

Housing Authority of the County of Contra Costa

PROCUREMENT POLICY

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## **1.0 INTRODUCTION**

### **1.1 General.**

This Procurement Policy (Policy) is established for the Housing Authority of the County of Contra Costa (hereinafter, “HACCC”) by Action of HACCC’s Board of Commissioners (Board) on December 8, 2015, for the acquisition of supplies, materials and equipment, personal and professional services, and construction and maintenance services in accordance with and subject to state and federal laws and regulations, including the following, as the same may be amended or superseded from time to time: the Annual Contributions Contract (ACC) between HACCC and the United States Department of Housing and Urban Development (HUD), HUD Notice SD-2015-01 (Transition to 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Guidance, issued February 26, 2015), Federal Regulations at 2 CFR §200.317 through §200.326 (procurement standards), the Buy America Build America Act, Cal. Labor Code sections 1720-1861 (Public Works), Cal. Public Contract Code, Cal. Government Code, Title 2 of the California Code of Regulations at sections 18110 – 18997 (Conflicts of Interest), Title 8 of the California Code of Regulations at sections 16000-16403 (Payment of Prevailing Wages upon Public Works), and applicable State and Local laws.

## **2.0 GENERAL PROVISIONS**

## **2.1 General.**

HACCC shall:

- 2.1.1** Provide for a procurement system of quality and integrity;
- 2.1.2** Provide for the fair and equitable treatment of all persons or firms involved in purchasing by HACCC;
- 2.1.3** Ensure that supplies and services (including construction) are procured efficiently, effectively, and at the most favorable and valuable prices available to HACCC;
- 2.1.4** Maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders;
- 2.1.5** Promote competition in contracting; and
- 2.1.6** Assure that HACCC purchasing actions are in full compliance with applicable Federal standards, HUD regulations, State, and local laws.

## **2.2 Applicability to Funding Source**

This Policy applies to all procurement actions of HACCC, regardless of the source of funds, except as noted under “exclusions” below. However, nothing in this Policy shall prevent HACCC 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. In carrying out its procurement activities, HACCC shall comply with any funding source requirements and all applicable laws and regulations, without necessarily imposing a higher standard than is necessary to ensure compliance with the applicable laws and regulations.

## **2.3 Definitions.**

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; consultant services, (3) Architectural and Engineering (A/E) services, (4) Social Services, and (5) other services.

## **2.4 Exclusions.**

This policy does not govern administrative fees earned under the Housing Choice Voucher (HCV) program, the award of vouchers under the HCV 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, real estate purchase and sale transactions, or loan transactions. These excluded areas are subject to applicable State and local requirements.

## **2.5 Changes in Laws and Regulations.**

In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with these Policies, automatically supersede these Policies.

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

Most procurement information that is not proprietary is a matter of public record and shall be available to the public to the extent provided in the California Public Records Act (Government Code Section 6250 et seq.) or similar applicable law.

# **3.0 ETHICS IN PUBLIC CONTRACTING**

## **3.1 General.**

HACCC 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.

## **3.2 Conflicts of Interest.**

No employee, officer, Board member, or agent of HACCC shall participate directly or indirectly in the selection, award, or administration of any contract if a conflict of interest, either real or perceived, would be involved. Prohibited conflicts of interest are set forth in both state and federal law, including the Political Reform Act (Government Code sections 81000 – 91014) and its implementing regulations (2 Cal. Code of Regs §§ 18110 – 18997) and (2 CFR 200.318(c)(1)). This type of conflict would be when one of the people listed below has a financial or any other type of interest in or a tangible personal benefit from a firm considered for the contract:

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

**3.2.2** 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);

**3.2.3** His/her partner; or

**3.2.4** An organization which employs or is negotiating to employ, or has an arrangement concerning prospective employment, of any of the above.

## **3.3 Gratuities, Kickbacks, and Use of Confidential Information.**

No officer, employee, Board member, or agent of HACCC shall ask for or accept gratuities, favors, or items of monetary value more than \$50 from any contractor, potential contractor, or party to any subcontract, and shall not knowingly use confidential information for actual or anticipated personal gain.

## **3.4 Prohibition against Contingent Fees.**

Contractors wanting to do business with HACCC must not hire a person to solicit or secure a contract for a commission, percentage, brokerage, or contingent fee, except for bona fide established commercial selling agencies.

### **3.5 Federal Contracts**

For federal contracts that are subject to the requirements of the Annual Contributions Contract (Form HUD-53012A) or the requirements of 24 CFR 982.161, the following restrictions apply, unless waived by HUD:

**3.5.1** Neither HACCC nor any of its vendors or their subcontractors may enter into any contract, subcontract, or arrangement in which any of the following classes of people have an interest, direct or indirect, during his or her tenure or for one year thereafter:

**3.5.1.1** Any present or former member or officer of the governing body of HACCC, or any member of the officer's immediate family. There shall be excepted from this prohibition any present or former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the resident corporation, HACCC or a business entity.

**3.5.1.2** Any employee of HACCC or any contractor, subcontractor or agent of HACCC, who formulates policy or who influences decisions with respect to the project(s), or any member of the employee's immediate family, or the employee's partner.

**3.5.1.3** Any public official, member of the local governing body, or State or local legislator, or any member of such individuals' immediate family, who exercises functions or responsibilities with respect to the project(s) of HACCC.

**3.5.1.4** Any employee of HACCC, or any contractor, subcontractor or agent of HACCC, who formulates policy or who influences decisions with respect to the programs;

**3.5.1.5** Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs; or

**3.5.1.6** Any member of the Congress of the United States.

**3.6.2** Any member of the classes described above shall disclose their interest or prospective interest to HACCC and to HUD.

### **3.6 Former Employees**

A former HACCC employee, officer or agent shall not knowingly act as a principal or agent for anyone other than HACCC in connection with any contract or claim in which said person participated personally and substantially through decision, approval, disapproval,

recommendation, rendering of advice, investigation, or otherwise while a HACCC employee, officer or agent, where HACCC is a party or has a direct and substantial interest.

A former HACCC employee or officer shall not engage in selling or attempting to sell supplies, materials, services or equipment to HACCC for a period of one year after such employment ceases. The terms "sell" means signing a bid or proposal; negotiating a contract; contacting any HACCC employee for the purpose of obtaining, negotiating or discussing changes in specifications, price, cost allowances or other terms of a contract; settling contract disputes; or any other liaison activity with a view toward the ultimate consummation of a sale, even if the actual contract is negotiated by another person.

### **3.7 Prohibition against Drafting Specifications or Requirements**

To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids shall always be excluded from competing on those procurements.

### **3.8 Waivers**

A conflict of interest may be waived by HUD for good cause, if permitted under State and local law. While the waiver is under consideration by HUD, the person for whom a waiver is requested may not exercise responsibilities or functions related to the waiver request.

## **4.0 PROCUREMENT AUTHORITY AND ADMINISTRATION**

### **4.1 Planning.**

Planning is essential to managing the procurement function properly. Hence, HACCC's Contracting Officer, or a designee, will periodically review its record of prior purchases, as well as future needs, to ensure that

**4.1.1** Find patterns of procurement actions that could be performed more efficiently or economically;

**4.1.2** Maximize competition and competitive pricing among contracts and decrease HACCC's procurement costs;

**4.1.3** Reduce Agency administrative costs;

**4.1.4** Ensure that supplies and services are obtained without any need for re-procurement (i.e., resolving bid protests);

**4.1.5** Minimize errors that occur when there is inadequate lead time;

**4.1.6** Avoid the acquisition of unnecessary or duplicative items; Consideration shall be given to storage, security, and handling requirements when planning the most appropriate purchasing actions. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. When appropriate, an analysis should be made between leasing and purchasing property or equipment to determine the most economic approach.

### **4.2 Procurement Administration.**

The Contracting Officer and the Executive Director and/or their designees shall ensure that:

**4.2.1** Procurement requirements are subject to an annual planning process to ensure efficient and economical purchasing;

**4.2.2** Contracts and modifications are in writing, clearly specifying the desired supplies, services and construction, and are supported by sufficient documentation regarding the history of the procurement, including as a minimum the method of procurement chosen, the selection of the contract type, the rationale for selecting or rejecting offers, and the basis for the contract price;

**4.2.3** For procurements other than those that follow the Small Purchase Procedures, public notice is given of each upcoming procurement; responses to such notice are honored to the maximum extent practical; bidders are provided sufficient time prior to the deadline for submission of bids or proposals; and notice of contract awards is made available to the public;

**4.2.4.** Solicitation procedures are conducted in full compliance with all applicable laws and regulations, including the federal standards set forth at 2 CFR at Part 200, particularly sections 200.318 through 200.326 (procurement standards);

**4.2.5.** For all solicitations not subject to the Small Purchase Procedures, an independent cost estimate is prepared before solicitation issuance and is appropriately safeguarded for each procurement, and a cost or price analysis is conducted of the responses received for all procurements;

**4.2.6.** For all solicitations subject to the Small Purchase Procedures (except Micro Purchases that shall only require one reasonable quote), either (i) an independent cost estimate is prepared before solicitation issuance and is appropriately safeguarded for each procurement and a cost or price analysis is conducted of the responses received for all procurements, or (ii) other reasonable and prudent means of ensuring price reasonableness are utilized, including, without limitation, securing multiple bids, comparing costs or prices with those paid by other public agencies for similar services or supplies or comparing costs or prices with previous contracting costs for similar services or supplies.

**4.2.7.** Contract awards that exceed the Simplified Acquisition Threshold are made to Responsive and Responsible bidders that offer the lowest price (for sealed bid contracts) and to Responsible offerors whose competitive proposals offer the Best Value to HACCC, considering price (except for those Competitive Proposals made by RFQ, as defined below), technical, and other factors as specified in the solicitation, and that all participants in the solicitation are timely notified of the results.

**4.2.8.** There are sufficient unencumbered funds available to cover the anticipated cost of each procurement before contract award or modification (including change orders), work is inspected before payment, and payment is made promptly for contract work performed and accepted; and



**4.2.9.** HACCC complies with applicable HUD review requirements as established in 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.

#### **4.3 Procurement Authority.**

Contracting authority under this Policy shall be vested in the following:

**4.3.1** Delegation. While the ED is responsible for ensuring that HACCC's procurements comply with this Policy, the ED may delegate in writing all procurement authority as is necessary and appropriate to conduct the business of HACCC.

**4.3.2** Contracting Officer. The Contracting Officer or designee shall have the authority to:

**4.3.2.1** Approve any procurement up to the Simplified Acquisition Threshold;

**4.3.2.2** Approve any change order to a construction contract authorized by the Board of Commissioners, pursuant to the provisions of this Policy;

**4.3.2.3** Approve any change order or amendment to a Board authorized contract up to the Simplified Acquisition Threshold;

**4.3.2.4** Approve any procurement of supplies, materials, services or equipment, without limit as to dollar amount, in the event of an Emergency as defined herein, provided that the nature and value of said purchases shall be reported to the Board of Commissioners at a public meeting at the earliest opportunity;

**4.3.2.5** Reject any bid or offer where the Contracting Officer determines that the price is unreasonably low based upon an Independent Cost Estimate, competing bids or offers, or other reasonable means. Determining a bid price to be unreasonable considers not only the total price of the bid or offer, but the prices for individual items included within the bid or offer; and

**4.3.2.6** Further delegate the authority set forth in this part in writing to other HACCC employees.

**4.3.3** Board of Commissioners. The Board of Commissioners reserves to itself the authority to approve all procurements not delegated to the Contracting Officer. The Board appoints and delegates procurement authority to the Executive Director (ED) in the amount not to exceed \$200,000 and is responsible for ensuring that any procurement policies and procedures adopted are appropriate for HACCC. All procurements that exceed \$200,000 must have approval from the Board prior to award and/or contract execution.

This Policy and any later changes shall be submitted to the Board of Commissioners for approval.

## **5.0 PROCUREMENT METHODS**

### **5.1 General.**

Upon the decision to purchase goods or services, one of the following procurement methods shall be chosen, based on the nature and anticipated dollar value of the total requirement.

### **5.1 Petty Cash Purchases.**

Purchases under \$250 may be handled via a petty cash account. Petty Cash Accounts may be established in an amount sufficient to cover small purchases made during a reasonable period, e.g., one month. For all Petty Cash Accounts, HACCC shall ensure that security is maintained, and only authorized individuals have access to the account. These accounts shall be reconciled and replenished periodically.

### **5.2 Small Purchase Procedures.**

For any amounts above the Petty Cash ceiling, but not exceeding \$200,000, HACCC may use small purchase procedures. Under small purchase procedures, HACCC shall obtain a reasonable number of quotes (a minimum of two, preferably three); however, for purchases of less than \$10,000 (except for construction procurements which are set at \$2,000), also known as Micro Purchases, only one quote is required provided the quote is considered reasonable. To the greatest extent feasible, and to promote competition, small purchases should be distributed among qualified sources. Quotations for Small Purchases (QSP), or quotes, may be obtained orally (either in person or by phone), by fax, in writing, or through e-procurement. The names, addresses, and/or telephone numbers of the offerors and people contacted, and the date and amount of each quotation shall be recorded and maintained as a public record (unless otherwise provided in State or local law). Award shall be made to the responsive and responsible vendor that submits the lowest cost to HACCC. If award is to be made for reasons other than lowest price, documentation shall be provided in the contract file. HACCC shall not break down requirements aggregating more than the small purchase threshold (or the Micro Purchase threshold) into several purchases that are less than the applicable threshold merely to: (1) permit use of the small purchase procedures or (2) avoid any requirements that apply to purchases that exceed the Micro Purchase threshold.

### **5.3 Sealed Bids.**

Sealed bidding, also known as Invitation for Bids (IFB), 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, HACCC publicly solicits bids and awards a firm fixed-price contract (lump sum or unit price) to the responsive and responsible bidder whose bid, conforming with all the material terms and conditions of the IFB, is the lowest in price. Sealed bidding is the preferred method for procuring construction, supply, and non-complex service contracts that are expected to exceed \$200,000.

**5.3.1 Conditions for Using Sealed Bids.** HACCC shall use the sealed bid method if the following conditions are present: a complete, adequate, and realistic statement of work, specification, or purchase description is available; at least two, but preferably three or more responsible bidders are willing and able to compete effectively for the work; the contract can be awarded based on a firm fixed price; and the selection of the successful bidder can be made principally on the lowest price.

**5.3.2 Solicitation and Receipt of Bids.** An IFB is issued which includes the specifications and all contractual terms and conditions applicable to the procurement, and a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the solicitation. The IFB must state the time and place for both receiving the bids and the public bid opening. All bids received will be date and time-stamped and stored unopened in a secure place until the public bid opening. A bidder may withdraw the bid at any time prior to the bid opening.

**5.3.3 Pre-Bid Conference/Bidwalk.** A pre-bid conference or bidwalk shall be scheduled with each issued IFB. Depending on the nature of the procurement, it may be virtual. Attendance is optional. The purpose of this conference is to assist prospective bidders to have a full understanding of the IFB documents so that they feel confident in submitting an appropriate bid; therefore, at this conference HACCC will conduct a brief overview of the IFB documents, including the attachments. Prospective bidders may also ask questions, though HACCC may require that some such questions are delivered in writing prior to a response being delivered. Whereas the purpose of this conference is to view the buildings to be demolished and review the IFB documents, attendees should bring a copy of the IFB documents to this conference. HACCC will not distribute any copies of the IFB documents at this conference.

**5.3.4 Bid Opening and Award.** Bids shall be opened publicly and in the presence of at least one witness. All bids received shall be recorded on an abstract (tabulation) of bids, which shall then be made available for public inspection. 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 the IFB. If only one responsive bid is received from a responsible bidder, award shall not be made unless the price can be determined to be reasonable, based on a cost or price analysis.

**5.3.5 Corrections of Errors in Bids.** Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the 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 clear 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 HACCC or fair competition shall not be permitted.

#### **5.4 Competitive Proposals.**

Unlike sealed bidding, the competitive proposal method, also known as Request for Proposals (RFP), 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. Awards are normally made on

the basis of the proposal that represents the best overall value to HACCC, considering price and other factors, e.g. technical expertise, experience quality of proposed staffing, etc., set forth in the solicitation and not solely the lowest price.

**5.4.1 Conditions for Use.** Where conditions are not appropriate for the use of sealed bidding, competitive proposals may be used. Competitive proposals are the preferred method for procuring professional services that will exceed the small purchase threshold. As detailed within Section 7.2.B of HUD Procurement Handbook 7460.8 REV 2, “Only under limited circumstances would construction services be procured by competitive proposals;” accordingly, construction services will most typically be procured utilizing the sealed bid (IFB) or small purchase procedures (QSP).

**5.4.2 Form of Solicitation.** Other than A/E services, developer-related services and energy performance contracting, competitive proposals shall be solicited through the issuance of an RFP. The RFP shall clearly identify the importance and relative value of each of the evaluation factors as well as any subfactors and price. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals until after award. HACCC may assign price a specific weight in the evaluation factors or HACCC may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.

**5.4.3 Pre-Bid Conference/Bid Walk.** A pre-bid conference or bid walk shall be scheduled with each issued RFP. Depending on the nature of the procurement, it may be virtual. Attendance is optional. The purpose of this conference is to assist prospective bidders to have a full understanding of the RFP documents so that they feel confident in submitting an appropriate proposal; therefore, at this conference HACCC will conduct a brief overview of the RFP documents, including the attachments. Prospective bidders may also ask questions, though HACCC may require that some such questions are delivered in writing prior to a response being delivered. Attendees should bring a copy of the RFP documents to this conference. HACCC will not distribute any copies of the RFP documents at this conference.

**5.4.4 Evaluation.** The proposals shall be evaluated only on the factors stated in the RFP. Where not apparent from the evaluation factors, HACCC shall establish an Evaluation Plan for each RFP. Generally, all RFPs shall be evaluated by an appropriately appointed Evaluation Committee. The Evaluation Committee shall be required to disclose any potential conflicts of interest and to sign a Non-Disclosure Agreement. An Evaluation Report, summarizing the results of the evaluation, shall be prepared prior to award of a contract.

**5.4.5 Negotiations.** Negotiations may 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 HACCC and offerors that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract or other terms of a proposed contract. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions. Discussions are tailored to each offeror's proposal and shall be conducted by the contracting officer with each offeror within the competitive range. The primary object of discussion is to maximize HACCC's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. The contracting officer shall indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as technical approach, past performance, and terms and conditions) that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposer's potential for award. The scope and extent of discussions are a matter of the contracting officer's judgment. The contracting officer may inform an offeror that its price is considered by HACCC 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 HACCC's price analysis, market research, and other reviews have identified as reasonable. "Auctioning" (revealing one offeror's price to get another offeror to lower their price) is prohibited.

**5.4.6 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 HACCC provided that the price is within the maximum total project budgeted amount established for the specific property or activity.

**5.4.7 A/E Services.** HACCC shall contract for A/E services using Qualifications-based Selection (QBS) procedures, utilizing a Request for Qualifications (RFQ). Sealed bidding shall not be used for A/E solicitations. Under QBS procedures, competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. QBS procedures shall not be used to purchase other types of services, other than Energy Performance Contracting and Developer services, though architectural/engineering firms are potential sources.

## **5.5 Noncompetitive Proposals.**

**5.5.1 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:

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

**5.5.1.2** An emergency exists that seriously threatens public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to HACCC, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any of the other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary simply to meet the emergency;

**5.5.1.3** HUD authorizes the use of noncompetitive proposals; or

**5.5.1.4** After solicitation of several sources, competition is determined inadequate.

**5.5.2 Justification.** Each procurement based on noncompetitive proposals shall be supported by a written justification for the selection of this method. The justification shall be approved in writing by the Contracting Officer responsible for that procurement. Poor planning or lack of planning is not justification for “emergency” or sole-source procurements. The justification, to be included in the procurement file, should include the following information:

**5.5.2.1** Description of the requirement;

**5.5.2.2** History of prior purchases and their nature (competitive vs. noncompetitive);

**5.5.2.3** The specific exception in 2 CFR §200.320(f)(1)-(4) which applies;

**5.5.2.4** Statement as to the unique circumstances that require award by noncompetitive proposals;

**5.5.2.5** Description of the efforts made to find competitive sources (advertisements in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);

**5.5.2.6** Statement as to efforts that will be made in the future to promote competition for the requirement;

**5.5.2.7** Signature by the Contracting Officer’s supervisor (or someone above the level of the Contracting Officer); and

**5.5.2.8** Price Reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing an analysis, as described in this Policy.

### **5.6 Cooperative Purchasing/Intergovernmental Agreements.**

HACCC may sign Federal, State and/or local intergovernmental agreements to utilize cooperative purchasing (a.k.a. “piggybacking”) to procure common supplies, equipment, or services that are routine in nature. The decision to use an interagency agreement instead of conducting an HACCC-issued 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 procurement must have been competitively procured, is not expired, and has an active contract. HACCC shall always get and document the permission of the agency that did the original procurement.

HACCC encourages using 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 through §200.326.

### **5.7 Contracting with Resident Organizations.**

Notwithstanding the provisions above pertaining to full and open competition in its procurements, HACCC may: (1) limit competition to resident-owned businesses, pursuant to 24 CFR Part 963; or (2) contract on a non-competitive basis with a resident management corporation pursuant to 24 CFR 964, Subpart C.

### **5.8 Contracting for Legal Services.**

**5.8.1 Contracting for Legal Services.** Contracting for legal services shall be conducted in accordance with all applicable HUD policy guidelines and HACCC procedures.

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

### **6.1 General.**

For all purchases above the Micro Purchase threshold, HACCC shall prepare an ICE prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item to be purchased. When a cost breakdown is submitted: an ICE shall be performed of the individual cost elements; HACCC shall have a right to audit the contractor's books and records pertinent to such costs; and profit shall be analyzed separately. Costs shall be allowable only to the extent that they are consistent with applicable Federal cost principles (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation, 48 CFR Chapter 1). In establishing profit, HACCC shall consider factors such as the complexity and risk of the work involved, the contractor's investment and productivity, the amount of subcontracting, the quality of past performance, and industry profit rates in the area for similar work.

## **7.0 COST AND PRICE ANALYSIS (CPA)**

### **7.1 General.**

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

**7.1.1 Petty Cash and Micro Purchases.** No formal cost or price analysis is required. Rather, the execution of a contract by the Contracting Officer (through a Purchase Order or other means) shall serve as the Contracting Officer's determination that the price obtained is reasonable, which may be based on the Contracting Officer's prior experience or other factors.

**7.1.2 Small Purchases.** A comparison with other offers shall generally be sufficient determination of the reasonableness of price and no further analysis is required. If a reasonable number of quotes are not obtained to establish reasonableness through price competition, the Contracting Officer shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the Contracting Officer's personal knowledge at the time of purchase, comparison to the ICE, or any other reasonable basis.

**7.1.3 Sealed Bids.** The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, and when the bid received is substantially more than the ICE, and where HACCC cannot reasonably determine price reasonableness, HACCC must conduct a cost analysis, consistent with federal guidelines, to ensure that the price paid is reasonable.

**7.1.4 Competitive Proposals.** The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient proposals are not received, HACCC 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, HACCC must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable.

**7.1.5 Contract Modifications.** A cost analysis, consistent with federal guidelines, shall be conducted for all contract modifications for projects that were procured through Sealed Bids, Competitive Proposals, or Non-Competitive Proposals, or for projects originally procured through Small Purchase procedures and the amount of the contract modification will result in a total contract price more than \$200,000.

## **8.0 SOLICITATION AND ADVERTISING**

### **8.1 Method of Solicitation.**

**8.1.1 Petty Cash and Micro Purchases.** HACCC can contact only one source if the price is considered reasonable.

**8.1.2 Small Purchases.** Quotes may be solicited orally, through fax, E-Procurement, or by any other reasonable method.

**8.1.3 Sealed Bids and Competitive Proposals.** Solicitation must be carried out publicly. HACCC must use one or more following solicitation methods, provided that the method employed provides for meaningful competition.



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

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

**8.1.3.3** E-Procurement. HACCC may conduct its public procurements through the Internet using e-procurement systems. However, all e-procurements must otherwise comply with 2 CFR §200.317 through §200.326, State and local requirements, and HACCC's procurement policy.

## **8.2 Time Frame.**

The solicitation must be run for a period sufficient to achieve effective competition, which, in the case of paid advertisements, should generally be run not less than once each week for two consecutive weeks. State or local law may impose additional advertising requirements, in which case HACCC shall follow those requirements. For purchases of more than \$200,000, the public notice should run not less than once each week for two consecutive weeks.

## **8.3 Form.**

Notices/advertisements should state, at a minimum, the place, date, and time that the bids or proposals are due, the solicitation number, a contact that can provide a copy of, and information about, the solicitation, and a brief description of the needed items(s).

## **8.4 Time Period for Submission of Bids.**

HACCC will generally strive to provide a minimum of 30 days 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.

## **8.5 Cancellation of Solicitations.**

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

**8.5.1.1** The supplies, services or construction are no longer required;

**8.5.1.2** The funds are no longer available;

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

**8.5.1.4** Other similar reasons.

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

**8.5.2.1** The supplies or services (including construction) are no longer required;

**8.5.2.2** Ambiguous or otherwise inadequate specifications were part of the solicitation;

**8.5.2.3** All factors of significance to HACCC were not considered;

**8.5.2.4** Prices exceed available funds, and it would not be appropriate to adjust quantities to come within available funds;

**8.5.2.5** 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

**8.5.2.6** For good cause of a similar nature when it is in the best interest of HACCC.

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

**8.5.4** 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.

**8.5.5** 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 with either the specifications or HACCC'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

**8.5.5.1** Re-solicit using an RFP; or

**8.5.5.2** 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 HACCC's intent to negotiate, and must give each bidder a reasonable opportunity to negotiate.

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

## **8.6 Credit (or Purchasing) Cards.**

Credit card usage should follow the rules for all other small purchases. For example, the Contracting Officer may use a credit card for Micro Purchases without obtaining additional quotes provided the price is considered reasonable. However, for amounts above the Micro Purchase level, the Contracting Officer would generally need to obtain a reasonable number of quotes before purchasing via a credit card. When using credit cards, HACCC shall adopt reasonable safeguards to ensure that they are used only for intended purposes (for instance, limiting the types of purchases or the amount of purchases that are permitted with credit cards).

## **9.0 BONDING REQUIREMENTS**

### **9.1 General.**

The standards under this section apply to construction contracts that exceed \$200,000. There are no bonding requirements for small purchases or for competitive proposals. HACCC may require bonds in these latter circumstances when deemed appropriate; however, non-construction contracts should generally not require bid bonds.

**9.1.1 Bid Bonds.** For construction contracts exceeding \$200,000, offerors shall be required to submit a bid guarantee from each bidder equivalent to 5% of the bid price.

**9.1.2 Payment Bonds.** For construction contracts exceeding \$200,000, the successful bidder shall furnish an assurance of completion. This assurance may be any one of the following four:

**9.1.2.1** A performance and payment bond in a penal sum of 100% of the contract price; or

**9.1.2.2** Separate performance and payment bonds, each for 50% or more of the contract price; or

**9.1.2.3** A 20 % cash escrow; or

**9.1.2.4** 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 California. 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.

## **10.0 CONTRACTOR QUALIFICATIONS AND DUTIES**

### **10.1 Contractor Responsibility**

**10.1.1** Procurements shall be conducted only with Responsible bidders, offerors, respondents, contractors and subcontractors who have a satisfactory record of integrity, including without limitation, all licenses and certifications required to perform the contract directly and/or with the assistance of a subcontractor as permitted under law, and in good standing with HACCC as well as applicable licensing and federal, state or local boards or agencies. A responsible bidder/offeror must:

**10.1.1.1** Have adequate financial resources to fulfil the contract, or the ability to obtain them;

**10.1.1.2** 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;

**10.1.1.3** Have a satisfactory performance record;

**10.1.1.4** Have a satisfactory record of integrity and business ethics;

**10.1.1.5** Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;

**10.1.1.6** Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,

**10.1.1.7** Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not being suspended, debarred or under a HUD-imposed LDP.

**10.1.2 Evaluation.** Evaluation of the responsibility of prospective contractors may be made based upon the following sources:

**10.1.2.1** A list of debarred, suspended or ineligible firms or individuals;

**10.1.2.2** The bidder's submittals, replies to questionnaires, financial data such as balance sheets, profits and loss statements, cash forecasts, and financial histories of bidder and affiliated concerns, current and past production records, list of tools, equipment, and facilities, written statements or commitments concerning financial assistance and subcontracting arrangements;

**10.1.2.3** Businesses that provide commercial credit rating reports;

**10.1.2.4** References from suppliers, subcontractors, banks and financial institutions, other government agencies, purchasing and trade associations, and better business bureaus and chambers of commerce;

**10.1.2.5** Documented past performance on contracts with HACCC.

**10.1.3 Timing of Determination.** The Contracting Officer will determine whether a Bidder is Responsible prior to consideration of contract award in the case of sealed bids and small purchase procurements, and prior to the panel's evaluation of proposals in the case of competitive proposals.

**10.1.4 Determination of Non-Responsible.** 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.

### **10.2 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 through §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, Agency staff shall, as detailed within Section 10.2.H.1 and 10.2.H.2 of HUD Procurement Handbook 7460.8 REV 2, conduct the required searches within the HUD Limited Denial of Participation (LDP) system and the U.S. General Services Administration System for Award Management (SAM) and place within the applicable contract file a printed copy of the results of each such search.

### **10.3 Licensing.**

For any contracts that require a California contractor's license to perform, contractors must be properly licensed at the time the bid is submitted, or the contractor will be deemed to be non-responsive and the bid rejected pursuant to Business and Professions Code section 7028.15. The contractor must remain properly licensed at the time the contract is awarded pursuant to Business and Professions Code section 20103.5.

### **10.4 Vendor Mailing and Prequalification Lists.**

All interested businesses shall be given the opportunity to be included on vendor mailing lists. Any lists of people, 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. In addition, HACCC may decide to keep a list of prequalified people, firms, or products used in common procurement transactions. HACCC shall ensure that all pre-qualified lists are current and include enough qualified sources to ensure maximum open competition. When establishing or amending pre-qualified lists, HACCC considers objective factors that evaluate price and cost to maximize competition. HACCC shall not preclude potential bidders from qualifying during the solicitation period.

## **11.0 CONTRACT PRICING ARRANGEMENTS**

### **11.1 Contract Types.**

Any type of contract which is appropriate to the procurement, and which will promote the best interests of HACCC 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 HACCC. For all cost reimbursement contracts, HACCC 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.

### **11.2 Options.**

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

**11.2.1** The option is contained in the solicitation;

**11.2.2** The option is a unilateral right of HACCC;

**11.2.3** The contract states a limit on the additional quantities and the overall term of the contract;

**11.2.4** The options are evaluated as part of the initial competition;

**11.2.5** The contract states the period within which the options may be exercised;

**11.2.6** The options may be exercised only at the price specified in or reasonably determinable from the contract; and

**11.2.7** The options may be exercised only if determined to be more advantageous to HACCC than conducting a new procurement, and the contractor's performance has been satisfactory or better based upon a performance evaluation.

## **12.0 CONTRACT CLAUSES**

### **12.1 Contract Pricing Arrangements.**

All contracts shall identify the contract pricing arrangement as well as other pertinent terms and conditions, as determined by HACCC.

### **12.2 Required Forms.**

**12.2.1 Construction Contracts.** For construction contracts over \$2000, the Davis-Bacon Wage Rate Determination form shall be used. Form 5370-EZ shall be used for construction contracts greater than \$2,000 but not exceeding \$200,000. For construction contracts of more than \$200,000, forms HUD-5369; 5370; and 50071, which contain all HUD-required clauses and certifications for contracts, shall be used, as applicable, in all corresponding solicitations and contracts issued by HACCC. The following forms shall also be used: Form HUD-2530, Form HUD-5369A, Form HUD-92010, Standard Form LLL Disclosure of Lobbying Activities, Standard Form 24 Bid Bond, Standard Form 25 Performance Bond, Standard Form 25A Payment Bond, Form HUD-92554M, WH-347 Payroll Form, Form HUD-5372.

**12.2.2 Maintenance or Service (Non-Construction) Contracts.** For non-construction contracts greater than \$200,000 and non-routine maintenance (24 CFR 905.100), forms HUD-5369-A, HUD-5369-B, and 5370-C (Sections I and II), and 500171 shall be used, as applicable, in all corresponding solicitations and contracts issued by HACCC. For non-construction contracts greater than \$2,000 but not exceeding \$200,000, Form HUD-5369-B, Form HUD-5369-C, Form HUD-5370-C Section I and II, and the HUD Maintenance Wage Rates Determination shall be used. **12.2.3 A/E Contracts** For A/E contracts that exceed \$200,000, forms HUD-51915 and 51915-A shall be used, as applicable, in all corresponding solicitations and contracts issued by HACCC.

### **12.3 Required Contract Clauses:**

HACCC shall ensure that each contract executed by HACCC contains the required contract clauses detailed within 2 CFR §200.326 and Appendix II. For cost reimbursement contracts

with commercial firms, costs are allowable only to the extent that they are consistent with the cost principles in FAR Subpart 31.2

#### **12.4 Use of Options**

In many cases, HACCC may have a recurring need for specific supplies or services. One method of obtaining firm commitments from contractors for additional quantities or longer time periods is to include an option clause in the contract. The advantage of awarding a contract with options is that it gives HACCC a continued source of supply or services under contract at known prices. The option to extend the term of the contract or to order additional supplies or services is the unilateral right of HACCC. The additional supplies or services are ordered at the prices specified in the original contract. A clause that allows an option to be exercised by the contractor is not a legitimate option clause. The following limitations apply:

**12.4.1 Price.** The option to extend the term of the contract or to order additional quantities may only be exercised if the contract contained an options clause and if a price for the additional supplies or services was included. An unpriced option is considered a new procurement and, therefore, may not be used. In the case of a cost-reimbursement contract, an estimated cost for the option periods or additional quantities must be negotiated and included in the contract award; otherwise, the option will need to be treated either as a change order or a new contract.

**12.4.2 Time and Quantity.** Contracts shall not exceed a period of five years, including options for renewal or extension. Contracts, other than energy performance contracts, with terms, plus extensions, that exceed a total of five years are viewed as restrictive of competition and in violation of 24 CFR 85.36(c). A Field Office may approve contracts in excess of five years if it determines there is no practical alternative. Energy performance contracts may be for a period not to exceed 20 years in accordance with 24 CFR Part 990 and PIH Notice 2006-6. HACCC must also follow its own procurement policy and any applicable local or State laws and regulations. There must be a finite period for a contract, including all options, and a specific limit on the total quantity or maximum value of items to be purchased under an option.

**12.4.3 Option to Extend.** Any contract containing options must specify the timeframe within which the option to extend the term of the contract must be exercised. If HACCC decides to include options in a solicitation, the pricing of the options should be evaluated as part of the overall contract award. Contractors should be notified of HACCC's likely intention to exercise the option to extend the term of the contract approximately 90 days before the expiration date of the contract. The Contracting Officer should notify the contractor at least 30 days before the contract expiration date of the specific intention to exercise the option and then issue a formal modification extending the contract. Options may not be exercised after the term of the contract has expired; technically, there is no longer a legal and binding contract to extend.

**12.4.4 Exercising Options.** Before exercising an option, the PHA should document the contract file with a written determination. At least the following items should be included: 1. Fund availability; 2. Statement that the option was included in and evaluated as part of the basic contract; 3. A brief review of market prices to justify price

reasonableness, indicating whether the option is still economical for HACCC; and 4. Any other factors that support the PHA's decision to exercise the option. For example, HACCC avoids the cost of a new procurement and ensures continuity in service.

## **13.0 CONTRACT ADMINISTRATION**

### **13.1 General.**

HACCC 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.

## **14.0 SPECIFICATIONS**

### **14.1 General.**

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

### **14.2 Limitation.**

The following types of specifications shall be avoided:

**14.2.1** 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);

**14.2.2** Brand name specifications (unless the specifications list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use);

**14.2.3** Unnecessary bonding or experience requirements.

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 (for example, having a consultant perform a study of HACCC's computer needs and then allowing that consultant to compete for the subsequent contract for the computers).

## **15.0 APPEALS AND REMEDIES**

### **15.1 General.**



It is Agency 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.

### **15.2 Informal Appeals Procedure.**

For contracts of \$200,000 or less, a bidder or contractor may request to meet with the appropriate Contract Officer. HACCC shall first engage in an informal process for any appeal regarding a decision. Following discussion, the bidder or contractor shall have the option to file a formal appeal.

### **15.3 Formal Appeals Procedure.**

The formal appeals procedure described below shall be followed for solicitations/contracts of more than \$200,000.

**15.3.1 Bid Protest.** Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy. Any protest against a solicitation must be received before the due date for the receipt of bids or proposals, and any protest against the award of a contract based on an IFB must be received within two (2) business days after the contractor receives notice of the contract award, or the protest will not be considered. Any protest against the award of a contract based on an RFP or appeal of a decision by HACCC to reject a proposal must be received within three (3) business days after notification to an unsuccessful proposer that they were not selected, or the appeal will not be considered. All bid protests shall be in writing, submitted to the Contracting Officer or designee, who shall issue a written decision on the matter. A written response will be directed to the appealing Contractor within fourteen (14) calendar days of receipt of the appeal, advising of the decision regarding the appeal and the basis for the decision. The decision of the HACCC shall be final and binding upon all parties. The Contracting Officer may, at his/her discretion, suspend the procurement pending resolution of the protest if the facts presented so warrant.

**15.3.2 Contractor Claims.** All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer for a written decision. The contractor may request a conference on the claim. The Contracting Officer's decision shall inform the contractor of its appeal rights to the next higher level of authority in Agency. Contractor claims shall be governed by the Changes clause in the relevant form HUD-5370.

## **16.0 BUY AMERICA PREFERENCE**

### **16.1 Requirements.**

Consistent with section 70914 of the Build America, Buy America Act, HACCC shall include the Buy America Preference in the terms and conditions any time Federal funds are appropriated or otherwise made available for infrastructure projects in the United States. The Buy America Preference (BAP) states that all of the iron or steel products, manufactured products, and construction materials incorporated into infrastructure projects must be produced in the United States.

**16.1.1** The Buy America Preference shall be included in all subawards, contracts, and purchase orders for the work performed, or products supplied. The terms and conditions shall always flow down to subawards and to subrecipients unless a particular section of the terms and conditions of the Federal award specifically indicate otherwise.

**16.1.2** An article, material, or supply incorporated into an infrastructure project must meet the Buy America Preference for only the single category in which it is classified: (i) Iron or steel products; (ii) Manufactured products; (iii) Construction materials; or (iv) Section 70917(c) materials. The classification shall be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project.

### **16.2 Construction Material Standards**

The Buy America Preference shall apply to the following construction materials incorporated into infrastructure projects. Each construction material is followed by a standard for the material to be considered “produced in the United States.” Except as specifically provided, only a single standard shall be applied to a single construction material.

**16.2.1** Non-ferrous metals: All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.

**16.2.2** Plastic and polymer-based products: All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.

**16.2.3** Glass: All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.

**16.2.4** Fiber optic cable (including drop cable): All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.

**16.2.5** Optical fiber: All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.

**16.2.6** Lumber: All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.

**16.2.7** Drywall: All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.

**16.2.8** Engineered wood: All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

### **16.3 Definitions.**

**16.3.1** *Iron or steel products* are defined as articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both, meaning that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

**16.3.2** *Construction materials* are defined as articles, materials, or supplies that consist of: Non-ferrous metals; Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); Glass (including optic glass); Fiber optic cable (including drop cable); Optical fiber; Lumber; Engineered wood; and Drywall. Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

**16.3.3** *Manufactured products* means articles, materials, or supplies that have been: (i) Processed into a specific form and shape; or (ii) Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

**16.3.4** *Infrastructure project* means any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project.

**16.3.5** *Manufacturer* means the entity that performs the final manufacturing process that produces a manufactured product.

**16.3.6** Produced in the United States means:

**16.3.6.1** In the case of iron or steel products, all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

**16.3.6.2** In the case of manufactured products: (i) The product was manufactured in the United States; and (ii) The cost of the components of the

manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product. For components purchased by the manufacturer, cost is determined by the acquisition cost, including transportation costs. For components manufactured by the manufacturer, costs include the manufacture of the component, including transportation costs, plus allocable overhead costs, but excluding profit.

**16.3.6.3** In the case of construction materials, all manufacturing processes for the construction material occurred in the United States. *See* § 184.6 for more information on the meaning of “all manufacturing processes” for specific construction materials.

**16.3.7** *Section 70917(c) materials* are defined as cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. See section 70917(c) of the Build America, Buy America Act.

## **16.4 Waivers.**

**16.4.1** HACCC shall submit a written request to HUD (or the otherwise applicable Federal awarding agency) to waive the application of the Buy America Preference in any case in which it finds that:

**16.4.1.1** Applying the Buy America Preference would be inconsistent with the public interest (a “public interest waiver”);

**16.4.1.2** Types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (a “nonavailability waiver”); or

**16.4.1.3** The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall infrastructure project by more than 25 percent (an “unreasonable cost waiver”).

**16.4.2** Each federal awarding agency must provide waiver request submission instructions and guidance on the format, contents, and supporting materials required for waiver requests. HACCC shall conform to such instructions. HACCC shall publish any granted waiver with a detailed written explanation for the proposed determination and provide a public comment period of not less than 15 days.

**16.4.3** A “Public Interest Waiver of Build America, Buy America Provisions for Exigent Circumstances as Applied to Certain Recipients of HUD Federal Financial Assistance.” 87 Fed. Reg. 76505 is in effect from November 23, 2022, until November 23, 2027 (unless HUD publishes a Notice altering the time period). This waiver applies to Infrastructure Projects impacted by exigent circumstances and was put in place to prevent delays to critically important projects that serve to ensure the safety and health of HUD constituents while continuing to provide economic opportunity through

housing and community development projects.

**16.4.4** A “Public Interest De Minimis and Small Grants Waiver of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance.” 87 Fed. Reg. 76502 is in effect from November 23, 2022, until November 23, 2027 (unless HUD publishes a Notice altering the time period). This waiver effectively waives the BAP for infrastructure projects whose total cost (including HUD funding and funding from any other source) is an amount equal to or less than the 2 CFR 200.1 simplified acquisition threshold, which is currently \$250,000 (which is above HACCC’s threshold of \$200,000). HUD also waived the application of the BAP for all Small Grants of FFA provided by HUD that are equal to or below the simplified acquisition threshold. However, if the FFA covered by this waiver is combined with other funding, the waiver may cease to apply in certain circumstances outlined later in this notice. Additionally, HUD waives the application of the BAP for a De Minimis portion of an infrastructure project, meaning a cumulative total of no more than 5 percent of the total cost of the iron, steel, manufactured products, and construction materials used in and incorporated into the infrastructure project, up to a maximum of \$1 million.

### **16.5 Exemptions.**

The Buy America Preference does not apply to expenditures for assistance authorized under section 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170a, 5170b, 16 5170c, 5172, 5174, or 5192) relating to a major disaster or emergency declared by the President under section 401 or 501, respectively, of such Act (42 U.S.C. 5170, 5191) or pre and post disaster or emergency response expenditures. “Pre and post disaster or emergency response expenditures” consist of expenditures for financial assistance that are (1) Authorized by statutes other than the Stafford Act, 42 U.S.C. 5121 and (2) Made in anticipation of or response to an event or events that qualify as an “emergency” or “major disaster” within the meaning of the Stafford Act, 42 U.S.C. 5122(1), (2).

## **17.0 ASSISTANCE TO SMALL AND OTHER BUSINESSES**

### **17.1 Required Efforts.**

Consistent with Presidential Executive Orders 11625, 12138, and 12432, Title VI of the Civil Rights Act of 1968, and Section 3 of the HUD Act of 1968, as amended, all necessary affirmative efforts shall be made to ensure that small and minority-owned and woman-owned business enterprises, labor surplus area businesses, and other individuals or firms located in or owned in substantial part by persons residing in the area of a HACCC public housing development are used when possible. Such efforts shall include, but shall not be limited to:

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

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

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

**17.1.4** Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;

**17.1.5** Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;

**17.1.6** Including in contracts, to the greatest extent feasible, a clause requiring contractors, to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with the project to business concerns which provide employment and training opportunities for low-income residents, as described in 24 CFR §135 (so-called Section 3 businesses); and

**17.1.7** Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed above.

## **17.2 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 Agency prime contracts and subcontracting opportunities.

## **17.3 Definitions.**

**17.3.1** 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.

**17.3.2** A minority-owned business is defined as a business which is at least 51% owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.

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

**17.3.4** A "Section 3 business concern" is as defined under 24 CFR §135.

**17.3.5** 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.

## **18.0 DOCUMENTATION**

### **18.1 Required Records.**

HACCC 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:

**18.1.1** Rationale for the method of procurement (if not self-evident);

**18.1.2** Rationale of contract pricing arrangement (also if not self-evident);

**18.1.3** Reason for accepting or rejecting the bids or offers;

**18.1.4** Basis for the contract price (as prescribed in this handbook);

**18.1.5** A copy of the contract documents awarded or issued and signed by the Contracting Officer;

**18.1.6** Basis for contract modifications; and

**18.1.7** Related contract administration actions.

### **18.2 Level of Documentation.**

The level of documentation should be commensurate with the value of the procurement.

### **18.3 Record Retention.**

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 DISPOSITION OF SURPLUS PROPERTY**

### **19.1 General.**

Property no longer necessary for HACCC's purposes (non-real property) shall be transferred, sold, or disposed of in accordance with applicable Federal, state, and local laws and regulations.

## **20.0 FUNDING AVAILABILITY**

### **20.1 General.**

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