



## Oakland Housing Authority Procurement Policy

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# Oakland Housing Authority PROCUREMENT POLICY

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## 1.0 INTRODUCTION

- 1.1 Policy Statement.** Established for the Housing Authority of the City of Oakland (hereinafter, "OHA" or the "Authority", commonly known as the Oakland Housing Authority) by Action of the OHA Board of Commissioners (Board), this Procurement Policy (Policy) complies with the Annual Contributions Contract (ACC) between the OHA and the United States Department of Housing and Urban Development (HUD), Federal Regulations at 24 CFR 85.36, the procurement standards of the Procurement Handbook for Public Housing Authorities (PHAs), HUD Handbook 7460.8, REV 2, and applicable State and Local laws.
- 1.2 Definitions**
- 1.2.1** "Executive Director" - The Executive Director of the Oakland Housing Authority or an officer specifically designated to act for the Executive Director.
- 1.2.2** "Contracting Officer" - The Executive Director, or the person designated in writing by the Executive Director with authority to contract and act as the authorized agent of the Oakland Housing Authority in all dealings with a contractor.
- 1.2.3** "Contractor" - The person or entity entering into a contract with the Authority to perform all of the work required under the contract documents.
- 1.2.4** "Procurement" - The procuring, purchasing, leasing, or renting of: (1) goods, supplies, equipment, and materials, (2) construction and maintenance, or consultant services, (3) architectural and engineering (A/E) services, (4) social services, and (5) other services. The process of obtaining goods or services, including all activities from the preparation and processing of a requisition through receipt and approval of the final invoice for payment. The acts of preparing specifications, making the purchase, and administering the contract are involved.
- 1.2.5** "Small Purchase Procedures" - Those relatively simple procurement methods for securing services or supplies that do not cost more than \$100,000.00 in the aggregate.
- 1.2.6** "Formal Bid" - A bid which must be advertised and forwarded in a sealed envelope and be in conformance with a prescribed format to be opened at a specified time.
- 1.2.7** "Competitive Proposal" - A technique for purchasing goods and services, usually of a technical nature, whereby qualified suppliers are solicited and the best offer (in terms of performance, quality, price, etc.) as judged against proposal evaluation criteria, is accepted. It is generally used when conditions are not appropriate for the use of a Formal Bid.
- 1.2.8** "Noncompetitive Proposal" - Procurement through solicitation of a proposal from only one source or after solicitation of a number of sources, competition is determined inadequate.

- 1.2.9 “Local Business Enterprise” - Business firm with fixed offices or distribution points located within the City of Oakland, listed in the permits and license tax paid file with an Oakland street address.
- 1.2.10 “Supplies” - Includes materials, commodities, and equipment.
- 1.2.11 “Services” - Includes labor, professional services, consulting services, or a combination of services and supplies which shall include construction projects.
- 1.2.12 “Price Analysis” - An evaluation of price based on comparison to market prices, catalog prices, historical data, or other sources.
- 1.2.13 “Cost Analysis” - An evaluation of elements of cost and profit which make up the contract price. Costs must be allowable under 48 CFR Part 31 - Federal Contract Cost Principles and Procedures.

## 2.0 GENERAL PROVISIONS

### 2.1 General. The OHA shall:

- 2.1.1 Provide for a procurement system of quality and integrity;
- 2.1.2 Provide for the fair and equitable treatment of all persons or firms involved in purchasing by the OHA;
- 2.1.3 Ensure that supplies and services (including construction) are procured efficiently, effectively, and at the most favorable and valuable prices available to the OHA;
- 2.1.4 Promote competition in contracting; and
- 2.1.5 Ensure that the OHA purchasing actions are in full compliance with applicable federal standards, HUD regulations, state, and local laws.

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

**2.3 Authority.** All procurement transactions shall be administered by the Authority’s Executive Director or a delegate of the Executive Director authorized in writing.

- 2.4 Exclusions.** This policy does not govern administrative fees earned under the Section 8 Voucher Program, the award of vouchers under the Section 8 program, the execution of landlord Housing Assistance Payments contracts under that program, or non-program income, e.g., fee-for-service revenue under 24 CFR Part 990. These excluded areas are subject to applicable State and local requirements.
- 2.5 Changes in Laws and Regulations.** In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with these policies, automatically supersede these policies.
- 2.6 Public Access to Procurement Information.** Most procurement information that is not proprietary is a matter of public record and shall be available to the public to the extent provided in the California Public Records Act.

### **3.0 ETHICS IN PUBLIC CONTRACTING**

- 3.1 General.** The OHA hereby establishes this code of conduct regarding procurement issues and actions and shall implement a system of sanctions for violations. This code of conduct, etc., is consistent with applicable Federal, State, or local law.

**3.2 Conflicts of Interest.**

**3.2.1.** No employee, officer, Board member, or agent of the OHA shall participate directly or indirectly in the selection, award, or administration of any contract if a conflict of interest, either real or apparent, would be involved. This type of conflict would be when one of the persons listed below has a financial or any other type of interest in a firm competing for the award:

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

**3.2.2.** No present or former OHA employee, officer, or agent shall engage in selling or attempting to sell supplies, services, or construction to the OHA for one year following the date such employment ceased (see Sections

515 of the old ACC, form HUD-53011, dated 11/69, and Section 19 of the new ACC, form HUD-53012A, dated 7/95). The term "sell" means signing a bid or proposal, negotiating a contract, contacting any OHA employee, officer, or agent for the purpose of obtaining, negotiating, or discussing changes in specifications, price, cost allowances, or other terms of a contract; settling contract disputes; or any other liaison activity with a view toward the ultimate consummation of a sale, although the actual contract is negotiated by another person.

**3.2.3.** In addition to any other applicable conflict of interest requirements, neither the OHA nor any of its contractors or their subcontractors may enter into any contract, subcontract, or arrangement in connection with a project under the ACC in which any of the following classes of people have an interest, direct or indirect, during his or her tenure or for one year thereafter:

- Any present or former member or officer of the governing body of the OHA, or any member of the officer's immediate family. There shall be excepted from this prohibition any present or former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the resident corporation, the OHA or a business entity.
- Any employee of the OHA who formulates policy or who influences decisions with respect to the project(s), or any member of the employee's immediate family, or the employee's partner.
- Any public official, member of the local governing body, or State or local legislator, or any member of such individuals' immediate family, who exercises functions or responsibilities with respect to the project(s) of the OHA.  
*(Note: For additional important provisions see Section 19 of the ACC)*

**3.3 Gratuities, Kickbacks, and Use of Confidential Information.** No officer, employee, Board member, or agent of the OHA shall ask for or accept gratuities, favors, or items of more than nominal value (e.g. inexpensive hat with logo) from any contractor, potential contractor, or party to any subcontract, and shall not knowingly use confidential information for actual or anticipated personal gain.

**3.4 Prohibition Against Contingent Fees.** Contractors wanting to do business with the OHA must not hire a person to solicit or secure a contract for a commission, percentage, brokerage, or contingent fee, except for bona fide established commercial selling agencies.

## 4.0 PROCUREMENT PLANNING

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

- 4.1.1 Find patterns of procurement actions that could be performed more efficiently or economically;
- 4.1.2 Maximize competition and competitive pricing among contracts and decrease the OHA's procurement costs;
- 4.1.3 Reduce OHA administrative costs;
- 4.1.4 Ensure that supplies and services are obtained without any need for re-procurement (i.e., resolving bid protests); and
- 4.1.5 Minimize errors that occur when there is inadequate lead time.

Consideration shall be given to storage, security, and handling requirements when planning the most appropriate purchasing actions.

## 5.0 PROCUREMENT METHODS

**5.1 Petty Cash Purchases.** Purchases under \$100 may be handled through the use of a petty cash account. Petty Cash Accounts may be established in an amount sufficient to cover small purchases made during a reasonable period, e.g., one month. For all Petty Cash Accounts, the OHA shall ensure that security is maintained and only authorized individuals have access to the account. These accounts shall be reconciled and replenished periodically.

**5.2 Small Purchase Procedures.** For any amounts above the Petty Cash ceiling, but not exceeding \$100,000, the OHA may use small purchase procedures. Under small purchase procedures, the OHA shall obtain a reasonable number of quotes (preferably three); however, for purchases of less than \$2,000, also known as Micro Purchases, only one quote is required provided the quote is considered reasonable. The reasonableness may be determined based on catalog price, market research, experience or past purchase. To the greatest extent feasible, and to promote competition, small purchases should be distributed among qualified sources. Quotations for Small Purchases ("QSP"), or quotes, may be obtained orally (either in person or by phone), by fax, in writing, through e-procurement, through paid advertising or by displaying the solicitation in a public place.

The OHA shall not break down requirements aggregating more than the Small Purchase threshold (or the Micro Purchase threshold) into several purchases (commonly known as bid splitting) that are less than the applicable threshold

merely to: (1) permit use of the Small Purchase procedures or (2) avoid any requirements that applies to purchases that exceed the Micro Purchase threshold.

Award shall be made to the responsive and responsible vendor that submits the lowest or most reasonable cost to the OHA.

Award Process for “Qualified List”:

Award shall be made to the responsive and responsible vendor that submits the most reasonable cost to the OHA. If award is to be made for reasons other than lowest price, documentation shall be provided in the contract file. QSPs can be for construction, non-construction services, goods, materials, consulting services, etc. OHA will retain the right to contract with any of the bidders as a result of this QSP, which shall occur in the following manner (this is sometimes called “forming a pool” of contractors that the HA may draw from or “qualified list”.) It is at OHA’s discretion to obtain a ‘qualified list’ through the QSP process and determine how the qualified list will be utilized for the project(s). For instance, OHA may choose at their discretion the top five lowest responsive, responsible bidders and rotate the jobs or evaluate the bidders based on price and other factors, rank them, and rotate the jobs. Moreover, the process of assigning work can be made in the following manner:

When OHA has need for work in each service area, the OHA staff assigned will contact the highest ranked contractor to ascertain whether or not that contractor is available to do the work within the time-frame the HA has established for that work (typically, “reasonable” shall mean arriving at the site within 1 work day and begin work within 1 work day thereafter). If the highest ranked contractor is not available, the HA will proceed to the next-ranked contractor, and so forth, until the HA has located an available contractor.

Emergency or urgent work: There are instances when it is not reasonable to wait for service, when service is required from a contractor immediately, meaning a contractor is needed to drive to the site immediately. Such cases include when a pipe has broken and water is escaping, or an electrical panel is “arching” and needs to be secured and repaired, or other such matters that are a physical threat to personnel and / or equipment . In such cases the OHA reserves the right to select the contractor on the qualified list they feel can best perform the job in the timeliest manner.

- 5.3 Sealed Bids.** Sealed bidding, also known as Invitation For Bids (IFB), shall be used for all contracts where the anticipated dollar value exceeds the small purchase threshold (\$100,000) and that are not competitive proposals, as defined in this Policy. Under sealed bids, OHA shall publicly solicit bids through an Invitation for Bids (“IFB”) and award a firm fixed-price contract (lump sum or unit price) to the responsive and responsible bidder whose bid, conforming with all the material terms and conditions of the IFB, is the lowest in price. Sealed bidding is the preferred method for procuring construction, supply, and non-complex service contracts that are expected to exceed \$100,000.

For “Trade Services” (Trade service areas include: Carpentry (structural, including work pertaining to sheetrock); Electrical; HVAC (most typically, work on air conditioning systems); Plumbing; and Disaster Cleanup (most typically, when

water pipes break in a unit/building), a “Qualified List” may be established as described under “Award Process for Qualified List” in Section 5.2 Small Purchase Procedures.

- 5.3.1 Conditions for Using Sealed Bids.** The OHA shall use the sealed bid method if the following conditions are present: a complete, adequate, and realistic Statement of Work, specification, or purchase description is available and bids can be received from a reasonable number of suppliers prior to the established bid submittal deadline; the contract can be awarded based on a firm fixed price; and the selection of the successful bidder can be made principally on the lowest price.
- 5.3.2 Solicitation and Receipt of Bids.** An IFB is issued which includes the specifications and all contractual terms and conditions applicable to the procurement, and a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the solicitation. The IFB must state the time and place for both receiving the bids and the public bid opening. All bids received will be date and time-stamped and stored unopened in a secure place until the public bid opening. A bidder may withdraw the bid at any time prior to the bid opening.
- 5.3.3 Bid Opening and Award.** Bids shall be opened publicly at the time and place prescribed in the invitation for bids. All bids received shall be recorded on an abstract (tabulation) of bids, which shall then be made available for public inspection. If equal low bids are received from responsible bidders, selection shall be made by drawing lots or other similar random method. The method for doing this shall be stated in the IFB. If only one responsive bid is received from a responsible bidder, award shall not be made unless the price can be determined to be reasonable, based on a cost or price analysis. Award shall be made in writing.  
[Award Date = Date of Board Approval (if applicable) or Purchase Order Date]
- 5.3.4 Mistakes in Bids.** Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the IFB prior to the time set for bid opening. After bid opening, corrections in bids may be permitted only if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made. All decisions to allow correction or withdrawal of a bid shall be supported by a written determination signed by the Contracting Officer. After bid opening, changes in bid prices or other

provisions of bids prejudicial to the interest of the OHA or fair competition shall not be permitted.

**5.3.5 Rejection of Bids.** Bids may be rejected for the following reasons:

- 5.3.5.1 Late bids (bids received after bid opening time or date)
- 5.3.5.2 Incomplete bids.
- 5.3.5.3 Bids received from firms that the Authority has removed from the bid list for cause.
- 5.3.5.4 The Authority may, at its discretion, decide to reject one, more, or all bids provided that written justification and / or rationale is documented in the bid file.

**5.4 Competitive Proposals.** Unlike sealed bidding, the competitive proposal method, also known as Request For Proposals (RFP), permits: consideration of technical and other non-price factors; discussion with offerors concerning offers submitted; negotiation of contract price or estimated cost and other contract terms and conditions; revision of proposals before the final contractor selection; and the withdrawal of an offer at any time up until the point of award. Award is normally made on the basis of the proposal that represents the best overall value to the OHA, considering price and other factors, e.g., technical expertise, past experience, quality of proposed staffing, etc., set forth in the solicitation and not solely the lowest price.

A “Qualified List” may be established as described under “Award Process for Qualified List” in Section 5.2 Small Purchase Procedures.

**5.4.1 Conditions for Use.** Where conditions are not appropriate for the use of sealed bidding (e.g., an accurate estimate the total cost of the contract is not possible due to the nature of the work, or other factors, such as expertise and experience, must be considered in addition to price), competitive proposals may be used. Competitive proposals are the preferred method for procuring professional services that will exceed the small purchase threshold. As detailed within Section 7.2.B of HUD Procurement Handbook 7460.8 REV 2, “Only under limited circumstances would construction services be procured by competitive proposals.”

**5.4.2 Form of Solicitation.** Other than A/E services, developer-related services and energy performance contracting, competitive proposals shall be solicited through the issuance of a Request for Proposals (“RFP”). The RFP shall clearly identify the importance and relative value of each of the evaluation factors as well as any sub-factors and price. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals until after award. The OHA may assign a specific weight in

the evaluation factors or the OHA may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.

**5.4.3** Evaluation. The proposals shall be evaluated based only on the factors stated in the RFP. Where not apparent from the evaluation factors, the OHA shall establish an Evaluation Plan for each RFP. Generally, all RFPs shall be evaluated by an appropriately appointed Evaluation Committee. The Evaluation Committee shall be required to disclose any potential conflicts of interest and to sign a Non-Disclosure statement. An Evaluation Report, summarizing the results of the evaluation, shall be prepared prior to award of a contract.

**5.4.4** **Negotiations.** No offerors shall attempt to unilaterally change the requirements of an RFP by inserting conditions in their offers or otherwise alter the contract's requirement to suit their own needs or prejudice other offerors. Any such offers will be rejected by OHA at our discretion. Negotiations may be conducted with all offerors who submit a proposal determined to have a reasonable chance of being selected for award, unless it is determined that negotiations are not needed with any of the offerors. This determination is based on the relative score of the proposals as they are evaluated and rated in accordance with the technical and price factors specified in the RFP. These offerors shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their proposals. No offeror shall be given any information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal. A common deadline shall be established for receipt of proposal revisions based on negotiations. Negotiations are exchanges (in either competitive or sole source environment) between the OHA and offerors that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract or other terms of a proposed contract. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions. Discussions are tailored to each offeror's proposal, and shall be conducted by the Contracting Officer with each offeror within the competitive range. The primary object of discussions is to maximize the OHA's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. The Contracting Officer shall indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as technical approach, past performance, and terms and conditions) that could, in the opinion of the Contracting Officer, be altered or explained to enhance materially the proposer's potential for award. The scope and extent of

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

After the initial negotiation, offerors in the competitive range will be invited to submit their best and final offers and will be allowed to make any changes in their technical proposal and the price. The best and final offers will be evaluated in essentially the same manner as the initial offers.

- 5.4.5 Award.** After evaluation of the revised proposals, if any, the contract shall be awarded to the responsible firm whose technical approach to the project, qualifications, price and/or any other factors considered, are most advantageous to the OHA provided that the price is within the maximum total project budgeted amount established for the specific property or activity. It will be at OHA's discretion to go to the next highest-ranked firm or any other appropriate action.

[Award Date = Date of Board Approval (if applicable) or Purchase Order Date]

- 5.4.6 A/E Services.** The HA shall contract for A/E services using Qualifications-Based Selection (QBS) procedures, utilizing a Request For Qualifications (RFQ). Sealed bidding shall not be used for A/E solicitations. Under QBS procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. QBS procedures shall not be used to purchase other types of services, other than Energy Performance Contracting and Developer services, or when specifically authorized by HUD, though architectural/engineering firms are potential sources for performing the proposed services.

- 5.4.7 Developer/Partner Services.** Pursuant to the HUD regulations and 24CFR941.602(d), the selection of HOPE VI Program developers/partners shall be by competitive proposals for qualifications-based procurement.

The entity created with the selected HOPE VI developer/ partner shall not be subject to the requirements of 24 CFR Part 85 unless HUD determines that the Authority exercises significant functions within the entity with respect to managing the development of the proposed units.

**5.4.8 General Construction/Contractor Services.** General construction contractor services may be obtained by competitive proposals with price as an evaluation criteria or qualification-based selection procedures. Evaluation factors may include, but need not be limited to, ability of staff to perform the work, experience and past performance, and knowledge of local building codes. OHA may use this selection process in accordance with Board of Commissioners Resolution #3751 adopted on March 28, 2006.

General construction contractor services may also be obtained by utilizing the 'multi-step bids' method in accordance with Section 6.14 of Handbook 7460.8 REV 2 as briefly described below:

OHA may use two-step or multi-step sealed bidding procedures where appropriate. The two-step procedure is designed to obtain the benefits of sealed bidding by awarding a contract to the lowest responsive, responsible bidder. Simultaneously, this procedure is designed to obtain the benefits of the competitive proposals method through soliciting technical offers and conducting discussions that evaluate and determine the acceptability of technical offers. Under the two-step sealed bidding process, technical proposals alone are requested first. Then the proposals are evaluated for acceptability and negotiations or discussions held, if necessary.

In the second step, the normal sealed bid process is followed except that only bidders with acceptable technical proposals may bid, and each bidder's price is based on its own technical proposal. An example of this method would be equipment contracts with performance specifications rather than detailed design specifications, where the OHA needs a certain level of performance but is not specifying how this performance is achieved.

## **5.5 Noncompetitive Proposals.**

**5.5.1 Conditions for Use.** Procurement by noncompetitive proposals (sole- or single-source) may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids, cooperative purchasing, or competitive proposals, and if one of the following applies:

5.5.1.1 The item is available only from a single source, based on a good faith review of available sources;

5.5.1.2 An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the OHA, as may arise by reason of a flood, earthquake, epidemic, riot, equipment

failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any of the other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary simply to meet the emergency;

5.5.1.3 HUD authorizes the use of noncompetitive proposals; or

5.5.1.4 After solicitation of a number of sources, competition is determined inadequate.

**5.5.2 Justification.** Each procurement based on noncompetitive proposals shall be supported by a written justification for the selection of this method. The justification shall be approved in writing by the responsible Contracting Officer. Poor planning or lack of planning is not justification for emergency or sole-source procurements. The justification, to be included in the procurement file, should include the following information:

5.5.2.1 Description of the requirement;

5.5.2.2 History of prior purchases and their nature (competitive vs. noncompetitive);

5.5.2.3 The specific exception in 24 CFR 85.36(d)(4)(i)(A) through (D) which applies;

5.5.2.4 Statement as to the unique circumstances that require award by noncompetitive proposals;

5.5.2.5 Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);

5.5.2.6 Statement as to efforts that will be taken in the future to promote competition for the requirement;

5.5.2.7 Signature by the Contracting Officer or his/her designee; and

5.5.2.8 Price Reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals or sole source shall be determined by performing an analysis, as described in this Policy.

**5.6 Cooperative Purchasing/Intergovernmental Agreements.** The OHA may enter into State and/or local cooperative or intergovernmental agreements to

purchase or use common supplies, equipment, or services. The decision to use an interagency agreement instead of conducting a direct procurement shall be based on economy and efficiency. If used, the interagency agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. The OHA may use Federal or State excess and surplus property instead of purchasing new equipment and property if feasible and if it will result in a reduction of project costs. The goods and services obtained under a cooperative purchasing agreement must have been procured in accordance with 24 CFR 85.36.

## 6.0 INDEPENDENT COST ESTIMATE (ICE)

- 6.1 General.** ICE is the OHA's estimate of the costs of goods or services to be procured under a contract or a modification. ICE is the primary in-house gauge of cost and price reasonableness, but it should not be relied upon to the exclusion of other sources of pricing information, especially during market fluctuation. For all purchases above the Micro Purchase threshold, the OHA shall prepare an ICE prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item to be purchased.

## 7.0 COST AND PRICE ANALYSIS (CPA)

- 7.1 General.** The OHA shall require assurance that, before entering into a contract, the price is reasonable, in accordance with the following instructions.
- 7.1.1 Petty Cash and Micro Purchases.** No formal cost or price analysis is required. Rather, the execution of a contract by the Contracting Officer (through a Purchase Order or other means) shall serve as the Contracting Officer's determination that the price obtained is reasonable, which may be based on the Contracting Officer's prior experience or other factors.
- 7.1.2 Small Purchases.** A comparison with other offers shall generally be sufficient determination of the reasonableness of price and no further analysis is required. If a reasonable number of quotes are not obtained to establish reasonableness through price competition, the Contracting Officer shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the Contracting Officer's personal knowledge at the time of purchase, comparison to the ICE, or any other reasonable basis.
- 7.1.3 Sealed Bids.** The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, and when the bid received is substantially more than the ICE, and where the OHA cannot reasonably determine price

reasonableness, the OHA must conduct a cost analysis, consistent with federal guidelines, to ensure that the price paid is reasonable.

**7.1.4 Competitive Proposals.** The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient proposals are not received, the OHA must compare the price with the ICE. For competitive proposals where prices cannot be easily compared among offerors, where there is not adequate competition, or where the price is substantially greater than the ICE, the OHA must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable.

**7.1.5 Contract Modifications.** A cost analysis, consistent with federal guidelines, shall be conducted for all contract modifications for projects that were procured through Sealed Bids, Competitive Proposals, or Non-Competitive Proposals, or for projects originally procured through Small Purchase procedures and the amount of the contract modification will result in a total contract price in excess of \$100,000.

## **7.2 Change Orders.**

1. The Authority is to use a competitive procurement process any time there is a substantial change in the Scope of Work for any project, as required by HUD and Federal procurement regulations.
2. Where Change Orders are the appropriate means to complete necessary work as a part of an on-going contract, the following requirements are to be met in all cases.
  - Contractors are to be required to submit supporting cost estimates.
  - The Authority shall perform and complete, independent cost analysis.
  - The Authority shall provide documentation that the proposed work is not included in the original scope of work. The work is necessary and economical, is consistent with applicable standards, cannot be practically performed under a separate contract after completion of the original contract, additional time is reasonable, and additional costs are within budget.
  - A file is to be created to preserve the contractors documentation and the authority's independent cost analysis along with all other related documentation including evidence or record of any negotiations of price or other conditions of the change order.
  - All change orders are to be carefully reviewed and concurred in by the respective OHA Department Director, and the CCGS Contract Compliance Specialist or Manager before being submitted for approval

by the Contracting Officer.

- All change orders exceeding \$50,000 shall require Board approval and the following applies:

Change Order Amount	Executive Director Approval Required	Board Approval Required
< \$50K	Yes	No
>\$50K (excluding ARRA projects)	Yes	Yes (This can be approved by the ED and reported back to the Board, possibly in the ED report section or tracked in a spreadsheet to be presented.)
> \$50K for ARRA projects only	Yes	Yes

- Under special circumstances and with a written justification, OHA may approve the change order at the appropriate signature authority levels and report the item to the Board at the next meeting. The report must include the justification and detail the action taken by the Authority.

## 8.0 SOLICITATION AND ADVERTISING

### 8.1 Method of Solicitation.

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

**8.1.2 Small Purchases.** Quotes may be solicited orally, through fax, E-Procurement, or by any other reasonable method.

**8.1.3 Sealed Bids and Competitive Proposals.** Solicitation must be done publicly. The HA must use one or more following solicitation methods, provided that the method employed provides for meaningful competition.

8.1.3.1 Advertising in newspapers or other print mediums of local or general circulations.

8.1.3.2 Advertising in various trade journals or publications (for construction).

8.1.3.3 E-Procurement. The OHA may conduct its public procurements through the Internet using e-procurement systems. However, all e-procurements must otherwise be in compliance with 24 CFR 85.36, State and local requirements, and the OHA's procurement policy.

**8.2 Time Frame.** For purchases of more than \$100,000, the public notice should run not less than once each week for two consecutive weeks.

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

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

**8.5 Cancellation of Solicitations.**

**8.5.1** An IFB, RFP, or other solicitation may be cancelled before bids/offers are due if:

8.5.1.1 The supplies, services or construction is no longer required;

8.5.1.2 The funds are no longer available;

8.5.1.3 Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best; or

8.5.1.4 Other similar reasons.

**8.5.2** A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if:

8.5.2.1 The supplies or services (including construction) are no longer required;

8.5.2.2 Ambiguous or otherwise inadequate specifications were part of the solicitation;

8.5.2.3 All factors of significance to the OHA were not considered;

8.5.2.4 Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;

- 8.5.2.5 There is reason to believe that bids or proposals may not have been independently determined in open competition, may have been collusive, or may have been submitted in bad faith; or
  - 8.5.2.6 For good cause of a similar nature when it is in the best interest of the OHA.
- 8.5.3** The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request.
- 8.5.4** A notice of cancellation shall be sent to all bidders/offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any re-solicitation or future procurement of similar items.
- 8.5.5** If all otherwise acceptable bids received in response to an IFB are at unreasonable prices an analysis should be conducted to see if there is a problem in either the specifications or the OHA's cost estimate. If both are determined adequate and if only one bid is received and the price is unreasonable, the Contracting Officer may cancel the solicitation and either
  - 8.5.5.1 Re-solicit using an RFP; or
  - 8.5.5.2 Complete the procurement by using the competitive proposal method. The Contracting Officer must determine, in writing, that such action is appropriate, must inform all bidders of the OHA's intent to negotiate, and must give each bidder a reasonable opportunity to negotiate.
- 8.5.6** If problems are found with the specifications, the OHA should cancel the solicitation, revise the specifications and re-solicit using an IFB.
- 8.6 Credit (or Purchasing) Cards.** Credit card usage should follow the rules for all other small purchases. For example, the Contracting Officer may use a credit card for Micro Purchases without obtaining additional quotes provided the price is considered reasonable. However, for amounts above the Micro Purchase level, the Contracting Officer would generally need to have obtained a reasonable number of quotes before purchasing via a credit card. When using credit cards, the OHA shall adopt reasonable safeguards to ensure that they are used only for intended purposes (for instance, limiting the types of purchases or the amount of purchases that are permitted with credit cards).

## 9.0 BONDING REQUIREMENTS

**9.1 General.** The standards under this section apply to construction contracts that exceed \$25,000. There are no bonding requirements for small purchases or for competitive proposals. The OHA may require bonds in these latter circumstances when deemed appropriate; however, non-construction contracts should generally not require bid bonds. *(OHA conducts all of its procurement and contracting activities pursuant to the stricter of both state and federal requirements. The above is in accordance to state requirements and is subject to change as appropriate.)*

**9.1.1 Bid Bonds.** For construction contracts exceeding \$25,000, offerors shall be required to submit a bid guarantee from each bidder equivalent to 5% of the bid price.

**9.1.2 Performance Bonds.** Used by OHA to ensure the contract is successfully completed.

**9.1.3. Payment Bonds.** Used by OHA to ensure that the contractor pays the subcontractors and suppliers.

**9.1.4. Bonding Requirements.** For construction contract exceeding \$25,000, each bidder must include a bid guarantee equivalent to 5% of the bid price, and one of the following:

9.1.2.1 Performance and payment bonds each in a penal sum of 100% of the contract price.

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

**9.1.5.** For non-construction projects, the bonding requirements will be at the discretion of OHA.

**9.1.6.** If the low bidder fails to provide an acceptable assurance of completion after award of the contract, OHA shall consider the bid guarantee forfeited and notify the Surety Company. The contract is then terminated for default.

## 10.0 CONTRACTOR QUALIFICATIONS AND DUTIES

### 10.1 Contractor Responsibility

**10.1.1** The OHA shall not award any contract until the prospective contractor, i.e., low responsive bidder, or successful offeror, has been determined to be responsible. A responsible bidder/offeror must:

10.1.1.1 Have adequate financial resources to perform the contract, or the ability to obtain them;

10.1.1.2 Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all of the bidder's/offeror's existing commercial and governmental business commitments;

10.1.1.3 Have a satisfactory performance record;

10.1.1.4 Have a satisfactory record of integrity and business ethics;

10.1.1.5 Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;

10.1.1.6 Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,

10.1.1.7 Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended, debarred or under a HUD-imposed LDP.

10.1.1.8 Prospective contractors must provide evidence of their ability to meet the requirements specified in 10.1.1.1 through 10.1.1.7 upon request within the time frame prescribed by OHA.

**10.1.2** **Prospective contractors must be determined to be responsible at the time of award.** If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the official contract file, and the prospective contractor shall be advised of the reasons for the determination. Documentation related to the determination of contractor responsibility must be kept in the procurement file.

**10.2 Suspension and Debarment.** Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred,

or determined to be ineligible by HUD in accordance with HUD regulations (24 CFR Part 24) or by other Federal agencies, e.g., Department of Labor for violation of labor regulations, when necessary to protect housing authorities in their business dealings. Prior to issuance of a contract, OHA staff shall, as detailed within Section 10.2.H.1 and 10.2.H.2 of HUD Procurement Handbook 7460.8 REV 2, conduct the required searches within the HUD Limited Denial of Participation (LDP) system and the U.S. General Services Administration (GSA) Excluded Parties Listing Service system and place within the applicable contract file a printed copy of the results of each such search.

Important Note: If during a project that a Contractor has already been awarded and the Contractor is debarred, suspended, or ineligible in any way, payments may be placed on hold and/or the project may be assigned to another Contractor at OHA's discretion until further resolution.

- 10.3 Labor Compliance and Other Requirements.** All Contractors must abide by applicable labor standards established by the U.S. Department of Labor (DOL), including the Davis-Bacon Act. Contractors are required to display a copy of the applicable Davis-Bacon Wage Decision and DOL poster Notice to all Employees (WH-1321). To ensure compliance, OHA shall, among other actions, review certified payroll records submitted by contractors, as well as conduct onsite interviews of laborers and mechanics. OHA will keep related compliance review records for a minimum of three years from the date of contract completion and acceptance by OHA, or from the date of resolution of any standards issues outstanding at the contract completion.

All construction projects over \$2,000 are subject to the Davis-Bacon Act. Non-compliance with Davis-Bacon requirements, Contractors State License Board, and other pertinent requirements will result in the ineligibility for future work at OHA until satisfactory resolution and compliance.

- 10.4 Vendor Lists.** All interested businesses shall be given the opportunity to register the company information online at the OHA website [www.oakha.org/](http://www.oakha.org/) Select Procurement/ OHA Vendor Center. Any lists of persons, firms, or products which are used in the purchase of supplies and services (including construction) shall be kept current and include enough sources to ensure competition.

Notwithstanding registering online with OHA, Vendors are responsible for checking the website for bid opportunities, update, status, and other bidding/procurement information.

Solicitations shall not be sent to firms that have been removed from the bid list for cause nor shall the OHA accept any bids from such firms. If the OHA inadvertently receives a bid from such firms, the bid shall not be considered or deemed valid.

## 11.0 CONTRACT TYPES AND OPTIONS

- 11.1 Contract Types.** Any type of contract which is appropriate to the procurement and which will promote the best interests of the HA may be used, **provided the cost-plus-a-percentage-of-cost and percentage-of-construction-cost methods are not used.** All solicitations and contracts shall include the clauses and provisions necessary to define the rights and responsibilities of both the contractor and the HA. For all cost reimbursement contracts, the HA must include a written determination as to why no other contract type is suitable. Further, the contract must include a ceiling price that the contractor exceeds at its own risk.
- 11.2 Options.** Options for additional quantities or performance periods may be included in contracts, provided that:
- 11.2.1 The option is contained in the solicitation;
  - 11.2.2 The option is a unilateral right of the HA;
  - 11.2.3 The contract states a limit on the additional quantities and the overall term of the contract;
  - 11.2.4 The options are evaluated as part of the initial competition;
  - 11.2.5 The contract states the period within which the options may be exercised;
  - 11.2.6 The options may be exercised only at the price specified in or reasonably determinable from the contract; and
  - 11.2.7 The options may be exercised only if determined to be more advantageous to the HA than conducting a new procurement.

## 12.0 CONTRACT CLAUSES

- 12.1 Contract Pricing Arrangements.** All contracts shall identify the contract pricing arrangement as well as other pertinent terms and conditions, as determined by the HA.
- 12.2 Required Forms.** Additionally, the forms HUD-5369, 5369-A, 5369-B, 5369- C, 5370, 5370-C, and 51915-A, which contain all HUD-required clauses and certifications for contracts of more than \$100,000, as well as any forms/clauses as required by HUD for small purchases, shall be used in all corresponding solicitations and contracts issued by the HA.

**12.3 Required Contract Clauses:** The HA shall ensure that each contract executed by the HA contains the required contract clauses detailed within 24 CFR 85.36(i). Additionally, OHA will abide by the following requirements:

**12.3.1. Mandatory Requirements for Construction/Development Contracts greater than \$100,000.** PHAs must incorporate the clauses contained in form HUD-5370, General Conditions of the Contract for Construction, and the applicable Davis-Bacon Wage Decision.

**12.3.2. Mandatory Requirements for Non-Construction Contracts (without maintenance work) greater than \$100,000.** PHAs must incorporate the clauses contained in Section I of form HUD-5370-C, General Conditions for Non-Construction Contracts.

**12.3.3. Mandatory Requirements for Maintenance Contracts (including non-routine maintenance work) greater than \$100,000.** PHAs must incorporate the clauses contained in Sections I and II of form HUD-5370-C, General Conditions for Non-Construction Contracts.

## 13.0 CONTRACT ADMINISTRATION

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

## 14.0 SPECIFICATIONS

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

**14.2 Limitation.** The following types of specifications shall be avoided:

14.2.1 Geographic restrictions not mandated or encouraged by applicable Federal law (except for A/E contracts, which may include geographic location as a selection factor if adequate competition is available);

- 14.2.2 Brand name specifications (unless the specifications list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use).

Nothing in this procurement policy shall preempt any State licensing laws. Specifications shall be reviewed to ensure that organizational conflicts of interest do not occur.

## 15.0 APPEALS AND REMEDIES

(Please refer to **‘Exhibit A - Vendor Protests and Claims Procedures’** for further details.)

- 15.1 General.** It is OHA policy to resolve all contractual issues informally and without litigation. Disputes will not be referred to HUD unless all administrative remedies have been exhausted. When appropriate, a mediator may be used to help resolve differences.
- 15.2 Informal Appeals Procedure.** The informal bid protest/appeal procedure shall be for contracts of \$100,000 or less. Under these procedures, the bidder/contractor may make a written complaint which the appropriate Contract Officer or his/her designee will address and make a final decision.
- 15.3 Formal Appeals Procedure.** A formal appeals procedure shall be for solicitations/contracts of more than \$100,000. All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer for a written decision.

## 16.0 ASSISTANCE TO SMALL AND OTHER BUSINESSES

- 16.1 Required Efforts.** Consistent with Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, all feasible efforts shall be made to ensure that small and minority-owned businesses, women’s business enterprises, and other individuals or firms located in or owned in substantial part by persons residing in the area of the HACM project are used when possible. Such efforts shall include, but shall not be limited to:
- 16.1.1 Including such firms, when qualified, on solicitation mailing lists;
  - 16.1.2 Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
  - 16.1.3 Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
  - 16.1.4 Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;

- 16.1.5 Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
  - 16.1.6 Including in contracts, to the greatest extent feasible, a clause requiring contractors, to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with the project to business concerns which provide opportunities to low-income residents, as described in 24 CFR Part 135 (so-called Section 3 businesses); and
  - 16.1.7 Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed above.
- 16.2 Goals.** OHA encourages the participation by small businesses, minority-owned businesses, women-owned business enterprises, labor surplus area businesses, and Section 3 business concerns in OHA prime contracts and subcontracting opportunities.

Small, Local & Emerging Business (SLEB) Program: OHA has a written draft of the SLEB program which entails the feasible efforts to assist small and other businesses. Please refer to a DRAFT copy of **Exhibit C – “Small, Local & Emerging Business (SLEB) Program”**.

Section 3 Requirements: OHA expects the selected Contractor(s) to make a good faith effort to comply with the Section 3 policy. Please refer to **Exhibit B - “Section 3 Requirements - Oakland Housing Authority Economic Opportunities Policy”**. Contractor(s) must be in compliance with Section 3 of the Housing Act of 1968, as amended regarding the provision of training and employment opportunities for low-income persons, with priority to residents of OHA public housing.

## 17.0 BOARD APPROVAL OF PROCUREMENT ACTIONS

- 17.1 Authority.** The Board appoints and delegates procurement authority to the Executive Director (ED) in the amount not to exceed \$100,000 and is responsible for ensuring that any procurement policies and procedures adopted are appropriate for the HA. All procurements that exceed \$100,000 must have approval from the Board prior to award and/or contract execution.

## 18.0 DELEGATION OF CONTRACTING AUTHORITY

- 18.1 Delegation.** While the ED is responsible for ensuring that the HA's procurements comply with this Policy, the ED may delegate in writing all procurement authority as is necessary and appropriate to conduct the business of the HA.

**18.2 Procedures.** Further, and in accordance with this delegation of authority, the ED shall, where necessary, establish operational procedures (such as a procurement manual or standard operating procedures) to implement this Policy. The ED shall also establish a system of sanctions for violations of the ethical standards described in Section 3.0 herein, consistent with Federal, State, or local law.

## 19.0 DOCUMENTATION

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

- 19.1.1 Rationale for the method of procurement (if not self-evident);
- 19.1.2 Rationale of contract pricing arrangement (also if not self-evident);
- 19.1.3 Information regarding accepting or rejecting the bids or offers, including the negotiation memo, the source selection panel, evaluation report, cost and price analysis, and correspondence (written or electronic).
- 19.1.4 The solicitation
- 19.1.5 Basis for the contract price (as prescribed in this handbook);
- 19.1.6 A copy of the contract documents awarded or issued and signed by the Contracting Officer;
- 19.1.7 Basis for contract modifications; and
- 19.1.8 Related contract administration actions.
- 19.1.9 Documentation pertaining to labor compliance review.

**19.2 Level of Documentation.** The level of documentation should be commensurate with the value of the procurement.

**19.3 Record Retention.** The Authority shall retain all significant and material documentation and records concerning all procurements it conducts. These records must be retained for a period of three years after final payment and all matters pertaining to the contract are closed. If any claims or litigation are involved, the records shall be retained until all issues are satisfactorily resolved.

## **20.0 DISPOSITION OF SURPLUS PROPERTY**

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

## **21.0 FUNDING AVAILABILITY**

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

## **22.0 EXHIBITS / APPENDICES**

*Refer to the Table of Contents for Exhibits/Appendices as referenced in the policy.*

**APPENDIX I:****Capital Fund Stimulus Grant Procurement Policy (Page 1 of 2)**

An Amendment to the Agency's Current Procurement Policy  
Board Resolution No. 4174 / Amended – October 26, 2009

In accordance with the U.S. Department of Housing and Urban Development PIH Notice 2009-12 (HA), the Oakland Housing Authority (OHA) hereby amends our current procurement policy in order to expedite and facilitate the use of American Recovery and Reinvestment Act (ARRA) Capital Fund Formula Grants. **This amended policy can be used only for procurements under the ARRA Capital Fund Stimulus Grants. This appendix will be removed from the Procurement Policy once the ARRA funds have been exhausted and expired.**

**A. General Provisions:**

1. **Priorities:** The Oakland Housing Authority shall give priority to Capital Fund Stimulus Grant projects that can be awarded contracts based on bids within 120 days from February 17, 2009.
2. **State and Local:** As provided for in HUD PIH Notice 2009-12 (HA) and the ARRA, any requirements relating to the procurement of goods and services arising under state and local laws and regulations shall not apply to Capital Fund Stimulus Grants. OHA shall follow the Code of Federal Regulations Title 24, Part 85 requirements. The PIH Notice, at page 6, specifically states that "...PHAs shall amend their procurement standards and policies as necessary in order to expedite and facilitate the use of the funds."
3. **Noncompetitive Proposals:** According to 24 CFR 85.36(d)(4), if solicitation of a proposal is only from one source or if OHA finds that after solicitation of a number of sources, that competition is inadequate, OHA may award the contract noncompetitively where small purchase procedures, sealed bids or competitive proposals are infeasible and one of the circumstances in 85.36(d)(4)(i) applies.

One such circumstance is that the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (85.36(d)(4)(i)(B)). If OHA finds that other competitive methods of procurement are infeasible, it may use the public exigency circumstance based on the purpose and requirements of ARRA. Accordingly, in order to meet ARRA's expenditure and obligation requirements, OHA may use the noncompetitive proposal method, but will do so on a contract-by-contract basis and in compliance with Part 85 requirements including the requirement for a cost analysis and the conflict of interest requirement. Further, OHA will maintain records sufficient to detail the significant history of each contract's procurement. These records will include, but will not necessarily be limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price (85.36(b)(9)).

Further, the Recovery Act has imposed expeditious obligation and expenditure requirements on the Capital Fund Stimulus Grants. It is necessary for OHA to expedite and facilitate the use of these grants. OHA may use the noncompetitive proposals method, but will do so on a contract-by-contract basis and in compliance with Part 85 requirements including the requirement for a cost analysis and the conflict of interest requirement. OHA will ensure that the noncompetitive proposals process followed is per this policy. Further, OHA will maintain records sufficient to detail the significant history of each contract's procurement. These records will include, but are

not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price (85.36(b)(9)).

**APPENDIX I:**  
**Capital Fund Stimulus Grant Procurement Policy (Page 2 of 2)**

An Amendment to the Agency's Current Procurement Policy  
Board Resolution No. 4174 / Amended – October 26, 2009

Justification: Each procurement based on non-competitive proposals shall be supported by a written justification for the selection of this method. The justification shall be approved by the responsible Contracting Officer and include a rational statement as to the unique circumstances that require award by noncompetitive proposals. **This statement may include that the ARRA Capital Fund Grants require expeditious obligation and expenditure.**

4. Force Account: (In-House direct labor where OHA acts as general contractor): To the extent feasible, OHA will consider employing existing or additional force account laborers on either a permanent or a temporary basis to perform Capital Fund stimulus grant work. See 24 CFR 968.105 and 968.120. Such work will be incorporated into the Capital Fund planning, budgeting and reporting documents.
5. Buy American: OHA will follow Buy American requirements of section 1605 of ARRA and use and/or require that only iron, steel and manufactured goods produced in the United States may be used in any of its projects for construction, alteration, maintenance or repair, unless an exception to the Buy American requirement is approved. OHA will include the Buy American requirement in all applicable solicitations and contracts.
6. Wage Rate Requirements: All laborers and mechanics employed by our Agency's contractors and subcontractors on projects funded under the Capital Fund Stimulus Grant shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.
7. Funding Availability: OHA shall ensure that there are sufficient ARRA Stimulus Capital funds available to cover the anticipated cost of the contract or modification before initiating any contract.
8. Self-Certification: OHA self-certifies this Capital Fund Stimulus Grant Procurement Policy, and OHA's procurement system, complies with all applicable Federal regulations and, as such, it is exempt from prior HUD review and approval of individual procurement action(s).
9. Time Period for Submission of Bids: For the general number of days provided for preparation and submission of sealed bids and competitive proposals, the Executive Director or Contracting Officer may allow for a shorter period under public exigency circumstances as provided in the purpose and requirements of the Recovery Act.
10. Unless changed by this amended policy, all other provisions of our current procurement policy apply.



## **EXHIBIT A**

### VENDOR PROTESTS AND CLAIMS PROCEDURES

*(See attached)*



## **EXHIBIT B**

### OHA ECONOMIC OPPORTUNITIES POLICY

*(See attached)*



## **EXHIBIT C**

### **SMALL, LOCAL & EMERGING BUSINESS PROGRAM (SLEB)**

*(See attached)*

## SMALL, LOCAL & EMERGING BUSINESS (SLEB) PROGRAM

The Small, Local and Emerging Business (SLEB) program is an equal opportunity program designed to enhance contracting and procurement opportunities for small, local and emerging businesses within the Oakland Housing Authority (OHA or the Authority).

### HUD Policies

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Pursuant to the Housing & Urban Development (HUD) policies, Handbook 7460.8 REV2, Section 13.0, OHA is prohibited from the use of geographic restrictions. Nonetheless, pursuant to Section 15.5 of the Handbook 7460.8, OHA shall make every feasible effort to ensure that small businesses MBEs, WBEs, and labor surplus area businesses participate in the contracting opportunities. The SLEB program was developed to promote and foster inclusiveness, diversity and economic development; as well as on-going evaluation to ensure all businesses including SLEBs are provided equal opportunities in contracting and procurement activities.

The only preference that the Authority is required to give is for Section 3 residents. For details, please refer to the “Section 3 Policy” and the “Section 3 Procedures Manual”, which can be found separately and not part of this program guide.

### Mission Statement

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It is the intent of the Oakland Housing Authority to develop and promote economic growth for the community in which it serves. The Authority desires to foster the growth of small, local and emerging businesses (SLEB). OHA will provide the community information about its procurement and contracting process to ensure the participation of SLEBs in the competitive processes of public procurement and will provide training and development opportunities to support their growth. Additionally, OHA will provide accurate and accessible information on available vendor/contract opportunities and will ensure that the process is inclusive for all residents regardless of race, color, gender, age, religion, national origin, disability or any other factor that is prohibited when making business decisions.

The Small Local and Emerging Business (SLEB) Program is a race and gender neutral program designed to ensure that all local businesses are given an opportunity to contract with the Authority and promote the economic growth of the community. The SLEB program was developed within the parameters of all applicable local and state laws including Proposition 209.

(Refer to Section 5 of the SLEB Program Guide for details on *HUD Policies and Proposition 209*)

### Goals and Objectives

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The goal of the OHA SLEB Program is to create and maintain our relationships with our external stakeholders. A larger goal is to promote the growth and development of small businesses (which includes minority, women-owned and veteran-owned firms). OHA is committed to having a diversified vendor base; therefore, we have made special efforts to participate in small business vendor outreach

activities all over the city of Oakland. We realize that quality and competence is not solely available through majority firms.

We feel that small and diverse firms have demonstrated the ability to be flexible; to provide added value; to be cost effective; and to provide significant value to OHA and its projects by providing quality goods and services. We are looking for small businesses that are committed to excellence, customer service, growth and expansion through high quality work and good service. (See also the attached checklist, *“Outreach Efforts Quick Reference Checklist”* at the end of this guide.

1. Networking- OHA plans to broaden its activity throughout the city of Oakland to recruit small businesses for its procurement needs, advocate for diverse supplier opportunities, and promote inclusion on all levels.
2. Supplier/ Vendor Relationship Management- Throughout the year, individual meetings will be held with vendors to work through issues, i.e., payment, invoices and concerns; in addition, introductions were made to specific buyers and/or end users.
3. Provide referrals for assistance in business development for small business through the State Office of Supplier Diversity, Division of Minority, Women Business Development, etc.
4. Maintain and distribute small business vendor information as opportunities present themselves.
5. Collaborate with partner agencies in the local and metropolitan areas.
6. Maintain positive visibility in the community and equal visibility with sister organizations
7. Make noteworthy impact across the State to enhance the Agency’s public image by strategically placed advertisements, distribution of promotional items, staff participation in small business outreach events, radio broadcast of public interest information and community based programs.

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### **Small Local Emerging Business (SLEB) Provision for Micro-Purchases (< \$2,000), Small Purchases (\$2,000-\$100,000), and Formal Sealed Bids (> \$100,000)**

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A small business is defined by the United States Small Business Administration (SBA) as having no more than the number of employees or average annual gross receipts over the last 3 years required per SBA standards based on the small business's appropriate North American Industry Classification System (NAICS) code.

An emerging business is defined by the County as having either annual gross receipts of less than one-half (1/2) that of a small business OR having less than one-half (1/2) the number of employees AND that has been in business less than five (5) years.

Small and emerging businesses must also satisfy the locality requirements (below) and be certified by the County as a small or emerging, local business. As OHA is not a certifying agency, businesses are referred to the local public certifying agencies such as the Alameda County. A certification application package is available at <http://www.acgov.org/auditor/sleb/cert.htm>.

The Authority is vitally interested in promoting the growth of small and emerging local businesses by means of increasing the participation of these businesses in the Authority's purchase of goods and services.

### **Micro-Purchases (< \$2,000)**

In efforts to advance the economic opportunities of these businesses, OHA will allow for selection of small businesses for purchases under the \$2,000 threshold as these purchases do not require 3 quotes according to HUD policies.

### **Small Purchases (\$2,000-\$100,000) and Formal Sealed Bids (> \$100,000)**

Due to the HUD Policy of prohibiting the use of geographic restrictions, there will be no preference given to small and local or an emerging and local business for purchases above the \$2,000 threshold.

### **Referrals to Public Agencies with SLEB Bid Preferences**

OHA may refer many of the small and emerging local businesses to public agencies such as the City of Oakland and/or Alameda County for opportunities in their procurements.

For instance, below is a brief summary of the Alameda County's SLEB bid preferences:

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#### **Small Local Emerging Business (SLEB) Provision for Informal and Formal Sealed Bids over \$25,000**

If a bidder is certified by the County as either a small and local or an emerging and local business, the County will provide a five percent (5%) bid preference for procurements over \$25,000, in addition to a 5% local bid preference for sealed bids (see below) for a total bid preference of ten percent (10%). A bid preference cannot override a State law, which requires the granting of an award to the lowest responsible bidder.

- Informal and formal sealed bids over \$25,000 are eligible for a 5% SLEB bid preference.
  - Only sealed bids are eligible for a 5% local preference.
  - The 5% or 10% total bid preference is applied to bidder's cost when lowest price is required to award or to evaluation criteria points for qualifications-based awards.
- b. Bidders not meeting the definition of a small or emerging local business do not qualify for a bid preference and must subcontract with one or more County certified small and/or emerging local
  - c. businesses for at least twenty percent (20%) of the total bid amount in order to be considered for contract award.
    - Bidders must submit written documentation evidencing a firm contractual commitment to meeting the minimum SLEB participation requirement.
    - SLEB participation must be maintained for the contract term.
    - Evidence of SLEB participation shall be provided immediately upon request at any time during the contract term.
  - d. The County reserves the right to waive the small/emerging local business participation requirements on contracts over \$25,000 if the additional estimated cost to the County, which may result from inclusion of the requirements, exceeds five percent (5%) of the total estimated contract amount or Ten Thousand Dollars (\$10,000), whichever is less.
    - Certified SLEB's cost must be greater than 10% or \$3,000 than a non-SLEB for waiver requests on procurements between \$10,001 and \$25,000.
  - e. The following entities are exempt from the Small and Emerging Local Business (SLEB) requirements as described above and are not required to subcontract with a SLEB:
    - non-profit community based organizations (CBO) that are providing services on behalf of the County directly to County clients/residents;
    - non-profit churches or non-profit religious organizations (NPO);
    - public schools; and universities; and
    - government agencies.
  - f. The maximum bid evaluation preference points available for being certified is 10% (5% local & 5% certified).

- g. Compliance with the SLEB program is required for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services projects, but no preference points are applied.

**Local Business Provision for Sealed Bid Procurements Only**

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A five percent (5%) preference points shall be granted to Alameda County products or Alameda County vendors on all sealed bids except with respect to those contracts which state law requires be granted to the lowest responsible bidder and architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services where no preference points are applied. These contracts require non-certified SLEBs to subcontract a minimum 20% with certified small or emerging businesses in order to be considered for contract awards.

An Alameda County vendor is a firm or dealer with fixed offices and having a street address within the County for at least six (6) months prior to the issue date of any RFP/Q being responded to; and which holds a valid business license issued by the County or a city within the County.

Alameda County products are those which are grown, mined, fabricated, manufactured, processed or produced within the County.

Locality must be maintained for the term of the contract. Evidence of locality shall be provided immediately upon request and at any time during the term of any contract that may be awarded to Contractor.

A small business will be considered for SLEB certification upon meeting the local business requirement.

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<p><u>Oakland Housing Authority</u></p> <p style="text-align: center;"><i>Contract Compliance &amp; General Services</i></p> <p>Outreach <span style="float: right;">Efforts</span> <span style="float: right;">-</span></p> <p><u>Quick Reference Checklist</u></p>		
<b>Overview</b>	The Contract Compliance & General Services Department, in an ongoing effort to enhance its outreach efforts with internal and external stakeholders, has created a checklist of activities.	<input type="checkbox"/>
<b>OUTREACH ACTIVITIES/ DESCRIPTION</b>		
<b>Sponsor vendor business opportunity fair</b>	Event to celebrate, educate and connect with current vendors and those seeking to do business with the Oakland Housing Authority.	<input type="checkbox"/>
<b>Attend outside vendor fairs</b>	Research and register for outside vendor fairs. Assign the most relevant CCGS staff to attend and represent the department.	<input type="checkbox"/>
<b>Develop a vendor outreach program with other public agencies</b>	See the ‘Small, Local & Emerging Business Program Guide’. The SLEB program will include trainings, mailings, social media, etc. Create a brochure and other marketing materials.	<input type="checkbox"/>
<b>Maintain &amp; enhance OHA’s relationships with all neighboring public agencies</b>	Forward all OHA solicitations to the relevant public agencies including the Chamber of Commerce, the East Bay Interagency Alliance etc. See ‘OHA Advertisement List’ and EBIA Directory. Distribute all OHA outreach efforts to assist agencies to communicate to their stakeholders. Clean current list and revise as necessary	<input type="checkbox"/>
<b>Use website, flyers, and announcements to communicate our message</b>	Place notices regarding training, bid opportunities, etc. on the website. Encourage vendors to register on the OHA Online Vendor Registration and to check the website frequently for updated information. Post on OHA website upcoming trainings, webinars, and upcoming solicitations. Email notifications (pre-bid, pre-proposal and networking opportunities to registered vendors.	<input type="checkbox"/>
<b>Use traditional methods to communicate our message</b>	Use local agencies to broadcast upcoming trainings, bid opportunities, etc. Place upcoming solicitations, trainings and other important information in the local and community newspapers.	<input type="checkbox"/>
<b>Increase Small, Local, Minority and/or Women Owned Business participation,</b>	See above outreach activities. This data is also gathered for reporting purposes.	<input type="checkbox"/>
<b>Order promotional items</b>	Brochures, pens, shirts, magnets, etc. to present at vendor fairs	<input type="checkbox"/>
<b>Track Progress</b>	Create and maintain tracking tools for all outreach efforts	<input type="checkbox"/>
<b>Report Project Status</b>	Create effective status reports.	<input type="checkbox"/>