

Spokane Housing Authority
Procurement Policy

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1.0 GENERAL PROVISIONS

1.1 Compliance with Applicable Laws and Regulations: In adopting these Procurement Policies, the Board of Commissioners and Executive Director affirm that the policies are in compliance with all applicable federal, state and local laws and regulations, which may include but not be limited to, the following:

Federal:

- [2 CFR 200.317 – 200.327 \(Uniform Administrative Requirement – Procurement Standards\)](#)
- [29 CFR Part 1 \(Procedures for Predetermination of Wage Rates\)](#)
- [29 CFR Part 3 \(Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants From the United States\)](#)
- [29 CFR Part 5 \(Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction\)\(Also Labor Standards Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act\)](#)
- [29 CFR Part 6 \(Rules of Practice for Administrative Proceedings Enforcing Labor Standards in Federal and Federally-Assisted Construction Contracts and Federal Service Contracts\)](#)
- [29 CFR Part 7 \(Practice Before the Administrative Review Board With Regard to Federal and Federally Assisted Construction Contracts \)](#)
- [ACC \(Annual Consolidated Contributions Contract between SHA and HUD\) HUD-53012A](#)

State:

- [Chapter 35.82 RCW \(Housing Authorities Law\)](#)
- [Chapter 39.04 RCW \(Public Works\)](#)
- [Chapter 39.08 RCW \(Contractor's Bond\)](#)
- [Chapter 42.23 RCW \(Code of Ethics for Municipal Officers-Contract Interests\)](#)
- [Chapter 60.28 RCW \(Lien for Labor, Materials, Taxes on Public Works\)](#)
- [Chapter 39.12 RCW \(Prevailing Wages on Public Works\)](#)
- [Chapter 296-127 WAC \(Prevailing Wages\)](#)
- [Chapter 39.80 RCW \(Contracts for Architectural and Engineering Services\)](#)

1.2 Conflicts Between Policies and Other Laws, Regulations and Interagency Agreements: In the event of a conflict between these Procurement Policies and any applicable law or regulation, the law or regulation will prevail. Reference to specific statutes or regulations in these policies means as they are presently codified or hereafter amended or revised. If the requirements of an Interagency Agreement are not in line with these Procurement Policies, then the more stringent of the two will prevail.

1.3 Changes in Laws and Regulations: In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulations, to the extent inconsistent with these Procurement Policies, automatically supersede these Procurement Policies, and the Executive Director shall make appropriate modifications to the Policies.

1.4 Approval of Policies

- A. **Adoption by Board of Commissioners:** These Procurement Policies shall be adopted by the SHA board of Commissioners and any substantive changes to the Policies must also be

approved by the Board.

- B. Self-Certification of Policies to HUD: Consistent with [24 CFR 85.36\(g\)\(3\)\(ii\)](#), which authorizes a housing authority to self-certify to HUD that its procurement policies are in compliance with all applicable laws and regulations, the SHA Board of Commissioners, in adopting these Policies, certifies that the Procurement Policies are in compliance with all applicable laws and regulations, specifically including, but not limited to [24 CFR 85.36](#). Furthermore, the SHA Board of Commissioners authorizes the Executive Director or Deputy Executive Director to submit these Procurement Policies to HUD as may be required and to self-certify SHA's procurement system as defined in [24 CFR 85.36\(g\)\(3\)\(ii\)](#).
- C. Interpretation of Policies: In the event of an ambiguity, contradiction, or unforeseen situation not addressed clearly or directly in these Policies, the Executive Director, or Deputy Executive Director, shall use his/her best professional judgment in making a decision that will best protect the interests of SHA, and ensure SHA's compliance with applicable statutory and regulatory requirements.

1.5 Public Records

SHA procurement information shall be a matter of public record to the extent provided for in [RCW 42.56](#) (The State of Washington Public Records law), and will be made available upon request as provided in that statute. SHA may charge for each photocopy of a public record requested in accordance with this law.

Payroll reports received by SHA from contractors and subcontractors on construction projects, for the purpose of monitoring prevailing wage requirements, shall not be released to outside parties *unless* the employees' personal identifiers (e.g., name, address, social security number) are first redacted.

2.0 ETHICS IN PUBLIC CONTRACTING

2.1 General

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

In the conduct of SHA's procurement system, SHA employees shall be aware of, and comply with, the following non-exclusive list of laws, regulations, and advice, which are hereby incorporated by reference as a part of these policies:

- A. 24 [CFR 85.36\(b\)\(3\)](#) – HUD Procurement Regulations
- B. [RCW 35.82.050](#) – Washington State Housing Authorities Law
- C. Terms and Conditions, Constituting Part A of a Consolidated Annual Contributions Contract between the Housing Authority and the United States of America, Section 16, Conflict of Interest, HUD Form 53012.
- D. [HUD Procurement Handbook, 7460.8 REV 2](#), Chapter 4 – Ethics in Public Contracting.
- E. SHA Code of Ethics – Employee Handbook
- F. [RCW 42.23.030](#) – Interest in Contracts Prohibited - Exceptions.

Contracts not funded with federal funds shall not be bound by any of the federal requirements noted above in A, C, and D.

2.2 Principles

Members of the Board of Commissioners, SHA employees, and any others serving in an official position or acting as an agent of SHA (hereafter referred to as employees, officers, or agents) must discharge their duties impartially to ensure fair competitive access to procurement opportunities by responsible contractors. Moreover, employees, officers, and agents should conduct themselves in such a manner as to foster the public's confidence in the integrity of SHA procurement organization and process. Any attempt to realize personal gain through SHA employment or to serve as an officer or agent of SHA through actions inconsistent with the proper discharge of duties is a breach of public trust.

2.3 Conflicts of Interest

- A. No SHA employee, officer, or agent shall participate in the selection, award, or administration of a contract if a conflict of interest, financial or otherwise, real or apparent, would be involved. Such a conflict would arise when the employee; officer or agent; any member of his or her immediate family; his or her partner; or an organization which employs or is about to employ any of the above, has a financial or other interest in the firm selected for the award.

- B. In addition to any other applicable conflict of interest requirements, neither SHA nor any of its contractors or their subcontractors may enter into any contract, subcontract, or arrangement in connection with a project under the Annual Contributions Contract (ACC) in which any of the following classes of people have an interest, direct or indirect, during his or her tenure or for one year thereafter:
1. Any present or former member or officer of the governing body of SHA, or any member of the officer's immediate family. There shall be excepted from this prohibition any present or former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the resident corporation, SHA or a business entity.
 2. Any employee of SHA who formulates policy or who influences decisions with respect to the project(s), or any member of the employee's immediate family, or the employee's partner.
 3. Any public official, member of the local governing body, or State or local legislator, or any member of such individuals' immediate family, who exercises functions or responsibilities with respect to the project(s) of SHA.
- C. No present or former SHA employee, officer, or agent shall engage in selling or attempting to sell supplies, services, or construction to SHA for one year following the date such employment ceased. The term "sell" means signing a bid or proposal; negotiating a contract; contacting any SHA employee, officer, or agent for the purpose of obtaining, negotiating, or discussing changes in specifications, price, cost allowances, or other terms of a contract; settling contract disputes; or any other liaison activity with a view toward the ultimate consummation of a sale.

2.4 Gratuities, Kickbacks, and Use of Confidential Information

SHA solicitations and contracts involving federal funds shall include clauses advising prospective contractors of the prohibitions against gratuities and kickbacks ([24 CFR 85.36\(i\)\(4\)](#)). These rules are designed to protect the integrity of the procurement system and to ensure that contracts are awarded fairly, based on merit, without improper influence.

- A. Gratuities ([24 CFR 85.36\(b\)\(3\)](#)) and Section 16 of the ACC. SHA officers, current employees, former employees within one year of employment, or agents shall neither solicit, accept, or agree to accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.

Exception: In general, a nominal gift of less than \$50.00 in value that was not solicited by an employee, and which can be and is shared with all employees and/or the public, may be considered acceptable. Employees are expected to exercise good judgment before accepting any gift, and to check with a supervisor or manager if in doubt.

- B. Kickbacks and Anticompetitive Practices. It is a breach of ethical conduct and prohibited for any payment, gratuity, or offer of employment to be made by, or on behalf of, a contractor or subcontractor under contract to the prime contractor, higher tier subcontractor, or any person associated therewith as an inducement for the award of a subcontractor order.

All employees shall report to the Executive Director, Deputy Executive Director, the HUD Field Office, and the appropriate State and local officials any suspected anticompetitive practices by contractors.

- C. Use of Confidential Information. Disclosure of confidential information to any person not authorized by the Executive Director or Deputy Executive Director to receive such information shall be a breach of ethical standards. Confidential information includes but is not necessarily limited to: the contents of a bid (prior to bid opening) or proposal (prior to contract award using competitive proposals); names of individuals or firms that submitted bids (prior to bid opening) or proposals (prior to contract award); SHA-generated information related to a procurement (including SHA cost estimates, contractor selection and evaluation plans, specifications (before solicitation is issued); and any other information the disclosure of which would have a direct bearing upon the contract award or the competitive process. It is a breach of ethical conduct for any current or former employee, officer, or agent to knowingly use confidential information for actual or anticipated personal gain or for actual or anticipated personal gain of any other person.

2.5 Prohibition Against Contingent Fees

It is a breach of ethical conduct for a person to be retained to solicit or secure a SHA contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for the retention of bona fide employees or a bona fide agency established for the purpose of securing business. This prohibition includes the employment of former SHA officials and employees on a contingency basis to obtain contracts with SHA by a business seeking SHA contracts.

2.6 Sanctions

Violations of SHA Ethics standards may result in, but is not limited to, one or more of the following sanctions:

- Oral or written warnings or reprimands;
- Suspension with or without pay for specified period of time;
- Termination of employment; or
- Dismissal from the official or agency position.

The value of anything received by an employee or a non-employee in breach of the ethical standards shall be recoverable by SHA either by confiscating the items or by charging the violator for any and all gratuities received. All procedures in this Chapter shall be in accordance with agency policy and existing law.

3.0 PROCUREMENT AUTHORITY AND ADMINISTRATION

OF THE PROCURMENT FUNCTION

3.1 General

Procurement authority and administration refers to the delegation of responsibility to specific SHA employees to recommend, commit, and expend SHA financial resources up to a particular dollar limit, for the department over which the employee has jurisdiction or control.

3.2 Delegation of Authority

- A. The Executive Director, and in their absence, the Deputy Executive Director, shall be responsible for providing oversight and management of all expenditures for the agency and as such is the designated "Contracting Officer."
- B. The following is a non-exclusive list of the procurement-related documents that the Executive Director or Deputy Executive Director are authorized to sign on behalf of SHA subject to the expenditure authority threshold outlined in Section 3.3 of this Chapter:
 - 1. Construction contracts
 - 2. Consultant and professional services contracts
 - 3. A&E Consultant contracts
 - 4. Agency Service Agreements
 - 5. Change Orders
 - 6. Award of housing or other vouchers
 - 7. Intergovernmental Cooperation Agreements
 - 8. Sub-recipient or sub-grantee agreements and related change orders
- C. The following is a non-exclusive list of the non-procurement-related documents that the Executive Director or Deputy Executive Director are not authorized to sign on behalf of SHA without prior Board approval:
 - 1. Real estate acquisitions
 - 2. Loan documents
 - 3. Restrictive Covenants
 - 4. Limited partnership agreements
 - 5. Employment contracts

3.3 Expenditure Authority

- A. Positions at SHA will be assigned a purchasing tier that will identify their authorized dollar threshold for purchases. Exhibit A, "General Expenditure limits guidelines", provides general guidelines for assigning purchasing tiers and may be amended as needed by the Executive Director or Deputy Executive Director.
 - 1. Tier 1 - positions are delegated authority to approve purchases and contracts up to the "Small Purchase/Simplified Acquisition Threshold" level, subject to board approved budgets.

2. Tier 2 - positions are delegated authority to approve purchases up to \$10,000 subject to board approved budgets.
3. Tier 3 - positions are delegated authority to approve purchases up to \$7,500 subject to board approved budgets.
4. Tier 4 - positions are delegated authority to approve purchases up to \$5,000 subject to board approved budgets.
5. Tier 5 - positions are delegated authority to approve purchases up to \$1,000 subject to board approved budgets.

Department Directors will be held accountable for staying within budget, if the purchase requires a formal contract, the Executive Director or Deputy Executive Director must sign the contract documents.

B. Source of Funds

1. Federal Financial Assistance – Funds used for procurement that are directly or indirectly received from a Federal program. Examples included HUD HCV Program funding, , HOME Investment Partnership funds, and Community Development Block Grant (CDBG) funds.
2. Non-Federal Funds – Funds used for procurement that are not directly or indirectly received from a Federal program. Examples include direct funding from Tax Credit operations, Washington State Housing Trust Funds, State or Housing Authority issued Bonds.

C. Purchasing Levels: For a matrix presentation of the levels and methods please refer to Exhibit B.

1. Micro Purchases SHA has set the "Micro Purchase" level at \$10,000¹ or less for both Non-Federally funded and Federally funded purchases. The limit is \$2,000 for Federally funded Construction projects involving new or major rehabilitation projects.
2. Small Purchases/Simplified Acquisition Threshold. SHA has set the "Small Purchase/Simplified Acquisition Threshold" level up to \$250,000 for both Non-Federally funded and Federally funded contracts.
3. Large Purchases. SHA defines "Large Purchases" as procurement exceeding \$250,000 for Federally Funded or Non-Federally Funded contracts. SHA requires Board of Commissioner approval for any large purchase. Large purchases shall be approved by Board resolution authorizing the purchase and permitting the Executive Director or Deputy Executive Director to sign the Purchase Order and/or the contract.

¹ HUD Procurement Training Guide (08/2020) states: "Micro Purchase threshold of up to \$10,000 per purchase."

4. Emergencies: If the Executive Director or Deputy Executive Director determines that an "emergency" exists and that the emergency requires the immediate execution of a contract that exceeds the "Large Purchase" threshold, Chapter 12.3.C must be followed.

D. Procurement/Expenditure Authority Responsibilities

- To make project and programmatic decisions.
- To recommend entering a contract, executing a Change Order, or approving a Purchase Requisition.
- To approve for payment expenditures on the Direct Payments list (items not subject to competition).
- To carefully read and review applicable documents for accuracy and appropriateness.
- To coordinate actions with other SHA employees and outside parties as may be appropriate.
- To work with the Finance Department to ensure that adequate funds have been budgeted and are available for the proposed expenditure.
- To conduct a Cost Analysis or Price Analysis demonstrating that the proposed price of a contract or Change Order is reasonable (see Chapter 6, Ensuring Reasonable Costs, for more information).
- To act diligently in placing a priority on protecting SHA's financial and other interests.
- To comply with SHA's procurement policies and procedures, including requirements related to ethical behavior (see Chapter 2 Ethics in Public Contracting).

E. Documents Authorized to Sign/Issue

1. Purchase Orders/Quotes/Proposals: Purchase orders must be approved by an employee with expenditure authority consistent with the estimated dollar value of the proposed purchase. Approval of a purchase order is tracked and completed through SHA software. Staff are authorized to sign quotes or proposals associated with the approved Purchase Order if requested by vendor.
2. Contracts: The Executive Director and Deputy Executive Director are authorized to sign contracts. All proposed contracts must be forwarded to the Executive Director or Deputy Executive Director, accompanied by a signed [contract cover sheet](#).
3. Change Orders: The Executive Director or Deputy Executive Director are authorized to sign change orders. All proposed change orders must be forwarded to the Executive Director or Deputy Executive Director for review and approval and must be

accompanied by a signed contract cover sheet containing justification for the change order.

4. Solicitations:

4.0 Formal solicitations, including RFPs, RFQs, IFBs and other such documents, must be approved in writing by the Department Director before such solicitation is advertised or otherwise distributed to contractors, consultants, or vendors. If the solicitation exceeds the Department Director's expenditure authority, the Procurement Specialist will forward the solicitation to the Executive Director or Deputy Executive Director for review and approval prior to its distribution.

4.1 Informal solicitations, including quotes, may be acquired by the employee and submitted with the purchasing request. If the solicitation exceeds the employee's expenditure authority, the Procurement Specialist will forward the request to the Department Manager, Department Director, Deputy Executive Director or Executive Director for approval.

5. Expenditures for Direct Payments: Authorization to pay for items listed on the Direct Payments list must be approved by an employee with expenditure authority in an amount consistent with the amount of the proposed payment. The one exception is for utility payments, these are reviewed by the Controller and Finance Director in the Accounts Payable check runs.

6. Purchasing Card Payments: All purchasing card payments must be approved in accordance with the purchasing card policy.

7. Travel Reimbursement/Payments: All travel reimbursement/payment must be approved in accordance with the travel policy.

8. Non-Competitive Selections: All non-competitive selections (emergency, sole source, proprietary, single response to solicitation, etc.) must be approved by the Executive Director or Deputy Executive Director. Those over \$250,000 must also be approved by the Board of Commissioners. **NOTE: If a contract is awarded without competitive bidding due to an emergency, a written finding of the existence of an emergency must be made by the governing body or its designee and duly entered of record no later than two weeks following the award of the contract ([RCW 39.04.280](#)).** Also see Chapter 12.

9. Cancellation of Expenditure Authority: For abuse or mismanagement of expenditure authority or other sufficient reasons, the Executive Director or Deputy Executive Director may cancel an employee's expenditure authority.

F. Contract/Payment Authorization

1. Employee Responsibilities: SHA employees are responsible for approving all invoice payment within their expenditure authority for their department's/properties expenditures, and for managing independent internal control procedures consistent with these Policies. By signing and recommending approval of an invoice for payment

on a contract, change order, or purchase order, an employee verifies that the work being approved for payment was satisfactorily performed or the goods received, and that the amount approved for payment is consistent with the terms of the contract or purchase order. Recommendations for approval are forwarded to the Department Manager, Department Director, Deputy Executive Director or Executive Director for review and approval, as appropriate based on the purchase amount. The approval given pursuant to this subsection is specifically intended for the sole benefit of SHA and not third parties, including contractors, subcontractors, or vendors.

4.0 ELIGIBILITY TO CONTRACT WITH SHA

4.1 Debarment Status Review

Prior to award, or renewal of a contract for goods or services of multi-year contracts, the procurement specialist shall ensure that the proposed business has not been debarred, or otherwise declared ineligible for award, by an applicable regulatory agency. The following non-exclusive list of sources shall be reviewed when required:

- A. U.S. General Services Administration's (GSA) "List of Parties Excluded from Federal Procurement and Non-Procurement Programs".
- B. U.S. Department of Housing and Urban Development's "[Limited Denial of Participation](#)" List
- C. State of Washington, Department of Labor and Industries list of debarred contracts for prevailing wage violations (only required on construction projects)
- D. SAM - System for Award Management this report must be inserted into contract documents for federally funded projects.

4.2 Compliance with IRS Regulations

Prior to making payments to a business, the procurement specialist shall ensure that SHA receives from the business (if not already on file), a [W-9](#) or W-9 substitution form.

4.3 Contractor Qualification Requirements

SHA may develop, as part of construction bidding documents, specific and objective qualification requirements for the contractor or subcontractors that may be used in evaluating whether a contractor or subcontractors is a responsible bidder capable of performing the proposed work.

4.4 Contractor Responsibility

SHA must make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Before awarding a contract, staff must evaluate contractor responsibility, including the personal knowledge of, or past experience with, the vendor. SHA will utilize both State and Federal Requirements below in their evaluation of contractor responsibility.

- A. State Requirements. [RCW 39.04.350](#) requires that before award of a public works contract, a bidder must meet the following responsibility criteria to be considered a responsible bidder and qualified to be awarded a public works project. The bidder must:
 - 1. At the time of the bid submittal, have a certificate of registration in compliance with [RCW 18.27](#);
 - 2. Have a current state unified business identifier number;

3. If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in [RCW 51](#);
 4. Have an employment security department number as required in [RCW 50](#); and a state excise tax registration number as required in [RCW 82](#).
 5. Not be disqualified from bidding on any public works contract under [RCW 39.06.010](#); unregistered or unlicensed contractors or [39.12.065\(3\)](#); [violated the requirement to pay the prevailing rate of wage](#).
 6. If bidding on a public works project subject to the apprenticeship utilization requirements in [RCW 39.04.320](#), not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without approach supervision, or outside their approved work processes as outlined in their standards of apprenticeship under [RCW 49.04](#) for the one-year period immediately preceding the date of the bid solicitation.
- B. Federal Requirements. SHA shall not award any contract until the prospective contractor, i.e., low responsive bidder, or successful offeror, has been determined to be responsible. A responsible bidder/offeror must:
1. Have adequate financial resources to perform the contract, or the ability to obtain them;
 2. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all the bidder's/offeror's existing commercial and governmental business commitments;
 3. Have a satisfactory performance record;
 4. Have a satisfactory record of integrity and business ethics;
 5. Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
 6. Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,
 7. Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended, debarred or under a HUD-imposed LDP, Limited Denials of Participation.

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.

5.0 CONTRACT DURATION

5.1 General Policy

- A. Competition: As a government agency and as stewards of the public's money, SHA acknowledges the importance of competition to ensure that it receives the best quality of goods and services at the most competitive prices. SHA also acknowledges the importance of spreading public contracting opportunities to the larger business community.
- B. Efficiency: SHA acknowledges that longer-term contracts are often beneficial to both the business community and SHA in that they reduce costs necessary to conduct frequent solicitation processes, enable the business community to gain proficiency and knowledge in meeting SHA's needs, and afford economies of financial return for the business community.
- C. Fairness: To ensure fairness and meet the expectations of the business community, the length of any contract shall be limited to the time specified in the advertised solicitation. SHA shall generally not extend a contract beyond the advertised period, except for good and sufficient reasons as may be approved by the Executive Director or Deputy Executive Director.

5.2 Length of Contracts

Recognizing the general policy outlined in this chapter, and acknowledging the difficulty in developing standard contract length that is appropriate for all types of contracts, the following shall govern the length of SHA contracts:

- A. Generally, a supply or service contract shall be established for between one and three years, with an option to extend the contract for up to three additional one-year periods. The decision on the length of a contract shall be determined on a case-by-case basis, provided that the Executive Director or Deputy Executive Director approves the contract length.
- B. Solicitation documents and contracts shall include language about the anticipated length of a particular procurement.

5.3 Contract Extensions

- A. Price Negotiations: Contracts shall generally include provisions outlining the process or formula to be followed in negotiating the price for an extension of a contract's original term.
- B. Available Funds: Contracts may be extended beyond the advertised or specified contract term in the event that sufficient, previously obligated funds remain available in the current contract.

6.0 ENSURING REASONABLE COSTS

6.1 General

As a public agency accountable to both the public and governmental funding agencies, SHA is committed to ensuring that the costs paid for obtaining necessary goods and services are reasonable and that SHA's interests are adequately protected.

6.2 Independent Cost Estimates (ICE)

- A. General: For all purchases above the Small/Simplified Acquisition Threshold, SHA shall prepare an ICE prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item to be purchased.

6.3 Cost and Price Analysis (CPA)

- A. General: SHA shall require assurance that, before entering into a contract, the price is reasonable, in accordance with the following instructions.
1. *Micro Purchases*: No formal cost or price analysis is required. Rather, the execution of a contract (through a Purchase Order or other means) shall serve as the authorized purchaser's determination that the price obtained is reasonable, which may be based on the purchaser's prior experience or other factors.
 2. *Small Purchases*: A comparison with other offers shall generally be sufficient determination of the reasonableness of price and no further analysis is required. If a reasonable number of quotes are not obtained to establish reasonableness through price competition, the Contracting Officer shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the Contracting Officer's personal knowledge at the time of purchase, or any other reasonable basis. If a reasonable number of quotes are not obtained to establish reasonableness through price competition, the authorized purchaser shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the authorized purchaser's personal knowledge at the time of purchase, or any other reasonable basis.
 3. *Sealed Bids*. The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, and when the bid received is substantially more than the ICE, and where SHA cannot reasonably determine price reasonableness, SHA must conduct a cost analysis, consistent with federal guidelines, to ensure that the price paid is reasonable.
 4. *Competitive Proposals*. The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient proposals are not received, SHA must compare the price with the ICE. For competitive proposals where prices cannot be easily compared among offerors, where there is not adequate competition, or where the price is substantially greater than the ICE, SHA must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable.
 5. *Contract Modifications*. A cost analysis, consistent with federal guidelines, shall be conducted for all contract modifications for projects that were procured through Sealed Bids, Competitive Proposals, or Non-Competitive Proposals, or for projects

originally procured through Small Purchases procedures and the amount of the contract modification will result in a total contract price in excess of the Simplified Acquisition Threshold.

6.4 Specific Situations

- A. Extent of Analysis: The requirements for ensuring reasonable costs in contracting apply to all SHA procurement activities (goods, supplies, construction, consultant, services), including changes to contracts. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation. Thus, there is some degree in which each analysis is treated on a case-by-case basis depending on the size, nature, and complexity of the contract or Change Order.
- B. Federal Cost Principles: For federally funded projects:
 - 1. The costs or prices based on estimated costs for contracts under Federal award are allowable only to the extent that costs incurred, or cost estimates included in negotiated prices would be allowable for the non-federal entity under (See [24 CFR 85.22 & 2 CFR 200.323 ©](#))
 - 2. Cost Practices Prohibited: The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used. (See [24 CFR 85.36\(f\)\(4\)2 CFR 200.323\(d\)](#))
- C. Time-and-Materials Contracts: A time-and-materials contract may be used only:
 - 1. After a determination that no other contract payment type is suitable, and
 - 2. If the contract includes a ceiling price that the contractor exceeds at its own risk.
 - 3. Time and material type contract means a contract whose cost to SHA is the sum of:
 - The actual costs of materials and
 - Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. 2 CFR §200.318(j)(1) - §200.318(j)(2).

This calculation generates an open-ended contract price which provides no incentive to the contractor for cost control or labor efficiency. Each time and material contract must, therefore, set a ceiling price that the contractor exceeds at its own risk. Further, in awarding such a contract, the contract must provide a high degree of oversight to assure that the contractor is using efficient methods and effective cost controls.

7.0 MICRO PURCHASE PROCEDURES

7.1 General

Micro purchase procedures are a simplified method for acquiring supplies, materials and services that do not exceed SHA's micro purchase threshold. These procedures are the simplest method of procurement.

7.2 Threshold

- A. General supplies, equipment or services purchased with **Federal or Non-Federal funds** less than \$10,000.
- B. Construction/Maintenance (Labor and Materials) purchased with **Non-Federal funds** less than \$10,000.
- C. Construction/Maintenance (Labor and Material) purchased with **Federal funds** less than \$2,000.

7.3 Competition Requirements

- A. Price Quotes/Evaluation and Price Reasonableness. Micro Purchases may be awarded without soliciting competitive quotations.
- B. Prohibition Against Bid Splitting. Purchases shall not be aggregated into multiple purchases that are less than the applicable threshold (commonly called "bid splitting") merely to permit use of the Micro Purchase procedures or avoid any requirements that apply to purchases that exceed this threshold.

7.4 Purchase Orders

General. Most purchases under the micro purchase method will be made via a Purchase Order sent or given to the contractor/vendor to initiate delivery of the item(s) or performance of the service(s). The issuance of a Purchase Order by SHA and its acceptance by the contractor/vendor (either through performance or signature on the purchase order) constitute a contract. It is crucial, therefore, that the Purchase Order specify clearly, the item(s) or service(s) being purchased and the terms and conditions of the purchase.

8.0 SMALL/SIMPLIFIED ACQUISITION PURCHASE PROCEDURES

8.1 General

Small purchase procedures are generally for acquiring supplies, materials, and services (including professional and construction) that do not exceed SHA's Small Purchase/Simplified Acquisition threshold.

8.2 Threshold

- A. For general supplies and equipment purchased with **Federal or Non-Federal** funds, from \$10,001 - \$250,000.
- B. Contracting for Work (Labor & Materials) using **Non-Federal** funds with a value from \$10,001 - \$250,000 or, using **Federal** funds with a value from \$2,001 - \$250,000.

8.3 Competition Requirements

- A. Price Quotes. If a complete, adequate and realistic specification or purchase description is available, the procurement lends itself to a firm fixed price, and the selection can be made principally on the basis of price, staff must solicit a minimum of 2, preferably 3, price quotes from qualified sources.
- B. Request for Qualifications (RFQ). If the nature of the procurement requires that SHA needs to evaluate more than just price to be sure that the prospective contractor understands SHA's needs and can successfully complete the contract, especially when contracting for professional services (e.g., legal, accounting, etc.) where SHA needs specific expertise and experience, then a Request for Qualifications (RFQ) process should be utilized (See Chapter 11 for guidance on utilization of RFQs for procurement).
- C. Architectural & Engineering (A&E) Services. A & E Services must be procured using an RFQ process (see Chapter 11 for guidance).
- D. Prohibition Against Bid Splitting. Staff shall not break down requirements aggregating more than the small purchase threshold into multiple purchases that are less than the applicable threshold (commonly called 'bid splitting') merely to permit use of the small purchase procedures or avoid any requirements that apply to purchases that exceed those thresholds. However, larger requirements may be broken into smaller ones to afford small and minority businesses the opportunity to participate in SHA's procurements. Staff must document in the contract file the reasons for breaking down larger requirements into smaller ones.
- E. Refer to Chapter 12 of these Policies for information on Sole Source, Emergency, and Single Response to Solicitation.

8.4 Method of Solicitation

Quotations for small purchases must be obtained in writing (hard copy or email), orally, by fax, via catalogs, by letter, through electronic means (e.g., the Internet), through paid advertisement, or by displaying the solicitation in a public place. Written solicitations are used when it is necessary to provide vendors with detailed information that cannot be conveyed orally (e.g., by phone), or with detailed quotation evaluation information. Sealed bidding procedures are *not required* for Small Purchases. When solicitation information is conveyed orally, care shall be taken to ensure that all vendors receive the same information.

8.5 Quotation Evaluation

- A. Price Reasonableness. Before making an award, staff must determine that the proposed price is fair and reasonable. For most small purchases, Price Analysis is sufficient to make that determination. In cases where SHA purchases services or items of a non-commercial nature, see Chapter 6, Ensuring Reasonable Costs.
- B. Price Analysis. Generally, price analysis will consist of a comparison of quotations to each other and to other sources of pricing information (e.g., past prices paid, catalog prices, etc.). If only one response is received, staff must include a statement of reasonableness in the contract file. This statement may be based on market research, comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, advertisements, a comparison with similar items in a related industry, the staff's personal knowledge at the time of purchase, or any other reasonable basis.
- C. Evaluating Contractor Responsibility. SHA must make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. (See Chapter 4.4, Contractor Responsibility).

8.6 Documentation

Staff should retain information supporting their purchases (paper or electronic) to the extent and duration needed for management review purposes (tracking purchasing activity, etc.). Procurement records must be retained for at least three years following the end of the Fiscal Year in which the purchase occurred unless otherwise referenced in the [State Housing Authorities Records Retention Schedule \(Version 2.0\)](#), at which time, this policy will follow the more stringent rule.

8.7 Purchase Orders/Contracts

- A. General. Most purchases under the small purchase method for materials and supplies will be done via a Purchase Order sent or given to the contractor to initiate delivery of the item(s) or performance of the service(s), or by formal Contract executed by both parties.
- B. Purchase Orders. The issuance of a Purchase Order by SHA and its acceptance by the contractor (either through performance or signature on the purchase order) constitute a contract. It is crucial, therefore, that the Purchase Order clearly specifies the item(s) or service(s) being purchased and the terms and conditions of the purchase.

- C. Contracts. Individual contracts will vary depending on the procurement. Formal written contracts must be reviewed and signed by the Executive Director or Deputy Executive Director. For more complicated Small Purchase procurement contracts, the Executive Director or Deputy Executive Director may consult with SHA's General Counsel before executing the contract.

Additional terms and conditions may be added depending on the nature and complexity of the work requested.

8.8 Standardized Forms/Mandatory Contract Clauses for Contracts Utilizing Federal Funds

General. Except in the case of bid specifications and contracts for construction or maintenance work in excess of \$2,000 (see Chapter 10) involving Federal funds, small purchases, including purchase orders, are subject only to the mandatory clauses contained in HUD Table 5.1.

In addition to Table 5.1, HUD has developed forms which contain the contract clauses required for small purchases related to construction and maintenance work involving Federal funds. See Chapter 10 for more specific information on the requirements for Construction & Maintenance Contracts.

9.0 LARGE PURCHASE PROCEDURES

9.1 General

For all SHA contracting or purchases above \$250,000, competitive procurements are conducted by inviting sealed bids (Invitations for Bid or IFBs) or by requesting competitive proposals. Both methods are effective ways of satisfying SHA's contractual requirements. All purchases above \$250,000 must be approved by the SHA Board of Commissioners if not previously approved in the annual budget or if the contract exceeds the approved budget by more than 10%. The Board must be notified if the contract exceeds the approved annual budget but does not exceed the 10% threshold.

9.2 Threshold

- A. General supplies and equipment purchased with a value exceeding \$250,000.
- B. Contracting for Work (Labor & Materials) with a value exceeding \$250,000.
- C. Contracting for Work (Labor & Materials) with a value exceeding \$250,000, when the Scope of Work is unclear.

9.3 Sealed Bids via Invitation for Bid (IFB)

- A. Description. Under sealed bids, SHA publicly solicits bids, and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the IFB, is the lowest in price.
- B. Alternate Bids. Staff should not request alternate bids, i.e., two different systems or types of projects. Instead, when necessary, because of limited available funding, SHA may specify the most expensive system as the base bid and list deductive alternates in inverse priority order. Thus, in the case of limited funding, deductive alternates may be taken in numerical order as listed until the award can be made within available funds.

Example: If the full-scope base bid included complete repainting and cleaning of 75 apartments, Deduct Alternate #1 might delete cleaning of 25 apartments and Deduct Alternate #2 might delete all cleaning. In this way, SHA can maximize the amount of work to be completed within a limited budget. Without alternates the project may have to be re-bid if the full-scope price exceeds the available budget.

- C. Evaluation Criteria.
 - 1. Price shall be the evaluation criterion used, provided the bid is submitted by a responsible bidder with a responsive bid.
 - 2. The geographic location of vendors submitting prices may not be used as an evaluation criterion.
 - 3. Refer to Chapter 12 of these Policies for information on Sole Source, Emergency, and Single Response to Solicitation.

D. Responsibilities. Department Directors are responsible for developing and managing the following for an IFB:

1. Sufficiently detailed, clear, and accurate description of the product to be provided and/or scope of work to be performed.
2. List of items to be submitted with the bid.
3. Ensuring that product descriptions on IFBs do not unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equal description may be used as a means to define the performance or other salient requirements of a material, product or service. The specific features of the named brand which must be met shall be clearly stated.
4. That an Independent Cost Estimate is developed for obtaining goods and supplies prior to issuance of an IFB, provided however, that for standard, commercially available items, the purpose of an Independent Cost Estimate is fulfilled by obtaining and comparing prices from vendors (Price Analysis), and no separate Independent Cost Estimate shall be required.
5. Advertise all IFBs.
6. Review and approve each IFB before it is sent to vendors to ensure that it is clear, consistent with requirements, and promotes competition.
7. Adequate and sufficient Price Analysis is conducted that demonstrates the reasonableness of the proposed contract amount (see Chapter 6 of these Policies for further information).

E. IFB Package. The IFB packages for supplies, services, or construction are quite similar. The major difference is the length and complexity of the specifications or scope of work and the variety of attachments. All IFBs must be in writing. The basic documents to be included in an IFB package are:

1. **Cover Page with Table of Contents.** States the name, address and phone number of SHA, a person to contact for information regarding the solicitation, the project name and solicitation number, and a table of contents for the complete solicitation package.
2. **Bid Form.** This is the form on which bidders enter their bid or price(s). The form must be clear, accurate, and unambiguous.
3. **Specification and Statement of Work.** Description of the work or items required. See Chapter 13.
4. **Additional Requirements for Federally funded projects:**
 - a. **Form HUD-5369,** Instructions to Bidders for Contracts, Public and Indian Housing Programs (construction) or form HUD-5369-B, Instructions to Offerors Non-Construction.

- b. **Form HUD-5369-A**, Representations, Certifications, and Other Statements of Bidders, Public and Indian Housing Programs (construction) or form HUD-5369-C, Certifications and Representations of Offerors Non-Construction Contract.
- c. **Form HUD-5370**, General Conditions of the Contract for Construction **or** form HUD-5370-C, General Conditions for Non-Construction Contracts, along with any appropriate Davis-Bacon or HUD wage decision for construction and maintenance work.

F. Solicitation Requirements.

1. IFBs will be publicly advertised in a major local newspaper or trade publication and posted on the SHA website.
2. It is the policy of SHA to encourage the use of WMBEs as vendors.
3. IFBs should be advertised and available for review by vendors for a sufficient length of time to provide vendors with adequate time to prepare and submit bids.
4. Generally, it is expected that IFBs will be advertised once a week for two consecutive weeks and available for review by vendors for fourteen calendar days before bids are due. However, dependent upon the particular procurement, the Executive Director or Deputy Executive Director may determine that adequate completion and preparation and submission of bids may be accomplished in a shorter period of time.

G. Federal Contract Provisions. Federally funded contracts resulting from selection based on an Invitation tfor Bid shall contain, where applicable, contract language required by 24 [CFR 85.36\(i\)](#) :

1. Breach of Contract: Administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
2. Termination: Termination for cause and for convenience by SHA, including the manner by which it will be affected and the basis for settlement (All purchase orders in excess of \$10,000).
3. EEO Requirements: Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations ([41 CFR Chapter 60](#)). (All purchase orders for construction in excess of \$10,000).
4. Copeland "Anti-Kickback" Act: Compliance with the Copeland "Anti-Kickback" Act ([18 U.S.C. 874](#)) as supplemented in Department of Labor regulations ([29 CFR Part 3](#)). (All Purchase Orders for construction or repair).
5. Davis Bacon Act: Compliance with the Davis-Bacon Act ([40 U.S.C. 276a to 276a – 7](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). (Required for construction purchase orders in excess of \$2,000 and other purchase orders in excess of \$2,500 which involve the employment of mechanics or laborers).

6. HUD Requirements and Reporting Standards: Notice of awarding agency requirements and regulations pertaining to reporting. This clause requires SHA to include in contracts any reporting requirements applicable to the terms of a particular grant or funding source that may be helping to fund the contract.
 7. Patent Rights: Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
 8. Copyrights: Awarding agency requirements and regulations pertaining to copyrights and rights in data.
 9. Audit: Access by SHA, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
 10. Records Retention: Retention of all required records for three years after grantees or sub grantees make final payments and all other pending matters are closed unless otherwise referenced in the [State Housing Authorities Records Retention Schedule \(Version 2.0\)](#), at which time, this policy will follow the more stringent rule.
 11. Environmental Regulations: Compliance with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), [Executive Order 11738](#), and Environmental Protection Agency regulations ([40 CFR Part 15](#)). (Purchase orders in excess of \$250,000).
 12. Energy Efficiency: Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L 94-163, 89 Stat.871).
- H. Amendments. If a change to the IFB, e.g., specifications, plans, date or time for bid opening, etc., becomes necessary after it has been issued, the change must be accomplished by issuing a written amendment, sometimes called an addendum. The amendment must indicate the IFB number, project title, issue date of the original IFB, and formally detail each change. Each amendment must be noted on [SHA's solicitation log](#). A copy of the amendment should be mailed to each known prospective bidder who was provided the initial IFB package with acknowledgement required and will be posted on the agency website. If an amendment needs to be issued just before the scheduled bid opening date, the bid opening should be postponed for an adequate period of time to permit the potential bidders to fully analyze the change and to submit timely bids.
- I. Pre-Bid Conference. After the IFB is issued and before bids are due, the Department Director, or their designee, may hold a pre-bid conference with prospective contractors to discuss the project requirements and details of the IFB. The conference should be attended by the Department Director and supporting technical staff. A pre-bid conference is normally conducted for large or complex procurements. Notice of any scheduled conference should be included in the IFB. The timing of the conference

should allow bidders enough time to review the IFB before the conference and adequate time to prepare or revise their bids before the bid opening. At the conference, the Department Director should state that nothing said at the conference will change any of the terms of the IFB unless a subsequent written amendment to the solicitation is issued. A written summary of the conference should be completed and made available to anyone requesting it. The summary should also be provided to all those who submitted IFBs or solicitations, not just those who attended the pre-bid conference. Attendance by offerors at the pre-bid conference, while desirable, should not be mandatory, and non-attendees should not be deemed non-responsive. SHA should consider the need for all potential bidders to attend. Attendance may not be necessary for firms familiar with the work and others may be unable to schedule a representative to attend, although they may be well qualified to do the work at a reasonable price. To impose a requirement to attend a pre-bid conference could unnecessarily limit competition.

J. Canceling an IFB.

1. SHA may cancel IFBs when necessary or when otherwise considered to be in the best interest of SHA. A common reason for canceling an IFB is that the low bid significantly exceeds SHA's budget (note, this is a good reason to consider the use of deductive alternate bids) or when the scope of work or specifications are found to be ambiguous or flawed, e.g., by the submission of wildly different bids or offer prices.
2. The Department Director or designated staff shall document the procurement file with the reasons and supporting facts for canceling the IFB.

K. Bid Opening. The bid opening process shall be carried out as follows:

1. Time and Place Certainty. Each bid must be dated and time-stamped immediately upon receipt by SHA. Sealed bids should be stored in the safe to ensure that they are not opened or mishandled prior to the bid opening. Sealed bids received after the time specified in the IFB should be recorded as a late bid and kept unopened in the contract file. A late bid received before the award is made may only be considered in accordance with the procedures listed in the form HUD-5369, Item 5, or HUD-5369-B, Item 6.
2. Public Bid Opening Process. To ensure fairness in the award process, anyone is permitted to attend the bid opening. Bids shall be publicly opened on the scheduled date and time shown in the solicitation. The bid opening official reads aloud the bidders' names and the bid prices. This information is recorded and may be made available for public inspection. No commitment or statement regarding contract award should be made to any bidder at the bid opening.
3. Recording the Bids. As bids are publicly opened and read aloud, a Bid Summary Sheet of all bids is prepared showing the name of each bidder and their bid prices including alternates, if any. This Bid Summary Sheet becomes part of the official contract file. The Bid Summary Sheet is public information and a copy may be sent to interested parties when requested.

L. Mistakes in Bids

1. General. Correction or withdrawal of bids requires careful consideration. The integrity of the competitive bidding system must be maintained, fairness ensured, and delays avoided. While bidders must be bound by their bids (the "firm bid rule"), circumstances may arise where correction or withdrawal of bids is proper and may be permitted.
2. Mistakes Before Bid Opening. Unless otherwise prohibited by State or local law, bidders shall be permitted to withdraw or modify their bids by written notice prior to bid opening.
3. Review of Bids for Mistakes. After the bid opening, the Department Director or designated staff should carefully review all bids to ensure that the bidders have not made any obvious mistakes in their bids, e.g., the sum of individual bid line items does not equal the total bid price. An item-by-item recalculation of the bid costs will often reveal the miscalculation or error. If a bidder appears to have made a mistake, the Department Director or designated staff should immediately notify a bidder of any apparent mistake in his/her bid and request verification of the bid as submitted. If the bidder is not present at bid opening, or if the Department Director or designated staff performs the bid review after opening takes place, they should notify the bidder by phone. Phone notifications must be followed up with a letter containing the information communicated by phone. A copy of the letter must be placed in the procurement file.
4. Mistakes after Bid Opening. In general, bidders should not be permitted to change a bid after bid opening. In rare cases, the Executive Director or Deputy Executive Director may permit the revision of a bid if the bidder is able to present clear and convincing evidence, acceptable to the Executive Director or Deputy Executive Director, of a mistake and the intended bid price. Examples of evidence may include: original work papers, bids from suppliers and subcontractors used to develop the bid, bonding or insurance evidence supporting a different bid price, etc. Failure or refusal by a bidder to provide adequate evidence shall result in the original bid remaining unchanged. The Executive Director or Deputy Executive Director must consult with SHA's General Counsel before allowing a change in bid. If justified, a low bidder can be replaced with the next lowest bidder.
5. Withdrawal of Bids. Withdrawal of a bid is permissible if there is an obvious error in the bid such as a math error, but the mistake must be readily apparent from the bid itself. A bidder may be permitted to withdraw a low bid if a mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident. A bidder may also be permitted to withdraw a low bid if the bidder submits written evidence that clearly and convincingly demonstrates that a mistake was made. Written supporting evidence must be provided before allowing withdrawal by the bidder. If SHA allows withdrawal, the bid bond should be returned to the bidder upon verification of the error. In cases of alleged mistakes or requests for withdrawal, the decision to allow a correction or withdrawal should only be made after consultation with SHA's General Counsel.

9.4 Contract Award

A. Evaluate Bids & Any Alternates

1. The apparent low bid should be evaluated according to the procedures outlined in the paragraphs below. If the apparent low bid exceeds the project budget, any deduct alternates should be applied to the bid prices, one at a time, to identify the bidder whose resulting price falls within the budget. If the first deduct alternate does not produce an acceptable bid, then the second alternate should be applied, and so on, until an acceptable price and bidder is identified.
2. If alternates are employed, and the apparent low bid falls below the available budget, a similar process of applying the alternates one at a time may be employed to identify the low bidder who includes the greatest number of alternates within the available funding.
3. SHA should not use alternate prices as a way to select a preferred bidder.

B. Determining Responsiveness & Contractor Responsibility.

The next step in the contract award process is to review the low bid for responsiveness.

1. **Responsiveness.** To be considered responsive, a bid must conform to the material requirements of the IFB. The Department Director or designated staff must examine the low bid to be sure that the bidder did not alter the specifications or other terms and conditions (e.g., delivery schedules, payment terms, etc.) or attempt to impose different terms and conditions. If the bid does not conform to the solicitation, it must be rejected and the next lowest bid examined for responsiveness. Allowing a bidder to alter the material requirements of a solicitation gives the bidder an unfair advantage over the other bidders and destroys the integrity of the sealed bidding process. It also limits SHA's rights in the contract. The Department Director or designated staff shall document his/her findings regarding the low bidder's responsiveness in the procurement file. Minor informalities (see paragraph D below) are not grounds for determining a bid to be non-responsive.
2. **Responsibility.** After determining the responsiveness of the low bid, the Department Director or designated staff shall determine if the bidder is responsible. See Chapter 4, for detailed guidance on assessing responsibility.

C. Equal Bids. In the rare case when two or more low bids are equal in all respects, the award should be decided by lottery (random selection from equal bids using a lottery system).

D. Minor Informalities. The Department Director or designated staff may waive minor informalities or allow the bidder to correct them. Minor informalities are matters of form rather than substance. They are insignificant mistakes that can be waived or corrected without prejudice to the other bidders and have little or no effect on price, quantity, quality, delivery, or contractual conditions. Examples include failure to: return the number of signed bids required by the bid package; sign the bid, provided that the unsigned bid is accompanied by other documents indicating the bidder's intent to be bound (e.g., a signed cover letter or a bid guarantee); complete one or more certifications; or acknowledge receipt of an amendment or addendum, provided that it is clear from the bid that the bidder received the amendment/addendum and intended to be bound by its

terms, or the amendment/addendum had a negligible effect on price,

quantity, quality, or delivery. The determination whether to waive informalities in the bid process is entirely within the discretion of SHA.

- E. Rejection of Bids. Rejection of any bid during the evaluation process shall be fully documented, including all reasons for the rejection. Minor informalities in the bid may be waived, as described above. Any bid may be rejected if the Department Director or designated staff determines that the price is unreasonable. Determining a bid price to be unreasonable includes not only the total price of the bid, but the prices for individual items as well. Any bid may be rejected if the prices for any of the items are materially unbalanced (such as bidding a high price for the first items to be provided and then low prices for subsequent items). A bid is materially unbalanced if and when there is a reasonable doubt that the bid would result in the lowest overall cost to SHA, even if it is the lowest bid, or if the bid is so grossly unbalanced that accepting it would amount to an advance payment.
- F. Award to the Lowest Responsive and Responsible Bidder. After the Department Director or designated staff evaluates each bid, the responsive and responsible bidder that submits the bid whose dollar value is lowest overall and meets all specified requirements shall be awarded the contract. Unsuccessful bidders also should be notified in writing of the contract award.

9.5 Standardized Forms/Mandatory Contract Clauses for Contracts Utilizing Federal Funds

General. There are mandatory contract clauses required for Construction/Development Contracts, Non-Construction Contracts and Maintenance Contracts that are greater than \$250,000 as referenced in Chapter 10.

9.6 Bid Protests and Appeals

Protests against the award of contracts shall be handled as described in Chapter 22.

10.0 CONSTRUCTION, MAINTENANCE, SUPPLIES & EQUIPMENT

10.1 General

Generally, contract for construction and maintenance projects and the purchase of supplies and equipment should be selected based solely on price instead of proposals (evaluated on price and other factors). If the following criteria are met, competitive proposals should be utilized:

- A. A complete, adequate and realistic specification is available.
- B. Two or more responsible bidders are willing and able to compete effectively for the work.
- C. The project lends itself to a firm fixed-price contract, and the selection of the successful bidder can be made principally on the basis of price.

The method of procurement will depend on the expected dollar amount of the project. Please refer to Chapters 8 through 9 for thresholds and purchasing/bidding procedures.

10.2 Wage Rate Requirements

- A. Federal vs. State Prevailing Wages: The prevailing wage rates applicable to construction or maintenance projects will be determined by whether the project is funded with federal or non-federal funds. If a project is funded with both federal and non-federal funds, regardless of the amount of federal funds involved, the greater prevailing wage rate shall be applicable.
- B. Applicability of Federal Prevailing Wage Requirements: Federal prevailing wage requirements shall apply for construction and maintenance contracts of more than \$2,000.

Please refer to Chapter 14 for specific wage rate requirements.

10.3 Additionally Required Federal Contract Provisions

All Federally funded construction and maintenance contracts shall contain, where applicable, contract language required by 24 CFR 85.36(i) and as outlined in HUD Table 5.1.

- A. Mandatory Requirements for Construction Contracts greater than \$2,000 but not more than \$250,000. Staff must incorporate the clauses contained in form HUD-5370-EZ, General Conditions for Small Construction/Development Contracts, and the applicable Davis-Bacon wage decision. Form HUD-5370-EZ has been designed for small construction jobs. PHAs may use form HUD-5370 in lieu of the HUD-5370-EZ if the former is more appropriate given the nature of the work.
- B. Mandatory Requirements for Maintenance Contracts (including nonroutine maintenance work) greater than \$2,000 but not more than \$250,000. PHAs must incorporate mandatory clauses contained in Table 5.1; Section II of form HUD-5370-C, General Conditions for Non-Constructions Contracts, and the applicable HUD wage decision.

- C. Mandatory Requirements for Construction/Development Contracts (without maintenance work) greater than \$250,000. PHAs must incorporate the clauses contained in form HUD-5370, General Conditions of the Contract for Construction, and the applicable Davis-Bacon wage decision.
- D. Mandatory Requirement for Non-Construction Contracts (without maintenance work) greater than \$250,000. PHAs must incorporate the clauses contained in Section 1 of form HUD-5370-C, General Conditions for Non-Construction Contracts.
- E. Mandatory Requirements for Maintenance Contracts (including non-routine maintenance work) greater than \$250,000. PHAs must incorporate the clauses contained in Sections I and II of form HUD-5370-C, General conditions for Non-Construction Contracts.
- F. Acceptable Methods of Incorporation. PHAs may:
 - 1. Attach the Table 5.1, HUD form(s), and/or wage decisions, as printed;
 - 2. Incorporate the clauses/text of the applicable HUD form and wage decision into other documents (e.g., into the SHA's own forms) that are bound/attached to the contract (and bid specifications, if applicable) or incorporated by reference (see paragraph 3, below).
 - 3. Incorporate the clauses or HUD forms and/or any applicable Davis-Bacon or HUD wage decision by reference. The reference must be specific as to the exact clauses or form(s) that are incorporated, and where the clauses or forms(s) may be accessed or obtained (e.g., HUDClips, SHA web site). A Davis-Bacon wage decision may be incorporated by reference to www.wdol.gov and to the specific number, modification number, and date of the wage decision. HUD maintenance wage decisions are not available at HUD's web site; however, a PHA may post any applicable HUD wage decision to its own web site and reference that site. SHAs must provide hard-copies of any referenced clauses, forms, and/or wage decisions on request.

11.0 CONSULTANT SERVICES – REQUEST FOR QUALIFICATIONS (RFQ)

11.1 General

Consultants provide advice, recommendations, reports, analysis, evaluations, audits, surveys or other products of cognitive processes or expert or professional services. Procurement of expert or professional services will be generally completed using the RFQ process outlined below.

For the purpose of these Policies, Consultants providing architectural, engineering, landscape architectural or land surveying services are considered as A & E Consultants, addressed separately below in Section 11.4 below.

11.2 Distinguishing Characteristics Between A & E Work and Non-A&E Work

Because price may not be used as a criterion for the selection of consultants performing A&E Work, and price must be used as one criterion for selection of consultants performing other work, it is important to distinguish what work is A&E work and what is non-A&E work. It is to SHAs advantage to use price as one criterion for selection of consultants when permitted. This helps to ensure that the authority is obtaining the most value for its money and represents good public policy. The definitions regarding the practice of each profession is outlined in State law and also found in the definitions section of these Policies.

Issues to Consider in Making a Determination: Generally, distinguishing between A & E work and non-A&E work is based on the following:

- If State law does not require that the work in question be performed by someone licensed or registered in one of the four professions cited above, then the work must be classified as non-A&E work and price must be used as an evaluation criterion.
- If State law requires that the work in question be performed by someone licensed or registered in one of the four professions cited above, then the work should be considered as A&E work and price may not be used as an evaluation criterion.

The mere fact that the scope of services for a particular contract is likely to be performed by, or may be performed by, someone who is licensed or registered in one of the four professions cited above does not mean that the work is A & E work. In order for it to be considered A&E work, the type of service SHA is seeking must be required by State law to be performed by someone licensed or registered in one of these four professions. As an example, if the design of something requires the stamp of a licensed engineer, then the work must be performed by an engineer.

11.3 Non Architectural and Engineering Professional Services/ Consulting Contracts

- A. General. Competitive proposals for professional services/consulting other than architect and engineering services (i.e., legal services, accounting, etc.) that require products of cognitive processes or expert or professional services shall generally be procured through competitive proposals utilizing a Request for Qualifications (RFQ) process.
- B. Evaluation Criteria. Evaluation criteria shall be included in the informal solicitation, along with the weighting to be assigned to each criterion.
 1. Price must be used as an evaluation criterion.

2. Evidence of the firm's ability to perform the work as indicated by the profiles of the principals' and staffs' professional and technical competence/ experience, and their facilities;
3. Capability to provide professional services in a timely manner;
4. Past performance in terms of cost control, quality of work, and compliance with performance schedules;
5. The geographic location of Consultants submitting qualifications may be used as an evaluation criterion provided that its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract; and
6. Other factors determined to be appropriate by the Contracting Officer.

Submittals will be reviewed and scored based only on the established criteria.

C. Analysis and Contract Award

1. SHA shall enter into negotiations for fair and reasonable compensation with the highest ranked Consultant in an effort to execute a Contract. In the event that negotiations are unsuccessful, SHA may proceed to negotiate with the next highest ranked Consultant.
2. The Department Director shall ensure that an adequate and sufficient Price Analysis is conducted that demonstrates the reasonableness of the proposed contract amount (See Chapter 6 of these Policies for further information on price reasonableness). The Analysis must be in writing for all contracts of \$100,000 or more.
3. Contracts shall normally either be based on a fixed-price or a cost-reimbursement model.

D. Solicitation. A written RFQ shall be issued which specifies all evaluation factors and their relative importance, contractual terms and conditions and any requisite qualifications of the contractor. The RFQ shall request that offerors furnish estimates of man-hours or costs for services. Price shall be used as a selection factor in all submissions for professional/consulting services (except A & E), regardless of the estimated value of the contract. Offerors are required to submit cost proposals breaking down the elements of their proposed costs at the discussion phase. A mechanism for fairly and thoroughly evaluating proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure to third parties 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 RFQ.

E. Process. SHA then opens negotiations with the top-ranked firm with intentions to reach agreement on a fair and reasonable price. If agreement cannot be reached, SHA terminates negotiations with this firm and proceeds to the next-highest rated firm until a price determined to be fair and reasonable to both parties is obtained. Once negotiations have been terminated with a firm, SHA may not go back to that firm for additional negotiations – even if the next lower ranked respondent is higher in price.

F. Consulting/Professional Services Micro/Small Purchases. Purchases of Professional Services other than Architectural, Engineering and Land-surveying with a value less than \$100,000.

G. Consulting/Professional Services Large Purchases. Purchases of Professional Services other than Architectural, Engineering and Land-surveying with a value more than \$100,000,.

1. General. A formally advertised qualifications-based selection method is utilized to obtain Consulting/Professional Services that are expected to cost more than \$100,000. This is accomplished by using a Request for Qualifications (RFQ). The RFQ method selects the highest-ranked respondent on technical factors and then negotiates price.
2. Formal Solicitation Requirements.
 - a. RFQs for Consulting/Professional Services will be publicly advertised in the local newspaper. RFQs will be advertised at least once per week for two consecutive weeks.
 - b. RFQs for Consulting/Professional Services will be posted on the SHA website.
 - c. It is the policy of SHA to encourage the use of WMBEs as vendors.
 - d. Generally, it is expected that RFQs will be advertised and available for review by vendors for 25 calendar days before bids are due. However, dependent upon the particular procurement, the Executive Director or Deputy Executive Director may determine that adequate completion and preparation and submission of bids may be accomplished in a shorter period of time, and the 25 calendar day guideline may be adjusted appropriately.
3. Inadequate Response to Consulting/Professional Formal Solicitation. If SHA receives fewer than three proposals, staff should analyze and document the reasons for the inadequate response (such as if public notice advertising and outreach to potential offerors were insufficient, or if the solicitation was unduly restrictive or vague). Depending on the results of the analysis, SHA may reject the proposals and issue a revised solicitation, or SHA may proceed to evaluate the proposals as deemed appropriate. If only one responsive proposal was received, SHA should follow the procedures described in Chapter 12.

H. Mandatory Forms/Contract Provisions. SHA must include with the solicitation/bid package the following mandatory forms, which contain all mandatory contract provisions. (Note: the forms listed below assume that competitive proposals are used for procuring non-construction services. Only under limited circumstances would construction services be procured by competitive proposals.)

1. Form HUD-5369-B, Instructions to Offerors – Non-Construction.
2. Form HUD-5369-C, Certifications and Representations of Offerors – Non-Construction Contract.
3. In addition, SHA may want to include with the solicitation Form HUD-5370-C, General Conditions for Non-Construction Contracts.
4. Additional Requirements for Legal Services Involving Federal Funds. Outside legal services procurement is subject to the requirements set forth in [24 CFR Part 85](#), "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," in particular, in [24 CFR Part 85.36](#). In accordance with [24 CFR Part 85.22](#), the costs of legal services incurred under HUD grants (including those obtained under contract) must be reasonable and necessary. Section 85.22(b) incorporates the 2 CFR Part 225, which contains a set of cost principles that SHAs must use for determining the allow-ability of costs they incur under Federal grants and provides guidance in their use. Contracts for litigation

services are also to meet the requirements of the HUD Litigation Handbook 1530.1 REV-5 dated May 2004 (the "Litigation Handbook"). HUD's Litigation Handbook should be consulted for other specific requirements for litigation service contracts where the fee is expected to exceed \$250,000.

11.4 Architectural and Engineering Services (A&E)

- A. General. Architectural & Engineering (A & E) Consultant Services are a subset of Consultant Services. The primary distinction between the two is that cost may not be used as an evaluation criterion when selecting a firm for performing A & E work. Instead, consistent with the requirements of [RCW 39.80](#) and [24 CFR 85.36\(d\)\(3\)\(v\)](#), the evaluation criteria must be limited to factors that relate to a Consultant's qualifications and competence to perform the desired work. SHA must select the most highly qualified A & E Consultant to provide the services.
- B. Disciplines Covered. Consistent with [RCW 39.80](#), the following four disciplines are included in the category of A&E Consultant Services, regardless of whether the project is funded with federal or non-federal funds:
 - 1. Architecture
 - 2. Engineering
 - 3. Landscape Architecture
 - 4. Land Surveying
- C. Evaluation Criteria. Evaluation criteria shall be included in the informal solicitation, along with the weighting to be assigned to each criterion.
 - 1. Price may not be used as an evaluation criterion.
 - 2. Evidence of the A & E's or firm's ability to perform the work as indicated by the profiles of the principals' and staffs' professional and technical competence/ experience, and their facilities;
 - 3. Capability to provide professional services in a timely manner;
 - 4. If design work is involved, evidence that the A & E is currently registered in the State of Washington and carries Errors and Omissions Insurance (Note that this is a yes or no criterion: if the answer is no, the firm is disqualified, not point-scored)
 - 5. Past performance in terms of cost control, quality of work, and compliance with performance schedules;
 - 6. Demonstrated knowledge of local building codes and Federal building alterations requirements (if a federally funded project);
 - 7. The geographic location of A & E Consultants submitting qualifications may be used as an evaluation criterion provided that its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract; and
 - 8. Other factors determined to be appropriate by the Contracting Officer.

Submittals will be reviewed and scored based only on the established criteria.

D. Analysis & Contract Award

- 1. SHA shall enter into negotiations for fair and reasonable compensation with the highest ranked A & E Consultant in an effort to execute a Contract. In the event

- that negotiations are unsuccessful, SHA may proceed to negotiate with the next highest ranked Consultant.
2. The Department Director shall ensure that an adequate and sufficient Price Analysis is conducted that demonstrates the reasonableness of the proposed contract amount (See Chapter 6 of these Policies for further information on price reasonableness).
 3. Contracts shall normally either be based on a fixed-price or a cost-reimbursement model.
- E. Procedure. SHA requests technical qualifications statements from prospective firms and then ranks the statements according to their qualifications as related to the project. SHA then opens negotiations with the top-ranked firm with intentions to reach agreement on a fair and reasonable price. If agreement cannot be reached, SHA terminates negotiations with this firm and proceeds to the next-highest rated firm until a price determined to be fair and reasonable to both parties is obtained. Once negotiations have been terminated with a firm, SHA may not go back to that firm for additional negotiations – even if the next lower ranked respondent is higher in price.
- F. State Requirement to Advertise A & E. [RCW 39.80](#) requires that A & E Consultant services be advertised, either specifically or generally, regardless of the dollar amount.
- G. Federal Contract Provisions. All Federally funded A & E contracts shall contain, where applicable, contract language required by 24 CFR 85.36(i) and as outlined in HUD Table 5.1.
- H. Forms for A & E Contracts. The form HUD-51915, Model Form of Agreement Between Owner and Design Professional, is required for use for all A & E contracts involving HUD funds that exceed \$250,000.
- I. Prohibition on “no fee” basis. SHA is not to allow an A & E contractor, on a sole-source basis, to prepare a grant (or development application) on a “no fee” basis and then compensate that A & E by paying a contingent fee (or contracting on a sole-source basis to do the design and construction phases).
- J. A & E SHA Micro/Small Purchases Procedures. [RCW 39.80](#) requires that all A & E Consultant services be advertised; therefore ***ordinary Micro and Small Purchase Procedures do not apply to A & E Contracts***. See Sections below for A & E Contracting procedures based on contract amount.
- K. A & E Large Purchases - Purchase of Professional Services for Architectural, Engineering and Land-surveying, by Request for Qualifications.
1. General. A formally advertised qualifications-based selection method is utilized to obtain A & E services. This is accomplished by using a Request for Qualifications (RFQ). The RFQ method selects the highest-ranked respondent on technical factors and then negotiates price.
 2. Formal Solicitation Requirements.
 - a. RFQs for A & E Services will be publicly advertised in the local newspaper. RFQs will be advertised at least once per week for two consecutive weeks.
 - b. RFQs for A & E Services will be posted on the SHA website.

- c. It is the policy of SHA to encourage the use of WMBEs as vendors.
- 3. Inadequate Response to A & E Formal Solicitation. If SHA receives fewer than three proposals, staff should analyze and document the reasons for the inadequate response (such as if public notice advertising and outreach to potential offerors were insufficient, or if the solicitation was unduly restrictive or vague). Depending on the results of the analysis, SHA may reject the proposals and issue a revised solicitation, or SHA may proceed to evaluate the proposals as deemed appropriate. If only one responsive proposal was received, SHA should follow the procedures described in Chapter 12.2.
- L. Alternative Methods of Selecting A & E Firms. There are several alternatives available to contract for the full range of services offered by A & E firms:
 - 1. A “full-service” approach may be used if SHA solicits offers using RFQ proposal procedures or for assistance in preparing modernization plans, with options for the follow-on design and construction phases for a specific contract. The evaluation criteria in the solicitation should address the qualifications and experience of prospective A & E firms for all tasks. If RFQ is used, SHA evaluates the qualification statements for technical competence, selects the best-qualified A & E, and negotiates a fair and reasonable price for the initial task. (If agreed by the A & E and SHA, the contract may stipulate that in the event that phase I is not approved, the A & E is not entitled to any payment.)

SHA specifies the optional task (design/construction) in the contract without a price because the full scope of the A & E services is not yet known.

If SHA then wishes to exercise its option for the additional services, SHA notifies the A & E accordingly and requests a design proposal. SHA conducts a cost/price analysis, enters into negotiations, and establishes a mutually acceptable price for the design and construction phases. SHA prepares a contract modification, executed and signed by both parties authorizing the A & E to begin the design/construction phase, or SHA has no further obligation to the A & E and may issue a new competitive solicitation for the follow-on work.

With the exception of the full-service approach, described in paragraph 11.4.L.1 above, SHA should determine whether or not there is an actual or potential conflict of interest resulting from the same A & E who was involved in the phase I being subsequently involved in the related design/construction phase work.

- 2. If SHA wishes to separate phase I from the design/construction phase, SHA first solicits and contracts for phase I. Then, after phase I approval, SHA solicits and contracts for the design/construction phase. The A & E who was awarded phase I may compete for the design/construction phase, provided that SHA makes all application-related information available to all competing A & E firms and that there is no organizational conflict of interest. (For example, award of the contract to the A & E who developed the plan would result in an unfair competitive advantage because, by virtue of doing phase I work, an unfair advantage exists through information which might not be available to others).
- 3. If SHA wishes to procure A & E services for more than one specific project, SHA may solicit for an indefinite-quantity of A & E services, e.g., design of various administrative or maintenance buildings, where separate orders would be placed for

each building as the need arises. Because this approach may provide the successful A & E with a substantial level of business and basically confers status as the "resident A & E," the contract should contain a clause precluding the successful A & E from competing on related A & E work solicited by SHA during the term of the contract if the other A & E work would result in an organizational conflict of interest (such as unfair competitive advantage or impairment of contractor objectivity).

12.0 NON-COMPETITIVE PROCEDURES

12.1 Restricting Competition Prohibited

Procurement practices that restrict competition are prohibited. Examples of such practices, cited in 24 [CFR 85.36\(c\)\(1\)](#), include the following:

- A. Unreasonable Requirements: Placing unreasonable requirements on firms in order for them to qualify to do business.
- B. Experience and Bonding: Requiring unnecessary experience and excessive bonding.
- C. Non-Competitive Pricing Practices: Non-competitive pricing practices between firms or between affiliated companies.
- D. Certain Retainer Contracts: Non-competitive awards to consultants that are on retainer contracts.
- E. Conflict of Interest: Organizational conflicts of interest.
- F. Brand Name Specificity: Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement.
- G. Arbitrary Actions: Any arbitrary action in the procurement process.

12.2 Permissible Non-Competitive Procurements

In certain instances and situations, the procurement of goods and services without adequate competition is permissible:

- A. Sole Source: The service or item is available only from a single source, based on a documented good faith review of available sources (see 24 [CFR 85.36\(d\)\(4\)\(i\)\(A\)](#)).
- B. Emergency: An emergency exists that seriously threatens the public health, welfare, or safety, endangers property, or would otherwise cause serious injury to SHA, as may arise by reasons of a flood, earthquake, epidemic, fire, riot, equipment failure, or similar event, and the needs will not permit a delay resulting from competitive solicitation.
- C. Inadequate Competition: After solicitation from a number of sources, only a single response is received, or competition is determined to be inadequate.
- D. HUD Authorization: HUD has authorized a non-competitive process (see 24 [CFR 85.36\(d\)\(4\)](#)).

12.3 Justifications

- A. Selection: Department Directors shall submit in writing to the Executive Director or Deputy Executive Director a recommendation justifying the reasons why competitive selection requirements should be waived.

- B. Price Reasonableness: Consistent with the Requirements of Chapter 6 of these Procurement Policies, Department Directors are responsible for ensuring that a price analysis is prepared for all non-competitive procurements in order to ensure that the proposed price is reasonable.
- C. Emergency Contract Awards:
1. ALTERNATIVE: If an emergency exists, the Executive Director or Deputy Executive Director may declare an emergency situation exists, waive competitive bidding requirements, and award all necessary contracts on behalf of SHA to address the emergency situation. If a contract is awarded without competitive bidding due to an emergency, a written finding of the existence of an emergency must be made and duly entered of record no later than two weeks following the award of the contract ([RCW 39.04.280](#)).
 2. If SHA determines that the "emergency" work necessary is any public work, and shall be executed by any means or method other than by contract or by a small works roster process, and it appears that the estimate of the work will exceed the sum of twenty-five thousand dollars (\$25,000), then SHA shall publish a description and estimate of the work within seven days after the commencement of the work a major local newspaper or trade publication ([RCW 39.04-020](#)).

13.0 SPECIFICATIONS AND STATEMENTS OF WORK

13.1 General

This chapter describes the development of specifications and statements (or scopes) of work, along with their uses. Properly prepared or described specifications and statements of work (1) enhance competition, and (2) clarify the relationship between the contractor and SHA, resulting in improved contract administration.

13.2 Specifications

- A. **Definition.** A specification is a detailed description of materials, supplies, services, equipment or construction work that is used in the procurement process to tell prospective contractors precisely what SHA desires to purchase.
- B. **Specification Types.** Three general types of specifications are used in preparing contracts for equipment, supplies, services, or construction. While these general types are described below, it is rare to find specifications that fit completely into just one of these categories. Most specifications contain a combination of design and performance requirements and may include brand name or equal descriptions of components.
 1. **Functional or Performance Specifications.** These specifications contain performance characteristics that are desired for the item or that identify how the item functions. The detailed design or exact measurements are not stated. Performance specifications state the overall requirements so that each contractor may furnish its own item to meet the required performance.
 2. **Design Specifications.** Design specifications contain a description of the item desired as opposed to performance standards. Design specifications may be as detailed as needed. Depending on the nature of the item, the design specifications may contain precise measurements, tolerances, materials, product tests, quality control, and other detailed information, provided competition is not being limited to one product. The information furnished in the specification should be sufficiently detailed to ensure that all items manufactured to the specifications will be virtually the same. A detailed description of kitchen cabinets, giving dimensions, fastening details, materials, and hardware, is one example of this type of specification.
 3. **Brand Name or Equal Specifications.** Under this form of specification, clear and accurate product descriptions are developed. These descriptions shall not contain features that unduly restrict competition. It may be necessary to describe technical requirements for materials and equipment by referencing brand name products in order to define performance or other salient requirements. References to brand names shall be followed by the words "or equal" and a description of the item's essential characteristics so that competition is not restricted.

Specific brand names may be used only for establishing design and quality standards and only if there is no other reasonable method of designating the required quality of the item desired. When brand names or catalog numbers are used, inform the offerors that such references establish only design or quality standard; in fact, any other products that clearly and demonstrably meet the standard are also acceptable.

- C. **Standardizing Inventory.** As stated above, SHA must comply with procurement standards

that requires full and open competition and prohibits using specifications that

unduly restrict competition. To standardize the SHA's inventory, specifications or descriptions that use brand names may be used only when accompanied by the term "or equal." The specific features of the product (design, functional, or performance) that are essential in order to be considered "or equal" shall be clearly stated. In addition to the brand name product specified, any other product that meets the same technical requirements shall be given full and fair consideration.

In all cases, SHA should give all offerors the opportunity to present reasons or data showing that their product can meet the stated requirements. Descriptions or specifications shall not be written to specify a particular product or feature of a product particular to one manufacturer unless that feature or product is critical to the intended use.

- D. Avoiding Manufacturers Specifications. Avoid incorporating a particular manufacturer's specification as the project specification. This may give the appearance of restricting competition and suggest that other manufacturers' products are at a disadvantage and may not be accepted. If SHA specifies a brand name cabinet, the essential key elements or features of the product should be stated. For example, if specifying kitchen cabinets with the key features of solid wood doors and plywood frames, then many available brands and styles of cabinets will meet the key criteria. Therefore, all of these brands should be acceptable.
- E. Contractor-Developed Specifications. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors funded to develop or draft specifications, requirements, statements of work, invitations for bid, or requests for proposals shall be excluded from competing in the procurement. The only exception to this rule is if, prior to the solicitation, all respondents to solicitations are provided with materials and information made available to the contractor involved in matters pertinent to the solicitation.

13.3 Statement of Work (SOW)

A statement or scope of work (SOW) is normally used for contracts for services, such as accounting or payroll services, energy audits, consultant, legal or A & E services, as well as non-professional services such as maintenance and grounds keeping.

- A. Purpose and Functions of the SOW. The primary purpose of a SOW is to provide a basis for mutual understanding between SHA and the offeror and subsequent contractor of SHA's requirements.
 - 1. The adequacy and detail of the SOW may affect the number of offerors who are willing and able to respond. If the SOW is not specific enough, some may not respond, either because of uncertainty about the risks involved or because they may not understand the relationship of the requirement to their own particular capabilities.
 - 2. The clarity and specific detail of the requirements presented in the SOW directly relate to the amount of the offer and the quality of the proposals submitted.
 - 3. Under the competitive proposals method, the SOW establishes conclusive baseline tasks that are the foundation for sound evaluation criteria. The SOW plays a significant role in the proposal evaluation and contractor selection process.

4. The SOW also becomes the standard for measuring contractor performance. When a question arises over an apparent increase in the scope of the work to be performed, the SOW is the baseline document for resolving the question. Negotiation of cost and schedule modifications will be impaired, if not rendered impossible, if the SOW is not definitive in these areas. (Alternately, some solicitations may include the actual contract, which is summarized or referenced in the statement of work.)
- B. Elements of the SOW. The particular issues to be addressed in a SOW will vary with the nature, purpose, size, and complexity of the work. At a minimum, every SOW should include:
1. Detailed work and task requirements;
 2. End results and deliverables, including the criteria which a deliverable must meet to be considered acceptable;
 3. Delivery schedules/period of performance;
 4. Any reporting and compliance requirements;
 5. A precise statement of the objectives;
 6. Contact information for SHA contact person/contract administrator; and
 7. Other special considerations (warranties, personnel and required classifications, testing procedures, procedural safeguards, etc.)

14.0 WAGE RATE REQUIREMENTS

14.1 Labor Standards and Wage Rates for Contracts Involving Federal Funds

- A. General. All laborers and mechanics (including apprentices), involved in the Department of Housing & Urban Development construction contracts in excess of \$2,000 must be paid wages in accordance with Federal Labor Standards issued pursuant to the Davis-Bacon Act by the Department of Labor (DOL). In addition, the overtime requirements of the Contract Work Hours and Safety Standards Act are applicable to construction contracts in excess of \$250,000. See, also, DOL regulations at [29 CFR Parts 1, 3 and 5](#). Additional information about labor standards administration and enforcement is contained in [HUD Handbook 1344.1 REV-3](#).
- B. Solicitations and Contracts. Solicitations and contracts subject to Davis-Bacon wage requirements must contain the applicable wage decision and labor standards provisions. Davis-Bacon Wage Decisions can be obtained at no charge from a DOL-approved web site at: www.wdol.gov.
- C. Enforcement. SHA is responsible for the administration and enforcement of labor standards requirements as provided in [HUD Handbook 1344.1 REV-3](#), [Labor Relations Letter 2004-01 revision 1] and as required by DOL regulations applicable to Davis-Bacon covered work ([29 CFR Part 5](#)). These activities include:
1. Posting Wage Rates. SHA must ensure that a copy of the applicable Davis-Bacon wage decision and the DOL poster *Notice to All Employees (WH-1321)* are displayed at the job site in a place accessible to all laborers and mechanics and placed in an area that is protected from inclement weather. The [WH-1321](#) poster is available through HUDClips or directory at DOL's web site at: www.dol.gov/esa/programs/dbra/forms.htm
 2. On-site Interviews. SHA is responsible for conducting interviews with the laborers and mechanics on the jobsite to determine if the work performed and wages received are consistent with the job classifications and wage rates contained in the applicable wage determination and the classifications and wages reported by the employer on certified payrolls. On-site interviews are documented on form [HUD-11](#), Record of Employee Interview.
- D. Recordkeeping. SHA shall retain all payroll reports and statements of compliance for three years from the date of contract completion and acceptance by SHA, or from the date of resolution of any standards issues outstanding at contract completion.
- E. Exclusions for Professional Service Contracts. Contracts for certain professional services are excluded from coverage by HUD-determined (or HUD-adopted) prevailing wage rates. These exclusions include: Periodic inspections or testing of equipment without repairs; testing for lead-based paint; warranty inspections; installation, service or maintenance of leased equipment, fixtures or appliances; and installation, inspections, maintenance or service on equipment or fixtures which are owned by a utility. Examples include, but are not limited to, local code or performance inspections of elevators or escalators, gas lines or equipment, or fire hydrants or water lines; inspections or routine servicing of fire

extinguishers, smoke detectors, security systems, boilers, heating systems, water heaters, air conditioners, water testing or treatment; soil testing or treatment; energy use or conservation analyses; routine garbage removal; and pest control (without attendant repairs).

- F. Guidance on Federal Labor Standards Requirements. Additional guidance on Federal labor standards is available on the Office of Labor Relations web site at: www.hud.gov/offices/olr. This web site offers the latest in HUD policy guidance and instructional materials regarding labor standards, including two guides concerning Davis-Bacon, *Making Davis-Bacon Work: A Practical Guide for States, Indian Tribes and Local Agencies* and *A Contractor's Guide to Prevailing Wage Requirements*, and Labor Relations Letters. The web site also includes HUD's Regional and Field Office Labor Relations Staff as well as links to other related web sites.

14.2 State Prevailing Wage Requirements

- A. General. Payment of prevailing wages under [Chapter 39.12 RCW](#) in Washington State applies to SHA for public works contracts accomplished through:
- Competitive bidding or the small works roster;
 - Smaller public works contracts for which telephone quotes were secured or for which the contractor was simply chosen for any number of good reasons
 - Maintenance contracts of any nature and for any amount

B. State Prevailing Wage Rate Principals

For construction and maintenance contracts of any dollar amount, basic prevailing wage principles are these:

1. Contractor must be told in advance that prevailing wages must be paid to all employees who work on the contract.
2. Contractor must be given a copy of the prevailing wages in effect for the contract.
3. Contractor must file a [Statement of Intent to Pay Prevailing Wages](#) with the Industrial Statistician of the Department of Labor and Industrial Services (DLIS). SHA must have a copy of the DLIS-approved Statement of Intent before it can make payments under the contract.
4. After completion of the contract, the contractor must file an Affidavit of Wages Paid with the Industrial Statistician of the Department of Labor and Industrial Services (DLIS). SHA must have a copy of the DLIS-approved Affidavit before it can release the contract retainage.

15.0 SMALL WORKS ROSTER

15.1 General.

SHA's may establish a Small Works Roster under the authority of [RCW 39.04.155](#). The SHA may also utilize MRSC Rosters, a shared statewide small public works and consultant roster service used by many Washington local public agencies as an affordable and convenient alternative to maintaining its own roster.

15.2 When to Use Small Works Roster.

SHA may use the MRSC roster for maintenance, construction, and consulting contracts expected to be \$250,000 or less. To be considered for Small Works maintenance, construction and consulting contracts with SHA, firms must join the Roster at <http://www.mrscrosters.org/>.

- A. Micro Purchases (\$10,000 and less, \$2,000 and less for Federally funded construction/maintenance projects). For purchases and/or contracts estimated to cost less than \$10,000, it would not be required to solicit bids from more than one contractor, provided that a qualified contractor is selected from the Small Works Roster and that a reasonable price is negotiated for the work. Solicitation opportunities must be "equitability distributed" among the contractors on the Small Works Roster.
- B. Small Purchases (\$10,001 - \$250,000, \$2,001 - \$250,000 for Federally funded projects). To ensure adequate and sufficient competition in obtaining construction and maintenance services, all of the contractors on the appropriate Roster category must be solicited.
- C. Advertisement: Consistent with the requirements of State law, MRSC Rosters publishes an advertisement twice per year inviting contractors to apply for the Roster. This advertisement would identify SHA as a participating Agency.
- D. Contractor Registration: Contractors may apply for the MRSC Roster anytime during the year at <http://www.mrscrosters.org/>.
- E. Listing of Contracts Awarded: SHA would be required to post a list of the contracts awarded under the Small Works Roster process at least once every two months ([RCW 39.04.200](#)). The list would contain the name of the contractor or vendor awarded the contract, the amount of the contract, a brief description of the type of work performed or items purchased under the contract, and the date it was awarded. The list would also state the location where the bid quotations for these contracts were available for public inspection. Department Directors would include Small Works roster awards/contracts in their monthly report to the Executive Director and the list would then be assembled and posted on the SHA website by the Executive Assistant.

16.0 BONDING & RETAINAGE REQUIREMENTS

16.1 General.

Both State and Federal law outline specific requirements for bid guarantees, bonding and retainage involving SHA contracts for construction, building, renovation, remodeling, alteration, repair, improvement of real property, or equipment. State requirements are found under [RCW 39](#) and [RCW 60](#) while the Federal requirements are found in [HUD Procurement Handbook](#). Because the state requirements vary, this policy is modeled to follow the most stringent in the guidelines.

16.2 Bid Guarantee.

Specifications/bidding documents for contracts exceeding \$150,000 for construction, building, renovation, remodeling, alteration, repair, improvement of real property, or equipment shall indicate that bidders must submit a bid guarantee (also known as a bid bond) with their bid in an amount of not less than five percent of the amount bid.

16.3 Bonding.

RCW 39 requires that SHA must call for a performance and payment bond for contracts exceeding \$150,000. It is to be conditioned that the contractor shall faithfully perform all of the provisions of such contract and pay all laborers, mechanics, and subcontractors and material suppliers, and all persons who supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work.

- A. Contract Bond. Specifications shall require the successful contractor to submit a Payment and Performance Bond (Contract Bond) or a separate Payment Bond and a separate Performance Bond, in the amount of 100% of the awarded contract amount; provided, however, consistent with [RCW 39.08](#), that SHA may waive the requirement for obtaining a Payment and Performance Bond for a project estimated to cost less than \$150,000 if SHA retains 10% of the contract price within 30 days after final acceptance.
- B. Bonding Companies. An acceptable surety (bonding) company is one that is authorized to do business in the State of Washington and acceptable to SHA. The surety must be listed on the most recently published U.S. Treasury Circular 570 (often referred to as the T-List). Individual sureties are not permitted. Circular 570 is available from the U.S. Department of the Treasury, Financial Management Service, Surety Bond Branch Room 262C, 401 14th Street, S.W., Washington, D.C. 20227. The T-List may also be accessed on the Internet at: <http://www.fms.treas.gov/c570/index.html>.
- C. Inadequate Surety. If the low bidder fails to provide an acceptable assurance of completion (payment and performance bonds) after award of the contract, SHA should consider the bid guarantee forfeited and notify the surety company. The contract is then terminated for default. The amount to be recovered from the bid bond or guarantee should equal at least the difference between the defaulted bid and the next higher acceptable bid or the amount by which the bid accepted by re-soliciting exceeds the defaulted contract.

- D. **Federal Requirement.** HUD-5369 must be included in all specifications for construction, building, renovation, remodeling, alteration, repair, improvement of real property, or equipment involving HUD funding.

16.4 Retainage.

Consistent with the requirements of [RCW 60.28](#), SHA shall withhold retainage from the contractor in the amount of 5% of each payment to the contractor, provided, however, consistent with [RCW 39.04.155](#), that SHA may waive the requirement to withhold retainage for a project estimated to cost less than \$35,000. As an alternative to withholding retainage, State law permits the contractor to submit a bond in lieu of retainage. This money is to be set aside to fund claims from any person arising under the contract; and the state with respect to taxes imposed pursuant to RCW 50 (Employment Security), RCW 51 (Industrial Insurance), and RCW 82 (Department of Revenue) which may be due from such contractor.

- A. **Project Completion/Closeout.** After the completion of all contractor work, the contractor may request that the agency release the retainage. The SHA must release the funds within 60 days of this request. This requirement, however, is subject to potential claims by DOR, ESD and DLIS, so SHA is not bound to the 60 days unless releases from these agencies are on file.

17.0 DIRECT PAYMENTS LIST

17.1 Definition

The Direct Payments list (also known as Competitive Exceptions) is a list of transactions which, by the nature of the transaction, are impractical or impossible to competitively bid because of market or other conditions and are thus exempt from competitive bidding requirements. These transactions do not have to be justified as a Non-Competitive Procurement (see Chapter 12) but may be obtained directly by an employee with adequate expenditure authority. Depending on the item, there may or may not be a contract or purchase order outlining the terms and conditions.

17.2 Modifications to Direct Payments List

The Executive Director or Deputy Executive Director may make modifications administratively to the Direct Payments list without seeking approval of the Board of Commissioners, provided that the charges are consistent with applicable statutory and regulatory requirements and that the current list is made readily available to SHA employees.

17.3 Interpretation of Direct Payments List

In the event of ambiguity or uncertainty as to whether an item is or is not subject to competition and whether it should be included on the Direct Payments List, the Executive Director or the Deputy Executive Director shall review the matter and make the final decision.

17.4 Direct Payments List

The following items are on the Direct Payments List:

- A. Utility bills (water, sewer, electricity, natural gas, and other regulated utility expenses).
- B. Postage and other purchases from the U.S. Postal Service.
- C. Licenses, permits, and fees from governmental or regulatory entities at the federal, state, or local level.
- D. Purchases from other governmental entities (federal, state, city, local, port districts, public development authorities, housing authorities, state colleges and universities, state hospitals, etc.) where the governmental entity provides goods or services not available from the private sector.
- E. Emergency housing for SHA residents at motels/hotels with which SHA has executed an Emergency Housing Agreement, or as otherwise authorized by the Executive Director or Deputy Executive Director.
- F. Service or use fees paid to governmental cooperative purchasing organizations.
- G. Fuel card charges for gasoline and diesel.
- H. Charges for official SHA business on personal credit card while on SHA travel status.
- I. Legal services such as arbitration fees, litigation fees, witness fees, court costs and related expenses (but not the cost of outside counsel, investigations, or related matters).

- J. Legal settlements of disputed matters, and judgment claims against SHA (for use only with approval of Board of Commissioners).
- K. Payments for existing annual maintenance, service, or support agreements for computer and telecommunication-related services. Payments for existing software license agreements. These require the approval of the Finance Director.
- L. Traffic control (flagging) by off-duty police officers (only when required).
- M. Travel expenses for SHA employees, residents, program participants, volunteers or members of the Board of Commissioners necessary to conduct SHA business.
- N. Training registration fees and tuition for pre-established, non-SHA specific, off-site classes, seminars, workshops, etc. for SHA employees, residents, program participants, volunteers, and members of the Board of Commissioners.
- O. Testing and travel expenses of employment applicants (including moving expenses for eligible personnel). This includes travel expenses of certain out-of-state job applicants. Travel expenses of job applicants must be approved by the Executive Director or Deputy Executive Director.
- P. Conference and convention expenses and fees for SHA employees, residents, program participants, volunteers, or members of the Board of Commissioners conducting SHA business.
- Q. Advertisements for employment opportunities, purchasing and contracting solicitations, sale of surplus items, public announcements and outreach, etc. (all media). This exception does not include printing, design, or graphics services.
- R. Freight bills, express shipping, common carriers, and delivery services.
- S. Entertainment such as speakers, lecturers, musicians, performing artists. Only when such expenses are permitted by the grant funding the activity.
- T. Insurance deductible and/or retained losses (requires approval of the SHA Executive Director or Deputy Executive Director).
- U. Taxi, public transportation, and toll fares; mileage and incidental parking expenses.
- V. Publications and subscriptions (newspapers, magazines, books, pre-printed materials, reprints, publishers page charges, electronic publications, online subscription services, pre-recorded audio or video cassettes, slide presentations, tapes, CDs, diskettes when purchased from the publisher or producer, etc.).
- W. Mailing lists (print or electronic).
- X. Professional association membership dues, fees, licenses, accreditation, and certifications.
- Y. Special items pre-approved by the Executive Director or Deputy Executive Director.

18.0 COOPERATIVE INTERGOVERNMENTAL AGREEMENTS

18.1 General Policy

In order to promote efficiency and competition in the procurement of goods and services, SHA may enter into agreements with other governmental agencies and regional or national intergovernmental purchasing networks or associations. The purpose of a cooperative intergovernmental agreement is to take advantage of a competitive selection process already conducting its own selection process. In evaluating the use of a cooperative intergovernmental agreement, the Executive Director or Deputy Executive Director shall review for reasonableness the standards in the competitive selection process conducted by the other agency. Intergovernmental cooperative agreements shall comply with the requirements of Chapter 39.34 RCW.

18.2 Government Competition with Private Sector

SHA may enter into an intergovernmental agreement with another government agency to procure goods and services when the agency provides goods or services not available from the private sector. In the event the private sector also offers such goods or services, the Executive Director or his/her designee shall evaluate on a case-by-case basis what would be in the best interests of SHA, and whether to contract directly with the agency or to conduct a competitive selection process.

19.0 DIVERSITY IN CONTRACTING

19.1 General Policy

- A. Diversity in Contracting Encouraged: The Spokane Housing Authority will take affirmative steps and encourage the use of women- and minority-owned business (WMBEs), businesses owned by economically disadvantaged persons, and small businesses as contractors, subcontractors, consultants, and service providers.
- B. Participation by WMBEs: In reporting participation by WMBEs on SHA contracts, generally, SHA will consider as WMBEs businesses that have been certified by appropriate agencies, although, where appropriate, SHA may also consider businesses WMBEs that it can verify from available information to be owned by women or minorities.
- C. HUD Section 3 Requirements: SHA will comply with Section 3 of the Housing Act of 1968, as amended by Section 915 of the Housing and Community Development Act of 1992, regarding use of Section 3 certified businesses and Section 3 eligible individuals ([24 CFR 135](#)). SHA may reference the HUD's Section 3 Business Registry web page @ www.hud.gov/Sec3biz in order to solicit potential businesses for a project, although the business must be verified as a Section 3 business regardless of its listing on the web site. SHA will provide a preference to Section 3 businesses in the award of contracts, regardless of the funding source, as described below.
1. In awarded contracts based on bids (where price is the sole determining factor for award), SHA will award contracts to the low bidder; provided however, if a Section 3 business' bid exceeds the low bid by no more than 10%, SHA may award the contract to the Section 3 business at the price bid by the Section 3 business.
 2. In awarding contracts based on proposals in which price is one factor in determining award, the evaluation criteria will provide for 20 points to be assigned to any qualified Section 3 business, unless the Executive Director or Deputy Executive Director, upon recommendation of the director of the department awarding the contract determines, based upon the circumstances, that fewer points should be established in the evaluation criteria. Qualified Section 3 businesses shall receive the maximum number of points authorized in this evaluation criterion.
 3. Generally, SHA will evaluate the Section 3 businesses that have been certified by appropriate agencies, although, where appropriate, SHA may also evaluate Section 3 businesses that it can verify from available information to meet the requirements to qualify as a Section 3 business.
 - A business may qualify as a Section 3 business if the business is owned by Section 3 qualified persons who live in Spokane, County and who meet the prescribed income limitations based on family size.
 - A business may qualify as a Section 3 business if 30% or more of their permanent, full-time employees (core employees within the last 12 months) are Section 3 qualified persons who live in Spokane County and meet the prescribed income limitations based on family size.

- A business may qualify as a Section 3 business based on a commitment to subcontract with other Section 3 businesses for more than 25% of the dollar amount of all subcontracts, as provided in 24 [CFR 135.5](#). Such businesses shall be required to submit with their bid or proposal a plan describing how they will implement the subcontracting commitment. Prior to an award or selection by SHA, the subcontracting plan shall be evaluated by SHA to determine if it is reasonable and attainable. SHA shall monitor the compliance of a selection Section 3 business with their subcontracting commitment. All solicitations and contracts shall include provisions for declaring a breach of contract for failure to meet the subcontracting commitment, and for assessing penalties or damages for such a breach.

19.2 WMBEs Defined

WMBEs are defined below based on current certification standards of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) – See [RCW 39.19](#) and [WAC 326- 02-030](#).

- Women's Business Enterprise (WBE): A business that is 51% owned and controlled by a woman or combination of women, and is certified as such by OMWBE.
- Minority Business Enterprise (MBE): A business that is 51% owned and controlled by a minority or combination of minorities, and is certified as such by OMWBE.
- Minority Women's Business Enterprise (WMBE): A business that is 51% owned and controlled by a minority woman or combination of minority women, and is certified as such by OMWBE.
- Combination Business Enterprise (CBE): A business that is 50% owned and controlled by a minority male and 50% owned and controlled by a non-minority female, and is certified as such by OMWBE.

19.3 Affirmative Steps Outlined

Affirmative steps may include, but not be limited to, the following:

- Place WMBEs on solicitation lists: Place qualified WMBEs on solicitation lists and bidders' lists.
- Solicit WMBEs when possible: Encourage WMBE participation through direct solicitations whenever they are potential sources.
- Advertising: When appropriate, advertise in applicable publications likely to be read by WMBEs.
- Plan Centers: For construction projects, provide plans and specifications to qualified plan centers that serve WMBEs.
- Split contracts into smaller segments: Divide contract work, when economically and logistically feasible, into smaller tasks to permit maximum participation by WMBEs.

- F. Delivery schedules that encourage use of WMBEs: Establish delivery schedules, where the requirement permits, which encourage participation by WMBEs.
- G. Use outside resources: Use the services and assistance the OMWBE (website, etc).
- H. Require prime to take affirmative steps: Require the prime contractor, if subcontracts are to be awarded, to take the affirmative steps listed in this subsection, and encourage them to subcontract with qualified WMBEs to the maximum extent possible.

20.0 CONCESSIONS

20.1 General

SHA has the opportunity in some instances to contract for revenue producing activities with private parties. This policy is a general guideline for these activities.

20.2 Competitive Selection Process

In selecting concessionaires for various SHA revenue-producing activities, including but not limited to vending and laundry machine operations, cellular and other communication antenna space leases, etc., SHA shall generally conduct a competitive selection process similar to those outlined for RFPs.

20.3 Objectives of Competition

While SHA is committed to a competitive selection process to help ensure openness in notifying concessionaires about business opportunities, SHA's primary objective in conducting a competitive selection process shall be to ensure that SHA's objectives of revenue generation and service delivery are met.

20.4 Waiver of Competition

On a case-by-case basis, the Executive Director or Deputy Executive Director may decide whether a competitive selection process shall be required for selecting a concessionaire.

21.0 DISPOSAL OF SURPLUS PROPERTY

21.1 Purpose

The purpose of this policy is to establish an efficient and effective method for disposal of its surplus personal property. SHA has statutory authority to dispose of property under [RCW 35.22.280](#). This policy directs the timely, efficient, cost effective and safe disposition of surplus personal property in a manner consistent with the best interest of SHA.

21.2 Policy

Surplus property with commercial value will be disposed of in a cost effective and efficient manner that achieves the highest net resale proceeds for SHA. Surplus property with a value less than \$500.00 or if the disposal and sales efforts are judged more costly than estimated net proceeds, may be transferred, donated, or eventually disposed of through salvage contracts or other cost effective and efficient means. Items that are broken, unusable or have no commercial, salvage or donation value may be declared as "trash" and efficiently and safely disposed of as such.

SHA employees and/or Board members and their immediate families are prohibited from purchasing or otherwise obtaining the surplus items, including trash, due to conflict of interest concerns.

21.3 Definitions

Surplus: Any SHA personal property and/or asset that are no longer needed now or in the foreseeable future, or that are no longer of value or use to SHA. This includes items purchased by SHA or abandoned items.

Estimated Surplus Value: The estimated amount of money an interested party will be willing to pay SHA for the property. This can be determined through an estimate, an official appraisal, an offer from another agency, Kelly blue book value or other sources available to the responsible department.

Eligible Purchaser: Any public entity, non-profit organization, private organization or the general public is eligible to purchase surplus products unless otherwise noted in this policy.

21.4 Procedure

The Department responsible for property that it wishes to have declared as surplus shall complete an inventory control form including a complete description of the item, location, condition and estimated fair market value.

Once the form is approved by the Executive Director or Deputy Executive Director, the requesting Department Director will coordinate the notification to other SHA departments/offices via an email distribution list. Other SHA departments will be given the first priority in using the surplus items. If no other Department/office declares a viable use of the item within 5 business days and the item is no longer of value to SHA, the item may be disposed of in the following methods.

Items proposed for disposition with original value over Ten Thousand Dollars (\$10,000.00) must be pre-approved by the Board of Commissioners. A copy of the appropriate approval, together with the complete documentation in support of destruction, abandonment, or donation, shall be retained as a part of the inventory control records. All real property dispositions must be pre-approved by the Board of Commissioners.

- A. Sell or transfer to another governmental agency, subject to the public notice and hearing requirements of [RCW 39.33.20](#) for items with a value in excess of \$50,000.
- B. Auction the item on a public website. The originating department will be responsible for all costs associated with this option, and must provide budget numbers of this purpose. The Department Director will coordinate the auction.
- C. Sell the item through a sealed-bid process.
- D. Trade the item in for new replacement equipment.
- E. Send the item to the State surplus program.
- F. Donate the item to a non-profit that serves or benefits low income persons or persons with disabilities. The organization must provide a donation form and must provide their mission statement, and proof of their non-profit status and confirmation that they do not discriminate in provision of services on any basis prohibited by [RCW 49.60](#), prior to receiving the donated items.
- G. Properly discard the item if the item is broken, unusable, and/or hazardous. An Inventory Control Form must be provided for an item to be disposed of. Discarding the item(s) is the last option to be used unless the item is broken, usable or has no commercial, salvage or donation value, and/or the department has exhausted all other options for disposal.

If the item is sold, the sale shall be documented by an appropriate bill of sale and the proceeds will be immediately forwarded to the Finance Director. The Finance Director will then ensure that the funds are deposited into the fund that accounts for the asset within 24 hours of the transaction. Checks for surplus items are to be made payable to the Spokane Housing Authority.

Vehicles

For surplus vehicles, the requesting department shall attach to the inventory control form a printout from Kelly Blue Book with the estimated value of the vehicle. If the item is being auctioned, the Department Director will set the starting bid price at half of Kelly Blue Book value unless the Executive Director approves a variance.

SHA logos, exempt license plates, and other markings identifying the vehicles as SHA property shall be removed prior to sale.

22.0 DISPUTES, PROTESTS AND APPEALS

22.1 Policy

- A. Resolve Internally: SHA shall attempt to resolve all procurement-related (solicitation, award, and contractual) disputes, protests and appeals internally without outside review by either HUD or the court system. (Unless otherwise specified, this section will use the term "protest" to also include disputes and appeals.)
- B. Notification to HUD: Consistent with HUD regulations, SHA shall notify HUD of procurement protests received by SHA when use of HUD funds is involved in the procurement. It is HUD's policy not to substitute their judgment for PHA's in the resolution of protests, unless the matter is primarily a Federal concern (24 [CFR 85.36\(b\)\(11\)](#)).

HUD's Review of Protests

HUD will review a procurement-related protest against SHA, subject to the following:

- 1. HA Administrative Remedies: The protestor must have exhausted all administrative remedies and procedures with SHA first, and
- 2. Violation of Federal law: The protest must be based on a violation of Federal law or regulations and the requirements of 24 [CFR 85.36\(b\)\(12\)](#), or
- 3. Violation of SHA's Protest Procedures: The protest must be based on a violation of SHA's procedures for failure to review a protest.

Protests received by HUD other than those based on the factors cited above will be referred by HUD to SHA for resolution.

22.2 Filing Deadlines

Consistent with HUD regulations requiring that SHA have protest procedures, the following deadlines for filing protests with SHA shall apply:

- A. Solicitations: Any protest against a solicitation issued by SHA must be received by the Executive Director before the bid or proposal submittal deadline, or it will not be considered.
- B. Awards:
 - 1. Any protest against the award of a contract based on an IFB must be received by the Executive Director no later than two full business days after the bid submittal deadline, or before award of the contract, whichever is earlier, or the protest will not be considered. SHA shall not execute a contract with anyone other than the protesting bidder without first providing at least two full business days; written notice of SHA's intent to execute a contract for the project.

2. Any appeal of a decision by SHA to reject a bid submitted in response to an IFB must be received by the Executive Director within two business days after being notified in writing of SHA's decision, or the appeal will not be considered.
3. Any protest against the award of a contract based on an RFP, or RFQ or appeal of a decision by SHA to reject a proposal, must be received by the Executive Director within three business days after notification to an unsuccessful proposer that they were not selected, or the protest will not be considered.
4. Any protest against the award of a contract based on an informal solicitation must be received by the Executive Director prior to award, or the protest will not be considered. Consistent with the nature of the informal process contemplated by 24 [CFR 85.36\(d\)\(1\)](#), it shall be the responsibility of contractors, consultants, and vendors to call SHA regarding the status of a contract award.

22.3 Form and Manner of Filing Protests

- A. In Writing: All protests must be in writing, signed, and explain the basis of the protest, or it will not be considered.
- B. File with Executive Director: All protests must be filed with the SHA's Executive Director, 25 W. Nora Ave, Spokane, WA 99205.

22.4 SHA's Review of Protests

- A. Appeal to SHA's Executive Director: Any appeal of a formal award must be received by the SHA Executive Director within two business days of receipt of the written decision, or the appeal will not be considered. Appeals will be reviewed and investigated by the Executive Director, who shall issue SHA's final decision. When SHA determines, pursuant to [RCW 39.04.350](#), that a bidder is not responsible, SHA will not execute a contract with any other bidder until two business days after the bidder determined to be not responsible has received written notice of SHA's final decision.
- B. Executive Director's Role: SHA's Executive Director shall review and investigate properly any timely filed protests and issue a written decision to the protestor.

22.5 Contractual Claims and Disputes

SHA is responsible for the handling and resolution of all contractual claims and disputes according to the requirements and procedures outlined in each contract. Consistent with HUD regulations, violations of law will be referred by SHA to the local, State or Federal authority having proper jurisdiction.

23.0 DEFINITIONS

A & E Consultant: A consultant in one of the following disciplines: architecture, engineering, landscape architecture, land surveying ([RCW 39.80](#)).

Architecture: The term "practice of architecture" means the rendering of services in connection with the art and science of building design for construction of any structure or grouping of structures and the use of space within and surrounding the structures or the design for construction of alterations or additions to the structures, including but not specifically limited to schematic design, design development, preparation of construction contract documents, and administration of the construction contract ([RCW 18.08.320\(10\)](#)).

Blanket Contract: A competitively bid contract with a vendor for goods, supplies, equipment, materials, or non-consultant services in which prices are established and guaranteed during the life of the contract, unless adjusted by Change Order.

Buyer: An employee of the SHA responsible for the procurement of goods, supplies, equipment, materials, and services.

Change Order: A written change to a contract, signed by both parties, modifying various terms of the contract such as scope of work, dollar amount, period of performance, or any other provisions.

Consultant: A Consultant provides advice, recommendations, reports, analyses, evaluations, audits, surveys or other products of cognitive processes or expert professional services. For the purpose of these Policies, Consultants providing architectural, engineering, landscape architectural, or land surveying services are considered as A & E Consultants. For the purpose of these Policies, Service Providers are also considered as Consultants (see Service Providers).

Contractor: Any firm or entity with whom SHA contracts. As used in these Policies, Contractor may also refer to a Consultant, an A & E Consultant, a vendor or a Service Provider.

Cooperative Intergovernmental Agreements: The process of taking advantage of competitive selection processes, prices and contracts established by other governmental agencies. See Chapter 18 of these Policies.

Cost Analysis: A written review and evaluation of costs received for contracts or change orders by SHA to determine whether the proposed cost is reasonable when compared with prices provided by others in the market.

Department Director: The head of a SHA department.

Direct Payment: A list of transactions that, by the nature of the transaction, are impractical or impossible to competitively bid because of market or other conditions, and that are thus exempt from competitive bidding requirements. See Chapter 17 of these Policies.

Emergency: An emergency condition or event that seriously threatens the public health, welfare, or safety, endangers property, or would otherwise cause serious injury to SHA, as may arise by reason of a flood, earthquake, epidemic, fire, riot, equipment failure, or similar event, and the needs "will not permit a delay resulting from competitive solicitation."

Engineering: The term “practice of engineering” within the meaning and intent of this chapter shall mean any professional service or creative work requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical, and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning, design and supervision of construction for the purpose of assuring compliance with specifications and design, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects. The practice of engineering shall not include the work ordinarily performed by persons who operate or maintain machinery or equipment ([RCW 18.43.020\(5\)](#)).

Expenditure Authority: The delegation of responsibility to various SHA employees to recommend, commit, and expend SHA financial resources up to a particular dollar limit.

Independent Cost Estimate: An estimate of the anticipated costs of a proposal, contract or Change Order prepared by SHA staff or other independent party to assist SHA in evaluating the reasonableness of costs proposed by a contractor, Consultant, or vendor.

Informal Solicitation: A competitive selection process, without formal advertising for soliciting goods and services that will cost less than \$250,000.

Invitation for Bid (IFB): A formally advertised competitive selection process used for obtaining goods and services that will cost more than \$250,000 where award is made based on the lowest price submitted by a responsible bidder with a responsive bid.

Land Surveying; The term “practice of land surveying” within the meaning and intent of this chapter shall mean assuming responsible charge of the surveying of land for the establishment of corners, lines, boundaries, and monuments; the laying out and subdivision of land; the defining and locating of corners, lines, boundaries and monuments of land after they have been established; the survey of land areas for the purpose of determining the topography thereof; the making of topographical delineations and the preparing of maps and accurate records thereof, when the property performance of such services requires technical knowledge and skill. ([RCW 18.43.020\(9\)](#))

Landscape Architecture: “Landscape architect” means a person who engages in the practice of landscape architecture as hereinafter defined. A person practices landscape architecture within the meaning and intent of this chapter who performs for hire professional services such as consultations, investigations, reconnaissance, research, planning, design or teaching supervision in connection with the development of land areas where, and to the extent that, the dominant purpose of such services is the preservation, enhancement, or determination of proper land uses, natural land features, ground cover and planting, naturalistic and aesthetic values, the settings and approaches to structures or other improvements, or natural drainage and erosion control. This practice shall include the location, design, and arrangement of such tangible objects as pools, walls, steps, trellises, canopies, and other uninhabitable structures, and such features as are incidental and necessary to the purpose outlined herein. It involves the design and arrangement of land forms and the development of outdoor space including, but not limited to, the design of public parks, playgrounds, cemeteries, home and school grounds, and the development of industrial and recreational sites. ([RCW 18.96.030](#))

Price Analysis: A written review and evaluation of competitive prices received by SHA to determine

whether the proposed price of a Contractor is reasonable when compared with prices provided by others in the market.

Public Work: All work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which by law a lien or charge on any property therein. All public works, including maintenance when performed by contract shall comply with [RCW 39.12](#).

Purchase Order (P.O.): A request from a SHA employee with appropriate expenditure authority for obtaining goods and/or services.

Request for Proposals (RFP): A formally advertised and competitive selection process used for obtaining professional services that will cost more than \$100,000, in which the evaluation and selection of a Contractor cannot be based on price alone, but is based on established criteria that include price and other factors.

Request for Qualifications (RFQ): A competitive selection process used for obtaining A & E Consultant services, in which the evaluation and selection of A & E Consultants is based on the consultants' qualifications, and price is not used as an evaluation criterion. Part of evaluating an A & E Consultant's qualifications may include an evaluation of their proposed approach for performing the work.

Service Provider: An agency, firm, or individual that performs non-consultant work, including ongoing management of programs and provision of services. Such services may include, but not limited to, security, moving and storage, legal messengers, telephone answering service, routine systems maintenance for elevators and HVAC, youth tutoring, etc. One distinguishing feature of Service Providers is that the work they perform is not normally subject to federal or state prevailing wage requirements. For the purposes of these Policies, Service Providers are considered as Consultants.

Small Works Roster: A Small Works Roster, established under the authority of [RCW 39.04.155](#), would consist of contractors who have expressed an interest in doing business with SHA. The Roster would permit SHA to select a contractor for certain construction projects without publicly advertising the work, but by following the process outlined in State law for soliciting bids from contractors on the Small Works Roster.

Sole Source: The service or item "is available only from a single source," based on a good faith review of available sources ([24 CFR 85.36\(d\)\(4\)\(i\)\(A\)](#)).