

ADOPTED October 19, 2001  
RESOLUTION NO. 1384  
EFFECTIVE October 19, 2001

## STATEMENT OF PROCUREMENT POLICY

Established for the Meridian Housing Authority (MHA) of the City of Meridian, Mississippi by Board Action on October 19, 2001 this Procurement Policy complies with HUD's Annual Contributions Contract (ACC), HUD Handbook 7460.8, "Procurement Handbook for Public Housing Agencies," and the procurement standards of 24 CFR 85.36.

### **I. GENERAL PROVISIONS**

#### **A. PURPOSE:**

The purpose of this Statement of Procurement Policy is to; provide a procurement system of quality and integrity; and assure that PHA purchasing actions are in full compliance with applicable Federal standards, HUD regulations, and the State and local laws.

#### **B. APPLICATION:**

This statement of Procurement Policy applies to all contracts for the procurement of supplies, services, and construction entered into by the PHA after the effective date of this policy. It shall apply to every expenditure of funds by the PHA for public purchasing, irrespective of the source of funds (such as concession contracts); however, nothing in this policy shall prevent the PHA from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with law. The term "procurement" as used in this policy includes both contracts and modifications (including change orders) for construction or services, as well as purchase, lease, or rental of supplies and equipment.

#### **C. PUBLIC ACCESS TO PROCUREMENT INFORMATION**

Procurement information shall be a matter of public record and shall be available to the public.

### **A. PROCUREMENT AUTHORITY AND ADMINISTRATION**

- A.** All procurement transactions shall be administrated by the Contracting Officer who shall be the Executive Director or Another individual he/she has authorized in writing.

**B.** The Executive Director's responsibilities or his/her designee shall ensure that:

1. procurement requirements are subject to a planning process to assure efficient and economical purchasing;
2. contracts and modifications are in writing, clearly specifying the supplies, services, or construction, and are supported by sufficient documentation regarding the history of the procurement chosen, the selection of the contract type, the rationale for selection or rejecting offers, and the basis for the contract price; and that contracts and modifications are awarded only by PHA employees designated in writing as Contracting Officers;
3. for procurements other than small purchases, public notice is given of each upcoming procurement; an adequate time period is provided for preparation and submission of bids or proposals; and notice of contract awards is made available to the public;
4. solicitation procedures are conducted in full compliance with Federal standards stated in 24 CFR 85.36, or State and local laws that are more stringent, provided they are consistent with 24 CFR 85.36;
5. an independent cost estimate is prepared before solicitation issuance and is appropriately safeguarded for each procurement above the small purchase limitation, and a cost or price analysis is conducted of the response received for all procurement;
6. contract award is made to the responsive and responsible bidder offering the lowest price (for sealed bid contracts) or contract award is made to the offeror whose proposal offers the greatest value to the PHA, considering price, technical, and other factors as specified in the solicitation (for contracts awarded based on competitive proposals); unsuccessful firms are notified within ten days after contract award;
7. work is inspected before payment, and payment is made promptly for contract work performed and accepted; and
8. The PHA complies with applicable HUD review requirements, and any local procedures supplementing this policy.

**C.** This Statement and any later changes **to the Statement of Policy** shall be submitted to the Board of Commissioners for approval. The Board appoints and delegates procurement authority to the Executive Director and he/she is responsible for ensuring that any procurement policies adapted are appropriate for MHA.

## **II. PROCUREMENT METHODS:**

### **A. SELECTION OF METHODS**

If it has been decided that MHA will directly purchase required items, one of the following procurement methods shall be chosen, based on the nature and anticipated dollar cost/value of the total requirements:

1. SMALL PURCHASE PROCEDURES

- a. General. Any contract not exceeding **\$50,000** may be made in accordance with the small purchase procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section (except as may be reasonably necessary to comply with Section VIII of this policy).
  
- b. Petty Cash Purchases. **For small dollar value items less than One Hundred Dollars and no/cents (\$100.00) which can be satisfied by local sources may be processed through the use of a petty cash account. The Contracting Officers shall ensure that the account is established in an amount of Five Hundred Dollars (\$500.00) which is sufficient to cover small purchases made during a one month period; security is maintained and only authorized individuals have access to the account; the account is reconciled monthly and replenished by submission of a voucher(s) to the Director of Finance or designee; and, the account is audited quarterly by the Director of Finance or designee to validate proper use and verify that the account total equal cash on hand plus the total of accumulated vouches.**

**Disbursement from petty cash can be made on a reimbursement basis or advanced funding that will only be made after receipt of a request from a Department Head or their designee. Presentation of a valid receipt which shows vendor's name, itemization of items purchased, and amount, and payment of any unused funds must be presented within two (2) working days after receipt of funds. Failure to present a valid receipt will result in payment in full of the amount received out of petty cash.**

- c. Small purchases of \$5,000 or less. For small purchases not exceeding **\$5,000**, only one quotation need be solicited if the price received is considered reasonable. Such purchases **should** be distributed equitably among qualified sources. If practicable, a quotation shall be

solicited from other than the previous source before placing a repeat order.

- d. Small purchases over \$5,000. For small purchases in excess of **\$5,000 but not exceeding \$50,000**, no less than three offerors should be solicited to submit price quotations, which may be obtained orally, by telephone, or in writing as allowed by State or local laws. Award shall be made to the offeror providing the lowest acceptable quotation, unless justification in writing based on price and other specified factors, such as for architect-engineer contracts. If non-price factors are used, they shall be disclosed to all those solicited. The names, addresses, and/or telephone numbers of the offerors and persons contacted, and the date and amount of each quotation shall be recorded and maintained as a public record.

## 2. SEALED BIDS

- a. General: Purchases, except for procurement of professional services, and purchases at the State contract price, involving an expenditure of more than **\$50,000** shall be made only by obtaining competitive sealed bids.
- b. Conditions For Use. Contracts shall be awarded based on competitive sealed bidding if the following conditions are present: a complete, adequate, and realistic specification or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; the procurement lends itself to a firm fixed price contract; and the selection of the successful bidder can be made principally on the basis of price. Sealed bidding is the preferred method for construction procurement. For professional service contracts, sealed bidding should not be used.
- c. Specifications. A complete and realistic specification or purchase description shall be adopted and available to bidders. Specifications pertinent to such bidding shall be written so as not to exclude comparable equipment. MHA will endeavor in formulation of specifications, advertisement, etc. to incorporate a clear and accurate description of the technical requirements for product or services to be procured. Such description shall not, in competitive procurement, contain features, which unduly

restrict competition. The description may include a statement of the qualitative nature of the product 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. MHA shall identify all requirements that the vendors must fulfill and all other factors to be used in evaluating bids.

- d. Solicitation and Receipt of Bids. An invitation for bids shall be issued including specifications and all contractual terms and conditions applicable to the procurement, including a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the invitation for bids. The invitation for bids shall state the time and place for both the receipt of bids and public bid openings. All bids received shall be time-stamped but not opened and shall be stored in a secure place until bid opening. A bidder may withdraw its bid at any time prior to bid opening.
- e. Bid Opening and Award. Bids shall be opened publicly and in the presence of at least one witness. An abstract of bids shall be recorded, and the bids shall be available for public inspection. Award shall be made as provided in the invitation for bids by written notice to the successful bidder. If equal low bids are received from responsible bidders, award shall be made by drawing lots or similar random method. If only one responsive bid is received from a responsible bidder, award shall not be made unless a cost or price analysis verifies the reasonableness of the price. Any or all bids may be rejected if there is a sound documented reason.
- f. Mistakes in Bids.
  - 1. Correction or withdrawal of inadvertently erroneous bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a nonjudgmental mistake may be permitted

to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made.

2. All decisions to allow correction or withdrawal of mistakes shall be supported by written determination signed by the Contracting Officer. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the PHA or fair competition shall be permitted.

g. Bonds. In addition to the other requirements of this Statement, the following requirements apply:

1. For construction contracts exceeding the Small Purchase threshold amount, contractors shall be required to submit the following:
  - (a) A bid guarantee from each bidder equivalent to five (5) percent of the bid price. It shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying the bid as assurance that the bidder will, upon acceptance of his/her bid, execute such contractual documents as may be required within the time specified.
  - (b) A performance **and payment bond** for 100 percent of the contract price; payable to, in favor of, or for the protection of MHA, as Owner, for the work to be done in an amount not less than the amount of the contract conditioned for the full and faithful performance **and payment of the labor and materials** of the contract.
  - (c) **Separate performance and payment bonds, each for fifty (50) percent of the contract price payable to MHA conditioned for the performance and payment, as required by law.**
  - (d) **In lieu of the performance bond and the payment bond or both, a cash escrow of 20 percent or an irrevocable letter of credit of 25 percent of the contract amount may be used.**

2. **For construction contracts less than \$50,000 MHA, at its discretion may require a bid guaranty and/or as assurance of completion (performance and payment bonds) depending on the type of work and/or purchase.**

3. The bonds shall be provided by any surety company that is authorized to do business in the State of Mississippi and is listed on the **current U. S. Treasury Circular No. 570.**

h. Certificate of Responsibility. No construction contract in a sum of \$50,000 or more shall be issued or awarded to any contractor who does not have a Certificate of Responsibility at the time of submission of the bid. All bids submitted which are \$50,000 or more shall contain on the outside or exterior of the envelope, or container of such bid the contractor's current Certificate of Responsibility number, and no bid shall be opened or considered unless the contractor's current Certificate of Responsibility number appears on the outside or exterior of such envelope or container as statement to the effect that the bid enclosed therewith does not exceed \$50,000. MHA, at its discretion, may require the contractor's Certificate of Responsibility for contracts for an amount less than \$50,000.

### 3. COMPETITIVE PROPOSALS

a. Conditions for Use. Competitive proposals (including turnkey proposals for development) may be used if there is an adequate method of evaluating technical proposals and where the PHA determined that conditions are not appropriate for the use of sealed bids. An adequate number of qualified sources shall be solicited normally, at least 3.

b. Solicitation. The request for proposals (RFP) shall clearly identify the relative importance of price and other evaluation factors and sub-factors, including the weight given to each technical factor, sub-factor, **and price**. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity

of the offerors, and the contents of their proposals. The proposals shall be evaluated only on the criteria stated in the request for proposals.

- c. Negotiations. Unless there is no need for negotiations with any of the offerors, negotiations shall be conducted with offerors who submit proposals determined to have a reasonable chance of being selected for award, based on evaluation against the technical and price factors as specified in the RFP. Such offerors shall be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. The purpose of negotiations shall be to seek clarification with regard to and advise offerors of the deficiencies in both the technical and price aspects of their proposals so as to assure full understanding of and conformance to the solicitation requirements. No offeror shall be assisted in bringing its proposal up to the level of any other proposal. Offerors shall not be directed to reduce their proposed prices to a specific amount in order to be considered for award. A common deadline shall be established for receipt of proposal revisions based on negotiations.
- d. Award. After evaluation of proposal revisions, in any, the contract shall be awarded to the responsible firm whose qualifications, price and other factors considered, are the most advantageous to the PHA. If only one response is received from a responsible proposer, award shall not be made unless a cost and/or price analysis verifies the reasonableness of the price **or cost**.
- e. Architect/Engineer Services. **Architect/Engineer services may be obtained by small purchase procedures, the competitive proposal method or qualifications-based selection procedures,** unless State mandates the specific method. However, Architect/Engineer services in the excess of the small purchase threshold amount must be obtained by the competitive proposal method or qualification-based selection method (or less if required by State or local law). Sealed bidding, however, shall not be used to obtain architect/engineer services. Under qualifications-based selection procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to the negotiation of fair and reasonable compensation. Price is not used as a selection factor

under this method. Qualifications-based selection procedures shall not be used to purchase other types of services even though architect-engineer firms are potential sources.

#### 4. NONCOMPETITIVE PROPOSALS

- a. Condition for use. Procurements shall be conducted competitively to the maximum extent possible. Procurement by noncompetitive proposals may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids, or competitive proposals, and one of the following applies:
  1. The item is available only from a single source, based on a good faith review of available sources;
  2. **The public exigency** or an emergency exists that seriously threatens the public health, welfare, safety, endangers property, or would otherwise cause serious injury to the PHA, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency.
  3. HUD authorizes the use of noncompetitive proposals; or
  4. After solicitation of a number of sources, competition is determined inadequate.
- b. Justification. Each procurement based on noncompetitive proposals shall be supported by a written justification for using such procedures.
- c. Price Reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing a cost analysis, as described in paragraph IIIB below.

#### 5. STATE CONTRACT PURCHASES

To the extent that such can be successfully accomplished, MHA may purchase items at the State contract price from the approved sources, Section 31-7-12 (1). MHA may purchase items approved by the Office of Purchasing and Travel from the State contract vendor after determining such purchases are the most economical. Two non-written bids will be obtained from qualified sources to verify that the price of the State contract item does not exceed the price available through other sources, and that the same item cannot be purchased for less through competitive bids. Under such circumstances, competitive sealed bids will not be required. MHA must maintain written record of solicitations.

#### 6. COOPERATIVE PURCHASING.

The PHA may enter into State and local intergovernmental agreements to purchase or use common goods and services. The decision to use an intergovernmental agreement or conduct a direct procurement shall be based on economy and efficiency. If used, the intergovernmental agreement shall stipulate individual authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. PHA's are encouraged to use Federal or State excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project cost.

#### B. COST AND PRICE ANALYSIS

**General. Some form of cost or price analysis shall be performed for all procurement actions, including contract modifications, using the procedures described in HUD Handbook 2210.18. The method of analysis shall be determined as follows. The degree of analysis shall depend on the facts surrounding each procurement.**

1. Submission of Cost or Pricing Information. If the procurement is based on noncompetitive proposals, or when only one offer is received, or for other procurements as deemed necessary by the PHA (e.g. when contracting for professional, consulting or architect/engineer services) the offeror shall be required to submit:
  - a. A cost breakdown showing projected costs and profit;

- b. Commercial pricing and sales information, sufficient to enable the PHA to verify the reasonableness of the proposed price as a catalog or market price of a commercial product sold in substantial quantities to the general public; or
  - c. Documentation showing that the offered price is set by law or regulation.
- 2. Cost Analysis. Cost analysis shall be performed if an offeror/contractor is required to submit a cost breakdown as part of its proposal. When a cost breakdown is submitted: a cost analysis shall be performed of the individual cost elements; the PHA shall have a right to audit the contractor's books and records pertinent to such costs; and profit shall be analyzed separately. Costs shall be allowable only to the extent that they are consistent with applicable Federal cost principles, **as outlined in HUD Handbook 2210.18**. In establishing profit, the PHA shall consider factors such as the complexity and risk of the work involved, the contractor's investment and productivity, the amount of subcontracting, the quality of past performance, and industry profit rates in the area for similar work.
- 3. Price Analysis. For competitive procurements in which cost or pricing information is not required of contractors, MHA shall perform a comparison of prices received in relation to the independent cost estimate, to ensure that the price being paid is reasonable, except those described in Section III B 2.

## 7. CANCELLATION OF SOLICITATIONS.

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

2. A solicitation may be canceled and all bids or proposals that have been received may be rejected if: the supplies, services, or construction are no longer required, ambiguous or otherwise inadequate specifications were part of the solicitation; the solicitation did not provide for consideration of factors of significance to MHA; prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds; there are reasons to believe that the bids or proposals may not have been collusive, or may have been submitted in bad faith; or for good cause of a similar nature when it is in the best interest of MHA.
3. The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request to any offeror solicited.
4. A notice of cancellation shall be sent to all offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any re-solicitation or future procurement of similar items.
5. If all otherwise acceptable bids received in response to an invitation for bids are at unreasonable prices, or only one bid is received and the price is unreasonable, the MHA shall cancel the solicitation and either:
  - a. resolicit using a request for proposals; or
  - b. complete the procurement by using the competitive proposals method, following paragraphs **III 3 A c** and **III 3 A d** above (when more than one otherwise acceptable bid has been received), or by using the noncompetitive proposal method and following paragraph **III A 4 b** above (when only one bid is received at an unreasonable price); provided, that the Contracting Officer determines in writing that such action is appropriate, all bidders are informed of MHA's intent to negotiate, and each responsible bidder is given a reasonable opportunity to negotiate.

### **III. CONTRACTOR QUALIFICATIONS AND DUTIES**

#### **8. CONTRACT RESPONSIBILITY.**

Procurements shall be conducted only with responsible contractors, i.e., those who have the technical and financial competence to perform and who have a satisfactory record of integrity. The PHA shall review each proposed contractor's ability to perform the contract successfully considering factors such as the contractor's integrity (including a review of the List of Parties Excluded from Federal Procurement and Non-procurement programs published by the U. S. General Service Administration **and HUD's Limited Denial of Participation-LDP**), compliance with public policy, record of past performance (including contacting previous clients of the contractor, such as other Public Housing Agencies), and financial technical resources. Contracts shall not be awarded to debarred, suspended, or ineligible contractors.

#### 9. SUSPENSION AND DEBARMENT

Contracts shall not be awarded to debarred, suspended, or ineligible contractors. **Contractors may be suspended, debarred, or determined ineligible by HUD in accordance with 24 CFR Part 24 or by other Federal agencies: i.e. violation of Labor Regulations.**

#### 10. QUALIFIED BIDDER'S LISTS.

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

### IV. TYPES OF CONTRACTS, CLAUSES, AND CONTRACT ADMINISTRATION

#### A. CONTRACT TYPES.

Any type of contract which is appropriate to the procurement and which will promote the best interests of the PHA may be used, provided that the cost-plus-a-percentage-of-cost and percentage of construction cost methods are prohibited. All procurements shall include the clauses and provisions necessary to define the rights and responsibilities of the parties. A cost reimbursement contract shall not be used unless: it is likely to be less costly or it is impracticable to satisfy the PHA's needs otherwise; the proposed contractor's accounting system is adequate to allocate costs in accordance with applicable cost principles (**for commercial firms, see HUD Handbook 2210.18**); and the contractor is paid only allowable costs. A time and material contract may be used only if a written

determination is made that no other contract type is suitable, and the contract includes a ceiling price that the contractor exceeds at its own risk.

B. OPTIONS.

Options for additional quantities or performance periods may be included in contracts, provided that: (I) the option is contained in the solicitation; (II) the option is a unilateral right of the PHA; (III) the contract states a limit on the additional quantities and the overall term of the contract; (IV) the options are evaluated as part of the initial competition; (V) the contract states the period within which the options may be exercised; (VI) the options may be exercised only at the price specified in or reasonably determined from the contract; and (VII) the option may be exercised only if determined to be more advantageous to the PHA than conducting a new procurement.

C. CONTRACT CLAUSES.

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

1. Termination for convenience,
2. Termination for default,
3. Equal Employment Opportunity
4. Anti-Kickback Act
5. Davis-Bacon Act,
6. Contract Work Hours and Safety Standards Act, reporting requirements
7. Patent rights,
8. Rights in data,
9. Examination of records by Comptroller General, and retention of records for three years after close-out,
10. Clean air and water,
11. Energy efficiency standards
12. Bid protests and contract claims,
13. Value engineering, and
14. Payment of funds to influence certain Federal transaction
15. **Lobbying Disclosure**

**MHA's Operational Procedures shall contain the text of all Clauses and required Certifications used by the Authority.**

D. CONTRACT ADMINISTRATION.

A contract administration system designed to insure that contractors perform in accordance with the terms, conditions, and specifications of their contracts shall be maintained. The system shall include procedures for inspection of supplies, services, or construction as well as monitoring contractor performance, status reporting on construction contracts, and similar matters. For cost reimbursement contracts with commercial firms, costs are allowable only to the extent that they are consistent with the cost principles **in accordance with HUD Handbook 2210.18.**

## **V. SPECIFICATIONS**

### **A. GENERAL**

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

### **B. LIMITATIONS ON COMPETITION**

The following specification limitations shall be avoided: Geographic restrictions not mandated or encouraged by applicable Federal law (except architect-engineer contracts, which may include geographic location as a selection factor if adequate competition is available); unnecessary bonding or experience requirements; brand name specifications (unless a written determination is made that only the identified item will satisfy the PHA's needs); brand name or equal specifications (unless they list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use). Nothing in this procurement policy shall preempt any State licensing laws. Specifications shall be scrutinized to ensure that organizational conflicts of interest do not occur (for example, having a consultant perform a study of the PHA's computer needs and then allowing that consultant to compete for the subsequent contract for the computers).

## **VI. APPEALS AND REMEDIES**

### **A. GENERAL**

It is the PHA's policy to resolve all contractual issues informally at the PHA level, without litigation. Disputes shall not be referred to HUD until all administration remedies have been exhausted at the PHA level. When appropriate, the PHA may consider the use of informal discussions between the parties by individuals who did not participate substantially in the matter in dispute, to help resolve the differences. HUD will only review protests in cases of violations of Federal law or regulations and failure of the PHA to review a complaint or protest. **MHA's Procurement Protest Procedures outline the protest procedures.**

#### B. BID PROTESTS.

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

#### C. CONTRACT CLAIMS.

All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer or designee for a written decision. The contractor may request a conference on the claim. The Contracting Officer's decision shall inform the contractor of its appeal rights to (a higher level in the PHA, such as the Executive Director or a designated Board member, or a Procurement Appeals Board).

### VII. ASSISTANCE TO SMALL AND OTHER BUSINESSES

#### A. REQUIRED EFFORTS

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

1. Including such firms, when qualified, on solicitation mailing lists;
2. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;

3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
5. Using the services and assistance of the Small Business Administration, and the Minority Business Development agency of the Department of Commerce;
6. Including in contracts a clause requiring contractors, to the greatest extent feasible, to provide opportunities for training and employment of lower income residents of the project area and to award subcontracts for work in connection with the project to business concerns which are located in, or owned in substantial part by persons residing in the area of the project, as described in 24 CFR 135.
7. Requiring prime contractors when subcontracting is anticipated, to take the positive steps listed in 1-6 above.

## B. DEFINITIONS

1. A small business is defined as a business, which is: independently owned; not dominant in its field of operation; and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in 13 DFR 121 shall be used, unless the PHA determines that their use is inappropriate.
2. A minority-owned business is defined as a business which is at least 51% owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.
3. A woman's business enterprise is defined as a business that is at least 51% owned by a woman or women who are U. S. citizens and who also control or operate the business.
4. A labor surplus area business is defined as a business which, together with its immediate subcontractors, will incur more than 50 percent of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the U. S. Department of Labor in 20 CFR Part 654, Subpart A,

and in lists of labor surplus areas published by the Employment and Training Administration.

5. A business concern located in the area of the project is defined as an individual or firm located within the relevant Section 3 covered project area, as determined pursuant to 24 CFR 135.15, listed on HUD's registry of eligible business concerns, and meeting the definition of small business above. A business concern owned in substantial part by persons residing in the area of the project is defined as a business concern which is 51% or more owned by persons residing within the Section 3 covered project, owned by persons considered by the U. S. Small Business Administration to be socially or economically disadvantaged, listed on HUD's registry of eligible business concerns, and meeting the definition of small business above.

## **VIII. ALTERNATIVE PROCUREMENT PROCESS (24 CFR PART 963)**

The Alternative Procurement Process is based on the established procurement procedures and requirements set forth in HUD's Regulations 24 CFR Part 85.36, but limits solicitation to resident-owned businesses. The purpose of this rule is to enhance the economic opportunities available to housing authority residents by facilitating the award of Housing Authority contracts to resident-owned businesses that are capable of performing successfully under a proposed Housing Authority contract at a reasonable price.

The procedures, definitions, and eligibility of resident owned-businesses are outlined in HUD's Regulations 24 CFR Part 963, 24 CFR Part 85.36, HUD Handbook 7460.8 REV-1, and Notice PIH 93-51

## **IX. ETHICS IN PUBLIC CONTRACTING**

### **A. GENERAL**

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

### **B. CONFLICT OF INTEREST.**

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

1. An employee, officer, or agent involved in making the award;
2. His/her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister);
3. His/her partner; or
4. An organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

C. GRATUITIES, KICKBACKS, AND USES OF CONFIDENTIAL INFORMATION.

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

D. PROHIBITION AGAINST CONTINGENT FEES.

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

E. EMPLOYEE RESPONSIBILITIES

1. Employees will at all times bear in mind that his/her responsibilities as a public employee, and will insure that his/her performance is governed by the highest standards of honesty and integrity.
2. Employees will not seek nor dispense personal favors, nor will he/she seek personal profit through the misuse of personal relationships and contracting information.
3. Employees will insure that all contracts are awarded, and purchases are made, based on the merit and without discrimination in any form.