



ADMINISTRATIVE ORDER 20

CMHA

Purchasing Policy

This revised and restated Purchasing Policy adopted by the Cuyahoga Metropolitan Housing authority Board of Commissioners on May 6, 2015. It shall be administered in a manner that is consistent with all CMHA policies including the Section 3 Policy and Program.

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POLICY STATEMENT

It is the policy of the Cuyahoga Metropolitan Housing Authority (“CMHA”) that all purchases and procurement of goods and services, and the solicitation thereof, are in compliance with the following:

- The U.S. Department of Housing and Urban Development’s (“HUD”) Annual Contributions Contract (“ACC”);
- The revised ACC Amendment for the Recovery Act grants;
- Public and Indian Housing (“PIH”) Notice 2009-2;
- PIH Notice 2009-13;
- HUD Handbook 7460.8 (“Procurement Handbook for Public Housing Agencies”);
- Procurement standards contained at 24 CFR Part 85.36;
- The “Buy American” provisions in Section 1605 of the American Recovery and Reinvestment Act (“ARRA”); and
- Other applicable Federal, State and local requirements.

The CMHA Board of Commissioners (“Board”) may at any time modify or amend this Policy or any provision hereof and is responsible for ensuring that any procurement policies adopted are appropriate for CMHA.

CMHA will utilize applicable HUD-prescribed forms to the extent practicable, as referenced in the Procurement Handbook for Public Housing Agencies, in its procurement function.

In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, which is in conflict with this Policy, the revised law or regulation shall supersede this Policy to the extent necessary to resolve such conflict.

To promote uniformity and consistency, Invitation for Bids (IFB’s) and Requests for Proposals (RFP’s) will only be issued by the CMHA Purchasing Department.

PURPOSE

The purpose of this CMHA Purchasing Policy (“Policy”) is to formalize standards and policies that govern the acquisition or procurement of all goods and services for CMHA. All CMHA acquisitions and procurements of goods and services shall be made in compliance with this Policy.

This Policy will provide for the fair and equitable treatment of all persons or firms conducting purchase transactions with CMHA.

DEFINITIONS

As used in this Policy, the following words shall have the following meanings:

Affiliate means an entity associated with another through common ownership or control. An entity having one or more common owners (owning 5% or more of the stock of such entity), principals, or officers.

Apparent Lowest Bidder means the Bidder submitting the bid which, at time of bid opening,, appears to be the lowest dollar amount for the products or services being solicited (before evaluation of any criteria to determine responsive, responsible, or other factors.)

Board means the CMHA Board of Commissioners.

Contractor means an individual or entity entering into a contract with CMHA pursuant to this Policy.

Protest means a dispute signified by filing written objections to the determination of responsive, responsible, or award of a contract that contains a statement of the determination being protested, the basis of the protest, and what relief is being requested and is made within five (5) days of notification of the determination being protested.

Procurement means the soliciting and acquiring, procuring, purchasing, leasing or renting of goods, supplies, equipment and materials, construction and maintenance services, and all types of consultant and professional services, including architectural and engineering (A/E), legal, accounting, social and other services.

Person means an individual or entity including a human, corporation, partnership, unincorporated association, joint venture, non-profit and similar business organization.

Supplier means any Person providing goods or services to CMHA.

I. Ethics in Public Contracting

- A. CMHA is committed to being an organization that demonstrates honesty, integrity, ethics, and best practices. To strengthen this commitment, we established a Compliance Department and strengthened our Conflict of Interest policies and procedures. This policy offers guidance for the complex legal and business issues we face every day and to provide the overall principles for CMHA's Procurement System. The standards outlined apply to all of CMHA's vendors, suppliers, and affiliate colleagues.

- B. CMHA receives funding from various sources, the majority of which are federal funds from HUD to operate low rent housing, to meet the capital needs of low rent housing, for housing choice vouchers (both tenant based and project based) and grants for specific purposes. Funding may also come from state or local agencies as well as private sources. As a result CMHA is subject to applicable HUD, local, state and federal laws and regulations, as well as its own internal policies and procedures.
- C. To ensure that the public's interest is protected, CMHA must demonstrate that its business relationships are free from improper influence and bias that might otherwise result from external interests and relationships
- D. All vendors must adhere to the applicable rules and regulations, including any conflict of interest requirements. Please review the Conflicts of Interests as defined below:
1. A conflict of interest exists when a vendor's financial, personal, or business affairs have the potential, either directly or indirectly, to influence the recipient's judgment or compromise their ability to carry out the responsibilities of the contract or could be detriment to CMHA's integrity.
 2. It is the intent of CMHA that these procedures be construed broadly to avoid even the appearance of improper activity. If there is any doubt or concern about whether specific conduct or activities are ethical or otherwise appropriate, the Vendor should contact the CMHA Internal Audit Department.
 3. For the purpose of these procedures, the term "Vendor's immediate family member" means the Vendor's spouse, mother, father, brother, sister, or child, whether related as a full blood relative or as a "half" or "step" relative, such as, for example, a half-brother or a stepchild.
 4. For the purpose of these procedures, the term "Vendor" or "Vendors" includes any contractor, supplier of sub-contractor, with which the CMHA does business or is likely to do business with including those who submit bids or proposals.
 5. Vendors also include, but are not limited to individual owners, partners and principals of business entities.
 6. For the purpose of these procedures, the term "Vendor's significant other" means spouse or any person with whom the Vendor is engaged in a romantic relationship.
 7. For the purpose of these procedures, the term "Vendor's household members" includes any person who resides in the same household and

the Vendor.

8. Vendors shall not divulge confidential or proprietary information of CMHA, or use such information to his or her personal advantage of any other person or organization that is not on a “need to know” basis.
9. Vendors shall not provide gifts, cash, loans, travel, meals, entertainment, favors, personal services or payments in excess of \$25.00 to any CMHA Employee, Commissioner or Resident.
10. Vendors shall not attempt to influence CMHA’s procurement decision-making process by offering any services or items to any CMHA Employee, Commissioner or Resident.
11. Vendors shall not retain a person or entity to solicit or secure a CMHA contract for a commission, percentage, brokerage, or contingent fee, except for bona fide employees or bona fide established commercial selling agencies.

E. For the purpose of these procedures, Vendors must adhere to the following Reporting obligations:

1. Vendors must disclose any situation that may be an actual, potential or apparent Conflict of Interest with any CMHA Employee, Commissioner or Resident.
2. On an annual basis (in January) the CMHA Vendor Conflict of Interest Certification Form must be submitted to the Purchasing Department by the date specified in the contract.
3. In addition to the annual reporting requirement, all Vendors must submit a new Conflict of Interest Form to the CMHA Purchasing Department no later than 10 business days after the date the Vendor becomes aware of facts that require a new CMHA Vendor Conflict of Interest Disclosure Form be filed.
4. Failure to disclose any actual, potential, apparent, or implied conflict of interest, as set forth in the procedure, could result in the termination or expiring of any contract with CMHA.
5. CMHA shall adhere to the highest code of conduct, consistent with applicable federal and state ethics laws and other similar local laws.
6. Vendors must submit within the stated timeframe all Labor Compliance related documents, included but not limited to, certify payroll reports,

sign-in and sign-out sheet, proof of payments and any other documentation required to complete a Labor Compliance review.

- F. No employee, officer or agent of the grantee [CMHA] or sub grantee [an entity whom CMHA has provided HUD funds] shall participate in selection, or in the award or administration of a contract supported by Federal Funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
 - 1. The employee, officer or agent,
 - 2. Any member of his immediate family,
 - 3. His or her partner, or
 - 4. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.
- G. A commissioner, officer, employee, or agent shall not solicit or knowingly accept any tips, gifts, or favors of any intrinsic value (in excess of \$25.00) from any person, business, or organization doing or seeking to do business with CMHA. Gifts such as fruit or candy baskets which may be shared communally in the workplace may be accepted when the value exceeds \$25.00, if shared communally.
- H. CMHA commissioners, officers, employees, agents and their spouses, significant others, immediate family members, or household members are to refrain from accepting any gift or favor from any resident, individual or organization which engages in current or prospective business with CMHA whether as a contractor, supplier, or consultant, if the acceptance potentially limits the commissioner, officer, employee or agent from acting solely in the best interest of CMHA.
- I. Confidential information is for CMHA official business use only and shall not be disclosed publicly without the written approval of the Chief Executive Officer (“CEO”) or his/her designee, except as required by law.
- J. To the extent permitted by Federal, State or local law or regulations, employees, officers, agents, vendors, contractors, and service providers who violate this policy are subject to penalties, sanctions, or other disciplinary actions.
- K. All conflicts and potential conflicts under this Policy are subject to review and determination by CMHA.

II. Prohibition Against Contracting

- A. CMHA shall only contract with responsible Contractors that have not been

involved in illegal, unethical or unacceptable conduct in the five years prior to initiation of a procurement initiative. Such involvement can be established by criminal plea or conviction, civil liability, other judicial proceedings, administrative proceedings, admission or documentation of the fact of such involvement. Involvement by owners, principals, directors, officers, and managers of a business shall be attributed to the business as well as to the individuals. The following is a non-exhaustive list of examples that may deem potential Contractors to be not responsible:

1. Commission of fraud or other criminal offense in connection with obtaining, attempting to obtain, or performing a contract or subcontract;
2. Violation of any federal, state, or local ethics laws, regulations, or policies;
3. Violation of any federal, state, or local laws, or regulations relating to the submission of bids, proposals, statements of qualifications, or any other type of procurement;
4. Violation of a policy of a federal, state, local, or other governmental agency pertaining to procurement;
5. Collusion to restrain competition by any means;
6. Embezzlement, theft, forgery, bribery, falsification, fraud, or any other act of dishonesty;
7. Illegal destruction of records;
8. Making false statements;
9. Receiving stolen property;
10. Conviction of any felony; or
11. Suspension, debarment or ineligibility under HUD regulations contained in 24 CFR Part 24.

B. CMHA shall not contract with individuals or businesses which have been barred, or otherwise designated as not to do business with, by HUD, other federal agencies, the State of Ohio, or any other state, Cuyahoga County or any county, the City of Cleveland, or any political subdivision which CMHA does business or in which CMHA owns property or provides rental vouchers

- C. CMHA may elect to prohibit contracting with a Contractor, based upon a reasonable belief, for any of the following, which occurred within the three years preceding the initiation of a procurement initiative:
1. Violation of the terms of a public contract or subcontract in a serious manner such as:
 - a. Willful or reckless failure to perform in accordance with the terms of one or more contracts; or
 - b. A history of failure to perform or unsatisfactory performance of one or more contracts.
 2. Violation of the terms, conditions, or requirements of a Small Business Enterprise program, a Disadvantaged Business program, a Minority and Female Business Enterprise program, or any other similar program, including, but not limited to, acting as a front company by purporting to be a Small Business Enterprise, a Disadvantaged Business, a Minority or Female Business, or any other such type of business when not in fact;
 3. Violation of prevailing wage laws;
 4. Submission of false information in connection with any bids, proposals, statements of qualifications or any other offers to CMHA or any other public or private entity;
 5. Attempting to influence a public employee to breach ethical conduct standards or to influence contract award;
 6. Submission of false information in contract documents, pay applications, payroll reports and similar submittals;
 7. Filing any action that a court or other administrative tribunal finds to be frivolous, vexatious, in bad faith or otherwise subject to a judicial finding of lack of merit;
 8. Entry of judgment(s) against a business, its owners, officers, or high ranking employees, for breach of contract or other improper business practices; or
 9. Commission of any unfair trade practice.

III. General Provisions

A. CMHA shall:

1. Provide for a procurement system of quality and integrity;
2. Provide for the fair and equitable treatment of all persons or firms involved in purchasing;
3. Ensure that supplies and services (including construction) are procured efficiently, effectively and at the most favorable prices available;
4. Promote competition in contracting; and
5. Assure that purchasing actions are in full compliance with applicable Federal standards, HUD regulations, State and local laws.

B. The CEO is authorized to establish such procedures as deemed necessary to carry out this Policy.

IV. Access to Procurement Information

A. Procurement information shall be a matter of public record to the extent provided in the Ohio Public Records access law; and, shall be available to the public as provided in that statute and other applicable laws.

B. The following items are exempt from public records access law and shall be treated as confidential:

1. All cost and pricing data received by CMHA in negotiated procurements with the exception of formally advertised **Invitation For Bids (IFB's)**.
2. Proprietary information, trade secrets and technical data received in response to negotiated procurements, except for data contained in the awarded contract.
3. Individually identifiable private information that can be used for identity fraud, such as Social Security numbers, Tax Identification numbers, tax returns, etc.

C. If the Bidder finds any perceived ambiguity, conflict, error, omission or discrepancy within the Request for Proposal ("RFP") or IFB, the Bidder shall submit a written request for information to the individual designated in the RFP or IFB for all questions and interpretations.

V. Procurement Authority and Administration

- A. The Board appoints and delegates procurement authority to the CEO.
- B. The CEO shall be CMHA's Contracting Officer and shall administer all purchase agreements and/or contracts.
 - 1. The CEO may delegate this authority to a designee such as CMHA's Director of Purchasing.
 - 2. The CEO must formally appoint any designee in writing to the Board. Any limitations on the designee's procurement authority must be clearly stated.
- C. The CEO shall execute and implement procurement protocols consistent with this policy and inclusive of all approved revisions and additions.
- D. The CEO shall ensure that:
 - 1. Procurement requirements are subject to an annual planning process to ensure efficient and economical purchasing;
 - 2. Contracts and modifications are written clearly, specifying the desired product, supplies and services, and are supported by sufficient documentation regarding the history of the procurement, including at a minimum, the method of procurement chosen, the selection of the contract type, the rationale for selecting or rejecting bids and the basis for the contract price;
 - 3. Bids or proposals shall be solicited from prospective Contractors on the CMHA Prospective Contractors List for that product/service, as well as others;
 - a. Sufficient time shall be allowed for Bidders to submit their bids to CMHA;
 - b. CMHA advertises a minimum of once each week for two (2) consecutive weeks and the date set for opening bids shall be a minimum of eight (8) calendar days from the last date of advertisement;
 - c. If an addendum is issued within seven (7) calendar days of the bid deadline date, the bid opening shall be postponed for at least seven (7) calendar days from the date of the addendum;
 - 4. Solicitation procedures are conducted in full compliance with Federal standards as stated in 24 C.F.R. 85.36, as the same may be amended from

time to time, or with state and local laws, which are more stringent, provided they are consistent with 24 C.F.R. 85.36, as the same may be amended from time to time;

5. A solicitation that is publicly advertised as an **IFB** is awarded, at the discretion of CMHA, to responsible Bidders submitting responsive bids and offering the lowest and best prices;
 6. A solicitation that is publicly advertised as a **RFP** is awarded, at the discretion of CMHA, to responsible Bidders submitting responsive proposals that are most advantageous to CMHA, considering price, technical specifications, and other factors as specified in the solicitation;
 7. After CMHA has awarded a contract, unsuccessful Bidders are notified no later than ten (10) days (or other time period required by state or local law) after contract award and "Contract award" is defined as when a contract has been fully executed, i.e., signed by Contractor and CMHA;
 8. There are sufficient unencumbered funds available to cover the anticipated cost of each procurement before a contract is awarded or modified (including change orders):
 9. The contracted work is inspected and, if applicable all related Labor Compliance documents submitted are reviewed before payment is made for work performed and accepted; and
 10. CMHA complies with applicable HUD review requirements, as provided in the operational procedures supplementing this Policy.
- E. A procurement over twenty-five thousand dollars (\$25,000) requires the requesting department to complete an independent cost estimate and scope of work and attach both items to a Request for Contract Activity (RCA) form.
1. The RCA must be fully executed by all parties prior to starting the procurement process.
 2. The requesting department must evaluate the bids/proposals and complete a cost analysis for all such procurements after the solicitation process has been conducted, and bids/proposals are received.
- F. All procurement contracts, including documents that are incorporated into the terms thereof, will be maintained in the Purchasing Department, in accordance with CMHA's Records Retention Policy.

VI. Procurement Methods

- A. All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of 24 C.F.R. Part 85.36, as the same may be amended from time to time.
1. The procurement polices outlined in 24 CFR Part 85 are applicable to the Public Housing programs. Where practical, CMHA will apply them to RAD properties, but otherwise will follow state and local procurement rules.
- B. Procurement transactions shall not:
1. Place unreasonable requirements on firms in order for them to qualify to do business;
 2. Require unnecessary experience and/or excessive bonding;
 3. Promote noncompetitive pricing practices between firms or between affiliated companies;
 4. Allow noncompetitive awards to consultants that are on retainer contracts;
 5. Allow organizational conflicts of interest;
 6. Specify a brand name product instead of allowing an equivalent product to be offered by describing the performance of other relevant requirements of the procurement; or
 7. Allow any arbitrary action in the procurement process.
- C. CMHA shall maintain a Procurement Procedures Manual (as the same shall be revised from time to time) for procurement transactions. These procedures shall ensure that all solicitations:
1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition.
 2. Identify all requirements which the Bidder must fulfill and all other factors to be used in evaluating bids or proposals.
- D. Methods of directly purchasing products or services shall be based on the nature of the product or service and the anticipated dollar value of the expenditure.

VII. Small Purchases

- A. Generally a small purchase is any purchase of a product or service for less than twenty-five thousand dollars (\$25,000).
1. Such purchase amounts and 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 assistance to Small, Minority, Female and Other Business described in Section XV of this policy.
 2. Multiple line purchases may be awarded on a line-item basis or may be awarded on an aggregate bid basis, whichever is determined to be in the best interest of CMHA.
- B. **Purchasing Card Purchases** are purchases less than one hundred dollars (\$100.00) that may be processed through the use of a Purchasing Card.
- a. Receipts must support all Purchasing Card purchases.
- C. **Purchases up to \$750** require the solicitation of only one price quotation, written or oral, if the price is considered reasonable.
- a. Such purchases should be distributed equitably among qualified sources.
 - b. If practicable, a price quotation shall be solicited from other sources prior to placing a repeat order from the same source.
- D. **Purchases greater than \$750.00 but less than \$5,000.00** require the solicitation of at least three price quotations, which may be obtained orally, by telephone, fax, e-mail or in writing.
- a. Award(s) shall be made to the lowest responsible prospective Contractor(s).
 - b. Non-price factors used in determining an award shall be disclosed and documented in the file.
- E. **Purchases greater than \$5,000.00 but less than \$15,000.00** require at least three bids, which shall be obtained in a written format.
- a. Award(s) shall be made to the lowest and best responsive Bidder from a responsible Bidder, unless an exception is justified in writing.
 - b. Non-price factors used in determining an award shall be disclosed and

documented in the file.

- F. **Purchases from \$15,000.00 but less than \$25,000.00** require at least three bids in written format and are subject to a review by a committee designated by the CEO.

VIII. Sealed Bids

- A. Competitive contracts shall require submission of a sealed bid. A contract may be awarded based on a competitive sealed bid if the following conditions are present:

1. A clear, complete description of the specification or purchase is available.
2. Specifications are not designed such that bidding is restricted to one supplier.
3. The procurement lends itself to a firm fixed price contract.
4. The selection of the successful Bidder can be made principally on the basis of price. If delivery time or any other factor will be used in consideration of the award, such shall be stated in the solicitation.

- B. Solicitation and Receipt of Bids

1. An Invitation For Bid (IFB) shall include specifications and all material contractual terms and conditions applicable to the procurement and shall include a statement that the award will be made at the discretion of CMHA to the responsible Bidders submitting the lowest and best responsive bid(s).
2. IFBs shall be publicly advertised.
3. IFBs shall state the time and place for both the receipt of bids and the public bid opening.
4. All bids received shall be time and date stamped but not opened and shall be stored in a secure place until the time of opening.
5. Faxed bids will not be considered.
6. A Bidder may withdraw its bid at any time prior to the bid opening.

- C. Bid Opening and Award

1. Bids shall be opened publicly and in the presence of at least one witness.

2. Bidders and other persons properly interested may be present, in person or by representative.
3. At the time and place fixed for the opening of the bids, every bid received within the time fixed for receiving bids will be opened and the bid amount will be publicly read aloud, irrespective of any irregularities therein.
4. A tally of bids shall be prepared and the tally sheet shall be available for public inspection.
5. A cost or price analysis shall be performed to verify the reasonableness of the price. If the winning bid is higher than the independent cost estimate, written justification shall be made why it is in CMHA's best interest to continue with the award.
6. Awards shall be made as provided in the IFB by written notice to the successful Bidder.
7. If equal low bids are received from responsible Bidders, CMHA may make multiple awards. However, a sole successful Bidder will be determined with the following receiving preference as follows:
 - a. Section 3 Resident Owned Business;
 - b. Minority Business Enterprise and/or Female Business Enterprise; and
 - c. By drawing lots or similar random method.

D. Bid Guarantee

1. Each Bidder shall be required to submit the following for construction and specified service contracts exceeding twenty-five thousand dollars (\$25,000):
 - a. A bid guarantee (bid bond or cash) equal to 10% of the bid price;
 - b. Proof of capability to obtain a performance bond for 100% of the contract price; and
 - c. Proof of capability to obtain a payment bond for 100% of the contract price.
 - d. In lieu of the 100% Performance Bond and 100% Payment Bond, proof of capability to establish a 20% cash escrow account.

2. In the case of construction of conventional development projects funded pursuant to the U.S. Housing Act of 1937, as revised by the Quality Housing Work Responsibility Act (QHWRA) of 1998, each Bidder shall be required to submit the following, unless otherwise required by the Ohio Revised Code:
 - a. A bid guarantee equivalent to 10% of the bid price; and
 - b. One of the following:
 - i. A performance payment bond for 100% of the contract price; or
 - ii. 20% cash of the contract price to be held in escrow by CMHA.

3. In the case of construction funded by the Capital Funds Program (CFP) pursuant to the U.S. Housing Act of 1937, for any contract over twenty-five thousand dollars (\$25,000); each Bidder shall be required to submit the following, unless otherwise required by the Ohio Revised Code:
 - a. A bid guarantee equivalent to 10% of the bid price, and
 - b. One of the following:
 - i. A performance and payment bond for 100% of the contract price; or
 - ii. Separate performance and payment bonds, each for 50% or more of the contract price, or
 - iii. A 20% cash escrow.

IX. Competitive Proposals

- A. A competitive RFP bid process may be used if there is an adequate method of evaluating technical proposals, when CMHA determines that conditions are not appropriate for the use of sealed bids or when factors other than price are considered in the award.

- B. Requirements for Issuing an RFP
 1. An RFP shall be publicly advertised. Additionally, an adequate number of qualified sources shall be solicited.

 2. The RFP shall clearly identify the type of services being solicited and the relevant importance of price and other evaluation factors upon which the

proposal will be evaluated, including the weight given to each technical factor. The proposal shall be evaluated only on the criteria stated in the RFP.

3. The CEO shall establish a list of members who will sit on the evaluation panel to evaluate each proposal based on the evaluation factors stated in the RFP.
 4. Negotiations may be conducted with Bidders who are 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.
 5. No Bidder shall be provided information about any other Bidder's proposal and no Bidder shall be assisted in bringing its proposal up to the level of any other proposal.
- C. This Policy is intended to prohibit the use of change orders, contract modifications or other means to manipulate, avoid or otherwise undermine competitive bidding or procurement.
- D. Awards shall be made as provided in the RFP by written notice to the responsible Bidder whose proposal is most advantageous to CMHA, with price and other factors considered.

X. Exceptions to Sealed Bids or Competitive Proposals

- A. Procurements shall be conducted competitively to the maximum extent possible.
- B. 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 proposal and one of the following applies:
1. The product or service is for a specific need and is available only from a single/sole source, based on a good faith review of available sources for such need, and said review is documented.
 2. An emergency or exigency exists that seriously threatens the public health, welfare or safety of the tenants, or that endangers property or would otherwise cause serious injury, harm, loss, or hardship to CMHA, its employees and/or tenants.

In such cases, there must be an immediate and serious need for supplies, services or construction that cannot be met through any other procurement methods. The emergency or exigency procurement shall be limited to only those supplies, services, or construction necessary to meet the emergency or exigency.

3. HUD authorizes the use of noncompetitive proposals.
4. The purchase is made under a federal, state or local purchase agreement.
5. If after solicitation of a number of sources, competition between responsible providers is determined to be inadequate.

C. Justification

1. Procurements based on non-competitive proposals shall be supported by a written justification for using such procedures.
 2. Justification for purchases less than fifteen thousand dollars (\$15,000) shall be approved in writing by the Chief Financial Officer (CFO), Purchasing Department, or their respective designees.
 3. Justification for purchases greater than fifteen thousand dollars (\$15,000) shall be approved in writing by the CEO or designee, after review by the Chief Financial Officer and the Purchasing Department, or their designee.
- D. The reasonableness of the price for all non-competitive proposals for procurement shall be determined by performing a cost or price analysis.

XI. Cost and Price Analysis

- A. A cost or price analysis shall be performed for all procurement actions, including contract modifications. The degree of analysis shall depend on the facts surrounding the procurement.
- B. If the procurement is based on non-competitive proposals; or when only one bid is received; or for other procurements as deemed necessary by CMHA (e.g., when contracting for professional, consulting, or architect/engineer services), the Bidder shall be required to submit:
 - a. A cost breakdown showing projected costs and profit or;
 - b. Commercial pricing and sales information sufficient to enable CMHA to verify the reasonableness of the proposed price of a commercial product sold in substantial quantities to the general public; or
 - c. Documentation showing that the offered price is set by law or regulation.

- C. A cost analysis of the individual cost elements shall be performed if a Bidder is required to submit a cost breakdown as part of its proposal.
- D. CMHA shall have a right to audit a Bidder's books and records pertinent to such costs; and profit shall be analyzed and negotiated separately.

Costs shall be allowable only to the extent that they are consistent with applicable Federal cost principles.

- E. A comparison of prices among all solicitations shall be used in all instances other than those described in the above section.

XII. Cancellation and Rejection of Solicitations

- A. CMHA reserves the right to cancel a solicitation at any time or to reject any and all bids or proposals at its discretion, and to waive any informality in bids or proposals received whenever such rejection or waiver is in the best interests of CMHA. Further, a bid or proposal may be rejected by CMHA if the Bidder (or any member, officer, director or employee of a partnership, corporation, limited liability company, joint venture or other business arrangement of the Bidder submitting the bid or any affiliated entity under common control with the Bidder) is in default or arrearage under any previous or existing agreements with CMHA or if there exists any unresolved monetary claims against CMHA and the Bidder.
- B. A notice of cancellation or rejection shall be sent to all prospective Contractors or Bidders solicited and, if appropriate, the notice shall explain that they will be given an opportunity to compete on any re-solicitation or future procurement of similar items.
- C. The reason for cancellation or rejection shall be documented in the procurement file.

XIII. Cooperative or Government Program Purchasing

- A. CMHA may utilize Cooperative or Government Program Purchasing agreements, also referred to as "state contracts", to purchase or obtain for its use common goods and services.
- B. The decision to use such agreements shall be based on economy and efficiency. If used, the agreement shall stipulate:
 - 1. The individual authorized to purchase on behalf of the participating parties; and

2. Specify inspection, acceptance, termination, payment and other relevant terms and conditions.
- C. CMHA is encouraged to use Federal or State excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project cost.

XIV. Contractor's Qualifications and Duties

- A. Contracts shall be only awarded to responsible Bidders/prospective Contractors. To determine whether a Bidder is responsible factors such as experience, financial condition, conduct and performance on previous contracts, facilities, management skills, ability to execute a contract properly, integrity, ethics and other similar indicators shall be considered.
- B. Before awarding a contract, CMHA shall review the prospective Contractor's ability to:
1. Perform the contract successfully, considering factors such as the prospective Contractor's integrity and ethics (including a review of the "List of Parties Excluded from Federal Procurement and Non-procurement Programs" published by the U.S. General Services Administration).
 2. Verify applicable registrations, licensing or other public business requirements.
 3. Demonstrate a record of satisfactory past performance (including contacting previous clients of the prospective Contractor, such as other public housing authorities);
 4. Provide demonstrable evidence of financial and technical resources.
 5. **Comply with all applicable Labor Compliance rules and regulations including Davis-Bacon Act requirements for prevailing wages.**
- C. If CMHA determines that a prospective Contractor is deemed not responsible, such determination shall be made in writing and included in the contract file.

The prospective Contractor shall be advised in writing of the reasons for the determination.

- D. Contracts shall not be awarded to debarred, suspended or ineligible prospective Contractors in accordance with HUD regulations (24 CFR Part 24) when necessary to protect CMHA in its business dealings.

- E. Awarded contracts may be suspended, debarred or determined ineligible in accordance with HUD regulations (24 CFR Part 24) when necessary to protect CMHA in its business dealings.
- F. Interested prospective Contractors shall be given an opportunity to be included on a CMHA approved, pre-qualified prospective Contractor's list maintained by the Procurement Department.
 - 1. 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.
 - 2. CMHA will not preclude potential Bidders from qualifying during the solicitation period.

XV. Types of Contracts, Clauses and Contract Administration

- A. Any type of contract that is appropriate to the procurement and that promotes the best interests of CMHA may be used including Basic Order Agreement (BOA) and Indefinite Delivery Indefinite Quantity (IDIQ).
- B. The "cost-plus-a-percentage-of-cost" and "percentage of construction cost" methods are prohibited.
- C. All procurements shall include the clauses and provisions necessary to define the rights and responsibilities of the parties.
- D. All change orders must be approved in writing by CMHA.
- E. A **cost reimbursement** contract may be considered if it is likely to be:
 - 1. Less costly;
 - 2. Determined to be practical to satisfy CMHA's needs;
 - 3. The prospective Contractor's accounting system is adequate to allocate costs in accordance with applicable cost principles.
- F. A **time and material** contract may be used only if written determination is made that no other contract type is suitable.

The contract must include a ceiling price and a clause that that the prospective Contractor shall assume all risks and costs if the ceiling price is exceeded.

G. Contracts may contain one or more renewal option(s) for additional quantities or performance periods, provided that:

1. The option(s) is contained in the solicitation;
2. The option(s) is a unilateral right of CMHA;
3. The contract provides for a limit on the additional quantities and/or the overall term of the contract;
4. The option(s) is evaluated as part of the initial competition;
5. The contract states the period within which the option(s) may be exercised ;
6. The option(s) may be exercised only at the price specified in, or reasonably determinable from, the contract; and
7. The option(s) may be exercised only if determined to be more advantageous to CMHA than conducting a new procurement.

H. All contracts shall include clauses required by federal regulations and Executive Orders, the Ohio Revised Code, and their implementing regulations, as provided in 24 C.F.R. 85.36(i), such as the following clauses:

1. Administrative, contractual or legal remedies;
2. Termination for convenience;
3. Termination for default;
4. Equal Employment Opportunity, Executive Order 11246;
5. Anti-Kickback Act;
6. Davis-Bacon Act;
7. Contract Work Hours and Safety Standards Act;
8. Reporting requirements;
9. Patent rights;
10. Copyrights and rights in data;

11. Examination of, or access to, records by the HUD Inspector General, Comptroller General of the U.S. and representatives of HUD or CMHA, and retention of records for three years after closeout;

12. Clean air and water;

13. Energy efficiency standards;

14. Bid protest and contract claims;

15. Conflict of interest; and/or

16. Section 3 provisions.

- I. A contract administration system shall be maintained to ensure that Contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders.

Required file documents and the flow process are described in CMHA's Purchasing Procedures Handbook.

XVI. Specifications

- A. All specifications shall be prepared in a manner which promotes overall economy for the purposes intended and to encourage competition.
- B. Specifications shall be reviewed by the Financial Services/Purchasing Department prior to releasing the solicitation to ensure that it is appropriate in scope and specificity, and to avoid purchase of unnecessary or duplicative items.
- C. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.
- D. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- E. In cases where product standardization is not a material consideration, "equivalent products" may be used as noted in Paragraph E.
- F. Brand name or equivalent specifications
1. Shall not be used unless the Chief Financial Officer, Purchasing Department, or designee determines in writing that the following apply:

- a. No other design or performance specification or qualified products list is available;
 - b. There is a bona fide need for consistency or standardization of inventory;
 - c. Time does not permit the preparation of another form of purchase description (other than a brand name-only specification);
 - d. The nature of CMHA's requirement is to make use of a brand name or equal specification suitable for the procurement or use of brand name or equal specification is in CMHA's best interests.
2. If a brand name or equal specifications is approved, the Chief Financial Officer or The Director of Purchasing, or their respective designees, shall seek to designate as many brands as are practical as "or equal" references and shall further state that products that are substantially equivalent to those designated will be considered for award.
 3. Brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required unless the Chief Financial Officer or Purchasing Department, or their designee, determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade.
 4. In order to standardize its inventory, CMHA may use specifications or descriptions that use brand names only when accompanied by the term "or equal".
 5. In addition to the named product, any other product that meets the same technical requirements should be considered.
 6. A brand name or equal description shall state only CMHA's actual minimum needs.

The specific features of the product (design, functional or performance) that are salient, or essential, in meeting CMHA's minimum needs in order to be considered "or equal" shall be clearly stated.

7. CMHA shall not claim ownership to specifications or descriptions of a brand name.

G. Descriptions or specifications shall be written so as not to specify a particular product or feature of a product, particular to one manufacturer.

- H. While standardization may be important for economy and efficiency in inventory control, it should not be done at the expense of purchasing higher priced products or products that are less efficient when life cycle factors are considered.
- I. Geographical restrictions not mandated or encouraged by applicable Federal law (except for architect-engineer contracts, which may include geographic location as a selection factor if adequate competition is available) shall be avoided.

XVII. Disputes, Appeals and Remedies

A. Bid Protests under O.R.C. 9.312

1. In the event a contract is awarded to a Bidder(s) other than the Apparent Low Bidder(s) for the construction, reconstruction, improvement, enlargement, alteration, repair, painting, or decoration of a public improvement, the Apparent Low Bidder(s) may file a written Protest. Such Protest must be received by CMHA within five (5) days of notification that the Apparent Low Bidder was found not responsive, not responsible or otherwise not awarded the bid.
2. Upon a timely filing of a written Protest under this subsection, CMHA shall meet with the Apparent Low Bidder(s) filing such Protest. No final award shall be made until the Board either affirms or reverses the earlier award or determination.

B. Other Disputes

1. Protests against a solicitation may be made to the Director of Purchasing and must be received at least one day before the due date for receipt of bids or proposals. The Protest shall be evaluated and a written decision shall be issued.
2. A Protest over any other written determination shall be in writing, submitted to the Purchasing Director, within five days of such determination, who shall evaluate the matter and issue a written decision.
3. A Protest by a Contractor relating to the performance of a contract shall be submitted in writing to the Purchasing Director who shall evaluate the matter and issue a written decision. CMHA may hold a conference to discuss the claim.
4. CMHA's decision shall be final.

C. Bidders and Contractors are allowed all further appeals as provided by law.

XVIII. Assistance to Small, Minority, Female and other Businesses

A. CMHA shall make efforts to ensure that small and minority-owned businesses, female-owned business enterprises, resident-owned businesses and labor surplus area businesses are used when possible in a manner consistent with United States Presidential Executive Orders 11165, 12138 and 12432, as described in Section 3 of the HUD Act of 1968. Such efforts shall include, but shall not be limited to:

1. Including, or placing, such firms, when qualified, on solicitation mailing lists;
2. Follow-up to encourage their participation in bid or proposals whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
4. Establishing delivery schedules, consistent with CMHA's needs, which encourage participation by such firms;
5. Using the services and assistance of formal federal agencies such as the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce or other agency approved by CMHA;
6. Using local minority assistance agencies such as the Northern Ohio Minority Business Council and others;
7. Using CMHA departments to develop and identify resident-owned business enterprises;
8. Including in contracts a clause requiring Contractors to provide, to the greatest extent feasible, opportunities for training and employment for lower income residents of the estate area and to award subcontracts for work in connection with estate to business concerns which are located in, or owned in substantial part by persons residing in the area if the estate, as described in 24 C.F.R. 135;
9. Directing solicitations and advertising to one or more disadvantaged, minority and female business.
10. Requiring prime Contractors, when subcontracting is anticipated, to take the positive steps as outlined above.

B. CMHA may establish certification requirements for prospective firms seeking eligibility under the Small Disadvantaged Business Program. Requirements may include, but are not limited to:

1. A 20% participation goal for minority owned businesses; and
 2. A 10% goal for female owned businesses in CMHA prime contracts and subcontracts opportunities.
- C. CMHA may require a goal of 25% of the total work hours for contracts exceeding twenty-five thousand dollars (\$25,000) to be performed by CMHA residents through employment opportunities.
- D. CMHA reserves the right to develop and implement assistance programs to enhance participation in accordance with this section. Such programs shall be at the discretion of the CEO or his/her designee.

XIX. Approvals

Unless otherwise stipulated in this Policy, the following approvals shall be required prior to executing a procurement activity with any Contractor or prospective Contractor:

- A. Procurement requests of any kind for contracts valued at equal to or greater than twenty-five thousand dollars (\$25,000.00) shall require review and execution by the Board.
- B. Procurement requests of any kind for contracts valued at between fifteen thousand (\$15,000.00) and twenty-four thousand nine hundred ninety-nine dollars and ninety-nine cents (\$24,999.99) shall require review and execution by the CEO or his/her designee.

The CEO, or his/her designee, may approve any procurement requests equal to or less than the amount of twenty-four thousand nine hundred ninety-nine dollars and ninety-nine cents (\$24,999.99).

- C. Procurement requests of any kind, for contracts valued at less than fifteen thousand dollars (\$15,000.00), shall require review and execution by the Chief Financial Officer or Director of Purchasing, or their respective designees.
- D. Procurement requests of any kind, from a Department, which reports to the CEO, for contracts valued between five thousand dollars (\$5,000.00) and fourteen thousand nine hundred ninety-nine dollars and ninety-nine cents (\$14,999.99), shall require approval by the CEO, or his/her designee.
- E. The CEO may approve procurement requests up to the amount of fourteen thousand nine hundred ninety-nine dollars and ninety-nine cents (\$14,999.99).

- F. Procurement requests of any kind, in a Department which does not report to Chief Executive Officer, which exceeds the amount of five thousand dollars (\$5,000.00), shall require the approval of the CEO, or his/her designee.
- G. Procurement requests of any kind which do not exceed the amount of four thousand nine hundred ninety-nine dollars and ninety-nine cents (\$4,999.99) may be approved by the Department Director, AMP Leader, or their designee.
- H. Procurement requests of any kind, which do not exceed one thousand four hundred ninety-nine dollars and ninety-nine cents (\$1,499.99), may be approved by the Property Manager or his/her designee.
- I. Procurement requests of any kind, which do not exceed the amount of seven hundred forty-nine dollars and ninety-nine cents (\$749.99), may be approved by the Office Manager or their respective designees.
- J. Inclusive of paragraphs A through I of this section, all procurements require written budgetary authorization and a purchase order or contract prior to commencement of work with the exclusion of emergency or exigent situations.

XXI. Record Retention

CMHA will retain all significant and material documentation and records concerning all procurements in accordance with CMHA's Record Retention Policy (Administrative Order #10).

APPENDIX A

PROCUREMENTS USING “AMERICAN RECOVERY AND REINVESTMENT ACT” FUNDS (CAPITAL FUND STIMULUS GRANT PROCUREMENT POLICY)

I. General

- A. This Appendix to the CMHA Purchasing Policy applies only to the procurement of goods and services using American Recovery and Reinvestment Act (Recovery Act) funds.
- B. Section 3 of the Recovery Act provides that these funds shall be managed and expended to achieve the purposes specified, including commencing expenditures and activities as quickly as possible consistent with prudent management.
- C. The Recovery Act has imposed expeditious obligation and expenditure requirements on Capital Fund Stimulus Grants. Housing Authorities are allowed one year from the grant start date to obligate 100% of the funds.

CMHA has:

- 1. Two years from the grant start date to expend 60% of the funds,
 - 2. Three years from the grant start date to expend 100% of the funds.
- D. To expedite and facilitate the use of Recovery Act funds in accordance with the established timelines, any requirements relating to the procurement of goods and services arising under state and local laws and regulations shall not apply to Capital Fund Stimulus Grants.
- CMHA will instead follow the requirements set forth in 24 CFR Part 85 for these procurements.
- E. According to 24 CFR 85.36(d)(4), if solicitation of a proposal is only from one source, or if the housing authority finds that after solicitation of a number of sources, that competition is inadequate, the housing authority may award the contract noncompetitively where small purchase procedures, sealed bids or competitive proposals are infeasible and one of the circumstances in Part 85.36(d)(4)(i) applies.

- F. Housing authorities may use the noncompetitive proposals method, but must do so on a contract-by-contract basis and in compliance with all Part 85 requirements, including the requirement for a cost analysis and the conflict of interest requirement.
- G. Section 1605 of the Recovery Act sets forth the requirements for use of American iron, steel, and manufactured goods.
 - 1. None of the funds appropriated or otherwise made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.
- H. The requirements in Paragraph G (above) shall not apply in any case or category of cases in which the head of the Federal department or agency involved finds that:
 - 1. Applying the requirements in Paragraph G (above) would be inconsistent with the public interest;
 - 2. Iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
 - 3. Inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.