

**STATEMENT OF PROCUREMENT POLICY FOR  
THE LAWRENCE-DOUGLAS COUNTY HOUSING AUTHORITY  
RESOLUTION 735**

**July 25, 2000**

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**TABLE OF CONTENTS**

1. GENERAL PROVISIONS
2. ETHICS IN PUBLIC CONTRACTING
3. PROCUREMENT PLANNING
4. PROCUREMENT METHODS
5. SOLICITATION AND ADVERTISING
6. CANCELLATION OF SOLICITATIONS
7. COST AND PRICE ANALYSIS
8. TYPES OF CONTRACTS, CLAUSES, AND CONTRACT ADMINISTRATION
9. CONTRACTOR QUALIFICATIONS AND DUTIES
10. CONTRACT ADMINISTRATION
11. APPEALS AND REMEDIES
12. ASSISTANCE TO SMALL, MINORITY-OWNED, AND LOW-INCOME AREA  
(SECTION 3) BUSINESSES; AND WOMEN'S BUSINESS ENTERPRISES
13. INSURANCE
14. SPECIFICATIONS AND STATEMENTS OF WORK
15. RECORDS
16. CAPITAL FUND STIMULUS GRANT PROCUREMENT

**7460.8 REV-1 STATEMENT OF PROCUREMENT POLICY**

Established for the Lawrence Housing Authority by Board Action on July 25, 2000. This Statement of Procurement Policy complies with HUD's Annual Contributions Contract (ACC), HUD Handbook 7460.8 REV-1. "Procurement Handbook for Public Housing Agencies and Indian Housing Authorities," and the procurement standards of 24 CFR 85.36. All references to the LDCHA shall automatically be revised to read the Lawrence-Douglas County housing Authority as of January 1, 2001.

**1.0 GENERAL PROVISIONS**

**1.1 PURPOSE**

The purpose of this Policy is to help maintain the integrity of the LDCHA's procurement system; ensure that the LDCHA procures products and services effectively, efficiently and at the most favorable prices; and ensure that LDCHA purchasing actions are in full compliance with applicable federal standards, and State and local laws. This Policy was designed to comply with HUD's Annual Contributions Contract (ACC), Procurement

Handbook for Public Housing Agencies (Handbook 7460.8. Revision 2), and the procurement regulations at 24 CFR 85.36.

## 1.2 DEFINITIONS

The following definitions shall be used in this Policy:

- **Procurement:** Refers to the purchasing, leasing or renting of goods (supplies, equipment and materials); construction and maintenance services; and architectural and engineering (A/E), legal, security, accounting, audit, social and other consulting services.
- **Contractor:** Refers to any business entity providing contracting, maintenance, consulting or social services.
- **Vendor:** Refers to any business entity that provides goods to the LDCHA who is not also hired as a contractor.
- **LDCHA:** Lawrence-Douglas County Housing Authority
- **HUD:** Housing and Urban Development

## 1.3 APPLICATION

This Policy applies to the expenditure of funds or other commodities of monetary value by the LDCHA to secure goods and services. It shall apply to every expenditure of federal funds by the LDCHA for public purchasing, irrespective of the source of funds, including transactions that do not involve an obligation of funds (such as concession contracts). Nothing in this Policy, however, shall prevent the LDCHA from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with law.

## 1.4 CHANGES IN LAWS AND REGULATIONS

In the event that an applicable federal, state or local law, regulation or ordinance is modified or eliminated, or a new law, regulation or ordinance is adopted, the revised directive shall, to the extent more stringent than a corresponding provision of this Policy, shall automatically supersede the applicable provision.

## 1.5 PUBLIC ACCESS TO PROCUREMENT INFORMATION

Procurement information shall be a matter of public record to the extent provided in the State of Kansas state law and shall be available to the public as provided by that statute.

## 1.6 PROCUREMENT AUTHORITY AND ADMINISTRATION

- A. The Executive Director shall serve as Contracting Officer, and shall administer or oversee all procurement transactions. Any delegations of contracting LDCHA by the Executive Director must be documented in writing. The Executive Director shall ensure that the following standards are implemented:
  - Proposed purchases are subject to a planning process to assure efficient and economical purchasing;
  - contracts, contract amendments and purchase orders are set forth in writing, and clearly specify the desired goods and services; procurement

transactions are supported by sufficient documentation regarding the history of the procurement; and contracts, purchase orders and contract amendments are awarded or approved only by LDCHA employees designated in writing as having such LDCHA;

- for procurements other than small purchases, public notice is given of each upcoming procurement, an adequate time period is provided for preparation and submission of bids or proposals, and notice of contract awards is made available to the public;
- solicitation procedures are conducted in full compliance with federal regulations set forth in 24 CFR 85.36, or State and local laws (where more stringent), provided they are otherwise consistent with 24 CFR 85.36;
- an independent cost estimate is prepared before each Invitation for Bids or Request for Proposals is issued, the estimate is appropriately safeguarded, and a cost or price analysis is conducted of the responses received for all procurements;
- award is made to: The responsive and responsible contractor or vendor providing the lowest bid (for sealed bid procurements); the contractor or vendor whose proposal offers the greatest overall value (for competitive proposal procurements); and the contractor or vendor whose quotation offers the greatest overall value, price and non-price factors considered (for small-purchase procurements). For sealed-bid and competitive proposals procurements, and in instances where contractor or vendors were required to submit quotations under small-purchase procurements, unsuccessful firms shall be notified within 14 calendar days after contract or purchase order award;
- work is inspected before payment, and payment is made promptly for contract work performed and accepted; and
- the LDCHA complies with applicable HUD review requirements.

B. This Statement and any later changes shall be submitted to the Board of Commissioners for approval. The Board appoints and delegates procurement authority to the Executive Director and is responsible for ensuring that any procurement policies adopted are appropriate for the LDCHA.

#### 1.7 CONTRACTOR AND VENDOR RESPONSIBILITY

Procurements shall be conducted only with responsible contractors and vendors, i.e., those who have the technical and financial resources to provide the products and/or services, and have a satisfactory record of performance. The LDCHA shall review each proposed contractor's and vendor's ability to perform the contract successfully, considering factors such as the contractor's and vendor's integrity (including a review of the List of Parties Excluded from Federal Procurement and Non-procurement Programs published by the U.S. General Services Administration), compliance with public policy, record of past performance (including contacting previous clients of the contractor, such as other Housing Authorities), and financial and technical resources. Awards shall not be made to debarred, suspended, or ineligible contractors or vendors.

## **1.8 QUALIFIED CONTRACTOR AND VENDOR LISTS**

Interested businesses shall be given an opportunity to be included on a list of qualified firms used in the procurement of products and services. Such lists shall be kept current, and shall include enough qualified sources to ensure competition. Firms shall not be precluded from qualifying during the solicitation period. Solicitation mailing lists of potential contractors and vendors shall include, but not be limited to, such pre-qualified suppliers.

## **1.9 COOPERATIVE PURCHASING**

The LDCHA may enter into State and local intergovernmental agreements to purchase or use common products and services. The decision to use an intergovernmental agreement or conduct a direct procurement shall be based on economy and efficiency. If used, the intergovernmental 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. When using a cooperative purchasing plan, the housing LDCHA shall ensure that the procurement process followed by the governmental entity was consistent with one of the four acceptable methods of procurement listed in Section 4.0. The LDCHA shall use federal or State excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs.

## **2.0 ETHICS IN PUBLIC CONTRACTING**

### **2.1 GENERAL**

The LDCHA shall adhere to the following code of conduct and shall establish a system of sanctions for violations consistent with applicable State or local law.

### **2.2 CONFLICT OF INTEREST**

No employee, officer or agent of this LDCHA 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:

- An employee, officer or agent involved in making the award;
- 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);
- his/her partner; or,
- an organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

### **2.3 GRATUITIES, KICKBACKS, AND USE OF CONFIDENTIAL INFORMATION**

LDCHA officers, employees or agents shall not solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to

subcontracts and shall not knowingly use confidential information for actual or anticipated personal gain.

## 2.4 PROHIBITION AGAINST CONTINGENT FEES

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

## 3.0 PROCUREMENT PLANNING

### 3.1 GENERAL

Planning is essential to properly managing the procurement function. Hence, the LDCHA will periodically review its record of prior purchases, as well as future needs, to: Find patterns of procurement actions that could be performed more efficiently or economically; maximize competition and competitive pricing among contracts and decrease procurement costs; reduce administrative costs; and ensure that an adequate amount of supplies, equipment and materials are obtained under each procurement transaction, in order to minimize the need for frequent transactions. Consideration will be given to storage, security, and handling requirements when planning the most appropriate purchasing actions.

## 4.0 PROCUREMENT METHODS

### 4.1 SELECTION OF METHOD

If it has been decided that the LDCHA 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 requirement.

### 4.2 SMALL PURCHASE PROCEDURES

- A. **General.** Any contract not exceeding \$50,000 may be made in accordance with the small purchase procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section (except as may be reasonably necessary to comply with Section VIII of this Statement).
- B. **Methods of Obtaining Price Quotes.** Quotes may be obtained by catalog, advertisement, brochure, web site, at point-of-sale, in-person, by telephone, by fax, or in writing, unless there is need to prepare a solicitation document, in which case the document would explain how price quotes are to be submitted.
- C. **Petty Cash Purchases.** Small purchases under \$1,000, which can be satisfied by local sources, may be processed through the use of a petty cash account. The Contracting Officer shall ensure that: the account is established in an amount sufficient to cover small purchases made during a reasonable period; security is maintained and only authorized individuals have access to the

account; the account is periodically reconciled and replenished by submission of a voucher to the LDCHA finance officer; and the account is periodically audited by the business manager or designee to validate proper use and to verify that the account total equals cash on hand plus the total of accumulated vouchers.

- D. **Small purchases of \$10,000 or less.** For small purchases below \$10,000, only one quotation need be solicited if the price received is considered reasonable. Such purchases must be distributed equitably among qualified sources. If practicable, a quotation shall be solicited from other than the previous source before placing a repeat order.
- E. **Small purchases over \$10,000.** For small purchases in excess of \$10,000 or a higher amount up to 10% of the dollar limit in 1. above but not exceeding \$50,000 or a lower dollar limit stated in 1. above no less than three offerors shall be solicited to submit price quotations, which may be obtained orally, by telephone, or in writing, as allowed by State or local laws. Award shall be made to the offeror providing the lowest acceptable quotation, unless justified in writing based on price and other specified factors, such as for architect-engineer contracts. If non-price factors are used, they shall be disclosed to all those solicited. The names, addresses, and/or telephone numbers of the offerors and persons 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).
- F. **Solicitation Document.** When procuring services, the housing LDCHA shall prepare a Request for Quotations (RFQ), which shall be furnished to all interested parties. The RFQ shall contain, at a minimum: Instructions for submitting offers; list of non-price factors (if any) to be considered; pre-contract conditions; wage determination (if applicable); contract form; contract general conditions; supplementary conditions (if applicable); and technical requirements of products and services. The LDCHA shall utilize HUD forms, where required, in its RFQs.
- G. **Prohibition Against Dividing Purchases.** The LDCHA shall not subdivide a procurement subject to either the sealed-bid or competitive proposals methods of procurement to permit the use of small-purchase procedures, or subdivide a small-purchase procurement to permit the use of micro-purchase procedures, unless the action is clearly aimed at affording small and minority-owned businesses the chance to compete for a contract or purchase order award.

#### 4.3 SEALED BIDDING

For purchases over \$50,000;

- A. **Conditions for Use.** Contracts shall be awarded using sealed bid procedures 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. For physical improvement (non-routine maintenance and construction) projects and major equipment

acquisition exceeding the small-purchase limit, sealed bidding shall be used. Sealed-bidding shall not be used for professional services.

B. **Solicitation Document.** Under the sealed-bid method of procurement, the LDCHA shall prepare an invitation for bids (IFB). For procurements involving the provision of services (usually non-routine maintenance or construction), the IFB shall contain:

- Instructions for submitting bids;
- bid form;
- pre-contract conditions;
- wage determination (if applicable);
- contract form;
- contract general conditions;
- supplementary conditions (if applicable; may be included by reference); and
- technical requirements of products and services (e.g., specifications and drawings).

For procurement of products only, e.g., items of equipment, the IFB shall contain:

- Instructions for submitting bids;
- sample purchase order form, with terms and conditions; bid form; and
- technical requirements of products.

The LDCHA shall utilize HUD forms, where required, in its IFBs.

C. **Solicitation.** Notice of the IFB shall be published in a local newspaper of wide circulation; and the IFB shall be available through plan rooms if the nature of the work so warrants. Newspaper notices should run once each week for at least two consecutive weeks. In addition, notice of the IFB may be posted in public buildings, trade journals and publications; and shall be furnished to all interested parties, including those on the LDCHA's list of qualified contractor's and vendors when appropriate. All advertisements/notices should state, at a minimum, the date, time and place the bids are due; the solicitation number; contact person and telephone or e-mail address; brief description of services/products needed; and an invitation to small, minority-owned, and Section 3 businesses, as well as women's business enterprises, to submit bids.

D. **Receipt of Bids.** The IFB shall state the time and place for both the receipt of bids and the public bid opening. In general, bidders shall be provided a minimum of 30 calendar days to submit bids following first public notice. 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.

E. **Bid Opening and Award.** Bids shall be opened publicly, an abstract of bids shall be recorded, and the bids shall be available for public inspection. If equal low bids are received from responsible bidders, award shall be made by drawing lots or similar random method, unless otherwise provided in State or 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.

- F. **Mistakes in Bids.** Correction or withdrawal of inadvertently erroneous bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, 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 LDCHA or fair competition shall be permitted.
- G. **Bid Guarantee.** For procurements of products and/or services whose value is estimated at over \$50,000, the bidder will be required to furnish a bid guarantee in an amount not less than 5 percent of the bid. The guarantee may be a certified check, bank draft, U.S. Government bonds at par value, or a bid bond.
- H. **Assurance of Completion.** For contracts exceeding \$ 50,000, contractors shall be required to submit the following, unless otherwise required by State or local laws or regulations:
- a performance bond for 100% of the contract price; and
  - a payment bond for 100% of the contract price.
- I. **Bonds.** Bonds must be obtained from guarantee or surety companies acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. Individual sureties will not be considered.

#### 4.4 COMPETITIVE PROPOSALS

- A. **Conditions for Use.** Competitive proposals (including turnkey proposals for development) may be used if there is an adequate method for technically evaluating proposals, and the LDCHA determines that conditions are not appropriate for the use of sealed bids. At least three proposals shall be obtained from qualified sources, where practicable.
- B. **Solicitation.** The request for proposals (RFP) shall clearly identify the relative importance of price and other evaluation factors, including the weight given to each. A mechanism for fairly and thoroughly evaluating the technical and price proposals (i.e., technical evaluation system) 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. The proposals shall be evaluated only on the criteria stated in the request for proposals.
- C. **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 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.

- D. **Award.** After evaluation of proposal revisions, if any, the contract shall be awarded to the responsible firm whose qualifications, price and other factors considered, are the most advantageous to the LDCHA.
- E. **Architect/Engineer Services.** Architect/engineer services may be obtained by either the conventional form of the competitive proposals method or by the qualifications-based selection (QBS) form of the competitive proposals method, unless State law mandates QBS. Under QBS, competitor's qualifications are evaluated and the most qualified competitor is selected, subject to the negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. Qualifications-based selection procedures shall not be used to purchase other types of services even though architect-engineer firms are potential sources.

#### 4.5 NONCOMPETITIVE PROPOSALS

- A. **Conditions for Use.** Procurements shall be conducted competitively to the maximum extent possible. Procurement by noncompetitive 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:
- The item is available only from a single source, based on a good faith review of available sources;
  - An emergency exists that seriously threatens the public health, welfare, or safety; endangers property; or would otherwise cause serious injury to the LDCHA, 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 other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency;
  - HUD authorizes the use of noncompetitive proposals; or
  - After solicitation of a number of sources, competition is determined inadequate.

- B. **Justification.** Each procurement based on noncompetitive proposals shall be supported by a written justification, approved by the Contracting Officer, for using such procedures.
- C. **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 Section 5.0 below.

## **5.0 SOLICITATION AND ADVERTISING**

### **5.1 SMALL-PURCHASES**

Quotes may be obtained by catalog, advertisement, brochure, web site, at point-of-sale, in-person, by telephone, by fax, or in writing, unless there is need to prepare a solicitation document, in which case the document would explain how price quotes are to be submitted. Advertising in a local newspaper or using other public notice venues should be considered when an adequate number of reasonable quotes cannot be obtained.

### **5.2 SEALED-BIDS AND COMPETITIVE PROPOSALS**

The LDCHA must use one or more following solicitation methods, provided that the method employed provides for meaningful competition: Advertising the notice of IFB/RFP in newspapers or other print mediums of local or general circulations for one day per week for at least two weeks; advertising the notice of IFB/RFP in various trade journals or publications; posting IFB in a plan room; posting the notice of the IFB/RFP in public buildings. In addition, the LDCHA shall be furnished to all interested parties, including those on the housing LDCHA's list of qualified contractor's and vendors when appropriate. All notices should state, at a minimum, the date, time and place the bids are due; the solicitation number; contact person and telephone or e-mail address; brief description of services/products needed; and an invitation to small, minority-owned, and Section 3 businesses, as well as women's business enterprises, to submit bids.

### **5.3 TIME PERIOD FOR SUBMISSION OF BIDS AND PROPOSALS**

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

### **5.4 VENDOR LISTS**

All interested businesses shall be given the opportunity to be included on vendor mailing lists. Any lists of persons, firms, or products which are used in the purchase of supplies and services (including construction) shall be kept current and include enough sources to ensure competition.

## **6.0 CANCELLATION OF SOLICITATIONS**

### **6.1 GENERAL**

- A. An IFB or RFP must be cancelled before bids/proposals are due if:
- The supplies, services or construction is no longer required;
  - the funds are no longer available;
  - proposed amendments to the solicitation are of such magnitude that a new solicitation would be best; or
  - other similar reasons.
- B. A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if:
- The supplies or services (including construction) are no longer required;
  - ambiguous or otherwise inadequate specifications were part of the solicitation;
  - all factors of significance to the LDCHA were not considered;
  - 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 not have been independently determined in open competition, 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 LDCHA.
- C. The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request.
- D. A notice of cancellation shall be sent to all bidders/offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any resolicitation or future procurement of similar items.
- E. If all otherwise acceptable bids received in response to an IFB are at unreasonable prices an analysis should be conducted to see if there is a problem in either the specifications or the LDCHA'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:
- Re-solicit using an RFP; 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 LDCHA's intent to negotiate, and must give each bidder a reasonable opportunity to negotiate.

## **7.0 COST AND PRICE ANALYSIS**

### **7.1 GENERAL**

Some form of cost or price analysis shall be performed for all procurement actions, including contract modifications, using the procedures described in HUD Handbook

2210.18. The method of analysis shall be determined as follows. The degree of analysis shall depend on the facts surrounding each procurement.

- A. **Price Estimate.** The Contracting Officer shall prepare a price estimate for all procurement transactions above the small-purchase threshold of \$50,000; and shall prepare an estimate for procurements below that threshold if he or she believes it is necessary to ensure the LDCHA is paying a reasonable price for goods and/or services.
- B. **Submission of Cost or Pricing Information.** If the procurement is based on a contract modification, noncompetitive proposal, or when only one offer is received in response to an IFB or RFP, the offeror shall be required to submit:
- A cost breakdown showing projected costs and profit;
  - commercial pricing and sales information, sufficient to enable the LDCHA to verify the reasonableness of the proposed price as a catalog or market price of a commercial product sold in substantial quantities to the general public; or
  - documentation showing that the offered price is set by law or regulation.

With respect to contract modifications, where the contract includes or consists of form HUD-5370 or HUD-51915, the offeror shall be required to conform to the provision of the document governing contract modifications.

- C. **Cost Analysis.** Cost analysis shall be performed if an offeror/contractor is required to submit a cost breakdown as part of its proposal. When a cost breakdown is submitted a cost analysis shall be performed of the individual cost elements, the LDCHA 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, the LDCHA 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.
- D. **Price Analysis.** For competitive procurements in which cost information is not required of contractors and vendors, the LDCHA shall perform a comparison of prices received in relation to the independent cost estimate (where required), to ensure that the price being paid is reasonable.

## **8.0 TYPES OF CONTRACTS, CLAUSES, AND CONTRACT ADMINISTRATION**

### **8.1 CONTRACT TYPES**

Any type of contract which is appropriate to the procurement and which will promote the

best interests of the LDCHA may be used, with the exception of the cost plus a percentage of cost, and percentage of construction cost contracts, which are prohibited. All procurements shall include the clauses and provisions necessary to define 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 LDCHA's needs otherwise; the proposed contractor's accounting system is adequate to allocate costs in accordance with applicable cost principles (for commercial firms, see HUD Handbook 2210.18); and the contractor is paid only allowable costs. A time and material 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.

## 8.2 OPTIONS

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

- the option is contained in the solicitation;
- the option is a unilateral right of the LDCHA;
- the contract states a limit on the additional quantities and the overall term of the contract;
- the options are evaluated as part of the initial competition;
- the contract states the period within which the options may be exercised;
- the options may be exercised only at the price specified in or reasonably determinable from the contract; and
- the options may be exercised only if determined to be more advantageous to the LDCHA than conducting a new procurement.

## 8.3 CONTRACT CLAUSES

In addition to containing a clause identifying the contract type, all contracts shall include any clauses required by Federal statutes, executive orders, and their implementing regulations, as provided in 24 CFR 85.36(i), such as the following:

- Termination for convenience.
- Termination for default.
- Equal Employment Opportunity.
- Anti-Kickback Act.
- Davis-Bacon Act.
- Contract Work Hours and Safety Standards Act
- Reporting requirements.
- Patent rights.
- Rights in data.
- Examination of records by Comptroller General, and retention of records for three years after closeout.
- Clean air and water.
- Energy efficiency standards.
- Bid protests and contract claims.

- Value engineering.
- Payment of funds to influence certain federal transactions.
- Contractors Guarantee Process.
- Building Materials list and Hazardous Materials register.

The LDCHA shall use those standards HUD forms incorporating the above clauses that are applicable to a given procurement transaction.

#### 8.4 CONTRACT TERM LIMITS

The terms for service contracts (e.g., any contract for on-going services of a repetitive nature, such as janitorial maintenance, preventive maintenance, routine maintenance, lawn maintenance, legal, architect/engineer, accounting, security, and pest control) shall be limited to three years. The LDCHA may not award additional work/task orders to a contractor beyond the prescribed limit in the contract, although the contractor may complete existing work/task orders that extend beyond the contract term limit. Automatic renewal provisions are prohibited.

#### 8.5 LIQUIDATED DAMAGES

A liquidated damages clause shall be enforced for all non-routine and construction contracts whose estimated cost exceeds \$50,000. The liquidated damage amount will be based on the costs reasonably borne by the housing LDCHA due to failure of the contractor to complete the project on time. The liquidated damage rate will appear in the solicitation document.

### 9.0 CONTRACTOR QUALIFICATIONS AND DUTIES

#### 9.1 CONTRACTOR RESPONSIBILITIES

The LDCHA shall not award any contract until the prospective contractor, i.e., low responsive bidder, or successful offeror, has been determined to be responsible. A responsible bidder/offeror must:

- Have adequate financial resources to perform the contract, or the ability to obtain them;
- 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;
- have a satisfactory performance record;
- have a satisfactory record of integrity and business ethics;
- have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
- have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and
- be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended, debarred or under a HUD-imposed LDP. 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.

## **9.2 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 (24 CFR Part 24) or by other Federal agencies, e.g., Dept of Labor for violation of labor regulations, when necessary to protect housing authorities in their business dealings.

## **10.0 CONTRACT ADMINISTRATION**

### **10.1 GENERAL**

A contract administration system, designed to ensure that contractors perform in accordance with their contracts, shall be maintained. The system shall include procedures for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on construction contracts, and similar matters.

## **11.0 APPEALS AND REMEDIES**

### **11.1 GENERAL**

It is the LDCHA's policy to resolve all contractual issues informally at the LDCHA level, without litigation. Disputes shall not be referred to HUD until all administrative remedies have been exhausted at the LDCHA level. When appropriate, the LDCHA 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. HUD will only review protests in cases of violations of Federal law or regulations and failure of the LDCHA to review a complaint or protest.

### **11.2 PROTESTS**

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

### 11.3 WRITTEN PROCEDURES

The LDCHA will develop a written procedure for handling all protests and complaints involving its procurement activities.

### 11.4 CONTRACTOR CLAIMS

All claims by a contractor relating to 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 shall inform the contractor of its appeal rights to the Executive Director.

## **12.0 ASSISTANCE TO SMALL, MINORITY-OWNED, AND LOW-INCOME AREA (SECTION 3) BUSINESSES; AND WOMEN'S BUSINESS ENTERPRISES**

### 12.1 REQUIRED EFFORTS

Consistent with Presidential Executive Orders 11625, 12138, 12432, and Section 3 of the HUD Act of 1968, the LDCHA shall make efforts to ensure that small and minority-owned businesses, women's business enterprises, and individuals or firms located in or owned in substantial part by persons residing in the area of an LDCHA development are used when possible. Such efforts shall include, but shall not be limited to the following:

- A. Including such firms, when qualified, on solicitation mailing lists;
- B. encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
- C. dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- D. establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
- E. using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce;
- 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 development area and to award subcontracts 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 development, as described in 24 CFR 135; and
- G. requiring prime contractors, when subcontracting is anticipated, to take the steps listed in A through F above.

### 12.2 DEFINITIONS

- A. A small business is defined as a business that is independently owned, not dominant in its field of operation, and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in 13 CFR 121 shall be used, unless the LDCHA determines that their use is inappropriate.
- B. 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 and Asian Indian Americans, and Hasidic Jewish Americans. The listing of minority-owned business may be obtained by utilizing the New York State approved Minority-owned (MBE) & Women-owned (WBE) register.

- C. A women's business enterprise is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who also control or operate the business.
- D. A business concern located in the area of the development is defined as an individual or firm located within the relevant Section 3 covered development area, as determined pursuant to 24 CFR 135.15; listed on HUD's 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 development 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 by the U.S. Small Business Administration to be socially or economically disadvantaged, listed on HUD's registry of eligible business concerns, and meeting the definition of small business above.

### **13.0 INSURANCE**

The LDCHA is required to obtain insurance certificates for all work performed for this agency, prior to the beginning of any work, as follows:

- A. Workers Compensation Insurance, per the requirements of the State of Kansas.
- B. Commercial General Liability Insurance, for bodily injury and property damage of not less than \$500,000, per occurrence.
- C. Auto Insurance, including owned, non-owned, and hired vehicles, for a combined single limit for bodily injury and property damage of not less than \$500,000, per occurrence.
- D. Professional Liability Insurance (Professional trades only), of not less than \$500,000, per occurrence.
- E. ALL INSURANCE SHALL HAVE THE FOLLOWING:
  - 1. It shall indicate that the insurance carrier will notify the LDCHA in writing 30 days prior (not 10 days) to any cancellation or expiration of the policy. The insurance carrier will need to remove the words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives", or any similar wording.
  - 2. The LDCHA shall be named as additional insured on all insurance policies for contracts over \$100,000.

## **14.0 SPECIFICATIONS AND STATEMENTS OF WORK**

### **14.1 GENERAL**

All specifications and statement of work (SOWs) shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying LDCHA needs. Specifications and SOWs shall be reviewed prior to issuing any solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items.

### **14.2 STATEMENTS OF WORK**

All SOWs shall incorporate a scope of work (a detailed description of the project for which the contractor/consultant will be providing services) and a scope of services (a detailed description of the services the contractor/consultant will provide relative to the project). All solicitation documents shall include the SOW. The LDCHA will include the SOW in the solicitation document and the contract documents. (In general, solicitation documents will be considered part of the contract documents.)

### **14.3 TECHNICAL SPECIFICATIONS**

Technical specifications refer to either description of a manufactured good (i.e., supply, material or equipment) that the LDCHA intends to acquire; or description of a product the LDCHA intends to produce or construct (e.g., management system, report, building structure or fixture). When procuring goods, or hiring a contractor/consultant to produce or construct a product, the LDCHA will include technical specifications in the solicitation document and the contract documents. (In general, solicitation documents will be considered part of the contract documents.) If at all possible, technical specifications shall not be unduly restrictive of competition. Unless a manufactured good is truly proprietary, the LDCHA shall prepare specifications that include the salient design and/or performance parameters of the item. The LDCHA may include a list of at least three manufacturers (including model designations, if applicable) as part of the description, but must stress that the named items are only examples of items that meet the specifications.

### **14.4 DRAWINGS**

Drawings shall be prepared for physical improvement projects where the complexity of the project warrants.

### **14.5 GEOGRAPHICAL PREFERENCES**

The LDCHA cannot impose geographical limits on contractors/consultants except for architects and engineers – but only if those limits leave an adequate number of sources from which to obtain reasonable offers.

## **15.0 RECORDS**

### **15.1 FILE DOCUMENTS**

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

- A. Rationale for the method of procurement;
- B. rationale of contract pricing arrangement;
- C. reason for accepting or rejecting quotes, bids or proposals;
- D. basis for the contract price;
- E. copies of solicitation documents;
- F. bid tabulations;
- G. copies of written offers (including, where applicable, catalog pages, brochures, advertisements, web pages, etc.);
- H. transcript of offers where not in writing;
- I. copies of contract documents;
- J. copies of submittals received by the LDCHA (e.g., insurance certificates, payroll reports, shop drawings, payment requests, contract modification requests, requests for time extensions, etc.);
- K. basis for contract modifications;
- L. all directives issues by the LDCHA (e.g., notices-to-proceed, stop orders, change orders, approvals, designation of contracting officer forms, etc.);
- M. inspection reports generated by the LDCHA or consultant;
- N. certificates of completion;
- O. documentation describing disputes or protests; and
- P. warranty documentation.

### **15.2 FILING SYSTEM**

The LDCHA shall maintain one file folder for procurement transactions under \$2,000; and at least two file folders (one set for the planning and solicitation processes; and a second set for contract award and administration processes) for all procurement transactions over \$2,000. All paperwork shall be neatly filed and in chronological order. Multi-leaf folders shall be used when the size of the contract warrants it.

### **15.3 RECORD RETENTION**

Records are to be retained for a period of five years after final payment, or all matters pertaining to the contact are closed, whichever is longer.

## **16.0 CAPITAL FUND STIMULUS GRANT PROCUREMENT**

Except as provided for below, consistent with HUD PIH Notice 2009-12, all requirements listed within the LDCHA's current Procurement Policy shall remain in effect for any procurement executed by the housing authority with the exception of the following procurements carried out with ARRA Capital Fund monies:

- A. **SMALL PURCHASES.** For Capital Funds awarded under the American Recovery and Reinvestment Act of 2009, small purchase shall be defined as the procurement of goods, services, supplies and other property that do not cost more than \$100,000. Under small purchase procedures price and rate quotations shall be obtained from an adequate number of qualified sources. For purchases over \$100,000, seal bid (formal advertising) procedures will be followed.
- B. **ORIGIN OF MANUFACTURED PRODUCTS.** All products (supplies, materials and equipment) secured under individual procurement transactions exceeding \$100,000 must be manufactured in America. The Authority will retain on file evidence demonstrating compliance with this provision.
- C. **INAPPLICABILITY OF STATE AND LOCAL LAWS.** State and local laws do not apply to procurement transactions under this section.
- D. **USE OF THE NON-COMPETITIVE METHOD OF PROCUREMENT.** The need to expend grant funds is considered a public exigency by HUD; and the Authority may use this declaration as the basis for using the non-competitive proposals method of procurement in accordance with the standards set forth under Section 4.5 of its standard Procurement Policy.
- E. **ELIGIBILITY OF EXPENSES.** The Authority may not use grant funds to support housing operations. Prohibited purchases include, but are not necessarily limited to: management improvements, including training, travel, salary costs, maintenance programs, occupancy programs, social services, consulting services (other than architectural, engineering and other types of services related to physical improvements); office equipment and furniture; and maintenance equipment.