non-Disclosure statement. An Evaluation Report, summarizing the results of the evaluation, shall be prepared prior to award of a contract.
- D. 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 AMHA 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 Procurement Officer or Designee with each offeror within the competitive range. The primary object of discussions is to maximize the AMHA’s ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. The Procurement

Officer shall indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as cost, price, technical approach, past performance, and terms and conditions) that could, in the opinion of the Procurement Officer, be altered or explained to enhance materially the proposer's potential for award. The scope and extent of discussions are a matter of the Procurement Officer's judgment. The Procurement Officer may inform an offeror that its price is considered by the AMHA 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.

- E. 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 AMHA provided that the price is within the maximum total project budgeted amount established for the specific property or activity.
- F. Architectural and Engineering (A/E) Services.** The AMHA must contract for A/E services using a Qualification Based Selection (QBS) procedures, utilizing an RFQ (Request for Qualifications) also known as (QBS). Sealed bidding shall not be used for A/E solicitations. Under QBS procedures, competitor's qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. **Price is not used as a selection factor under this method.** QBS procedures **shall not** be used to purchase other types of services, though architectural/engineering firms are potential sources.
- G. Developer Related Services and Energy Performance Contracting.** QBS procedures are permitted under an exception that parallel the selection of an A/E and where price is negotiated with the highest-ranked offeror based on responses to an RFQ. QBS method is not permitted for the procurement of HOPE VI, Mixed-Finance Program Managers and Legal services.

VII. Noncompetitive Proposals.

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

B. 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 Procurement Officer. Poor planning or lack of planning is not justification for emergency or sole-source procurements. The justification, to be included in the procurement file, should include the following information:

1. Description of the requirement;
2. History or prior purchases and their nature (competitive vs. noncompetitive);
3. The specific exception in 2 CFR §200.320(f)(1)-(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. Approval signatures to include the Procurement Officer, Requesting Department Head and the Executive Director.
8. Price Reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing a cost analysis, as described in this Policy.

VIII. Cooperative Purchasing/Intergovernmental Agreements. The AMHA may enter into State and/or local cooperative or intergovernmental agreements to purchase or use common supplies, equipment, or services. However, there is no purchasing of goods and services, other than computers, software and security services through the General Service Administration (GSA) purchasing programs without seeking quotes or proposals from other vendors/suppliers. Only **GSA IT Schedule 70** is to be used for purchase of computers, software and other IT services, and only **GSA Security Schedule 84** is to be used for security 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 AMHA may use Federal or State excess and surplus property instead of purchasing new equipment and property if feasible and if it will result in a reduction of project costs. The goods and services obtained under a cooperative purchasing agreement must have been procured in accordance with 2 CFR §200.317 - §200.326.

IX. Multi-Step Bids. The AMHA may utilize the multi-step bidding method when appropriate and as detailed in HUD Handbook 7460.8, Rev 2, Section 6.14.

SECTION - 6.0 - INDEPENDENT COST ESTIMATE (ICE)

- I. **General.** For all purchases above the Micro Purchase threshold, or construction/maintenance projects that exceed \$2,000.00 and are subject to prevailing wage requirements, the AMHA shall prepare an Independent Cost Estimate (ICE) prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item to be purchased. An ICE may be prepared by AMHA staff or by a third-party with relevant subject matter knowledge. A third-party who prepares an ICE for use by the AMHA is disqualified from being awarded any contract associated with the work for which the third-party prepared the ICE.

SECTION - 7.0 - COST AND PRICE ANALYSIS (CPA)

- I. **General.** The AMHA shall require assurance that, before entering into a contract, the price is reasonable, in accordance with the following instructions.
 - A. **Petty Cash and Micro Purchases.** No formal cost or price analysis is required. Rather, the execution of a contract by the Procurement Officer (through a Purchase Order or other means) shall serve as the Procurement Officer's determination that the price obtained is reasonable, which may be based on the Procurement Officer's prior experience or other factors.
 - B. **Small Purchases.** A comparison with other offers shall generally be sufficient determination of the reasonableness of price and no further analysis is required. If a reasonable number of quotes is not obtained to establish reasonableness through price competition, the Procurement Officer shall document price reasonableness through other means, such as prior purchases (purchased within the last six months) of this nature, catalog prices, the Procurement Officer's personal knowledge at the time of purchase, comparison to the ICE, or any other reasonable basis.
 - C. **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 AMHA cannot reasonably determine price reasonableness, the AMHA must conduct a cost analysis, consistent with federal guidelines, to ensure that the price paid is reasonable.
 - D. **Competitive Proposals.** The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient proposals are not received, the AMHA 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 AMHA must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable.
 - D. **Contract Modifications.** A cost analysis, consistent with federal guidelines, shall be conducted for all contract modifications for projects that were procured through Sealed Bids, Competitive Proposals, or Non-competitive Proposals, or for projects originally procured through Small Purchase procedures and the amount of the contract modification will result in a total contract price in excess of \$100,000.00

SECTION 8.0 - SOLICITATION AND ADVERTISING

I. Method of Solicitation

- A. Petty Cash and Micro Purchases (up to \$10,000.00).** The AMHA may contact only one source if the price is considered reasonable.
- B. Small Purchases (\$10,000.01 to \$100,000.00).** Quotes may be solicited orally, through email, fax, or by any other reasonable method.
- C. Sealed Bids (>\$100,000.00) and Competitive Proposals.** Solicitation must be done publicly. The AMHA must use one or more following solicitation methods, provided that the method employed provides for meaningful competition:
 - 1. Advertising in newspapers or other print mediums of local or general circulation a minimum of once each week for two consecutive weeks.
 - 2. Advertising in various trade journals or publications (for construction).
 - 3. Publishing to the AMHA Website
 - 4. E-Procurement. The AMHA may conduct its public procurements through the Internet using e-procurement systems. However, all e-procurements must otherwise be in compliance with 2 CFR §200.317 - §200.326, State and local requirements, and the Authority's procurement policy.

- II. 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 item(s).

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

IV. Cancellation of Solicitations

- A.** An IFB, RFP, or other solicitation may be cancelled before bids/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 would be best; or
 - 4. Other similar reasons.
- B.** A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if:
 - 1. The supplies or services (including construction) are no longer required;

2. Ambiguous or otherwise inadequate specifications were part of the solicitation;
 3. All factors of significance to the AMHA 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 the AMHA.
- C. The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request.
- D. 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.
- E. 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 AMHA's cost estimate. If both are determined adequate and if only one bid is received and the price is unreasonable, the Procurement Officer may cancel the solicitation and either
1. Re-solicit using an RFP; or
 2. Complete the procurement by using the competitive proposal method. The Procurement Officer must determine, in writing, that such action is appropriate, must inform all bidders of the AMHA's intent to negotiate, and must give each bidder a reasonable opportunity to negotiate.
- F. If problems are found with the specifications, AMHA should cancel the solicitation, revise the specifications and re-solicit using an IFB.

SECTION 9.0 - CREDIT (OR PURCHASING) CARDS

- I. **General.** Purchasing Cards (including debit or credit cards) are a payment method and not necessarily a method of procurement. Credit card usage follows the rules for micro and all other small purchases. AMHA has adopted reasonable safeguards through its Credit Card Policy to assure that credit cards are used only for intended purposes (i.e., limiting the types and amounts of purchases that are permitted).

SECTION 10.0 - BONDING REQUIREMENTS

- I. **General.** The standards under this section apply to construction contracts that exceed \$100,000.00. There are no bonding requirements for small purchases or for competitive proposals. The AMHA may require bonds in these latter circumstances when deemed appropriate; however, non-construction contracts should generally not require bid bonds.

- A. Bid Bonds.** For construction contracts exceeding \$100,000.00, offerors shall be required to submit a bid guarantee from each bidder equivalent to 10% of the bid price. The guarantee may be any one of the following:
1. Certified check, cashier check, bank draft, or
 2. Irrevocable letter of credit, or
 3. Bid bond secured by a surety company acceptable to AMHA and authorized to do business in the State of Ohio in the full amount of the bid.

- B. Payment Bonds and Performance Bonds.** For construction contracts exceeding \$100,000.00, the successful bidder shall furnish an assurance of completion. This assurance may be any of the following four:

1. A performance and payment bond in the penal sum of 100 % of the contract price; or
2. Separate performance and payment bonds, each for 50 % or more the contract price; or
3. A 20 % cash escrow; or
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 Ohio. 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.

SECTION 11.0 - CONTRACTOR QUALIFICATIONS AND DUTIES

I. Contractor Responsibility

- A.** AMHA 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:
1. Have adequate financial resources to perform the contract, or the ability to obtain them;
 2. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all the bidder's/offeror's existing commercial and governmental business commitments;
 3. Have a satisfactory performance record;
 4. Have a satisfactory record of integrity and business ethics;
 5. Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;

6. Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,
 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 Deniability Participation (LDP).
- B. 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.
- II. **Suspension and Debarment.** Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined to be ineligible by HUD in accordance with HUD regulations (2 CFR §200.317 - §200.326) or by other Federal agencies, e.g., Department of Labor for violation of labor regulations, when necessary to protect housing authorities in their business dealings. Prior to issuance of a contract, the AMHA procurement staff shall, as detailed within Section 10.2.H.1 and 10.2.H.2 of the HUD Procurement Handbook 7460.8 REV 2, conduct the required searches within the HUD Limited Denial of Participation (LDP) system also known as the Excluded Parties Listing System (EPLS). A printed copy of the results of such search shall be placed within the applicable procurement/contract file.
- III. **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.

SECTION 12.0 - CONTRACT PRICING ARRANGEMENTS

- I. **Contract Pricing Arrangements.** All contracts shall identify the contract pricing arrangement as well as other pertinent terms and conditions, as determined by AMHA.
- II. **Contract Types.** The AMHA may use any type of contract which is appropriate to the procurement and which will promote the best interests of the AMHA, 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 AMHA. The following is a list of acceptable contract types for the AMHA:
 - A. Firm fixed price.
 - B. Fixed price with economic adjustment.
 - C. Indefinite delivery/quantity*
 - D. Definite delivery/quantity.
 - E. Multiple awards.

*Indefinite delivery/quantity contracts provide for delivery of an indefinite quantity, within stated limits (a minimum and maximum quantity), of supplies or services during a fixed period (life of the contract). Quantity limits may be stated in the contract as number of units or as dollar values.

Any procurement of this type must include the stated limits (minimum and maximum) for the life of the contract.

A cost reimbursement contract shall only be used if it is likely to be less costly than the acceptable contract types listed above or it is impracticable to satisfy AMHA needs without the use of a cost reimbursement contract. If a cost reimbursement contract is used, the proposed contractor's accounting system must be adequate to allocate costs in accordance with applicable cost principals for commercial firms. For all cost reimbursement contract, AMHA 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.

- III. **Contract Duration.** The length of any contract shall be limited to the time specified in the solicitation and/or bidding documents. The AMHA shall not extend a contract beyond the specified contract period, except when good and sufficient reasons exist and such extension is approved by the Executive Director. Generally, the contract duration for a supply contract or service contract shall be established for one to three years, with options to extend the contract for up to a total of five years.
- IV. **Options.** Options for additional quantities or performance periods may be included in contracts, provided that:
 - A. The determining dollar threshold for the contract award shall be based on the total amount of the contract period inclusive of any option years;
 - B. The option is contained in the solicitation;
 - C. The option is a unilateral right of the Authority
 - D. The contract states a limit on the additional quantities and the overall term of the contract;
 - E. The options are evaluated as part of the initial competition;
 - F. The contract states the period within which the options may be exercised;
 - G. The options may be exercised only at the price specified in or reasonably determinable from the contract; and
 - H. The options may be exercised only if determined to be more advantageous to AMHA than conducting a new procurement.

SECTION 13.0 - CONTRACT CLAUSES

- I. **General.** All contracts should identify the contract pricing arrangement as well as other pertinent terms and conditions as determined by AMHA.
- II. **Required Forms.** Additionally, forms HUD-5369, 5369-A, 5369-B, 5369, 5370, 5370-C (Sections I and II), 51915 and 51915-A, which contain all HUD required clauses and certifications for contracts of more than \$100,000.00, as well as any forms/clauses as required by HUD for small purchases shall be used in corresponding solicitations and contracts issued by AMHA, as applicable.

- III. **Required Contract Clauses:** The AMHA shall ensure that each contract executed by the AMHA contains the required contract clauses detailed within 2 CFR 200.326 Appendix II.

SECTION 14.0 - CONTRACT ADMINISTRATION

- I. **General.** The AMHA 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.

SECTION 15.0 - SPECIFICATIONS

- I. **General.** All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying the AMHA needs. Specifications shall be reviewed prior to issuing any solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicate 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.

In order to ensure objective contractor performance and eliminate unfair competition advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements.

- II. **Limitation.** The following types of specifications shall be avoided:
- A. Geographic restrictions not mandated or encouraged by applicable Federal law (except for A/E contracts, which may include geographic location as a selection factor if adequate competition is available);
 - B. Brand name specifications (unless the specifications list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use).
 - C. 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.

SECTION 16.0 - APPEALS AND REMEDIES

- I. **General.** It is AMHA'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.
- II. **Informal Appeals Procedure.** The AMHA shall adopt an informal bid protest/appeal procedure for contracts less than \$100,000.00. Under these procedures, the bidder/contractor may request to meet with the appropriate Procurement Officer.

- III. **Formal Appeals Procedure.** A formal appeals procedure shall be established for solicitations/contracts of more than \$100,000.00.
- A. **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 Procurement Officer or designee, who shall issue a written decision on the matter. The Procurement Officer may, at his/her discretion, suspend the procurement pending resolution of the protest if the facts presented so warrant.
- B. **Contractor Claims.** All claims by a contractor relating to performance of a contract shall be submitted in writing to the Procurement Officer for a written decision. The contractor may request a conference on the claim. The Procurement Officer's decision shall inform the contractor of its appeal rights to the next higher level of authority in AMHA. Contractor's claims shall be governed by the Changes clause in the form HUD-5370.

SECTION 17.0 - ASSISTANCE TO SMALL AND OTHER BUSINESSES

- I. **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 businesses, minority-owned businesses, women's business enterprises, and other individuals or firms in or owned in substantial part by persons residing in the area of the AMHA project are used when possible. Such efforts shall include, but not necessarily limited to:
- A. Including such firms, when qualified, on solicitation mailing lists;
- B. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- D. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
- E. Using the services and assistance of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce and any state and/or local small business, minority and women owned business development agencies;
- F. 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 §75 (Section 3 businesses); and
- G. Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed above.

II. **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 AMHA prime contracts and subcontracting opportunities.

III. **Definitions.**

A. 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 §121 should be used to determine business size.

B. A **minority-owned business** is defined as a business which is at least 51% owned by one or more minority members; or, in the case publicly-owned business, at least 51% of its voting stock is owned by one or more minority 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.

C. 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.

D. A **Section 3 business concern** is as defined under 24 CFR §75.

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

IV. **Scoring for Competitive Proposals**

A. If a respondent to competitive proposal is a minority business or a women's business enterprise, as certified to by the respondent on HUD Form 5369A, the respondent's proposal will be awarded a minimum of five percent of the total points available for the scoring of the respective proposal. Respondents may also obtain points in the M/WBE scoring category for a respective procurement if their proposal reflects that a minority owned business or a women's business enterprise is a **firmly** committed partner of, or subcontractor to, the respondent. If a respondent's proposal reflects **no** firm commitments with M/WBE's either through a partnership or subcontracting, and the respondent is not itself a M/WBE then no points shall be awarded to the respondent in the M/WBE scoring category (a respondent's commitment to use its best efforts to subcontract with M/WBE's shall not, standing alone, entitle the respondent to points during the scoring of proposals).

SECTION 18-0 - BOARD APPROVAL OF PROCUREMENT ACTIONS

I. **Authority.** The AMHA Board of Trustees (Board) appoints and delegates procurement authority to the Executive Director in the amount not to exceed \$250,000.00, and the Executive Director is responsible for ensuring that any procurement policy and procedures adopted are appropriate for the AMHA. All procurements where cost exceeds \$250,000.00, for the life of the contract, including contract extensions, shall be approved by the Board prior to award and/or contract execution with the exception of emergencies which shall be approved by the Executive Director.

SECTION 19.0 - DELEGATION OF CONTRACTING AUTHORITY

- I. **Delegation.** While the Executive Director (ED) is responsible for ensuring that AMHA's procurements comply with this Policy, the Executive Director may delegate in writing procurement authority as is necessary and appropriate to conduct the business of AMHA.
- II. **Procedures.** Further, and in accordance with this delegation of authority, the Executive Director shall, where necessary, establish operational procedures (such as a procurement manual or standard operating procedures) to implement this Policy. The ED shall also establish a system of sanctions for violations of the ethical standards described in Section 3.0 herein, consistent with Federal, State, or local law.

SECTION 20.0 - DOCUMENTATION

- I. **Required Records.** The AMHA 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:
 - A. Rationale for the method of procurement (if not self-evident);
 - B. Rationale of contract pricing arrangement (also if not self-evident);
 - C. Reason for accepting or rejecting the bids or offers;
 - D. Basis for the contract price (as prescribed in this handbook);
 - E. A copy of the contract documents awarded or issued and signed by the Procurement Officer;
 - F. Basis for contract modifications; and
 - G. Related contract administration actions.
- II. **Level of Documentation.** The level of documentation should be commensurate with the value of the procurement.
- III. **Record Retention.** Records are to be retained for a minimum period of three years after final payment and all matters pertaining to the contract are closed and/or in accordance with the AMHA Records Retention Policy.

SECTION 21.0 - DISPOSITION OF SURPLUS PROPERTY

- I. **General.** Property no longer necessary for the AMHA's purposes (non-real property) shall be transferred, sold, or disposed of in accordance with applicable Federal, State and local laws and regulations and/or in accordance with the AMHA Disposition Policy.

SECTION 22.0 - FUNDING AVAILABILITY

- I. **General.** Before initiating any contract, the AMHA shall ensure that there are sufficient funds available to cover the anticipated cost of the contract or modification.

SECTION 23.0 - SELF-CERTIFICATION

- I. **General.** The AMHA self-certifies that this Procurement Policy, and the AMHA's procurement system, complies with all applicable, federal, state and local laws and regulations; and, as such, the AMHA is exempt from prior HUD review and approval of individual procurement action.