

COMMUNITY DEVELOPMENT AUTHORITY
of the
CITY OF MADISON



Procurement Policy

Resolution No.: xxxx

Adopted:

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PROCUREMENT POLICY

COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF MADISON

This Procurement Policy is established for the Community Development Authority of the City of Madison (hereinafter, CDA) by action of the CDA Board of Commissioners (Board) on xxx, 2019. This Procurement Policy (Policy) complies with the Annual Contributions Contract (ACC) between the CDA and the United States Department of Housing and Urban Development (HUD); Federal Regulations 2 CFR 200.317 through 200.326, the procurement standards of the Procurement Handbook for Public Housing Authorities (PHAs); HUD Handbook 7460.8, Rev 2; and applicable State and Local Laws. In case of a discrepancy between this document and the procurement standards of HUD, the language of the HUD Procurement Handbook shall prevail.

I. GENERAL PROVISIONS

The CDA shall:

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

Application

This Policy applies to all procurement actions of the CDA, regardless of the source of funds, except as noted under “exclusions,” below. However, nothing in this Policy shall prevent the CDA from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with the law. When both HUD and non-Federal grant funds are used for a project, the work to be accomplished with the funds should be separately identified prior to procurement so that appropriate requirements can be applied, if necessary. If it is not possible to separate the funds, HUD procurement regulations shall be applied to the total project. If funds and work can be separated and work can be completed by a new contract, then regulations applicable to the source of funding may be followed.

CDA will conduct its purchasing and procurement according to this Policy and the federal regulations, Handbooks and policies listed above. This procedure is authorized for the Housing Authority by the federal government, thus CDA conducts its purchasing methods under the exception to Wis. Stat. sec. 66.1201(24)(a) stated in sec. 66.1201(24)(ag). CDA also is not obligated to follow the City of Madison’s Purchasing Guidelines and related ordinances, because CDA is a separate legal entity from the City of

Madison. However, CDA may use the services of the City of Madison Finance Department Purchasing unit when it is advantageous to do so, as long as done in compliance with this Policy.

Definition

The term “procurement,” as used in this Policy, includes the procuring, purchasing, leasing, or renting of: (1) goods, supplies, equipment, and materials, (2) construction and maintenance; consultant services, (3) Architectural and Engineering (A/E) services, (4) Social Services (Tenant/Resident Services), and (5) other service.

Exclusions

This policy does not govern administrative fees earned under the Section 8 voucher program, the award of vouchers under the Section 8 program, the execution of landlord Housing Assistance Payments contracts under that program, or non-program income, e.g., fee-for-service revenue under 24 CFR Part 990 and non-HUD funded units. These excluded areas are subject to applicable State and local requirements.

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 regulation shall, to the extent inconsistent with this Policy, automatically supersede this Policy.

Public Access to Procurement Information

Most procurement information that is not proprietary is a matter of public record and shall be available to the public to the extent provided in the Freedom of Information Act and Wisconsin Public Records Law, Wis. Stat. s.19.31, *et.seq.*

II. ETHICS IN PUBLIC CONTRACTING

The CDA hereby establishes this code of conduct regarding procurement issues and actions and shall implement a system of sanctions for violations. This code of conduct is intended to be consistent with applicable Federal, State, and Local law.

Conflicts of Interest

No employee, officer or agent of CDA 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, 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, stepsister, half brothers, or half sisters);
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.

Gratuities, Favors, Kickbacks, and Use of Confidential Information

CDA officers, employees, Board members or agents will neither solicit nor 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. CDA may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law, such minimum rules will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the officers, employees, or agents, or by contractors or their agents. Compliance with applicable state law and the City of Madison Ethics Code, Sec. 3.35 of the Madison General Ordinances (“Madison Ethics Code”) and its interpretation and enforcement under procedures established therein shall fulfill this requirement.

City of Madison Ethics Code. In addition to the code of conduct established in this section, CDA employees and officers (CDA commissioners) are subject to the City of Madison Ethics Code, section 3.35 of the Madison General Ordinances. In the event of a conflict between the Madison Ethics Code and this Policy, the more strict provision shall apply.

Prohibition Against Contingent Fees

Contractors wanting to do business with the CDA must not hire a person to solicit or secure a contract for a commission, percentage, brokerage, or contingent fee, except for bona fide established commercial selling agencies.

III. PROCUREMENT PLANNING

Planning is essential to managing the procurement function properly. Hence, the CDA will periodically review its record of prior purchases, as well as future needs, to:

1. Find patterns of procurement actions that could be performed more efficiently or economically;
2. Avoid unnecessary or duplicative items;
3. Maximize competition and competitive pricing among contracts and decrease the CDA’s procurement costs;
4. Reduce CDA administrative costs;
5. Ensure that supplies and services are obtained without any need for re-procurement, e.g., resolving bid protests; and
6. Minimize errors that occur when there is inadequate lead time.

Consideration should be given to storage, security, and handling requirements when planning the most appropriate purchasing actions. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

IV. PURCHASING METHODS

CDA will conduct its purchasing and procurement according to this Policy and the federal regulations, Handbooks and policies listed in the Introduction. This procedure is authorized for the Housing Authority by the federal government, thus CDA conducts its purchasing methods under the exception to Wis. Stat. sec. 66.1201(24)(a) stated in sec. 66.1201(24)(ag). CDA also is not obligated to follow the City of Madison's Purchasing Guidelines and related ordinances, because CDA is a separate legal entity from the City of Madison. However, CDA may use the services of the City of Madison Finance Department Purchasing unit when it is advantageous to do so, as long as done in compliance with this Policy.

Petty Cash Purchases

Purchases under \$200 may be handled through the use of a petty cash account. The Contracting Officer shall ensure that:

1. The account is established at \$500 to cover small purchases made during a reasonable period, e.g., one month;
2. Security is maintained and only authorized individuals have access to the account;
3. The account is periodically reconciled and replenished by submission of a voucher to the City of Madison Finance Office; and
4. The account is periodically, no less than annually, audited by the CDA Finance and Grants Manager or designee to validate proper use and to verify that the account totals equals cash on hand plus the total of accumulated vouchers.

Micro Purchase Procedures (under \$10,000)

For purchases of less than \$10,000 (except for construction procurements subject to the Davis-Bacon Act, which is set at \$2,000), also known as Micro Purchases, a minimum of one quote is required provided the quote is considered reasonable.

CDA shall not break down requirements aggregating more than the Micro Purchase limit into several purchases that are less than the applicable threshold merely to: (1) permit use of the Micro Purchase procedures or (2) avoid any requirements that apply to purchases that exceed the Micro Purchase limit.

To the greatest extent feasible and to promote competition, Micro Purchases should be distributed among qualified sources.

Small Purchase Procedures (\$10,000 - \$250,000)

For any amounts above the Micro Purchase threshold, but not exceeding \$250,000 the CDA may use Small Purchase procedures. Under Small Purchase procedures, the CDA shall obtain a reasonable number of quotes, preferably a minimum of three Quotations for Small Purchases (QSP), or quotes, shall be obtained in writing.

CDA shall not break down requirements aggregating more than the Small Purchase limit into several purchases that are less than the applicable threshold merely to: (1) permit use of the Small Purchase procedures or (2) avoid any requirements that apply to purchases that exceed the Small Purchase limit.

Award shall be made to the responsive and responsible vendor that submits the lowest cost to the CDA. If the award is made for reasons other than the lowest price, documentation shall be provided in the contract file. To the greatest extent feasible and to promote competition, Small Purchases should be distributed among qualified sources.

Sealed Bids (\$250,000 and above)

Sealed Bidding shall be used for all contracts that exceed the Small Purchase threshold and that are not competitive proposals or non-competitive proposals, as these terms are defined in this Policy. Under Sealed Bids, the CDA publicly solicits bids and awards a fixed-price contract (lump sum or unit price) to the responsive and responsible bidder whose bid, conforming with all the materials terms and conditions of the Invitation for Bids (IFB), is the lowest price. Sealed bidding is the preferred method for procuring construction, supply, and non-complex service contracts that are expected to exceed the Small Purchase threshold of \$250,000.

1. **Conditions for Using Sealed Bids.** CDA shall use the sealed bid method if the following conditions are present: a complete, adequate, and realistic statement of work, specification, or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; the contract can be awarded based on a firm fixed price; and the selection of the successful bidder can be made principally on the lowest price. Sealed bidding shall not be used for A/E solicitations.
2. **Solicitation and Receipt of Bids.** An IFB is issued, which includes the specifications and all contractual terms and conditions applicable to the procurement, and a statement that the award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the solicitation. The IFB must state the time and place for both receiving bids and the public bid opening. All bids received will be date and time-stamped and stored unopened in a secure place until the public bid opening. A bidder may withdraw the bid at any time prior to the bid opening.
3. **Bid Opening and Award.** Bids shall be opened publicly and in the presence of at least one witness. All bids received shall be recorded on an abstract (tabulation) of bids and then made available for public inspection. If equal low bids are received from responsible bidders, selection shall be made by drawing lots or similar random method, unless otherwise provided in State or local law and stated in the invitation for bids. If only one responsive bid is received for a responsible bidder, award shall **not** be made unless a cost or prices analysis verifies the reasonableness of the price.
4. **Mistakes in Bids.** Correction or withdrawal of bids may be permitted where appropriate, before bid opening by written notice received in the office designated in the IFB prior to the time set for bid opening. After bid opening, corrections in bids may be permitted only if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a

nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made. All decisions to allow correction or withdrawal of a bid shall be supported by a written determination signed by the Contracting Officer. After bid opening, changes in bid prices or other provisions of bid prejudicial to the interest of the CDA or fair competition shall not be permitted.

Competitive Proposals (\$250,000 and above)

Unlike Sealed Bidding, the Competitive Proposal method permits: the consideration of technical factors other than price; discussion with offerors concerning offers submitted; negotiation of contract price or estimated cost and other contract terms and conditions; revisions to proposals before the final contractor selection; and the withdrawal of an offer at any time up until the point of award. Award is normally made on the basis of the proposal that represents the best overall value to the CDA, considering price and other factors (e.g., technical expertise, past experiences, quality of proposed staffing, etc.) set forth in the solicitation and not solely the lowest price.

1. **Conditions for Use.** Where conditions are not appropriate for the use of Sealed Bidding, Competitive Proposals may be used.

Competitive Proposals are the preferred method for procuring professional services that will exceed the Small Purchase threshold. As detailed within Section 7.2.B. of HUD Procurement Handbook 7460.8 REV 2, "Only under limited circumstances would construction services be procured by competitive proposals," accordingly, construction services will most typically be procured utilizing Sealed Bidding or Small Purchase procedures.

2. **Form of Solicitation.** Other than architectural and engineering (A/E) services, Competitive Proposals shall be solicited through the issuance of a request for proposals (RFP). The RFP shall clearly identify the importance and relative value of each of the evaluation factors as well as any sub factors 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 offers, identity of the offerors, and the contents of their proposals until after award. The CDA may assign price a specific weight in the evaluation criteria or the CDA may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.
3. **Evaluation.** The proposals shall be evaluated only on the criteria stated in the RFP. Where not apparent from the evaluation criteria, the CDA shall establish an Evaluation Plan for each RFP. Generally, all RFPs shall be evaluated by an appropriately appointed Evaluation Committee. An Evaluation Report, summarizing the results of the evaluation, shall be prepared prior to the award of a contract.
4. **Negotiations.** Negotiations are exchanges (in either the competitive or sole source environment) between the CDA and offerors that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes

persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract or other terms of a proposed contract. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions.

Discussions are tailored to each offeror's proposal, and shall be conducted by the Contracting Officer with each offeror within the competitive range. The primary object of discussions is to maximize the CDA's ability to obtain the best value, based on the requirements and the evaluation factors set forth in the solicitation. The Contracting Officer shall indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as technical approach, past performance, and terms and conditions) that could, in the opinion of the Contracting Officer, be altered or explained to enhance materially the proposer's potential for award. The scope and extent of discussions are a matter of the Contracting Officer's judgement.

The Contracting Officer may inform an offeror that its price is considered by the CDA to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible to indicate to all offerors the cost of price that the CDA's price analysis, market research, and other reviews have identified as reasonable. "Auctioning" (revealing one offeror's price in an attempt to get another offeror to lower their price) is prohibited.

These offerors shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their proposals. No offeror shall be given any information about any other offeror's proposal. A common deadline shall be established for receipt of the proposal revisions based on negotiations.

Negotiations shall be conducted with all offerors who submit a proposal determined to have a reasonable chance of being selected for award, unless it is determined that negotiations are not needed with any of the offerors. This determination is based on the relative score of the proposals as they are evaluated and rated in accordance with the technical and price factors specified in the RFP.

5. **Award.** After evaluation of the revised proposals, if any, the contract shall be awarded to the responsible firm whose technical approach to the project, qualifications, price and/or any other factors considered, are more advantageous to the CDA provided that the price is within the maximum total project budgeted amount established for the specific property or activity and the contract terms can be successfully negotiated.
6. **Architect/Engineer Services.** The CDA shall contract for A/E services using Qualifications-based Selection (QBS) procedures, utilizing a Request for Qualifications (RFQ). Under QBS procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. QBS procedures shall not be used to purchase other types of services, other than Energy Performance Contracting and Developer services, though architectural/engineering firms are potential sources.

Noncompetitive Proposals

1. **Conditions for Use.** Procurement by noncompetitive proposals (sole or single source) may be used only when the award of a contract is not feasible using Small Purchase procedures, Sealed Bidding, Competitive Proposals, or Cooperative Purchasing/Intergovernmental Agreements, and if one of the following applies:
 - a) The item is available only from a single source, based on a good faith review of available sources;
 - b) An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the CDA, 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 of the other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary simply to meet the emergency;
 - c) The awarding agency authorizes the use of noncompetitive proposals; or
 - d) After solicitation of at least three sources, competition is determined inadequate.

2. **Justification.** Each procurement based on Noncompetitive Proposals shall be supported by a written justification for the selection of this method. This justification shall be approved in writing by the responsible Contracting Officer. Poor planning or lack of planning is not justification for emergency or sole-source procurements. The justification, to be included in the procurement file, should include the following information:
 - a) Description of the requirement;
 - b) History of prior purchases and their nature (competitive vs. noncompetitive);
 - c) The specific exception in 2 CFR 200.320(f)(a)-(4) which applies to the procurement;
 - d) Statement as to the unique circumstances that require award by Noncompetitive Proposals;
 - e) Description of the efforts made to find competitive sources (e.g., advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitations, etc.);
 - f) Statement as to the efforts that will be take in the future to promote competition for the requirement;
 - g) Signature by the Contracting Officer's supervisor or CDA Executive Director; and
 - h) Price Reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing an analysis, as described in this Policy.

Cooperative Purchasing/Intergovernmental Agreements

The CDA may enter into State and/or local cooperative or intergovernmental agreements to purchase or use common supplies, equipment or services. The decision to use an interagency agreement instead of conducting a direct procurement shall be based on economy and efficiency. If used, the interagency agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. The CDA may use Federal or State excess and surplus property instead of purchasing new equipment and property if feasible and if it will result in a reduction of project costs. The goods and services obtained

under a cooperative purchasing agreement must have been procured in accordance with 2 CFR 200.317 through 200.326.

V. INDEPENDENT COST ESTIMATE (ICE)

For all purchases above the Micro Purchase threshold, the CDA shall prepare an Independent Cost Estimate prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item to be purchased.

VI. COST AND PRICE ANALYSIS

The CDA shall require assurance that, before entering into a contract, the price is reasonable, in accordance with the following instructions.

Petty Cash and Micro Purchases (under \$10,000)

No formal cost or price analysis is required. Rather, the execution of a contract by the Contracting Officer (through a Purchase Order or other means) shall serve as the Contracting Officer's determination that the price obtained is reasonable, which may be based on the Contracting Officer's prior experience or other factors.

Small Purchases (\$10,000 – \$250,000)

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, comparison to ICE, or any other reasonable basis.

Sealed Bids and Competitive Proposals

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 the CDA cannot reasonably determine price reasonableness, the CDA must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable. 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, the CDA must conduct a cost analysis consistent with Federal guidelines, to ensure that the price paid is reasonable.

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. Projects originally procured through Small Purchase procedures that will exceed the Small Purchase limit with the contract modification shall also require a cost analysis.

VII. SOLICITATION AND ADVERTISING

Method of Solicitation

1. **Petty Cash and Micro Purchases.** The CDA may contact only one source if the price is considered reasonable.

2. **Small Purchase.** Quotes may be solicited by phone, email, or any other reasonable method. In soliciting quotes, staff should be mindful of avoiding conflicts of interest, both real and perceived, in the selection of firms solicited for quotes. Reasonable efforts shall be made to solicit quotes from minority- and women-owned businesses.
3. **Sealed Bids and Competitive Proposals.** Solicitation must be conducted publicly. The CDA must use one or more of the following solicitation methods, provided that the method employed provides for meaningful competition:
 - a. Advertising in newspapers or other print mediums of local or general circulations.
 - b. Advertising in various trade journals or publications (for construction).
 - c. E-Procurement. The CDA may conduct its public procurements through the Internet using e-procurement systems. However all e-procurements must otherwise be in compliance with federal regulations, State, and local requirements and the CDA's procurement policy.

Time Frame

For purchases exceeding the Small Purchase threshold, the public notice should run not less than once each week for two consecutive weeks.

Form

Notices/advertisements should state, at a minimum, the place, date, and time that the bids or proposals are due, the solicitation number, a contact who can provide a copy of, and information about, the solicitation, and a brief description of the needed item(s).

Time Period for Submission of Bids

A minimum of 30 days shall generally be provided for preparation and submission of sealed bids and 15 days for competitive proposals. However, the Executive Director may allow for a shorter period under extraordinary circumstances.

Cancellation of Solicitations

1. An IFB, RFP, or other solicitation may be cancelled before bids/offers are due if:
 - a. The supplies, services, or construction is no longer required;
 - b. The funds are no longer available;
 - c. Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best; or
 - d. Other similar reasons.
2. A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if:

- a. The supplies or services (including construction) are no longer required;
 - b. Ambiguous or otherwise inadequate specifications were part of the solicitation;
 - c. All factors of significance to the CDA were not considered;
 - d. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
 - e. There is a reason to believe that bids or proposals may not have been independently determined in open competition, may have been collusive, or may have been submitted in bad faith; or
 - f. For good cause of a similar nature when it is in the best interest of the CDA.
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.
 4. A notice of cancellation shall be sent to all bidders/offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any resolicitation or future procurement of similar items.
 5. If all otherwise acceptable bids received in response to an IFB are at unreasonable prices, an analysis should be conducted to see if there is a problem in either the specifications or the CDA's cost estimate. If both are determined adequate and if only one bid is received and the price is unreasonable, the Contracting Officer may cancel the solicitation and either
 - a. Re-solicit using an RFP; or
 - b. Complete the procurement by using the Competitive Proposal method. The Contracting Officer must determine, in writing, that such action is appropriate, must inform all bidders of the CDA's intent to negotiate, and must give each bidder a reasonable opportunity to negotiation.
 6. If problems are found with the specifications, CDA should cancel the solicitation, revise the specifications, and resolicit using an IFB.

Purchasing Credit Cards

Credit card usage should follow the rules for all other Micro Purchases and Small Purchases. For example, the Contracting Officer may use a credit card for Micro Purchases without obtaining additional quotes provided the price is considered reasonable. However, for amounts above the Micro Purchase level, the Contracting Officer would generally need to have obtained a reasonable number of quotes before purchasing via a credit card.

When using credit cards, the CDA should adopt reasonable safeguards to assure that they are used only for intended purposes (for instance, limiting the types of purchases or the amount of purchases that are permitted with credit cards) in collaboration with the City of Madison Finance Department.

VIII. BONDING REQUIREMENTS

The standards under this section apply to construction contracts that exceed the Small Purchase threshold. There are no bonding requirements for Micro Purchases, Small Purchases, or Competitive Proposals. The CDA may require bonds in these latter circumstances when deemed appropriate; however, non-construction contracts should generally not require bid bonds.

1. **Bid Bonds.** For construction contracts exceeding the Small Purchase threshold, offerors shall be required to submit a bid guarantee from each bidder equivalent to 5% of the bid price. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
2. **Performance and Payment Bonds.** For construction contracts exceeding the Small Purchase threshold, the successful bidder shall furnish an assurance of completion. This assurance may be any one of the following four at the discretion of the Contracting Officer:
 - a. A performance and payment bond in penal sum of 100% of the contract price; or
 - b. Separate performance and payment bonds, each for 50% or more of the contract price;
or
 - c. A 20% cash escrow; or
 - d. A 25% irrevocable letter of credit.

These bonds must be obtained from guarantee or surety companies acceptable to the U.S. Government and authorized to do business in the State of Wisconsin. Individual sureties shall not be considered. U.S. Treasury Circular Number 570 lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies on this circular is mandatory.

IX. CONTRACTOR QUALIFICATIONS AND DUTIES

Contractor Responsibility

The CDA 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 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, or debarred or under a HUD-imposed LDP.

If a prospective contractor is found to be non-responsible using these criteria, 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.

Suspension and Debarment

Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined to be ineligible by HUD in accordance with HUD regulations (2CFR 200.317 through 200.326) or by other Federal agencies (e.g., Department of Labor for violation of labor regulations) when necessary to protect housing authorities in their business dealings. Prior to issuance of a contract, CDA staff shall, as detailed within Section 10.2.H.1 and 10.2.H.2 of HUD Procurement Handbook 7460.8 REV 2, conduct the required searches within the HUD Limited Denial of Participation (LDP) system and the U.S. General Services Administration System for Award Management (SAM) and place with the applicable contract file a printed copy of the results for each such search.

Qualified Bidder's Lists

All interested businesses shall be given an opportunity to be included on qualified bidder's lists. Any lists of persons, firms, or products which are used in the procurement of supplies and services (including construction) 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 prequalified suppliers.

X. CONTRACT PRICING ARRANGEMENTS

Contract Types

Any type of contract which is appropriate to the procurement and which will promote the best interests of the CDA may be used, with the exception of the cost-plus-a-percentage-of-cost and percentage-of-construction-cost methods.

For all cost reimbursement contracts, CDA must include a written determination as to why no other contract type is suitable. Further, the contract must include a ceiling price and the contractor exceeds at its own risk.

A time and material contracts 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 his own risk.

All solicitations and contracts shall include the clauses and provisions necessary to define the rights and responsibilities of both the contractor and the CDA.

Options

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

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

XI. CONTRACT CLAUSES

All contracts shall identify the contract pricing arrangement as well as other pertinent terms and conditions, as determined by the CDA.

Additionally, the CDA shall ensure that each contract executed by CDA contains the required contract clauses detailed within 2 CFR 200.326 and Appendix II.

All contracts shall include clauses outlining the process to resolve grievances and the situations under which the contract may be terminated.

XII. CONTRACT ADMINISTRATION

The CDA shall maintain a system of contract administration designed to ensure that contractors perform in accordance with their contracts. These systems shall provide for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on major projects including construction contracts, and similar matters. For cost-reimbursement contracts, costs are allowable only to the extent that they are consistent with the cost principles in HUD Handbook 2210.18.

XIII. SPECIFICATIONS

General

Specification in procurement are defined as a description of a supply, service, or construction item that is used in procurements to tell prospective contractors precisely what the CDA requires. Specifications

are required for all solicitations and are also used in the resulting contract, and come in a variety of forms, including a statement of work when procuring services. All specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying the CDA'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. For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

Limitation

The following specification limitations shall be avoided:

1. Geographic restrictions not mandated or encouraged by applicable Federal law (except for architect-engineer contracts, which may include geographic location as a selection factor if adequate competition is available);
2. Unnecessary bonding or experience requirements;
3. Brand name specifications (unless a written determination is made that only the identified item will satisfy the CDAs needs);
4. 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 CDA's computer needs and then allowing that consultant to compete for the subsequent contract for the computers).

XIV. APPEALS AND REMEDIES

It is the CDA's policy to resolve all contractual issues informally at the CDA and in a manner that avoids litigation unless necessary. Disputes will not be referred to HUD until all administrative remedies have been exhausted. When appropriate, the CDA 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.

Informal Appeals Procedure (under \$250,000)

The CDA shall adopt an informal bid protest/appeal procedure for contracts under the Small Purchase threshold. Under these procedures, the bidder/contractor may request to meet with the appropriate Contract Officer.

Formal Appeals Procedure (over \$250,000)

A formal appeals procedure shall be established for solicitations/contracts of more than the Small Purchase threshold.

1. **Bid Protest.** 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.

Any protest against the award of a contract must be received within ten (10) calendar days after the contractor receives notice of the contract award, or the protest will not be considered.

All bid protests shall be in writing and submitted to the Contracting Officer or designee, who shall issue a written decision on the matter. The Contracting Officer may, at his/her discretion, suspend the procurement pending resolution of the protest if the facts presented so warrant.

2. **Contractor Claims.** All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer or designee for written decision. The contractor may request a conference on the claim. The Contracting Officer's decision shall inform the contractor of its appeal rights to the Executive Director. Contractor claims shall be governed by the Changes clause in the form HUD-5370.

XV. ASSISTANCE TO SMALL AND OTHER BUSINESSES

Required Efforts

Consistent with Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, all feasible efforts shall be made 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 the area of a CDA project 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, to the greatest extent feasible, a clause requiring contractors, to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with the project to business concerns which provide opportunities to low-income residents, as described in 24 CFR 135 (so-called Section 3 businesses); and

7. Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed in A1e through A1f above.

Goals may be established by the CDA periodically for participation by small businesses, minority-owned businesses, women's business enterprises, labor surplus area businesses, and the business concerns which are located in, or owned in substantial part by persons residing in the area of the projects, in the CDA's prime contracts and subcontracting opportunities.

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 CFR 121 shall be used, unless the CDA 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 is which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans and Asian Indian Americans, and Hasidic Jewish Americans.
3. A **women's business enterprise** is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who also control(s) or operate(s) the business.
4. A **labor surplus area business** is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the U.S. Department of Labor in 20 CFR 654, Subpart A, and in lists of labor surplus areas published by the Employment and Training Administration.
5. A **Section 3 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.

XVI. BOARD APPROVAL OF PROCUREMENT ACTIONS

Other than approval of this Procurement Policy, approval by the Board of Commissioners is not required for any procurement action, as permitted under State and local law. Rather it is the responsibility of the Executive Director to make sure that all procurement actions are conducted in accordance with the policies contained herein.

XVII. DELEGATION OF CONTRACTING AUTHORITY

While the Executive Director is responsible for ensuring that the CDA’s procurements comply with this policy, the Executive Director may delegate all procurement authority in writing as is necessary and appropriate to conduct the business of the CDA.

Further, and in accordance with this delegation of authority, the Executive Director shall, where necessary, establish operational procedures (such as a procurement manual or standard operating procedures) to implement this Policy. The Executive Director shall also establish a system of sanctions for violations of the ethical standards described in Section III below, consistent with Federal, State, or local law.

The Executive Director or his/her designee shall ensure that:

1. Procurement requirements are subject to an annual planning process to assure efficient and economical purchasing;
2. Contracts and modifications are in writing, clearly specifying the desired supplies, services or construction, and are supported by sufficient documentation regarding the history of the procurement, including as a minimum the method of procurement chose, the selection of the contract type, the rationale for selecting or rejecting offers, and the basis for the contract price;
3. For procurements other than small purchases, a class 2 public notice (as defined in Wis. Stat. sec. 985.07) is given of each procurement; responses to such notices are honored to the maximum extent practical; a minimum of 30 days is provided for preparation and submission of bids or proposals; and notice of contract awards is made available to the public;
4. There are sufficient unencumbered funds available to cover the anticipated project (cost of each procurement before contract award or modification, including change orders), work is inspected before payment, and payment is made promptly for contract work performed and accepted; and
5. The CDA complies will applicable HUD review requirements.

The Board appoints and delegates procurement authority consistent with this policy to the Executive Director. The Executive Director is authorized to sign contracts of any type not to exceed \$50,000. Any contracts in excess of \$50,000 must be authorized by the Board prior to signature and are signed by the Executive Director and the Board Chair unless another signer is authorized by resolution.

XVIII. DOCUMENTATION

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

1. Rationale for the method of procurement (if not self-evident);
2. Rationale for contract pricing arrangements (also if not self-evident);
3. Reason for accepting or rejecting the bids or offers;

4. Basis for the contract price (as prescribed in this handbook);
5. A copy of the contract documents awarded or issued and signed by the Contracting Officer;
6. Basis for contract modifications; and
7. Related contract administrative actions.

The level of documentation should be commensurate with the value of the procurement.

Records are to be retained for a period of seven years, pursuant to Wis. Stat. s.19.21 (4)(b), after final payment and all matters pertaining to the contract are closed.

XIX. DISPOSITION OF SURPLUS PROPERTY

Property no longer necessary for the CDA's purposes (non-real property) shall be transferred, sold, or disposed of in accordance with applicable Federal, state, and local laws and regulations.

XX. FUNDING AVAILABILITY

Before initiating any contract, the CDA shall ensure that there are sufficient funds available to cover the anticipated cost of the contract or modification.