"Procurement Policy"

LORAIN METROPOLITAN HOUSING AUTHORITY

Procurement Policy established by Board Resolution Number [6924]

Effective Date: [September 19, 1990]

ARTICLE I - GENERAL

1-100 Housing Authority Policy - Procurement System - When procuring authorized supplies, services, equipment, and construction items, the Housing Authority shall follow the procurement policies stated herein.

A. Purpose - The purpose of this policy is designed to achieve a twofold primary objective.

1. First, the policy provides the Housing Authority with:

   a. Policy guidance and statutory language for managing and controlling its purchases of supplies, services, equipment, and construction items; and

   b. Directions for soliciting contractors, including small, minority, and women-owned businesses; awarding and administering contracts and purchase orders; and resolving controversies relating to protests and contract disputes and claims.

2. Second, the policy is designed to:

   a. Provide for the equitable treatment of all persons, including contractors and subcontractors, who are currently engaged, or may become engaged, in public contracting sponsored by the Housing Authority;
b. Maximize the purchasing value of all funds expended by the Housing Authority in satisfying its procurement needs; and

c. Provide safeguards for maintaining the general public’s confidence in the integrity of the Housing Authority’s procurement program.

3. Finally, it furnishes, a set of ethical standards that govern the performance of the Housing Authority employees, as well as non-Housing Authority individuals and businesses, who are involved, or may become involved, in the Authority’s procurement process.

In addition to its primary objective, this policy satisfies several secondary functions. For instance, it serves as the primary policy document to be followed by employees of this Housing Authority when procuring services, supplies, equipment, and construction items. It also sets forth basic guidance which the Housing Authority must use to implement the procurement standards defined in 24 CFR 85.36.

Finally, this policy provides the fundamental foundation upon which the Authority’s manual of procurement procedures and techniques shall be constructed.

B. Applicability - This procurement policy applies to the expenditure of all funds, related to both formal contracts and purchase orders, used to purchase supplies, services, equipment, and construction items needed by the Housing Authority.

In the event of conflict between this policy and 24 CFR 85.36, the procurement requirements of 24 CFR 85.36 shall govern. The requirements of 24 CFR 85.36 shall also apply to conflicts involving the procurement provisions of this policy and the following publications:

1. Annual Contributions Contract (ACC);

2. U. S. Department of Housing and Urban Development (HUD) handbooks; and

3. Other uncodified guidelines.
However, nothing in this policy shall prevent the Housing Authority from complying with specific terms and conditions of any Housing Authority grant which is consistent with Federal, state, and Local laws.

C. Deviations - Unless approved in writing by the executive Director, Housing Authority staff shall not deviate from the contents of this policy. The fact that deviation authority is required shall not, in itself, deter the staff in their development and testing of new techniques and procurement methods. Under no circumstances shall the Executive Director allow deviation from Federal, State, or Local Government statutes. For example, the federally mandated $25,000 ceiling for small purchase procurements and the $2,000 threshold required to invoke the use of Davis Bacon wage rates shall not be altered.

1-101 Definitions of Words and Terms

A. As used throughout this policy, the following significant words and terms are used as defined in this article unless:

1. The context in which they are used clearly requires a different meaning; or

2. A different definition is prescribed for a particular section or portion of a section.

Architect-Engineer Service - Those licensed professional services within the scope of the practice of architecture and professional engineering as defined by the Laws of the State of Ohio.

Contract - All types of Housing Authority agreements that are enforceable in a court of law, regardless of what they may be called, for the procurement of supplies, services, equipment, and construction items. The following are only a few examples of contractual agreements: firm-fixed price contract, time and materials contract, purchase order, architect-engineer contract, indefinite delivery contract, professional service contract, letter contract, and construction contract.

Contractor - Any business concern or person having a contract with the Housing Authority.
Cost - The amount of money spent in providing a supply or service, usually exclusive of profit and/or other markups.

Cost Analysis - Means the review and evaluation of the separate cost elements and the proposed profit related to a contract.

Cost Data - Factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

Executive Director - The designated principal manager who has overall responsibility for the operation and administration of the Housing Authority.

Financial Interest - The ownership of any interest or involvement in any relationship from which, or as a result of which, a business concern or person is presently or in the future entitled to receive money or its equivalent. A financial interest also includes the holding of a position such as an officer, director, trustee, partner, employee, or the like in a business.

HUD - This term shall mean the U. S. Department of Housing and Urban Development including its regional and field offices.

Immediate Family - A family relationship by virtue of blood or marriage, including common-law marriage, and adoption. The relationship shall include grandparents, parents, sisters, brothers, or and children.

Person - Any business, company, individual, contractor, subcontractor, union, committee, club, other organization, or group of individuals.

Price - The amount of money paid or charged for providing a supply or service, usually includes profit and/or other markups.

Price Analysis - Means the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.

Pricing Data - Factual information concerning prices for procurement items that are substantially similar.
Procurement - A composite function that includes one or more of the following activities: buying, purchasing, renting, leasing, or otherwise the acquiring of any supplies, services, equipment, and construction items. It also includes all functions that pertain to the obtaining of any supplies, services, equipment, and construction, plus description of requirements, selection, and solicitation of sources, preparation and award of contracts or purchase orders, and all phases of contract administration.

Procurement Policy - A plan or course of action designed to manage and guide the purchasing activities of the Housing Authority.

Purchase Order - An offer by the Housing Authority to buy certain supplies, services, equipment, and construction items from a commercial source, upon specified terms and conditions, the aggregate amount of which does not exceed $2,500.00. RESOLUTION 7797-95 (11/15/95)

Small Business - A United States business that meets the small business qualification criteria set forth by the U. S. Small Business Administration. The small business shall be independently owned and shall not be dominant in its field of operation or an affiliate or subsidiary of a business that is dominant in its field of operation.

Small Purchase - A single procurement transaction that calls for a single or aggregate purchase of supplies, services, equipment, and construction items in the amount of $25,000 or less using small purchase procedures.

Source - Same as "Person" (See above definition for person.)

COMMENTARY

Refer to the terms "Purchase Order" and "Small Purchase". The $25,000 amount which appears in their definitions is the statutory ceiling for purchases made under small purchase procedures; this ceiling amount shall not be increased. However, at the discretion of the Executive Director, the ceiling amount may be lowered to a lesser amount. For additional details pertaining to small purchases, see Article 4, section 4-101 and its commentary.
1-102 Improper Business Practices and Personnel Conflicts of Interest

A. General - Housing Authority business shall be conducted in a manner above reproach and, except as authorized by statute or 24 CFR 85.36, with complete impartially and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. In essence, Housing Authority employees shall avoid strictly any conflict of interest or even the appearance of a conflict of interest in Housing Authority - contractor relationships. Authority personnel must always be in a position that allows them to have no reluctance to make a full public disclosure of any of their actions.

B. Employee, Officer, and Agent Conflict of Interest

It shall be unethical for an employee, officer, or agent of this Housing Authority to participate directly or indirectly in the selection, award, or administration of a contract or purchase order supported by Housing Authority funds if a conflict of interest, real or apparent, would be involved. A conflict of interest would arise when:

1. An employee, officer, or agent of this Authority;
2. Any member of his or her immediate family;
3. His or her partner; or
4. An organization or business which employs or is about to employ any of the above, has a financial or other interest in the firm selected for contract or purchase order award.

C. Solicitation and Acceptance of Gratuities

It is unethical for any contractor or any other persons to:

1. Offer, give, or agree to give any Housing Authority employee or former employee (that
is, an employee whose employment with the Housing Authority has been terminated for two years or less) gratuity;

2. Employment; or

3. Any other benefit in connection with any decision relating to any part of the Authority's procurement requirements.

It is also unethical for any Authority employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or employment in connection with any decision involving any part of the Housing Authority's procurement requirements.

D. Kickbacks - The value of anything transferred or received in breach of the gratuity provision may be recovered from either a Housing Authority employee or nonemployee, such as a contractor or subcontractor, or both. The Housing Authority shall comply with Federal, State, and Local government Kickback statutes, such as the Federal Copeland "Anti-Kickback Act (18 U.S.C. 874). The governmental authorities listed in the latter sentence shall govern kickback issues involving a prime contractor, a prime contractor employee, subcontractor, or a subcontractor employee.

Upon showing that a contractor or subcontractor made one or more kickbacks, the amount shall be recovered as specified in Federal, State, and/or Local statutes or regulations, for example the Copeland "Anti-kickback" Act.

E. Prohibition Against Contingent Fees - Except as specified, it shall be unethical for a contractor to retain a person, to solicit or secure a Housing Authority contract or purchase order based on an agreement or understanding for a commission, percentage, brokerage, or contingent fee. Except for the retention of a bona fide employee or a bona fide established commercial agency established for the purpose of securing business, no other individual or business shall be used to solicit or secure Authority business.

F. Contemporaneous Employment Prohibited - It shall be unethical for any employee of the Housing Authority who is participating directly or indirectly in the
Authority's procurement process to become or to be, while employed by the Authority, the employee of any person or firm contracting with the Housing Authority. However, the Executive Director may, request in writing the local HUD office's approval to, grant a waiver from the employee conflict of interest provision upon making a written determination that:

1. The contemporaneous employment or financial interest of the Housing Authority employee has been publicly disclosed;

2. If the individual is a former employee, the person has been unemployed by the Housing Authority for a period of at least one(1) year.

3. The employee shall be able to perform his or her procurement functions without actual or apparent bias or favoritism; and

4. The contract or purchase order award shall be in the best interests of the Housing Authority.

G. Officials not Benefit - No member of or delegate to the U.S. Congress, a State Congress, or other local publicly elected Governmental body shall be allow to participate in any share or part of Housing Authority contracts or purchase orders. The referenced public officials shall not be permitted to receive any benefits arising from such contracts or purchase orders.

H. Reporting Suspected Anti-Trust Violations - When for any reason collusion or other anti-competitive practices are suspected among any bidders or offerors, a notice of the relevant fact shall be transmitted to the Ohio State Attorney General and the U. S. Department of Housing and Urban Development's Columbus Field Office. For the purpose of this policy, an Anti-Trust violation is considered to be any practice that is designed and used to eliminate full and open competition or deliberately restrain trade.

I. Contracts/Purchase Orders with Housing Authority Employees - The Contracting Officer shall not knowingly award a contract or purchase order to any employee or group of employees employed by this Housing Authority. Furthermore, the Contracting Officer shall not enter into any contractual
agreement with any business concern or other organization owned or controlled by one or more of the Authority's employees.

This policy is intended to avoid conflict of interests that might arise between the employees' interests and their Housing Authority duties to avoid the appearance of favoritism or preferential treatment by the Authority toward its employees.

J. Independent Pricing of Bids and Proposals – Each contractor who competes for a Housing Authority contract or purchase order shall independently arrive at his or her bid or proposal prices. Under no circumstances shall a contractor enter into any consultation, communication, or agreement with any other offeror or competitor when preparing bid or proposal prices, for the purpose of restricting competition.

K. Buying – In – The Contracting Officer shall give particular attention to Contractors’ bid or proposal prices to identify potential buy – in bids or offers. A Buy-in shall mean knowingly submitting an offer or bid below anticipated costs.

L. Prohibition Against Lobbying – As specifically stated in the Byrd Amendment, it shall be unethical for any individual or business concern to lobby or engage others to lobby for it any Housing Authority contracts or purchase orders.

M. Civil and Criminal Sanctions – The Contracting Officer may determine that a violation of certain provisions of this section warrants civil or criminal penalties. For example, the violation of the Copeland Anti-kickback Act, the Anti-Trust statutes, and the Davis Bacon Act could precipitate criminal action against violators.

N. Administrative Sanctions

1. Employees – The Executive Director may impose any one of the following sanctions on an employee for violations of the ethical provisions referenced in section 1-102, paragraph A through K above:
a. Oral or written warnings or reprimands;

b. Termination of employment.

2. **Nonemployees** - The Executive Director may impose any one or more of the following sanctions on a nonemployee, including a contractor or subcontractor, for violations of the ethical provisions:

   a. Written warnings or reprimands;

   b. Limited Denial of participation in certain Housing Authority programs;

   c. Termination of contracts or purchase orders; or

   d. Debarment or suspension from participating in all Housing Authority programs.

O. **Existing Administrative Sanctions** - Criminal, civil, and administrative sanctions which are in existence against employees of this Authority or nonemployees on the effective date of this policy shall not be impaired.

1-103 **Administrative Matter**

A. **Contract Execution** - Only an individual who serves as a Contracting Officer shall sign contracts or purchase orders on the behalf of the Housing Authority. Each contract or purchase order shall bear the Contracting Officer’s signature, typed or printed name, and position title.

B. **Contract and/or Modification Distribution** - The Contracting Officer shall ensure that copies of contracts are distributed within ten(10) working days after execution by all parties to the contract or purchase order. As a minimum, a copy of the contract shall be forwarded to both the contractor and the contract administrator and other individuals, such as contract inspectors who are responsible for monitoring the contract performance. A copy of the contract or purchase order including any modifications shall also be placed in the official contract or purchase order file.

C. **Safeguarding Confidential Information** - It shall be
unethical for any Housing Authority employee, or former Authority employee, knowingly to use confidential information for actual or anticipated personal gain, or to release such information for the actual or anticipated personal gain of any other person. (Also see section 1-104 below.)

D. **Contractor Records Retention** - On request by the Contracting Officer, HUD, or the U. S. Comptroller General, a contractor shall make available specified contract documents. The documents pertinent to a specific contract shall include: books, records, and other supporting evidence used to satisfy contract negotiation, administration, and audit requirements. The foregoing documents shall be retained by the contractor for at least three(3) years after final payment or after all outstanding issues such as disputes have been settled. However, Payroll records required by the Davis Bacon Act shall be retained for four(4) years following final payment or four(4) years after the settlement of outstanding issues.

E. **Contract Files** - The Housing Authority’s Contracting Officer shall establish files containing the records of all contractual actions. The documentation in the files shall be sufficient to present a complete history of the events which occurred during the solicitation and contract performance periods.

F. **Closingout Contract Files** - After receiving evidence of the physical completion of a contract, including final payment, the Contracting Officer shall be responsible for ensuring that the contract is administratively closeout.

G. Small purchase files shall be considered closed when the Contracting Officer receives evidence of satisfactory receipt of the supplies, services, equipment, construction items, and notice of final payment.

**1-104 Release of Procurement Information**

A. **General** - A reasonable level of business security must be maintained in order to preserve the integrity of the Housing Authority’s procurement system. Therefore, the Executive Director shall ensure that the following categories of information are properly managed:
B. Disclosure of General Procurement Information - Each request from the general public for general procurement information shall be processed properly and in a timely manner. The request shall be handled in accordance with the Authority's written procedures for releasing procurement information to the general public. The procedures shall regulate:

1. The type of information that can be released;

2. The circumstances and authority under which the information can be relinquished, such as Federal, State, or Other applicable freedom of information statues.

3. The timeframe in which the data must be released; and

4. What information shall be exempt from public disclosure.

B. Disclosure of Proprietary and Source Selection Information - During the conduct of any Housing Authority procurement for services, supplies, equipment, or construction, no Housing Authority manager or employee who is given authorized (or unauthorized) access to proprietary or source selection information regarding any Housing Authority procurement, shall knowingly disclose such information, directly or indirectly, to any person other than a business concern or person authorize by the Executive Director or the Contracting Officer to receive such information.

1-105 Maintenance of a Drug-Free Workplace - The Contracting Officer shall not knowingly award any contract or purchase order, of any dollar amount, to an individual who is engaged in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of an Authority contract or a purchase order.

If a contractor fails to maintain a drug-free workplace at all times during the contract or purchase order performance period, the Contracting Officer shall terminate the contract or the purchase order for default. The latter default action shall result in a debarment sanction being imposed against the contractor.
ARTICLE 2 - OFFICE OF THE CONTRACTING OFFICER

2-100 Establishment and Appointment

A. Establishment of the Position of Contracting Officer - This policy creates the position or positions of Contracting Officer. To be valid, the position must be approved by a board resolution issued by the Housing Authority’s Board of Commissioners.

The Executive Director of this Authority shall normally serve as the principle Contracting Officer. In this capacity, the Director is the only individual in the Authority who is authorized to enter into, administer, or terminate contracts or purchase orders.

The Contracting Officer may bind the Housing Authority only to the extent of the authority vested or delegated to the position. However, with the Board of Commissioners’ approval, the Executive Director may establish the position of Contracting Officer as one or more separate entities. These entities may have the same, or reduced, contracting duties and authority normally vested in the Executive Director. The individuals who fills such an entities shall report directly to the Executive Director of the Authority.

2-101 Authority and Duties

A. Contracting Officer - Except as otherwise provided herein, the Contracting Officer shall serve as the principal contracting official for this Housing Authority. The Contracting Officer shall also be responsible for the procurement of supplies, services, equipment, and construction in accordance with this policy, as well as the management and disposal of supplies.

B. Duties - The Contracting Officer shall:

1. Be allowed wide latitude to exercise good judgement;

2. Ensure that contractors receive impartial, fair, and equitable treatment;
3. Request and consider the advice of specialists in audit, law, engineering, and other fields as appropriate;

4. Provide procurement assistance to the divisions of the Housing Authority.

5. Procure all supplies, services, equipment, and construction needed by the Housing Authority;

6. Sign all contracts and purchase orders;

7. Analyze bids and proposals, including related prices;

8. Award and modify contracts and purchase orders;

9. Establish and maintain procedures for contract administration;

10. Sell, trade, or otherwise dispose of surplus supplies belonging to the Housing Authority;

11. Detect and minimize contract irregularities; and

12. Ratify contractual agreements that are not binding solely because the Authority's employee who made it lacked the authority to enter into a proper agreement on behalf of the Housing Authority.

2-102 Delegation of Authority to Other Housing Authority Officials

With the Board of Commissioners' approval, the Executive Director may designate other qualified individuals to be Contracting Officers solely by virtue of their positions. Using delegated authority, the individuals are authorized to formally contract for, and/or, award purchase orders for specific supplies, services, equipment, or construction items.

Delegated Contracting Officer authority shall normally be reserved for selected division directors. However, limited contracting authority may be delegated to specialized positions such as a Purchasing Agent.

2-103 Reduction of Duties and Authority - Removal from Office

A. If necessary and for cause, the Executive Director may:
1. Suspend all or a portion of the Contracting Officer’s duties and authority;

2. Partially or fully terminate the Contracting Officer’s duties and authority; or

3. Remove an individual from the position of Contracting Officer. The Board of Commissioners shall ratify the Executive Director’s action to remove a Contracting Officer from office.

B. When the Executive Director and the Contracting Officer are one in the same, the Board of Commissioners shall partially or fully terminate the Contracting Officer’s duties and authority. If required, the Board shall remove the Executive Director from the Office of Contracting Officer.

C. If any of the above actions are exercised, they shall be done in writing; no termination action shall be written to operate retroactively.
ARTICLE 3 - COMPETITION AND PROCUREMENT PLANNING

3-100 General Public Notice - The major newspapers which is generally circulated in the area shall be the public's principle notification media by which the Housing Authority identifies proposed contract requirements and contract awards. The Authority shall publicize each proposed contract estimated to cost more than $25,000 by publishing a public notice.

The notice shall appear at least three (3) days prior to the date that the invitation for bids or request for proposals is released. The Housing Authority shall synopsiz the public notice in the legal notice section of the paper. The notice shall state as a minimum the place, date, and time of the bid opening or the proposal closing date and delivery point; the notice shall run once a week for two consecutive weeks.

In addition to the newspaper notice, the Housing Authority may publish construction solicitations with local construction clearing houses and local contractor plan rooms. When appropriate, the Authority may also list its construction, management, and consultant procurement needs in applicable trade or industry publications. In addition to the foregoing notices, the Housing Authority shall maintain a copy of the solicitation for public viewing. The copy shall be located in a conspicuous and convenient place in the Housing Authority.

3-101 Response time - bid or proposal - Each offeror shall be given no less than [30] calendar days from the date of issuance of the solicitation to the bid opening date or proposal closing date to submit a bid or proposal, whichever is specified in the solicitation. Contingent upon the nature of the procurement such as an emergency, a shorter bid or proposal preparation period may be specified.

3-102 Competition Requirements

A. Full and Open Competition - The Contracting Officer shall conduct all procurement transactions in a manner that provides for full and open competition. The transactions shall be consistent with the procurement standards set forth in this policy.

The Housing Authority shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals, except for applicable Federal and State statutes that expressly mandates or encourages geographical preference. When contracting for architectural and Engineering(A-E) services, geographic location may be a selection criteria
provided its application leaves an appropriate number of qualified firms to compete for the contract.

B. Other than Full and Open Competition

The Contracting Officer shall ensure that each contract or purchase order awarded without providing for full and open competition is adequately justified. The justification shall be stated in writing and placed in the contract or purchase order file.

Contracting without providing for full and open competition shall not be justified on the basis of:

1. A lack of advance planning by the Authority (For exception, See item D below); or

2. Concerns related to the amount of public housing funds available (e.g., funds that will expire) to the Authority for the procurement of various items and services.

C. Housing Authority's contracting plans that must be changed due to circumstances that are beyond the Authority's control shall be altered accordingly. The proposed method of procurement shall be dictated by the prevailing circumstances and the nature of the procurement.

D. Restricted Competition

The following situations shall be considered to be restrictive to the full and open competition policy. When soliciting contractors, the Contracting Officer shall ensure that solicitation requirements do not:

1. Place unreasonable requirements on contractors in order for them to qualify to do business;

2. Require unnecessary experience and excessive bonding;

3. Noncompetitive pricing practices between firms or between affiliated companies;

4. Engender organizational conflicts of interest;

5. Specify only a "brand name" product instead of allowing "an equal" product to be offered; and
6. Permit any arbitrary and capricious action to take place in the procurement process. All actions shall be sound and stable.

E. Nothing in this procurement policy shall preempt any state licensing laws.

F. This Housing Authority shall develop and maintain written procedures for its procurement transactions. These procedures shall ensure that all solicitations satisfy the competition requirements specified in 24 CFR 85.36.

G. The Authority shall ensure that all prequalified lists of persons, firms, or products which it uses in acquiring supplies, services, equipment, and construction are current and include enough qualified sources to ensure maximum full and open competition; under no circumstances shall the Contracting Officer preclude potential bidders or offerors from qualifying during any solicitation bid or proposal periods.

3-103 Procurement Planning

A. The Housing Authority shall prepare an annual procurement plan, or plans, and conduct market surveys for all contracts estimated to exceed $25,000 and for purchase orders when appropriate. The planning requirement is essential in order to promote and provide for full and open competition. The purpose of this planning phase is to ensure that the Authority meets its needs in the most effective, economical, and timely manner. The planning effort shall integrate the efforts of each Authority personnel who is responsible for the procurement of supplies, services, equipment, and construction.

B. Small Purchase Procedures Planning (Purchase Orders)

When practical, the procurement of small purchases shall be planned in a manner similar to that used for planning formal contracts.

3-104 Excess Federal Property - Supplies and Equipment - When it is practicable to do so, the Contracting Officer shall request and use excess Federal property as its first source of supply in fulfilling the Authority's supplies and equipment needs. Accordingly the Executive Director shall ensure that all personnel in the Housing Authority make positive efforts to
satisfy the Authority’s requirements by obtaining and using excess Federal property before initiating new contracting actions.

3–105 Contractor Qualifications

A. Contractor Responsibility

1. The Housing Authority shall only purchase its procurement needs from and award contracts and purchase orders to, responsible contractors;

2. Prior to awarding any contract or purchase order, the Contracting Officer shall make an affirmative determination of a contractor’s responsibility. As a minimum, the Contracting Officer’s determination shall indicate that a contractor is not debarred, suspended, or otherwise declared ineligible to participate in Housing Authority procurements. A contractor must affirmatively demonstrate its responsibility, including when necessary, the responsibility of its proposed subcontractors; and

3. Although it is important that the Authority’s contracts and purchase orders be made at the lowest price, this requirement does not require that a contract award be made solely because a contractor submitted the lowest price.

B. Subcontractor Responsibility – If necessary, the Contracting Officer shall instruct the prime contractor to provide information that clearly indicates each of his or her subcontractor’s responsibility.

C. Responsibility Standards – The Contracting Officer shall determine if a contractor is responsible by applying the standards listed below. The contractor or subcontractor must:

1. Possess the ability to perform successfully under the terms and conditions of a proposed procurement;

2. Have an acceptable record of business integrity; and
3. Have an acceptable record of compliance with public policy, record of past performance, and financial and technical resources.

3-106 Specifications and Other Purchase Descriptions

A. Maximum Practical Competition

All specifications shall be drafted so as to promote full and open competition and overall economy for the purpose intended. The specifications shall also encourage competition in satisfying the Housing Authority's needs, and shall not be unduly restrictive.

The policy enunciated in this section applies to all specifications including but not limited to, those prepared for the Housing Authority by architects, designers, draftsmen, and consultants.

B. Qualified Products List - When appropriate, the Housing Authority shall refer to its own qualified product list or those product list provided by other sources.

C. Brand Name or Equal Specification

1. Use - Brand name or equal specifications may be used when the Contracting Officer determines in writing that:

   a. No other design or performance specification or qualified products list is available;

   b. Time does not permit the preparation of another form of purchase description not including a brand name specification;

   c. The nature of the product or the nature of the Housing Authority's requirements make use of a brand name or equal specification suitable for the procurement; or

   d. Use of a brand name or equal specification is in the Housing Authority's best interests.

2. Designation of Several Brand Names - Brand name or equal specifications shall seek to designate three, or as many different brands as are
practical, as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.

3. **Required Characteristics** - Unless the Contracting Officer determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.

4. **Nonrestrictive Use of Brand Name or Equal Specifications** - Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

D. **Brand name Specification**

1. **Use** - Since use of a brand name specification is restrictive of product competition, it may be used only when the Contracting Officer makes a written determination that only the identified brand name item or items will satisfy the Housing Authority's needs.

2. **Competition** - The Contracting Officer shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under sole source procurement procedures.

E. **Types of Specifications** - The three basic types of specifications that shall be used by the Housing Authority when preparing Housing Authority contracts or purchase orders:

1. Performance specifications;
2. Design specifications; and
3. Purchase descriptions
3-107 **Contract Delivery or Performance**

A. The Housing Authority shall not accept promises made by a contractor that he or she is meeting all the technical requirements of a contract or purchase order; the Contracting Officer will cause inspections of all areas to ascertain actual performance. The inspections shall ensure that the contractor is performing according to the contract specifications. During the monitoring of the contract performance inspections, if the contractor has not performed properly, the Housing Authority shall reject or take appropriate action to ensure the contractor meets all performance standards prior to final delivery of supplies or services.

B. The Authority shall have a reasonable time after delivery to ascertain that all specifications in the contract are satisfying the technical requirements of the contract.
ARTICLE 4 - CONTRACTING METHODS AND CONTRACT TYPES

4-100 General

A. Several contracting methods are available to the Contracting Officer to provide the needed flexibility in acquiring the variety and volume of supplies, services, equipment, and construction items required by the Housing Authority.

B. The competitive contracting methods are grouped into three board categories:

1. Small purchases;
2. Sealed bidding, and
3. Competitive proposals (Contacting by Negotiation.)

4-101 Small Purchase and Other Simplified Purchase Procedures

A. General - Small purchase procedures shall be used to procure services, supplies, equipment, and construction items costing [$25,000] or less. A purchase order containing applicable contract clauses shall be used when purchasing the foregoing items. Contract requirements which exceed $25,000 shall not be artificially divided so as to constitute small purchases under this section, except as authorized by the provisions of Article 5.

B. Purchases not over $2,500.00 (RESOLUTION 7797-95) 11/15/95

1. Purchases not exceeding this limit may be made without securing competitive quotations if the Contracting Officer considers the prices to be reasonable;
2. Such purchases shall be distributed equitably among qualified suppliers or contractors;
3. If practical, a quotation shall be solicited from other than the previous supplier or contractor before placing a repeat order; and
4. The administrative cost of verifying the reasonableness of the price of purchases not exceeding $1,000 may more than offset potential savings from detecting instances of overpricing.
Therefore action to verify price reasonableness need be taken only when: (a) The buyer or Contracting Officer suspects or has information to indicated that the price may not be reasonable, or (b) Purchasing an item for which no comparable pricing information is readily available.

C. Purchases over $2500.00 (RESOLUTION 7797-95) 11/15/95

1. The Contracting Officer shall solicit quotations from a reasonable number of sources (no less than three sources) to promote competition to the maximum extent practicable and ensure that the purchase is advantageous to the Housing Authority, price and other factors considered, including the administrative cost of the purchase. Solicitations may only be limited to one source if the Contracting Officer determines that only one source is reasonably available.

2. Small purchase solicitations may be publicized to obtain competition depending upon the estimated dollar amount and complexity of the solicitation.

3. Generally, quotations should be solicited orally except that written solicitations shall be used for construction contracts over $2,000. Written solicitations shall be used when obtaining oral quotations is not considered economical or practical.

4. Generally, the solicitation of at least three sources may be considered to promote competition to the maximum extent practicable.

4-102 Sealed Bidding

A. Conditions for Use - All Housing Authority contracts shall be awarded by competitive sealed bidding procedures unless the Contracting Officer determines in writing that the use of seal bidding is impractical.

B. Public Notice - Adequate public notice of the invitation for bids shall be issued as specified in Section 3-100.

C. Invitation for Bids - An invitation for bid (IFB) shall be issued and shall include a statement of work and/or specifications, plus all contractual terms and
conditions applicable to the proposed contract. The response time to the IFB shall be as specified in sections 3-100.

D. Bid Opening - Bids shall be opened publicly in the presence of one or more witnesses of the Housing Authority at the stated time and place designated in the invitation for bids. The witness shall always be a member of the Housing staff. The amount of each bid and such other relevant information as the Contracting Officer deems appropriate, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection.

E. Bid Acceptance and Bid Evaluation - Bids shall be unconditionally accepted without alteration or correction, except as authorized in this policy. Bids shall be evaluated based on the requirements set forth in the invitation for bids.

F. Correction or Withdrawal of Bids - Correction or withdrawal of erroneous bids before or after bid opening may be permitted by the Contracting Officer, where appropriate. Mistakes discovered before bid opening may be modified or withdrawn 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 to the extent that the bidder can show as expeditiously as possible to the Contracting Officer by clear and convincing evidence:

1. That a mistake of a nonjudgmental character was made;

2. The nature of the mistake; and

3. The bid price that was actually intended.

Based on the timely submission of information by the bidder, the Contracting Officer shall make a written determination that the proposed changes in bid or bid prices or other provisions of the bid or proposal will not be prejudicial to the interest of the Housing Authority or the concept of full and open competition.

G. Award - The contract shall be awarded with reasonable promptness by appropriate written notice to the responsible contractor whose bid meets the
requirement and criteria set forth in the invitation for bids, and whose bid price is lowest and responsive in addition to being fair and reasonable.

H. Cancellation of Invitations for Bids - Each solicitation issued by the Housing Authority shall state that the solicitation may be cancelled and that any bid may be rejected in whole or in part for good cause when in the best interest of the Housing Authority. Notice of cancellation shall be sent to all businesses who submitted a bid.

The notice of cancellation shall identify the solicitation, explain the reasons for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar items. The reasons for cancellation therefore shall be made part of the notice and contract file.

I. Rejection of Bids - Each Invitation for bids solicitation shall contain a provision that states the Contracting Officer reserves the right to reject any and all bids which are determined not to be in the best interest of the Housing Authority.

When One Bid is Received - Consistent with prior policy, it is the policy of the Housing Authority Board to rebid all work or projects when only one (1) bid has been received by the time the bid acceptance period has expired. Provided however, if the work is of an emergency nature and the sole bid received has met with the acceptance criteria of the administration of the Housing Authority, then, in that event, the Board can, in its sole discretion, accept or reject such bid. If accepted, such acceptance will be subject to the approval of the Department of Housing and Urban Development.

In addition to this policy, the Board has resolved and does adopt the following addendum to present policy:

In the event only one (1) bid has been received on a project by the expiration of the bid acceptance period, the administration shall not reveal what the bid was or any information about the bid. Rather, the bid and bid package shall be referred to the Housing Authority Board and only after the Board has had an opportunity to assess such bid and make a determination as to the
acceptance or rejection thereof shall such disclosure be made and then, such disclosure shall be made only if the bid is accepted.

The purpose of this policy is to eliminate unfair disadvantage to the sole bidder by having its bid revealed to competitors in a rebid situation. (Resolution: #7327-93, dated: March 17, 1993)

J. Contracting Monitoring - The contract shall be administered as specified in Article 8 of this policy.

4-103 Competitive Proposals (Contracting by Negotiation)

A. General - The contracting method involving competitive proposals is generally used when procurement conditions are not appropriate for use of sealed bids or small purchase results in the award of contracts by negotiation. The negotiated contracts shall be used when factors in addition to price are considered in the award of a contract.

Standards for competition shall not be relaxed in negotiated contracting procedures. Negotiations shall call for full and open competition to the maximum extent possible.

B. Request for Proposals - Proposals shall be solicited through a request for proposals.
C. **Public Notice** - Adequate public notice of the request for proposals shall be given in the same manner as provided in Sections 3-100 and 3-101.

D. **Receipt of Proposals** - No proposals shall be handled so as to permit disclosure of the identity of any offeror on or the contents of any proposal to competing offerors during the process of negotiations.

E. Since the firm bid rule does not apply to the competitive proposal method of procurement, an offeror may withdraw his or her offer anytime prior to contract award.

F. **Evaluation Factors** - The request for proposals shall state the relative weight or importance attached to each individual factor. The factors shall clearly express the standards to be used in the evaluation of proposals.

G. **Proposal Evaluation** - The Contracting Officer shall establish a technical evaluation panel to evaluate each proposal based on the evaluation factors stated in the request for proposals.

H. **Discussions** - The request for proposals shall state that the Contracting Officer will conduct discussions with offerors regarding their technical proposals, including proposal prices.

If discussions will not be held, the Contracting Officer shall ensure that the request for proposals includes a statement to that effect, clearly emphasizing that the prospective contract award will be based on the technical proposal and price as initial submitted to the Housing Authority.

I. **Best and Final Offer** - Following the discussion phase, the Contracting Officer shall request each offerer to submit his or her best and final offer. The Contracting Officer shall set the date and the time best and final offers will be received. Late offers shall be treated the same as late proposals.

J. **Award** - Contract award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Housing Authority. Each proposal shall be evaluated and ranked based on the best and final offer including price as a secondary consideration and the evaluation
factors set forth in the request for proposals. No other factors or criteria shall be used in the proposal evaluation process. The contract file shall contain a written record to provide a history of the contract award.

K. Record of Negotiation Process and File Documentation - The Contracting Officer shall take the necessary action to document the contract file. This task is an important means of curbing and improprieties and establishing public confidence in the process by which the contractor was selected. As a minimum the file shall contain all proposals, proposal evaluation scores, contract ranking, rejected proposals, a record of discussions, best and final offers, a record of negotiations, and the original contract and proposal submission.

L. Contracting Monitoring - The contract shall be administered as specified in Article 8 of this policy.

4-104 Types of Contracts

A. General - Subject to the limitations of this section, any type of contract which is appropriate to the procurement and which will promote the best interest of the Housing Authority may be used, provided that the use of a cost-plus-a-percentage-of-cost or cost-plus-a-percentage-of-construction contract is prohibited.

The contract types are grouped into two broad categories: Fixed-price contracts and Cost-reimbursement contracts.

A cost reimbursement contract may be used when a determination is made in writing that such contract is likely to be less costly to the Housing Authority than any other type or that it is impracticable to obtain the supply, service, equipment, or construction item required except under such a contract.

Only equipment for the Housing Authority's owned units shall be purchased with CIAP or operating funds. The equipment shall be approved in a CIAP or operating budget prior to purchase under small purchase procedures or other contracting methods.
B. **Factors in Selecting Contract Types**

The Contracting Officer shall consider several factors when selecting a contract type:

1. Contract type;
2. Price competition;
3. Price analysis;
4. Cost analysis;
5. Type and complexity of the requirement;
6. Urgency of the requirement;
7. Period of performance;
8. Contractor's technical capability and financial responsibility;
9. Contractor's accounting system;
10. Concurrent contracts being completed by the contractor; and
11. Extent and nature of proposed subcontracting.

C. **Fixed Price contracts**

These types of contracts provide for a firm price or, in appropriate cases, an adjustable price. A fixed-price contract that provides for an adjustable price shall include a ceiling price, a target price, or both. The following types of contracts are available to the Contracting Officer to use:

1. Firm-fixed price;
2. Fixed-price contract with economic price adjustment; and
3. Fixed-price incentive contracts.

D. **Seal Bidding Contracts**

Contracts resulting from sealed bidding procedures shall be firm-fixed price contracts or fixed-price contracts with economic price adjustment. The fixed-
price contract is the preferred formal contract to be used by the Contracting Officer when procuring supplies, services, equipment, and construction items for the Housing Authority.

E. **Negotiated Contract** - Prime contracts, including letter contracts other than firm-fixed-price contracts shall, by an appropriate clause, prohibit cost-plus-a-percentage-of-cost subcontracts for cost reimbursement contracts and for fixed-price contracts.

F. **Other Useful Contracts or Agreements**

1. When appropriate and in accordance with the authorized methods of procurement stated in this policy, the Contracting Officer shall use the following types of contracts and agreements:

   a. **Indefinite Delivery Contracts** - A type of contract which may be used when the exact times and/or quantities of future deliveries are not known at the time of contract or purchase order award. There are three types of indefinite delivery type of contracts available to the Contracting Officer: definite - quantity contract, requirements contract, and indefinite - contract;

   b. **Time and Materials Contract** - A contract, including a purchase order which provides for acquiring supplies or services on the basis of (a) direct labor and (b) materials at cost;

   c. **Letter Contract** - An abbreviated contract that is a written preliminary contractual instrument that authorizes a contractor to begin immediately providing supplies or performing services;

   d. **Labor Hour Contract** - A variation of the time-and-materials contract, differing only in that materials are not supplied by the contractor.

   e. **Basic Agreements** - A written instrument of understanding, negotiated between the Housing Authority and a contractor, that (a) contains contract clauses applying to
future contracts between the parties during its term and (b) contemplates separate
future contracts that will incorporate by reference or attachment the required and
applicable clauses agreed upon in the basic agreement; and

2. The Contracting Officer shall use time and material contracts only:
   a. After a determination that no other contract is suitable; and
   b. If the contract includes a ceiling price that the contractor exceeds at his or her own risk.

4-105 Special Contracting Methods

A. Contracting for Designated Professional Services -
For the purpose of procuring the services of lawyers, architects and engineers, accountants, professional management concerns, consultants as defined by the laws of the State of Ohio, the Housing Authority shall procure them on its own behalf in accordance with the selection procedures specified in this section. Prior to initiating any contractual action, the Contracting Officer procuring such services shall consult with the appropriate Housing Authority staff person to confirm the services to be procured. Prior to contract award, the Contracting Officer shall obtain the appropriate staff person's approval and the local HUD office's approval (if required) of the proposed contract requirements.

No contract for the services of legal counsel shall be awarded without the written approval of the local HUD office's Assisted Housing Branch.

It is intended that the types of services specified in subsection A be competitively procured on a "retained" basis as well as for a particular project. Frequently, the Executive Director of the Housing Authority may need to consult various professionals on an ongoing but "from time-to-time" basis. For example, the Director may wish to retain a specialist in small claims law who may be consulted immediately when small claims issues arise.
B. Selection Procedures

1. **Conditions for Use** - Except as provided under sole source procurement or emergency procurements, the professional services designated in subsection A of this section shall be procured in accordance with this subsection.

2. **Statement of Qualifications** - Persons engaged in providing the required professional services shall submit to the Contracting Officer statements of qualifications and expressions of interest in providing such professional services. The Contracting Officer shall specify a uniform format for statements of qualifications and expressions of interest in providing such professional services. Persons may amend these statements at anytime by filing a revised statement.

3. **Public Announcement and Form of Request for Proposals** - Adequate notice of the need for such services shall be given by the Contracting Officer. He or she shall notify the prospective contractors of the required services by public notice as specified in Article 3. Detailed services shall be made known by issuing a request for proposals (RFP). The request for proposal shall describe the services required, list the type of information and data required of each offeror, and state the relative importance of particular qualifications. If the cost of the professional services are estimated to cost less than [$25,000], the Contracting Officer may use small purchase procedures to purchase the services.

4. **Discussions** - The Contracting Officer and other appropriate Housing Authority individuals shall conduct discussions, if they were specified in the RFP, with any offeror who has submitted a proposal to determine such offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.

5. **Award** - The Contracting Officer shall make contract award based primarily on the scoring of technical qualifications and secondary a fair and reasonable proposal price. The scoring
shall be based on the evaluation factors set forth in the request for proposals.

If a fair and reasonable price cannot be agreed upon with the most qualified offeror, then negotiations shall be formally terminated, in writing, with the selected offeror. If proposals were submitted by other offerors who were determined to be qualified, the Contracting Officer shall conduct negotiations with such offeror or offerors, in the order of their respective qualification ranking. The contract shall be awarded to the offeror then rank most qualified if the offeror’s proposal price is determined to be fair and reasonable.

C. Emergency Procurements – Notwithstanding any other provision of the policy, the Contracting Officer shall make or authorize a designee to make emergency procurements of supplies, services, equipment or construction items when there exists a threat to public health, welfare, or safety; provided that such emergency procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of a particular contractor shall be included in the contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor’s name, the amount and type of the contract, a listing of the item(s) procured under the contract, and the identification number of the contract file.

D. Sole Source Procurement

A contract may be awarded without competition where the Contracting Officer determines in writing, after conducting a good faith review of available sources that there is only one source for the required supply, service, equipment or construction item. The Contracting Officer shall conduct negotiations, as appropriate, as to price, delivery, and terms. A record of sole source procurements shall be maintained as public record and shall list each contractor’s name, the amount, and type of each contract, a listing of the item(s) procured under each contract, and the identification number of each contract file.
4-106 Noncompetitive Procurements – Procurement by noncompetitive proposals such as sole source procurements may be used only when the award of a contract is infeasible under small purchase procedures, seal bid, or competitive proposals and one of the following circumstances applies:

A. The item is available only from a single source;

B. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

C. The local HUD office authorizes noncompetitive proposals; or

D. After the solicitation of a number of sources, competition is determined to be inadequate.

4-107 Consolidated Supply Program – The consolidated supply program is available to the Housing Authority. Purchases may be made from the program merely by writing an order against any of the programs national contracts awarded by the U. S. Department of Housing and Urban Development.
ARTICLE 5 - SMALL BUSINESSES, MINORITY BUSINESS ENTERPRISES, WOMEN OWNED BUSINESSES, LABOR SURPLUS AREA FIRMS

5-100 General - The Director shall actively operate a procurement program that promotes opportunities for small businesses, minority business enterprises, women-owned businesses, and labor surplus area firms to participate in the Authority's contracts, including small purchases.

Under executive order 11625 and 12432, the Housing Authority shall provide an outreach for minority businesses to bid on contracts under the modernization, development, and management programs. The Housing Authority shall establish a method of documenting all MBE bids or proposals received whether they are approved or disapproved by the Contracting Officer. The Housing Authority shall also establish a goal of at least [10%] percent of its overall contracting funds for the businesses referenced in this section. This is not a set-aside requirement to meet a goal. However, as specified in 24 CFR 85.36, the Housing Authority shall make an earnest effort to ensure that small businesses have a fair and reasonable opportunity to enter into contracts and purchase orders with the Housing Authority. For example, the Authority shall use as a minimum the following affirmative steps:

A. Place qualified small businesses, minority business enterprises, and women owned businesses on the Authority's contractor source list;

B. Identify labor surplus area contractors for possible contract and purchase order awards;

C. Assure that small, minority, women-owned, and labor surplus areas businesses are solicited whenever they are potential sources;

D. Divide the total contract requirements when economically feasible, into small tasks or quantities to facilitate program participation by small, minority, women-owned businesses, and labor surplus areas;

E. Establish delivery schedules, where the requirement permits, which encourage participation by small, minority, women-owned, and labor surplus area enterprises;

F. Use the services and assistance of the U. S. or State of Ohio Small Business Administrations, and the
Minority Business Development Agency of the Department of Commerce to locate contractor sources; and

G. Require the prime contractor, if subcontracts are to be let, to follow the affirmative steps listed in paragraphs A through F of this section.

5-101 Labor Surplus Areas

The Executive Director shall earnestly encourage the Contracting Officer to procure supplies, services, equipment, and construction items from businesses located in labor surplus areas.

5-102 Application of Labor Laws to Housing Authority Procurements

A. The Housing Authority shall maintain sound relations with industry and labor to ensure:

1. Prompt receipt of information involving labor relations that may adversely affect the Housing Authority’s procurement process; and

2. That the Housing Authority obtains needed supplies, services, equipment, and construction items.

B. The Housing Authority shall cooperate, and encourage its staff and contractors to cooperate, with Federal, State, and Local agencies responsible for enforcing labor requirements concerning matters such as:

1. Safety;
2. Health and sanitation;
3. Maximum hours and minimum wages;
4. Equal employment opportunity;
5. Child and convict labor;
6. Age discrimination;
7. Disabled and Vietnam veteran employment; and
8. Employment of the handicapped; and Davis Beacon wages.
C. All solicitation issued by the Housing Authority for Construction contracts estimated to cost in excess of $2,000 (Statutory threshold) shall include a clause which specifies compliance with the Davis Bacon Act. The contractor shall pay the wage rates specified for the applicable class of construction being performed.
ARTICLE 6 - GENERAL CONTRACTING REQUIREMENTS

6-100 Patents, Data, and Copyright.

A. If a Housing Authority contract or purchase order involves research and development, experimental, or demonstration work, the contract shall include provisions:

1. Giving notice to the contractor of Housing Authority requirements and regulations concerning the reporting of, and rights to any discovery or invention arising out of the contract; and

2. Requiring the contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

B. Applicable Housing Authority contracts and purchase orders shall include a provision giving the contractor notice of applicable regulations concerning the rights of the Housing Authority to any plans, drawings, specifications, computer programs, technical reports, operating manuals, and similar work products developed and paid for under the contract.

6-101 Bonding

A. General - Bid guarantees, performance bonds, and payment bonds shall be requested by the Contracting Officer for construction contracts to protect the Housing Authority's interests. Bonding requirements shall be specified for all construction or facility improvement contracts or subcontracts estimated to cost in excess of $25,000. Any such bonding requirements shall be set forth in the solicitation.

B. Bid Guarantee - In response to the solicitation, the Contracting Officer shall instruct each bidder to submit with his or her bid a bid guarantee equivalent to five percent of the bid price. The bid guarantee shall be a certified check, bank draft, U. S. Government bonds at par value, or a bid bond secured by a surety that is approved by the U. S. Department of the Treasury Circular 570, published annually in the Federal Register.

C. Performance Bond - The Contracting Officer shall instruct each bidder to submit within 10 calendar
days following contract award a performance bond.

For all construction and equipment contracts, the contractor shall be required to furnish a performance and payment bond for 100 percent of the contract price or, separate performance and payment bonds, each for 50 percent or more of the contract price, or 20 percent cash escrow, or a 25 percent irrevocable letter of credit to the extent these options are permitted by the laws of the state of Ohio.

D. Other Bonding Requirements Bid, performance, and payment bonds may be requested for supply contracts or service contracts as the Contracting Officer deems advisable to protect the Housing Authority's interests. Any such bonding requirements shall be set forth in the solicitation. The bid guarantee shall be a certified check, bank draft, U.S. Government bonds at par value, or a bond secured by a surety recognized by the U.S. Department of Treasury. Bid guarantee, performance, and payment bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility.

E. Approved Sureties — It is mandatory that the Housing Authority use U.S. Treasury Circular No. 570 to determine if a surety providing bonding has been approved. The Treasury Circular No. 570 is published semiannually in the Federal Register. The Contracting Officer shall place the Housing Authority's name on the Treasury's mailing list to receive current copies of Circular No. 570.

F. Treasury Sureties List — The Circular List:

1. Companies approved to act as surety on bonds that secure the Housing Authority's contracts;

2. The maximum underwriting limits on each contract bonded; and

3. The states in which each company is licensed to do business.

6-102 Rejection of Bid for Noncompliance with Bonding Requirements

A. When the invitation for bids requires a bid guarantee and performance and payment bonds, noncompliance with the requirements shall result in the rejection of the bid.
6-103 Cost Accounting Standards

A. The Contracting Officer shall determine whether a proposed Housing Authority contract is exempt from the cost accounting standards (CAS). The following are some, but not all, of the categories of contracts that are exempt from the CAS:

1. Sealed bid;
2. Negotiated contracts and subcontracts not in excess of $100,000; and
3. Contracts and subcontracts with small businesses.

6-104 Contract Cost Principles

A. Contract Cost Principles

A cost or price analysis shall be performed for every procurement action including contract modifications. The Housing Authority must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his or her estimated costs, e.g., costs relating to professional, consulting, and architectural engineering services contracts. A written copy of such cost analysis or price analysis shall be made a part of the contract file following contract award.

The housing authority will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where their is cost analysis, if performed.

Cost or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.

Cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used under any circumstances.

B. Right to Audit Records

1. Audit of Cost and Pricing Data - The Contracting Officer, HUD, or the Comptroller General of the
United States may at reasonable times and places, audit the books and records of any contractor who has submitted cost on pricing data pursuant to 24 CFR 35.36, Section (f), titled: Contract Cost and Price. The audit shall be performance to the extent that such books, documents, papers, and records are pertinent to a specific contract's cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain the necessary books, documents, papers, and records that are pertinent to the cost or pricing data; the latter items shall be retained at least for three years from the date of final payment under the contract or three years after the last outstanding dispute is closeout.

6-105 **Contract Payment** - Under this policy, contracts shall be financed by one of the following methods:

A. **Progress Payments** - Payments based on costs shall be made on the basis of cost incurred by the contractor as work progresses under a contract.

B. **Partial Payments** - The Contracting Officer shall make partial payments supplies, services, equipment, and construction which has been accepted by the Housing Authority.

6-106 **Debarment, Suspension, and Limited Denial of Participation**

A. **General** - After reasonable notice to a person or firm involved and a reasonable opportunity for that person or firm to be heard, the Contracting Officer, after consulting with legal counsel, is authorized to impose an appropriate administrative sanction. The sanction shall be imposed against the person or firm for cause from consideration for award of contracts and purchase orders. The sanction shall be one of the following:

1. a limited denial of participation;
2. suspension; or
3. a debarment.

B. The Contracting Officer is authorized to suspend a person or firm from consideration for award of a
contract or a purchase order if there is probable cause to believe that the person or firm has engaged in any activity which might lead to debarment. The suspension shall be for a period not to exceed [three] month.

C. In the event a debarment is imposed, it shall remain in effect for no longer than [three] years. A limited denial of participation sanction shall be imposed for up to [twelve] months.

D. **Decision to Debar, Suspend, or Limit Participation**
The Contracting Officer shall issue a written decision to debar, suspend, or limit participation. The decision shall state the reasons for the action taken and inform the debarred, suspended, or limited denial of participation person or firm involved of its rights to appeal the Contracting Officer’s decision and his or her rights concerning judicial or administrative review.

E. **Notice of Decision** - A copy of the decision required by subsection B shall be mailed by registered or certified mail to the debarred, suspended, or limited denial of participation person or firm. A copy of the decision shall also be forwarded to the local HUD Field Office’s Assisted Housing Branch.

F. **Finality of Decision** - The Contracting Officer’s decision render under subsection B of the section shall be final and conclusive unless, within [15] calendar days from the date of receipt of the decision, the contractor mails or otherwise delivers a written appeal for administrative review as specified in Section E below.

G. **Access to Judicial and Administrative Reviews** - If a contractor is unsatisfied with the Contracting Officer’s final decision, he or she may file an appeal as specified in Section 6-105, subsection (5).

6-107 **Protest, Disputes, and Appeals**

A. **General** - The Housing Authority shall have written procedures to handle and resolve bid protest and contract disputes relating to its procurements. In all instances, the Housing Authority shall promptly disclose information regarding any protest or dispute to the local HUD field office’s Assisted Housing Branch. Before pursuing a protest with the local HUD field office, a protestor must exhaust all
administrative remedies with the Housing Authority. Solicitations issued by the Housing Authority shall contain provisions which instruct bidder’s or protesters to seek resolution of their complaints initially with the Contracting Officer. The latter task shall be exercised prior to filing the matter with the Housing Authority’s board of contract appeals, a court of competent jurisdiction, or when authorized, with the local HUD field office when the protest or dispute involves questions concerning Federal Laws and regulations or when the violations pertain to the Housing Authority’s protest procedures.

B. Bid Protest

1. Authority to Settle a Bid Protest - The Contracting Officer is authorized to settle any bid protest regarding the solicitation or award of a Housing Authority contract or purchase order. The latter authority shall be exercised prior to the protester filing the protest with the Authority’s board of contract appeals (if available) or the commencement of a protest action in a court of competent jurisdiction. If the protestor does not receive a favorable decision from the Contracting Officer, he or she may file the matter with the Housing Authority’s administrative review board (if available), a court of competent jurisdiction, and when authorized, with the local HUD field office.

2. Finality of Decision - The Contracting Officer’s decision render under subsection B of the section shall be final conclusive unless, with [15] calendar days from the date of receipt of the decision, the contractor mails or otherwise delivers a written appeal to the Housing Authority’s administrative review board or commence an action in a court of competent jurisdiction, in the order stated.

3. Entitlement to Costs - In addition to any other relief where a protest is sustained and the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, then the protesting bidder or offeror shall be entitled to the reasonable costs incurred in connection with the solicitation, including bid preparation cost other than attorney’s fees.
C. **Contract Disputes**

1. **Decision of the Contracting Officer** - All claims by a contractor against the Housing Authority relating to a contract, except bid protests, shall be submitted in writing to the Contracting Officer for a decision. The notice shall be sent by Registered or Certified Mail, with a request for return receipt, to the contractor's last known address. The contractor may request a conference with the contracting Officer on the claim. Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

2. **Notice to Contractor of Contracting Officer's Decision** - The decision of the purchasing agent shall be promptly issued in writing, and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of its appeal rights under Subsection (3) of this section.

3. **Finality of Contracting Officer's Decision: Contractor's Right to Appeal** - The Contracting Officer's decision shall be final and conclusive unless, with [15] calendar days form the date of receipt of the decision, the contractor mails or otherwise delivers a written appeal to the Housing Authority or commences any action in a court of competent jurisdiction.

4. **Failure to Render Timely Decision** - Failure to Render timely Decision - If the Contracting Officer does not issue a written decision regarding any contract controversy within [15] days after written request for a final decision, or within such longer period as may be agreed upon between the parties, then the contractor may proceed as if an adverse decision had been received.

5. **Access to Judicial and Administrative Reviews**

   If the contractor is unsatisfied with the Contracting Officer's final decision, he or she may appeal the
matter to the Housing Authority's administrative review board. If an administrative review board is unavailable, or the contractor is unsatisfied with a board's review decision, the contractor may refer the matter to a court of competent jurisdiction.
ARTICLE 7 - SPECIAL CATEGORIES OF CONTRACTING

7-100 Construction

A. General - The Contracting Officer shall have the discretion to select the appropriate method of construction contracting management for a particular project. In determining which method to use, the Contracting Officer shall consider the Housing Authority's requirements, its resources, and the potential contractor's capabilities. The Contracting Officer shall execute, and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of construction contracting management for each project.

7-101 Architect - Engineer Services

A. Determination of Need - During joint reviews, the Housing Authority and HUD shall reach agreement on the Housing Authority's need for architectural and engineering professional services, taking into account the Authority's staff capability and the type and complexity of work.

B. Selection Process - The Housing Authority shall use competitive proposal procedures for procurement of architect-engineering professional services. Such procedures shall be:

1. Qualifications - The Contracting Officer shall evaluate competition qualifications and then through a ranking system selects the best qualified competitor, subject to the negotiation of a fair and reasonable price;

2. Best Qualified - The best qualified competitor shall be the responsible firm whose proposal is most advantageous to the Housing Authority, with price and other factors considered.

3. Applicability - The competitive proposal procedures shall apply to the procurement of all modernization funded architect-engineer contracts over [\$25,000]. Small purchase procedures shall apply to the procurement of all modernization-funded architect-engineer contracts that do not cost more than [\$25,000].
4. **Request for Proposals (RFP)** - The Housing Authority shall publicize the RFP and solicit proposals from as many qualified sources as possible.

5. **Evaluation Factors** - The RFP shall identify all evaluation factors and their relative importance. The factors shall address: the architect-engineers’s ability to perform the work, capability to provide professional services in a timely manner, evidence that the architects-engineer is currently registered in the state where projects are to be designed, demonstrates past performance for similar work in terms of cost control, quality of work, demonstrates a knowledge of local building codes, contractor is not debarred, suspended, or otherwise ineligible to receive a Housing Authority contract, and other applicable factors.

6. **Form of Agreement** - When the Housing Authority and the architect-engineer reach an agreement, the agreement shall be placed in writing. The agreement shall be recorded on a form specified by HUD. The contract agreement shall not be modified to required that the Housing Authority pay interest for late payment.

7. **Contract Cost** - The Housing Authority shall perform a cost analysis in connection with the procurement of professional services, including contact modifications. The Housing Authority shall make an independent estimate of the contract cost before receiving proposals.

8. **Profit (Fee)** - The Housing Authority shall negotiate profit as a separate element of the contract’s direct and indirect costs.

9. **Allowable Costs** - Allowable costs shall be determined in accordance with the guidelines set forth in 24 CFR 85.22.

10. **Contract Type** - The Architect-Engineer contract shall normally be a firm fixed-price contract. If the circumstances warrant, the contract type may be a cost-plus-fixed-fee type contract (which
includes an established ceiling). Under no circumstances shall the Contracting Officer use a cost-plus-a-percentage-of-cost-type contract to procure Architect - Engineer services.

11. **Contract Award** - Upon selecting and reaching agreement with the architect-engineer, the Housing Authority shall prepare and execute a contract without prior HUD review and approval, unless the contract exceeds the dollar threshold that has been established by HUD, on the approved budget amount. Where the architect-engineer contract requires prior HUD approval, the Housing Authority shall not execute the contract until it has received such approval.

**7-102 Service Contracting**

A. The contracting officer shall be responsible for ensuring that a proposed contract for services is proper. The Housing Authority shall generally rely on the private sector for commercial services. In no event shall the Authority award a contract for services that are inherently Housing Authority functions unless approved in writing by the Executive Director.
ARTICLE 8 - CONTRACT MANAGEMENT

8-100 Contract Administration

The Contracting Officer shall ensure that a contract administration system designed to insure that a contractor is performing in accordance with the solicitation under which a contract was awarded, and the terms and conditions of the contract, is actively maintained by the Housing Authority. The Contracting Officer may assign all or segments of the contract administration functions to the appropriate directors of the Housing Authority.

The Contracting Officer shall provide special instructions, authorizations, and applicable regulations or directives, in writing, to the division directors. The name(s) and titles of the personnel assigned to administer a contract shall be provided at the time of contract award or purchase order award if deemed necessary by the Contracting Officer. Progress inspections shall be conducted by the Housing Authority personnel, or representatives of the Authority, as frequently as necessary to assure that the work is being performed in an acceptable manner on contracts or purchase order.

All progress inspections shall be documented using an appropriate Housing Authority inspection report. The inspection report shall include a description of the work or service completed, or being completed and a determination whether or not the work or service is acceptable. If payment is made on a unit price basis, quantities shall be physically verified. If payment is made on a time-and-materials basis, the report must show that the time charged was spent on Housing Authority work, services, or supplies and that materials were charged at the same cost as charged to other preferred customers. A copy of the inspection report shall be filed in the contract file or purchase order file, a copy of the report shall be forwarded to the Contracting Officer or his or her designee and to the general contractor.

Based on a progress report, the Contracting Officer shall initiate any needed follow-up actions to ensure that the terms of a contract will be fulfilled.

8-101 Contract Modifications

Only the Contracting Officer acting within the scope of his or her authority shall be empowered to execute contract or purchase order modifications on behalf of the Housing Authority. Other Authority personnel shall not execute contract or purchase order modifications, act in such a manner as to cause
the contractor to believe that he or she has the authority to bind the Housing Authority, or direct or encourage the contractor to perform work that should be the subject of a contract or purchase order modification.

Contract or purchase order modifications, including changes that could be issued unilaterally, shall be priced before their execution if this can be done without adversely affecting the interest of the Housing Authority. If a significant cost increase could result from a contract or purchase order modification and time does not permit negotiation of a price, at least a maximum price shall be negotiated unless it is impractical to do so.

Contract and purchase order modifications shall be issued in one of the following modification forms:

A. bilateral modification - a modification that is signed by both the contractor and the Contracting Officer.

B. unilateral modification - a modification that is signed only by the Contracting Officer.

For this Housing Authority, the bilateral modification is the preferred method to use when modifying a contract or purchase order.

8-102 Subcontracting Activities

The Contracting Officer may consent to subcontracts when the contract requirement is complex, the dollar value is substantial, or the Housing Authority's interest is not adequately protect by competition and the type of prime contract or subcontract.

8-103 Housing Authority Property

Contractors are ordinarily required to furnish all property necessary to perform Housing Authority contracts or purchase orders. The Contracting Officer shall establish definitive procedures to authorize and control the use of such property to complete Authority contracts or purchase orders. The latter action is required to eliminate to the maximum extent any competitive advantage that might arise from a contractor using such property without the Contracting Officers written approval.

8-104 Quality Assurance

The Contracting Officer shall ensure that all supplies, services, equipment and construction items acquired under the
Authority's contracts and purchase orders conform to contracts' or purchase orders' quality and quantity requirements.

The Contracting Officer shall ensure that:

A. Contracts and purchase orders include inspection and other necessary quality requirements, including warranty clauses when appropriate;

B. Supplies, services, equipment, and construction items delivered by contractors meet contract or purchase order requirements;

C. Housing Authority contract or purchase order quality assurance shall be conducted before acceptance by or under the direction of the Contracting Officer;

D. No contract or purchase order shall preclude the Contracting Officer from performing inspections; and

E. Nonconforming supplies, services, equipment, and construction items shall be rejected.

B. Contract Audit

The Contracting Officer, U. S. Department of Housing and Urban Development, or the Comptroller General of the United States shall be entitled to audit the books and records of a contractor or a subcontractor at any tier under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books, documents, papers, and records are pertinent to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of [three] years from the date of final payment under the prime contract and by the subcontractor for a period of [three] years from the date of final payment under the subcontract.

8-105 Value Engineering

A. For this Housing Authority, value engineering is the formal technique by which contractors may:

1. Voluntarily suggest methods for performing more economically and share in any resulting savings; or
2. Be required by the Contracting Officer to establish a program to identify and submit to methods for performing Housing Authority functions more economically.

B. Value engineering attempts to eliminate, without impairing essential functions or characteristics, anything that increases procurement, operation, or support costs.

C. The Contracting Officer may use either one of the following value engineering approaches:

1. An incentive approach in which contractor participation is voluntary and the contractor uses its own resources to develop and submit any value engineering change proposals (VECP’s); or

2. A mandatory program in which the Housing Authority requires and pays for a specific value engineering program effort.

The Contracting Officer may also consider requiring prime contractors to incorporate value engineering clauses in appropriate subcontracts.

8-106 Right to Inspect Contractors and/or Subcontractors Job Sites and Businesses

The Contracting Officer or HUD may, at any time, inspect the contractor’s place of business, or the work site of the contractor or subcontractor, at any tier, which is pertinent to the performance of any contract the Housing Authority has awarded or is about to award.

8-106 Termination of Contracts and Purchase Orders

A. General - The Contracting Officer shall terminate a contract or purchase order for many reasons, including but not limited to, the following:

1. Failure to deliver the services or supplies as specified in the contract or purchase order;

2. Failure to perform work in a timely manner;

3. Violation of contract clause prohibiting gratuities, using undisclosed agents to obtain contracts, and collusive bidding,
4. Repeated violations of labor standards; and

5. The Housing Authority's need to have a contract or purchase order terminated for the convenience of the Authority.

B. Termination - For the purposes of this policy, terminating a contract or purchase order shall mean the policy and procedures the Contracting Officer follows in ending a contractual agreement, in whole or part, between the Housing Authority and a contractor. Additionally, the termination process shall also include the subsequent settlement of claims relating to the termination of the contract or purchase order.

C. Clauses - The Contracting Officer shall ensure that each contract or purchase order includes two provisional clauses to permit the Housing Authority to terminate contracts or purchase orders. The clauses shall permit the Contracting Officer to terminate contracts or purchase orders for:

1. The convenience of the Housing Authority;

2. Default the contractor

The Contracting Officer shall notify a contractor of a termination action; the notification shall be in writing and shall be forwarded by certified or registered mail to the contractor's last known address. Preferably, the notice shall be in the form of a letter notice, however the urgency of the matter may require the transmission of a telegraphic notice of termination.

D. Documentation and Notices - The Contracting Officer shall ensure that contracts to be terminated for default are adequately documented. The documentation shall normally be in the form of inspection reports, "Cure Notices", and "Show Cause Notices" which require the contractor to take appropriate actions.
ARTICLE 9 - CLAUSES AND FORMS

9-100 Solicitation Provisions and Contract Clauses

A. Contract Clauses - The Contracting Officer shall ensure that all Housing Authority contracts and purchase orders for supplies, services, equipment, and construction items include provisions necessary to define the responsibilities and rights of all parties to a contract or purchase order. As a minimum, the Contracting Officer shall include in contracts and purchase orders the appropriate contract provisions defined in 24 CFR 85.36.

B. The Contracting Officer, after consultation with an attorney, shall establish standard provisions for use in contracts and purchase orders. As a minimum, the standard clauses should address the following subjects:

1. The unilateral right of the Contracting Officer to order in writing changes in the work within the scope of the contract or purchase order;

2. The unilateral right of the Contracting Officer to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract or purchase order;

3. Variations occurring between estimated quantities of work in a contract or a purchase order and actual quantities

4. Defective pricing;

5. Liquidated damages;

6. Specific excuses for delay or nonperformance;

7. Maintaining a drug free work-place;

8. Termination of a contract or a purchase order for default. (Aplicable to all contracts awarded in excess of $10,000 by the Housing Authority);

9. Termination of a contract or purchase order in whole or part for the convenience of the
Housing Authority. (Applicable to all contracts awarded in excess of $10,000 by the Housing Authority);

10. Suspension of work on a construction project ordered by the Contracting Officer;

11. Site conditions differing from those indicated in the contract or purchase order, or those ordinarily encountered;

12. Subcontracting policies and procedures;

13. Value engineering opportunities;

14. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract or purchase order terms, and provide for sanctions and penalties;

15. 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 construction contracts and purchase orders awarded in excess of $10,000 by the Housing Authority.)

16. Compliance with the "Copeland Anti-kickback" Act. (All construction and repair contracts and purchase orders awarded by the Housing Authority)

17. Compliance with the "Davis Bacon Act". (All construction contracts and purchase orders in excess of $2,000)

18. Compliance with the "Contract Work Hours and Safety Standards Act". (All construction contracts and purchase orders awarded in excess of $2,000 by the Housing Authority);

19. Notice of HUD's requirements pertaining to reporting;
20. Notice of HUD’s 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;

21. HUD’s requirements and regulations pertaining to copyrights and rights in data;

22. Access by the Housing Authority, the Comptroller General of the United States, the U. S. Department of Housing and Urban Development, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to a specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

23. Retention of all required records for three years after the Housing Authority makes final payment or three years after all other pending matters are closed.

24. Compliance with all applicable standards, orders, or requirements issued under section 306 of the "Clean Air Act", section 508 of the "Clean Water Act", and "Environmental Protection Agency regulations. (All contracts, including subcontracts, of amounts in excess of $100,000); and

25. Mandatory standards and policies relating to energy efficiency which are contained in the State of Ohio’s energy conservation plan, issued in compliance with the "Energy Policy and Conservation Act".

B. Contract and Purchase Order Forms - To facilitate the procurement process and when practical, the Contracting Officer shall develop and use standardize contract and purchase order formats for various procurement actions. The Contracting Officer shall use current editions of the formats unless otherwise
directed by the local HUD field office. Directors of internal Housing Authority departments, divisions, branches, or sections shall not alter any of the standard forms. The local HUD field office will assist the Housing Authority in developing standardized contract, purchase order, and other related procurement formats.