

STATEMENT OF PROCUREMENT POLICY FOR THE MRHA VIII FOR ALL NON PUBLIC HOUSING PROPERTIES

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STATEMENT OF PROCUREMENT POLICY FOR THE MRHA VIII FOR ALL NON PUBLIC HOUSING PROPERTIES

Established for the MHRA VIII by Board Action on August 27, 2015 by Board resolution No. 2015-17.

I. GENERAL PROVISIONS

A. PURPOSE

The purpose of this Statement of Procurement Policy is to: provide for the fair and ethical treatment of all persons or firms involved in purchasing by the AGENCY; assure that supplies, services and construction are procured efficiently, effectively, and at the most favorable prices available to the AGENCY; promote competition in contracting; provide safeguards for maintaining a procurement system of quality and integrity; and assure that AGENCY purchasing actions are in full compliance with local laws if applicable.

B. APPLICATION

This statement of Procurement Policy applies to all contracts for the procurement of supplies, services and construction entered into by the AGENCY after the effective date of this Statement. This policy does not apply to those properties which are Public Housing properties. All Public Housing properties, wherever located, are covered by the existing MRHA VIII procurement policy established for the MHRA VIII (PHA) by Board Action on June 13, 2002 and by regulations issued by the United States Department of Housing and Urban Development. It shall apply to every expenditure of funds by the AGENCY for public purchasing, irrespective of the source of funds, including contracts which do not involve an obligation of funds (such as concession contracts); however nothing in this Statement shall prevent the AGENCY from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with law. The term "procurement" as used in this Statement, includes both contracts and modifications (including change orders for construction or services, as well as purchase, lease, or rental of supplies and equipment).

II. PROCUREMENT AUTHORITY AND ADMINISTRATION

- A.** All procurement transactions shall be administered by the Contracting Officer, who shall be the CEO or other individual he or she has authorized in writing. The CEO shall also establish a system of sanctions for violations.
- B.** The CEO or his/her designee shall ensure that:
1. Procurement requirements are subject to an annual planning process to assure efficient and economical purchasing;
 2. Contracts and Modifications are in writing, clearly specifying the desired supplies, services or construction, and are supported by sufficient documentation for 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;
 3. For procurement other than small purchases (IFB's), public notice is given of each upcoming procurement of at least 7 days (or other time period if required by Local Law) before a solicitation is issued; responses to such notice are honored to the maximum extent practical; a minimum of 15 days (or other time period if required by local Law) is provided for preparation and submission of bids for construction purposes.
 4. Solicitation procedures are conducted in full compliance with local laws, if applicable.
 5. An Independent Cost Estimate (ICE) is prepared before solicitation issuance and an appropriately safeguarded for each procurement above the small purchase limitation, and a cost or price analysis is conducted on the responses received for all procurement.
 6. Contract award is made to the responsive and responsible bidder offering the lowest price (for sealed bid contracts) or the contract award is made to the offeror whose proposal offers the greatest value and advantage to the AGENCY, considering price, technical, and other factors as specified in the solicitation (for contracts awarded based on competitive proposals).
 7. 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 payments made promptly for contract work performed and accepted.
- C.** This Policy and any later changes shall be submitted to the Board of Commissioners for approval. The Board appoints and delegates procurement authority to the CEO and is responsible for ensuring that any procurement policies adopted are appropriate for the AGENCY.

III. PROCUREMENT METHODS

SELECTION OF METHOD

If it has been decided that the AGENCY will directly purchase the required items, one of the following procurement methods shall be chosen, based on the nature and anticipated dollar value of the total purchases.

A. SMALL PURCHASE PROCEDURES

- 1. Bids/Quotes procedure for micro purchases not over \$3,000.00. (Non-Competitive Proposals)** The Agency has established a Micro-Purchase Threshold of up to \$3,000.00. The Agency may award Micro-Purchases without soliciting competitive quotations if the Contracting Officer or designee considers the price to be reasonable (e.g., based on recent research, experience or purchases). To the greatest extent feasible and to promote competition, small purchases should be distributed among qualified sources. Bids/Quotes may be obtained orally (either in person or by phone), by fax, in writing or through e-procurement. Award shall be made to the qualified vendor that provides the best value to the AGENCY. Purchases which do not involve an expenditure of more than Three Thousand Dollars (\$3,000.00), exclusive of freight or shipping charges, may be made without advertising or otherwise requesting competitive quotes/bids. **(HUD Micro-Purchase limit is now set at \$3,000.00).**

NON-COMPETITIVE PROPOSALS

Conditions for use: Procurement shall be conducted competitively to the maximum extent possible. Procurement by non-competitive proposals may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids or competitive proposals, and 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 AGENCY, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be a serious and immediate need for supplies, services, or construction such that the need cannot be met through any other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary simply to meet the emergency;
- 3) After solicitation of a number of sources, competition is determined inadequate.

Justification: Each procurement based on noncompetitive proposals shall be supported by a written justification for using such procedures. The justification shall be approved in writing by the responsible Contracting Officer.

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 the paragraphs below.

2. **Bids/Quotes procedure for purchases/small contracts over \$4,000.00 but not over \$99,999.99 (Competitive Proposals)** Purchases which involve an expenditure of more than Four Thousand Dollars (\$4,000.00) but not more than Ninety Nine Thousand, Nine Hundred Ninety Nine and Ninety Nine cents (\$99,999.99), exclusive of freight and shipping charges may be made from the lowest and best bidder or offeror without publishing or posting advertisement for bids, provided at least three (3) competitive written bids/quotes have been obtained. Purchases/Contracts that do not involve an expenditure of more than \$99,999.99 may be made without advertising, provided at least three (3) competitive written bids/quotes have been obtained. To the greatest extent feasible, and to promote competition, small purchases should be distributed among qualified sources.

COMPETITIVE PROPOSALS:

Conditions for Use: Competitive proposals (including turnkey proposals for development) may be used if there is an adequate method of evaluating technical proposals and where the AGENCY determines that conditions are not appropriate for the use of sealed bids. An adequate number of qualified sources shall be solicited.

Solicitation: The request for proposals (RFP) shall clearly identify the relative importance of price and other evaluation factors and sub-factors, including the weight given to each technical factor and sub-factor. A mechanism for fairly and thoroughly evaluating technical and price proposals shall be established before the solicitation is issued

Negotiations: Unless there is no need for negotiations with any of the offerors, negotiations shall be conducted with offerors who submit proposals determined to have a reasonable chance of being selected for award, based on evaluation against the technical and price factors as specified in the RFP. Such offerors, negotiations shall be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. The purpose of negotiations shall be to seek clarification with regard to and advise offerors of the deficiencies in both the technical and price aspects of their proposals so as to assure full understanding of and conformance to the solicitation requirements. No offeror shall be provided 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. Offerors shall not be directed to reduce their proposed prices to a specific amount in order to be considered for award. A common deadline shall be established for receipt of proposal revisions based on negotiations.

Award: After evaluation of proposals, the contract shall be awarded to the lowest responsible firm whose qualifications, price and other factors considered, are the most advantageous to the AGENCY. To the greatest extent feasible and to promote competition small purchases should be distributed among qualified sources.

- 3. Bidding procedure for purchases over \$100,000.00. (Sealed Bidding)** Publication requirement. Purchases which involve an expenditure of more than One Hundred Thousand Dollars (\$100,000.00), exclusive of freight and shipping charges, may be made from the lowest and best bidder after advertising for competitive sealed bids once each week for two (2) consecutive weeks in a regular newspaper published in the county or municipality in which such AGENCY or governing authority is located. Bid opening involving construction projects in which the estimated cost is in excess of One Hundred Thousand Dollars (\$100,000.00), shall not be opened less than fifteen (15) working days after the last notice is published and the notice for the purchase of such construction shall be published once each week for two (2) consecutive weeks. If less than (3) competitive bids are received, all bids will be rejected and resolicited.

SEALED BIDDING

Conditions for Use: Contracts shall be awarded based on competitive sealed bidding if the following conditions are present: a complete, adequate, and realistic specification or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; the procurement lends itself to a firm fixed price contract; and the selection of the successful bidder can be made principally on the basis of price. Sealed bidding is the preferred method for construction procurement. For professional service contracts, sealed bidding should not be used.

Solicitation and Receipt of Bids: An invitation for bids shall be issued including specifications and all contractual terms and conditions applicable to the procurement; including a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the invitation for bids. The invitation for bids shall state the time and place for both the receipt of bids and the public bid opening. All bids received shall be time stamped but not opened and shall be stored in a secure place until bid opening. A bidder may withdraw its bid at any time prior to bid opening.

Bid Opening and Award: Bids shall be opened publicly and in the presence of at least two witnesses. An abstract of bids shall be recorded and the bids shall be available for public inspection. Award shall be made as provided in the invitation of bids by written notice to the successful bidder. If equal low bids are received from responsible bidders, award shall be made by drawing lots or similar random method, unless otherwise provided in Local Law and stated in the invitation for bids. If only one responsive bid is received from a responsible bidder, award shall not be made unless a cost or price analysis verifies the reasonableness of the price.

Mistakes in Bids: (Minor Informalities): Correction or withdrawal of inadvertently erroneous bids may be permitted, where appropriate, before bid opening by written or electronic notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid openings, corrections in bids shall 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 bid mistakes shall be supported by a written determination signed by the Contracting Officer. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the AGENCY or fair competition shall be permitted. Construction project negotiations authority; If the lowest and best bid is not more than ten percent (10%) above the amount of funds allocated for a public construction or renovation project, then the AGENCY or governing authority shall be permitted to negotiate with the lowest bidder in order to enter into a contract for an amount not to exceed the funds allocated.

CANCELLATION OF SOLICITATIONS

An invitation for bids, request for proposals, or other solicitation may be cancelled before offers are due if: The AGENCY no longer requires the supplies, services or construction; the AGENCY can no longer reasonably expect to fund the procurement; proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable; or similar reasons.

A solicitation may be cancelled and all bids or proposals that may have already been received may be rejected if: The supplies, services, or construction are no longer required; ambiguous or otherwise inadequate specifications were part significance to the AGENCY; prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds; there is reason to believe that bids or proposals may have been collusive, or may have been submitted in bad faith; or for good cause of a similar nature when it is in the best interest of the AGENCY. The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request to any offeror solicited. A notice of cancellation shall be sent to all 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.

If all otherwise acceptable bids received in response to an invitation for bids are at unreasonable prices, or only one bid is received and the price is unreasonable, the AGENCY shall cancel the solicitation and either:

Re-solicit using a request for proposals; or complete the procurement by using the competitive proposals method. The Contracting Officer must determine, in writing, that such action is appropriate, must inform all bidders of the AGENCY's intent to negotiate, and must give each bidder a reasonable opportunity to negotiate.

BONDS: In addition to the other requirements of this Policy Procedure, the following requirements apply for construction contracts exceeding \$100,000. Contractors shall be required to submit the following, unless otherwise not required by State or Local Laws:

- (A) A bid guarantee from each bidder equivalent to 5% of the bid price; and
- (B) A performance bond for 100% of the contract price; and
- (C) A payment bond for 100% of the contract price.

4. State Contract or GSA (if applicable)

To the extent that such can successfully be accomplished, the AGENCY may purchase items at the state contract price on items approved by the Mississippi office of Purchasing and Travel from the state contract

vendor after determining that the same items cannot be purchased for less through competitive quotes or advertisement.

IV. CONTRACTOR QUALIFICATIONS AND DUTIES

A. CONTRACTOR RESPONSIBILITY: Procurement shall be conducted only with responsible contractors, i.e., those who have the technical and financial competence to perform and who have a satisfactory record of integrity. Before awarding a contract, the AGENCY shall review the proposed contractor's ability to perform the contract successfully, considering the following factors:

1. The contractor's integrity and;
2. Record of past performance (including contacting previous clients of the contractor, such as other AGENCIES) and;
3. No other contract type is suitable, and the contract includes a ceiling price that the contractor exceeds at his own risk.

*** Refer to Exhibit #16 for criteria regarding contractor responsibility.**

B. SUSPENSION AND DEBARMENT: Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined ineligible by any other Local agency.

C. QUALIFIED BIDDER'S LIST: Interested businesses shall be given an opportunity to be included on qualified bidder's lists. Any pre-qualified lists of persons, firms, or products which are used in the procurement of supplies and services shall be kept current and shall include enough qualified sources to ensure competition. Firms shall be precluded from qualifying during the solicitation period. Solicitation mailing lists of potential contractors shall include, but not being limited to, such pre-qualified suppliers.

V. TYPES OF CONTRACTS, CLAUSES, AND CONTRACT ADMINISTRATION

A. CONTRACT TYPES: Any type of contract which is appropriate to the procurement and which will promote the best interest of the AGENCY may be used {i.e. the following is a list of acceptable contract types for the MHRA VIII:

1. Firm fixed price
2. Fixed price with economic adjustment
3. Indefinite delivery/ quantity
4. Multiple awards

*** Refer to Exhibit #17 for descriptive language regarding contract type.**

All procurements shall include the clauses which defines the rights and responsibilities of the parties. A cost reimbursement contract shall not be used unless it is likely to be less costly or it is impracticable to satisfy the AGENCY's needs otherwise, and the proposed contractor's accounting system is adequate to allocate costs in accordance with applicable cost principles for commercial firms. A time and materials contract may be used only if a written determination is made that no other contract type is suitable, and the contract includes a ceiling price that the contractor exceeds at its own risk.

B. OPTIONS: Options for additional quantities or performance periods may be included in contracts, provided that (i) the option is contained in the solicitation; (ii) the option is a unilateral right of the AGENCY; (iii) the contract states a limit on the additional quantities and the overall term of the contract; (iv) the options are evaluated as part of the initial competition; (v) the contract states the period within which the options may be exercised; (vi) the options may be specified only at the price specified in or reasonably determinable from the contract; and (vii) the options may be exercised only if determined to be more advantageous to the AGENCY than conducting a new procurement.

C. CONTRACT CLAUSES: In addition to containing a clause identifying the contract type, all contracts shall include any clauses required, such as the following:

1. Termination for convenience
2. Termination for default
3. Equal Employment Opportunity
4. Anti-Kickback Act
5. Davis Bacon provisions of the United States Housing Act of 1937
(Pertains only to rehab for RAD)

VI. SPECIFICATIONS

GENERAL: All specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying the AGENCY's needs. Specifications shall be reviewed prior to solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicate items. Functional 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.

LIMITATIONS: The following specifications limitations should be avoided: geographic restrictions not mandated or encouraged by applicable State/Local Law (except for architect-engineer contracts, which may include geographic location as a selection factor if adequate competition is available); unnecessary bonding or experience requirements; brand name specifications (unless a written determination is made that only the identified item will satisfy the AGENCY's need); brand name or equal specifications (unless they conform to satisfy its intended use). Nothing in this procurement policy shall preempt any State licensing

laws. Specifications shall be scrutinized to ensure that organizational conflicts of interest do not occur (for example, having a consultant perform a study of the AGENCY's computer needs and then allowing that consultant to compete for the subsequent contract for the computers).

VII. ASSISTANCE TO SMALL AND OTHER BUSINESSES

A. REQUIRED EFFORTS (Applies only to public housing unit rehabilitation work)

1. Consistent with Section 3 of the HUD Act of 1968, the AGENCY shall make efforts to insure that small and minority-owned businesses, women's business enterprises, labor surplus area businesses, and individuals or firms located in or owned in substantial part by persons residing in the area of an AGENCY project are used for the rehabilitation phase only. This provision shall only be in effect only during the rehabilitation under RAD. Such efforts shall include, but shall not be limited to:
 - a. Including such firms, when qualified, on solicitation of 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 requirements permit, which encourage participation by such firms.
 - e. Using the services and assistance of the Minority Business Development AGENCY of the MS Development Authority (MDA).
 - f. Including in contracts a clause requiring contractors, to the greatest extent feasible, to provide opportunities for training and employment for lower income residents of the project area and to award sub-contractors for work in connection with the project to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
 - g. Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed in A1.a through A1.f above.
2. Goals may be established by the AGENCY periodically for participation by small and minority-owned businesses, women's business enterprises, labor surplus area businesses, and individuals or firms located in or owned in substantial part by persons residing in the area of the project area.

B. DEFINITIONS

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.
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, Native Americans, Hispanic Americans, Native Americans, Asian Pacific Americans and Asian Indian Americans, and Hasidic Jewish Americans.

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.
4. 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 in the list of labor surplus areas published by the Employment and Training Administration.
5. A business concern located in the area of the project, is defined as an individual or firm located within the relevant Section 3 covered project area, registry of eligible business concerns, and meeting the definition of small business above. A business concern owned in substantial part by persons residing in the area of the project is defined as a business concern which is 51% or more owned by persons residing within the Section 3 covered project, owned by persons considered to be socially or economically disadvantaged, and meeting the definition of small business above.

VIII. ETHICS IN PUBLIC CONTRACTING

A. GENERAL:

Ethical standards apply not only to PHA employees and Contracting Officers but to others with a vested interest in PHA contracts such as members of the Board of Commissioners, other officials and agents of the authority, and contractors with whom the PHA does business.

B. CONFLICT OF INTEREST:

No employee, officer or agent of this AGENCY shall participate directly or indirectly in the selection or in the award or administration of any contract if a conflict, real or apparent, would be involved. Such conflict would arise when a financial or other interest in a firm selected for award is held by:

1. An employee, officer or agent involved in making the award;
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. His/her partner;
4. An organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment of any of the above;
5. No present or former PHA employee, officer, or agent shall engage in selling or attempting to sell supplies, services, or construction to the PHA for one year following the date such employment ceased.

C. MISSISSIPPI STATE ETHICS LAWS:

This Article is in addition and supplemental to Section 109 of the Mississippi Constitution of 1890 and the Mississippi Ethics in Government Act, Mississippi Code Section 25-4-101 et Seq. Where this Article conflicts with any of the Mississippi State Ethics Laws, the Mississippi State Ethics Laws shall prevail.

D. GRATUITIES, KICKBACKS, AND USE OF CONFIDENTIAL INFORMATION:

AGENCY officers, employees or agents shall not solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontractors, and shall not knowingly use confidential information for actual anticipated personal gain.

E. PROHIBITION AGAINST CONTINGENT FEES:

Contractors shall not retain a person to solicit or secure an AGENCY contract for a commission, percentage, brokerage, or contingent fee, except for bona fide employees or bona fide established commercial selling agencies.

IX. APPEALS AND REMEDIES:

A. GENERAL It is the AGENCY's policy to resolve all contractual issues informally at the AGENCY level, without litigation. When appropriate, the AGENCY may consider the use of informal discussions between the parties by individuals who did not participate substantially in the matter in dispute, to help resolve the differences.

B. BID PROTESTS Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Statement. Any protest against a solicitation must be received before the due date of receipt of bids or proposals. Any protest against the award of a contract must be received within 72 Hours after contract award, or the protest will not be considered. The Contracting Officer may, at his or her discretion, suspend the solicitation pending resolution of the protest, if warranted by the facts presented.

C. CONTRACT CLAIMS All claims by a contractor relating to the performance of a contract shall be submitted in writing to the Contracting Officer or designee for a written decision. The contractor may request a conference on the claim. The Contracting Officer's decision is final.