

# ANN ARBOR HOUSING COMMISSION PROCUREMENT POLICY



ANN ARBOR HOUSING COMMISSION

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**ANN ARBOR HOUSING COMMISSION  
PROCUREMENT POLICY  
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# **ANN ARBOR HOUSING COMMISSION**

## **PROCUREMENT POLICY**

This Procurement Policy complies with the Consolidated Annual Contributions Contract between the Ann Arbor Housing Commission (AAHC) and the Department of Housing and Urban Development (HUD), Federal Procurement Regulations at **24 CFR 85.36**, applicable Michigan Compiled Laws, and the procurement standards of the Public Housing Agency Procurement Handbook 7460.8, Rev 2 (dated 2007), *et seq.*

### **I. GENERAL PROVISIONS**

#### **A. General**

The AAHC shall: provide for a procurement system of quality and integrity; provide for the fair and equitable treatment of all persons or firms involved in purchasing by the AAHC; ensure that supplies and services (including construction) are procured efficiently, effectively, and at the most favorable prices available to the AAHC; promote competition in contracting; and assure that the AAHC purchasing actions are in full compliance with applicable Federal standards, HUD regulations, State, and local laws. The term “procurement,” as used in this Policy, includes the procuring, purchasing, leasing, or renting of: (1) goods, supplies, equipment, and materials; (2) construction and maintenance; consulting services; (3) architectural and engineering (A/E) services; (4) social services; and (5) other services.

#### **B. Application**

This Procurement Policy applies to all procurement actions of the Authority, regardless of the source of funds. However, nothing in this Policy shall prevent the AAHC from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with the law. When both federal grants and other 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, 24 CFR Part 85.36 procurement regulations shall be applied to the total project. If funds and work can be separated and work can be

completed by a separate contract, then regulations applicable to the source of funding may be followed.

### **C. Exclusions**

The following shall not be governed by this Policy for all funding sources.

1. Real Estate Purchase and Sale Transactions (surveys, appraisals, environmental site assessments, and financing analyses are considered Consultant Services and are governed by this Policy).
2. Loan transactions and documents.
3. Sub-recipient or sub-grantee agreements and related change orders.
4. Employment contracts.
5. Award of housing or other vouchers to non-profit agencies.
6. Housing Assistance Payments Contracts in connection with the Housing Choice Voucher Program.
7. Financial institution agreements and contracts.
8. Direct Payments. These are transactions that are impractical or impossible to procure competitively because of market or other conditions and thus are exempt from competitive bidding requirements. (See Appendix A for list of direct payments.)

In addition, the following shall not be governed by this Policy for funding that is not a federal grant.

1. Supportive services provided to tenants by non-profit and governmental entities
2. Legal services
3. Health and safety services (for example, elevator inspections, emergency repairs, hazardous clean-up, boiler maintenance etc.)

### **D. 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 consistent with this Policy, automatically supersede this Policy.

### **E. Public Access to Procurement Information**

Most procurement information shall be available to the public to the extent provided in the Michigan Freedom of Information Act.

## **II. ETHICS IN PUBLIC CONTRACTING**

### **A. General**

The AAHC hereby establishes this code of conduct regarding procurement issues and actions and shall implement a system of sanctions for violations. This code of conduct is consistent with applicable Federal, State, or local law and the AAHC Ethics Policy.

## **B. Conflicts of Interest**

No employee, officer, Board member, or agent of the AAHC 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 exist when one of the persons listed below has a financial or any other type of interest in a firm competing for the award:

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

## **C. Gratuities, Kickbacks, and Use of Confidential Information**

No officer, employee, Board member, or agent shall accept gratuities, favors, or items of more than \$25 in value from any contractor, potential contractor, or party to any subcontract, and shall not knowingly use confidential information for actual or anticipated personal gain.

## **D. Prohibition against Contingent Fees**

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

# **III. PROCUREMENT AUTHORITY & ADMINISTRATION**

## **A. Procurement Planning**

Planning is essential to managing the procurement function properly. Therefore, the AAHC will annually review its record of prior purchase, as well as future needs, to:

1. Find patterns of procurement actions that could be performed more efficiently or economically;
2. Maximize competition and competitive pricing among contracts and decrease the Commission's procurement costs;
3. Reduce the Commission's administrative costs;
4. Ensure that supplies and services are obtained without any need for re-procurement, e.g., resolving bid protests; and
5. Minimize errors that occur when there is inadequate lead time. Consideration should be given to storage, security, and handling requirements when planning the most appropriate purchasing actions.

## **B. Independent Cost Estimate**

For all purchases using federal grants, above the Micro Purchase (\$2,000) threshold, the AAHC shall prepare an independent cost estimate (ICE) prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item to be purchased.

1. The ICE is the AAHC estimate of the cost of the goods or services to be acquired under a contract or a modification for evaluating the reasonableness of the contractor's proposed costs or prices and can be used to determine the method of contracting to be used;
2. The AAHC may develop the ICE using its own employees, outside parties, or a combination of the two. The AAHC will take appropriate steps to ensure that the outside party does not obtain any competitive advantage from its advance knowledge of the AAHC's cost estimate.
3. The ICE must be prepared prior to the solicitation of offers. The requirements for ICE 's are:
  - a. For Micro Purchases (below \$2,000), ICE is not required – price reasonableness will be based on a comparison with historical prices paid for the item, commercial catalog prices, or other offers.
  - b. For purchases above \$2,000 but less than the AAHC small purchase threshold – the ICE may be based on prior purchases, commercial catalogs, or detailed analysis.
  - c. For purchases above the AAHC's small purchase threshold – the level of detail shall commensurate with the size, complexity, and commercial nature of the requirement and are broken out into major categories of cost including labor materials, travel, overhead, profit and etc.
4. The ICE is not relied upon to the exclusion of other sources of pricing information. The Contracting Officer shall request that an updated ICE be prepared to use in evaluating offers.

### **C. Board Approval of Procurement Actions**

The AAHC Board of Commissioners' approval, by resolution, is required for all procurement actions above \$100,000.00. In addition, it is the responsibility of the Executive Director or designee to submit for approval to the Board of Commissioners, during its next regularly scheduled meeting, each contract modification that increases the value of the contract amount ten per cent (10%) or more or that changes the scope of work. Further, the AAHC Board of Commissioners' approval is required for all contracts previously approved by the Board when a contract modification extends the contract for forty-five (45) or more calendar days. All other change orders, addendums and amendments do not require Board approval.

Although extending a contract after it has expired is discouraged as poor business practice, on the rare occasions on which this action is deemed in the best interest of AAHC, all such extensions shall be submitted to the Board of Commissioners for approval regardless of the length of such extensions. A written explanation of the reason the contract was not timely extended shall be submitted to the Board of Commissioners.

A contract terminated by AAHC for cause or convenience may only be renewed or extended with the approval of the Board of Commissioners.

The Executive Director or designee shall submit a monthly report to the Board of Commissioners detailing procurement actions which were taken during the previous full month that are greater than \$25,000.00. .

### **D. Delegation of Contracting Authority**

The AAHC Board of Commissioners designates the Executive Director as the AAHC Contracting Officer. The Executive Director is responsible for ensuring that the AAHC's procurement actions comply with this Policy. The Executive Director may delegate all or some procurement authority as is necessary and appropriate to conduct the business of the Commission. The Executive Director shall appoint delegations of Contract Authority in writing. The appointment shall state the scope and limitations of authority. Changes in the scope or limitations shall be made in writing by amendment to the existing delegation or by issuance of a new appointment.

Each Delegation of Authority shall clearly state the position's limit of authority, e.g.:

1. Award, agree to, or execute any contract, contract modification, or notice of intent;
2. Obligate, in any way, the payment of grant funds by the government;
3. Make a final decision on any contract matter subject to disputes; or
4. Terminate, for any cause, the contractor's right to proceed.

Further, and in accordance with this delegation of authority, the Executive Director shall establish operational procedures (such as a procedures manual or standard operating procedures) to implement this Policy. The Executive Director shall also establish a system of sanctions for violations of the ethical standards described in Page 7 and 8 of this policy, consistent with Federal, State, or local law.

The Executive Director, or designee(s), shall ensure:

1. Contracts and modifications are in writing and clearly specify the desired supplies, services, or construction, and are supported by sufficient documentation.
2. Procurement requirements are subject to review to assure efficient and economical purchasing.
3. For contracts exceeding \$100,000, one (1) or more public advertisement(s) shall be made over a minimum of 10 business days. Contractor/vendor preparation and submission of bids or proposals shall be allowed a minimum of 10 business days.
4. Solicitation procedures are conducted in full compliance with the Federal standards set forth at 24 CFR 85.36; or State or local laws that are more stringent, provided they are consistent with 24 CFR 85.36.
5. An independent cost estimate (ICE) shall be prepared before solicitation for all federal grant procurement actions that exceed \$2,000.
6. A cost or price analysis is conducted on responses for all federal grant procurement actions that exceed \$2,000.
7. Contract awards are made to the lowest responsive responsible bidder. In the case of Requests for Proposals or quotes, contract awards are to be made only to the offeror whose proposal or quote offers the greatest value to the AAHC, considering the evaluation criteria stated in the solicitation.
8. Notice of award is made available to the public if the procurement process was a publically posted process (public ITB, RFP or RFQ).
9. Unsuccessful firms are notified.
10. Work, equipment, or service is inspected/reviewed and accepted/approved prior to payment.
11. The AAHC complies with applicable HUD review requirements.

## **E. Documentation**

The AAHC must maintain records so that the level of documentation is commensurate with the value of the procurement.

All Individual contract records are to be retained for a period of three (3) years after final payment and all matters pertaining to that contract are closed, including litigation. Procurement records related to federal grants are to be retained a minimum of three (3) years after audit and close out of each grant.

**F. Funding Availability**

Before initiating any contract, the Executive Director or designee or delegated entity shall ensure that there are sufficient funds available to cover the anticipated cost of the contract or modification.

**E. Policy Modifications**

This Policy and any subsequent modifications shall be submitted to the Board of Commissioners for approval.

**IV. PROCUREMENT METHODS**

**A. General**

The AAHC will select one of the following methods of procurement for all procurement actions based on the nature and anticipated dollar value of the total requirement. As previously provided, procurement actions exceeding \$100,000 must have approval of the AAHC Board of Commissioners.

<b>Procurement Method</b>	<b>Federal grants</b>	<b>All other funding sources</b>
Micro Purchase	Up to \$2,000	Up to \$10,000
Small Purchase	\$2,001 - \$100,000	\$10,001 - \$100,000
Sealed Bids/Proposals – Board Approval Required	\$100,001 and above	\$100,001 and above

**B. Micro Procurement Methods**

1. **For Micro Purchases, one (1) quote is required** provided the quote is considered reasonable. Micro purchases may be handled with the use of an official AAHC Procurement Card (Corporate Charge Cards). Accounts may be established in an amount sufficient to cover small purchases made during a reasonable period (e.g., one month). For all Procurement Card Accounts, the

Executive Director shall ensure that security is maintained and only authorized individuals have access to the account. These accounts should be reconciled monthly by the AAHC Finance Division and replenished periodically.

2. The Procurement Manager or designee may use a Procurement Card for Micro Purchases after obtaining one (1) quote and the price is considered reasonable. However, for amounts above the Micro Purchase level, the Procurement Manager or designee shall obtain three quotes before purchasing via a Procurement Card.
3. When using Procurement Cards, the Executive Director or designee shall authorize usage in writing, adopt written procedures and other reasonable safeguards to assure that they are used only for intended purposes (for instance, limiting the types of purchases or the amount of purchases that are permitted with Procurement Credit cards). Procurement Cards may be used for payment under a Blanket Purchase Agreement, E-Procurement, and Emergencies.

### **C. Small Purchase Procedures**

Under small purchase procedures, the AAHC shall obtain at least **three quotes**; however, to the greatest extent feasible, and to promote competition, small purchases should be distributed among qualified sources.

**Quotes may be obtained orally (either in person or by phone), in writing, or through e-procurement. Documentation, such as written notes, is required to support oral quotes.** Award shall be made to the qualified vendor that provides the best value to the AAHC. If award is to be made for reasons other than lowest price, documentation shall be provided in the contract file. The AAHC shall not break down requirements aggregating more than the small purchase threshold (or the Micro Purchase threshold) into several purchases that are less than the applicable threshold merely to:

1. Permit use of the small purchase procedures or,
2. Avoid any requirements that apply to purchases exceeding the Micro Purchase threshold.

### **D. Sealed Bids**

Sealed bidding shall be used for all contracts that exceed the small purchase threshold and that are not competitive proposals, non-competitive proposals, or cooperative purchasing, as these terms are defined in this document. Under sealed bids, the AAHC publicly solicits bids and awards a firm fixed-price contract (lump sum) to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation to bids, 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.**

1. **Conditions for Using Sealed Bids.** The AAHC shall use the sealed bid method if the following conditions are present:
  - a. Procurement actions exceed the small purchase threshold of \$100,000;
  - b. A complete, adequate, and realistic statement of work, specification, or purchase description is available;
  - c. Two or more responsible bidders are willing and able to compete effectively for the work;
  - d. The contract can be awarded based on a firm fixed price; and
  - e. The selection of the successful bidder can be made principally on the basis of price;
  - f. Sealed Bidding is the preferred method for Construction Contracts above the small purchase threshold.
  - g. Sealed bidding is not recommended for Professional Service Contracts.
  
2. **Solicitation and Receipt of Bids.** An **invitation to bid (ITB)** 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 ITB.

The ITB 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. Bids, which, for any reason, are not timely delivered, will not be considered and will be returned unopened.

No responsibility will be attached to an officially delegated AAHC officer, employee, or agent of the AAHC for not recognizing or receiving a bid, which is not properly marked, addressed or delivered to the submission place, using the required submission method, by the submission date and time.

3. **Bid Opening and Award.** Bids shall be opened publicly. AAHC staff designated to conduct the bid opening (most often in conjunction with City of Ann Arbor designated staff) shall read aloud each bidders name and bid price. All bids received shall be recorded on an abstract (tabulation) of bids, and then made available for public inspection. Bids shall be evaluated and the award made in writing to the lowest responsive and responsible bidder. If equal low bids are received from responsible bidders, selection shall be made by drawing lots or other similar random method unless otherwise provided by Michigan State law. The method for doing this shall be stated in the ITB. 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. The successful bidder and all unsuccessful bidders shall be notified in writing.
  
4. **Mistakes in Bids.** Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written or facsimile notice received in the office designated in the ITB 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. 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.
- b. All decisions to allow correction or withdrawal of a bid shall be supported by a written determination signed by the Procurement Manager or designee. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the AAHC or fair competition shall **not** be permitted.
- c. The Executive Director, or designee, may waive any irregularity if it determined the waiver is in the best interest of the AAHC.

## **E. Competitive Proposals/Negotiated Procurement**

Competitive Proposals are the primary alternative to the sealed bidding method of contracting for amounts above Federal small purchase threshold (currently \$100,000), and may also be used for small purchases. Unlike sealed bidding, the competitive proposal method permits:

(1) consideration of technical factors other than price; (2) discussion with offerors concerning offers submitted; (3) negotiation of contract price or estimated cost and other contract terms and conditions; (4) revision of proposals before the final contractor selection; and (5) 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 AAHC, 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.

1. **Conditions for Use.** Where conditions are not appropriate for the use of sealed bidding, competitive proposals may be used. **Competitive proposals are the preferred method for procuring professional services.** Generally, the competitive proposal method should be used whenever any of the following conditions exist.
  - a. The work is not definite enough to accurately estimate the total cost of the contract and the contract may require contingency cost;
  - b. The nature of the requirement is such that AAHC needs to evaluate more than just the price to ensure the prospective contractor understands AAHC's the requirements and can successfully complete the contract; or

c. The requested work or a service lends itself to different approaches from prospective contractors in accomplishing the work.

2. **Form of Solicitation.** Federal grant-funded Competitive proposals, other than A/E services, 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 subfactors 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, subject to the Michigan Freedom of Information Act. The AAHC may assign price a specific weight in the evaluation criteria or the AAHC may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.

The RFP shall state the date and time the proposals are due. Proposals, which for any reason are not delivered timely, will not be considered and will be returned unopened. The AAHC staff designated to receive proposals will determine when the deadline for receipt of proposals has expired. No responsibility will be attached to an officially designated AAHC officer, employee, or agent of AAHC for not recognizing or receiving a proposal which is not properly marked, addressed, or delivered to the submission place, in the submission method, by the submission date and time.

3. **Evaluation.** The proposals shall be evaluated only on the criteria stated in the RFP. Where not apparent from the evaluation criteria, the AAHC shall establish an Evaluation Plan for each RFP. Generally, an appropriately appointed Evaluation Committee shall evaluate all RFPs. 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.**

4. **Negotiations.** Negotiations or discussions shall be conducted with all offerors who submit a proposal determined to have a reasonable chance of being selected for award, unless it is determined that negotiations are not needed with any of the offerors. This determination is based on the relative score of the proposals as they are evaluated and rated in accordance with the technical and price factors specified in the RFP. 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. 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 AAHC and offerors 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 or discussions are conducted, they generally take place after establishment of the competitive range and are called discussions. These negotiations/discussions are generally tailored to each offeror's proposal, and shall be conducted by the Procurement Manager or designee with each offeror within the competitive range.

- b. The primary object of discussions is to maximize the AAHC's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. The Procurement Manager may indicate to, or discuss with, each offeror still being considered for award, deficiencies, and other aspects of its proposal (such as cost, price, technical approach, past performance, and terms and conditions) so that each offeror has a complete understanding of AAHC's position or concerns with its proposal.
- c. The scope and extent of discussions are a matter of the Procurement Manager or designee's judgment. The Procurement Manager or designee may inform an offeror that its price is considered by the AAHC 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 government'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.

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 AAHC provided that the price is within the maximum total project budgeted amount established for the specific service. Award is normally made on the basis of the proposal that represents the best overall value to the AAHC, 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.

## **F. Qualifications Based Solicitations & Other Specialized Services**

1. **A/E Services.** If the design warrants the use of an Architect or Engineer, under any federal grant funded program, the AAHC may solicit A/E services using qualifications-based selection (QBS) procedures, utilizing a Request for Qualifications (RFQ) or, as allowable per Michigan State law, AAHC may solicit A/E Services using the Request for Proposals method. 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.**

2. **Developers - Joint Venture Partners** The QBS method may also be used to select a development partner, where price is negotiated with the highest –ranked offeror based on response to an RFQ. AAHC shall follow all requirement and additional guidance governing the selection of a development partner as listed in 24CFR 941.602(d)1 of the Mixed Finance Interim Rule when applicable.
3. **Legal Services.** AAHC shall obtain required outside legal services through procurement contracts when using federal grants. 24 CFR 85.36 (d) permits AAHC to use any of the following contracting methods, based on the facts surrounding the particular situation: 1) Small Purchase Procedures; 2) Sealed Bids (not recommended); 3) Competitive Proposals; or 4) Noncompetitive Proposals.
4. **Litigation Services.** In addition to the methods listed above, the HUD Litigation Handbook 1530.1 REV-5 sets thresholds for Regional Counsel and Headquarters Program Associate General Counsel approval of litigation service contracts.

With the exception of litigation involving AAHC acting as a section 8 private developer, AAHC must submit to HUD Regional Counsel for prior written concurrence any litigation service contract expected to exceed \$100,000 with a private attorney involving AAHC program, project, or activity receiving loan, grant, or other subsidy assistance from HUD. Such contracts shall make a provision for reasonable fees and reimbursement of necessary expenses. If additional funding or budget revision will be required to cover the cost of litigation services, AAHC shall consult appropriate Field and Regional Office staff.

## **G. Noncompetitive Proposals**

1. **Conditions for Use.** Procurement by noncompetitive proposals (sole-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:
  - a. The item is available only from a single source, based on a good faith review of available sources;
  - b. An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the AAHC, 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; or

- c. The awarding agency authorizes the use of noncompetitive proposals; or
- d. After solicitation of a number of sources, competition is determined inadequate.

A single response to a competitive procurement, either an RFP or RFQ, does not constitute sole source procurement. AAHC may award a contract based on a sole response and shall document the files to demonstrate that the procurement was appropriately advertised and the procurement was determined to be fair and reasonable.

**2. Justification.** Each procurement action using federal grants, based on noncompetitive proposals, shall be supported by a written justification for the selection of this method.

The Executive Director or designee shall approve the justification in writing. Poor planning or lack of planning is not justification for emergency or sole-source procurements. The justification, to be included in the procurement file.

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

## **H. Emergencies**

An exigent or emergency purchase may be made when an exigent or emergency situation exists. An exigent condition is a situation or condition requiring immediate aid or action. This could be the result of a pending natural disaster, an equipment failure such as fire safety or elevator malfunction. An emergency condition is an immediate threat to the health and safety of the residents or employees of the AAHC. **Only the Executive Director or his/her designee shall be authorized to declare an exigent or emergency condition.**

Exigent and/or emergency procurement actions shall be limited to only those supplies, services, or major repairs to abate and or cure the exigent condition or emergency. When taking such actions the procurer must attempt to get the best product for the least cost while considering the time sensitive nature of the situation.

The exigent condition or the emergency should be completed as soon as possible. Within twenty four (24) hours after the exigent condition or emergency condition is abated, the Executive Director shall ensure the proper documentation for the supplies,

services, or construction is submitted. Documentation of the exigent condition or emergency condition shall be maintained separately in the Procurement Division's files.

Procedures for submitting the proper documentation are to be included in the operational procedures.

### **I. Cooperative Purchasing/Intergovernmental Agreements**

The AAHC may enter into cooperative or intergovernmental agreements with State and/or local governmental agencies to purchase or use common supplies, equipment, or services. The decision to use an intergovernmental agreement instead of conducting a direct procurement shall be based on economy and efficiency. If used, the intergovernmental 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 AAHC may use 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.

## **V. COST AND PRICE ANALYSIS**

The AAHC shall require assurance that, before entering into a contract, the price is reasonable, in accordance with the following instructions. The reasonableness determination shall be placed into the official procurement file.

- A. Micro Purchases.** No formal cost or price analysis is required. Rather, a review by the Procurement Manager or designee shall serve as determination that the price obtained is reasonable, which may be based on the Procurement Manager's prior experience or other factors. The Executive Director shall establish guidelines and procedures on Cost and Price Analysis determinations.
- B. Small Purchases.** A comparison with other offers shall 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 Procurement Manager or designee shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the Procurement Manager's personal knowledge at the time of purchase, comparison to the ICE, or any other reasonable basis. The Official Procurement File shall be documented with the appropriate rationale.
- C. 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 more than 10% greater than the ICE, the AAHC entity which submitted the ICE must conduct a cost analysis, consistent

with federal guidelines, to ensure that the price paid is reasonable. Comparison may indicate need for verification of Bid.

AAHC may use alternative methods of determining price reasonableness as noted in the HUD Procurement Handbook, 7460.8 REV 2, Chapter 10.3(B.), in lieu of a formal cost analysis.

- D. Competitive Proposals.** The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, the AAHC 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 AAHC must conduct a cost or price analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable. The AAHC may use the HUD Guidance at 7460.8 REV 2 Chapter 10(B.) as an alternate means to determine price reasonableness (other than cost analysis).
- E. Contract Modifications.** A cost or price 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. The only exception to this rule is a contract modification based on pricing terms already established in the contract document.

## **VI. SOLICITATION AND ADVERTISING**

### **A. Method of Solicitation**

1. **Small Purchases.** Oral requests for quotes (documented in writing in the file) shall be the preferred method of solicitation; however, the AAHC may also use other means, including advertising, mailing lists, or e-procurement.
2. **Sealed Bids and Competitive Proposals.** Solicitation must be done publicly. The AAHC must use one or more of the following solicitation methods, provided that the method employed provides for meaningful competition.
  - a. Advertising in newspapers or other print mediums of local or general circulations;
  - b. Advertising in various trade journals or publications, such as the Dodge Reports (for construction);
  - c. Mailing/Faxing to Vendor Lists.; and/or
  - d. E-Procurement. The AAHC 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 this Procurement Policy. File documentation must be designed to be audited.

- B. Time Frame.** For purchases of more than \$100,000, the public notice/advertisement shall be run not less than once for a ten (10) business days, unless dictated otherwise by Michigan State law.
- C. 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 person who can provide a copy of, and information about, the solicitation, and a brief description of the needed items(s).
- D. Time Period for Submission of Bids.** A minimum of ten (10) business days shall generally be provided for preparation and submission of sealed bids and (10) business days for competitive proposals exceeding \$100,000. However, the Executive Director or designee may allow for a shorter period in response to emergencies or exigencies, as allowed for by State and local law.
- E. Cancellation of Solicitations**
  - 1. An ITB, RFP, RFQ, or other solicitation may be cancelled before bids/offers are due if:
    - a. the supplies, services or construction is no longer required;
    - b. the funds are no longer available; and/or
    - c. proposed amendments to the solicitation are of such magnitude that a new solicitation would be best.
  - 2. A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if:
    - a. the supplies or services (including construction) are no longer required;
    - b. ambiguous or otherwise inadequate specifications were part of the solicitation;
    - c. all factors of significance to the AAHC were not considered;
    - d. prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
    - e. there is reason to believe that bids or proposals may not have been independently determined in open competition, may have been collusive, or may have been submitted in bad faith; or
    - f. for good cause of a similar nature when it is in the best interest of the AAHC.
  - 3. The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request.

4. A notice of cancellation shall be sent to all bidders/offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any resolicitation or future procurement of similar items.
5. If all otherwise acceptable bids received in response to an ITB are unreasonable as to price, an analysis shall be conducted to review the adequacy and or appropriateness' of the the specifications or the accuracy and appropriateness' AAHC's accuracy of cost estimate. If both are determined adequate and if only one bid is received and the price is unreasonable, the Procurement Manager or designee may cancel the solicitation and either:
  - a. Re-solicit using an RFP;
  - b. Complete the procurement by using the competitive proposal method. (The Contracting Officer or designee must determine, in writing, that such action is appropriate, must inform all bidders of the AAHC's intent to negotiate, and must give each bidder a reasonable opportunity to negotiate.); or
  - c. If problems are found with the specifications, shall cancel the solicitation, revise the specifications and re-solicit using an ITB.

## VII. BONDING & INSURANCE REQUIREMENTS

The standards under this section generally apply to construction contracts that exceed \$100,000. There are no bonding requirements for small purchases or for competitive proposals. The AAHC may require bonds and/or insurance for other services when deemed appropriate to protect the interest of AAHC; non-construction contracts should generally not require bid bonds.

### A. Bonds

1. **Bid Bond.** For construction contracts exceeding \$100,000, offerors shall be required to submit a bid guarantee/bid bond from each bidder equivalent to 5% of the bid price. A bid guarantee/bid bond may be acceptable in the form of a cash equivalent.
2. **Payment Bonds.** For construction contracts exceeding \$100,000, and in addition to the bid guarantee/bid bond required, the successful bidder shall furnish an assurance of completion. This assurance may be met and provided below: A performance and payment bond in a penal sum of 100% of the contract price for contracts exceeding \$100,000; or
  - a. Separate performance and payment bonds, each for 50% or more of the contract price for contracts exceeding \$100,000; or

- b. A 20% cash escrow; or
  - c. A 25% irrevocable letter of credit.
3. **Performance Bonds** are required for all construction or service contracts exceeding \$100,000.
- a. These bonds must be obtained from guarantee companies acceptable to the U.S. Government and authorized to do business in the State of Michigan. Individual sureties shall not be considered.
  - b. U.S. Treasury Department Circular No. 570 lists companies approved to act as surety on bonds securing Government (e.g., Housing Agencies) contracts, the maximum underwriting limits on each contract bonded, and the State of Michigan.

#### **B. Inadequate Surety.**

If the low bidder fails to provide an acceptable assurance of completion (payment and performance bonds) after award of the contract, the AAHC should consider the bid guarantee forfeited and notify the surety company. The contract is then terminated for default. The amount to be recovered from the bid bond or guarantee should equal at least the difference between the defaulted bid and the next high acceptable bid or the amount by which the bid accepted by resoliciting exceed the defaulted contract.

#### **C. Insurance.**

All contracts shall contain insurance provisions appropriate to the project or service and/or as may be required by Federal, State and or local laws and ordinances.

The successful contractor, before start of work, must submit a certificate of insurance, name the AAHC as an additional insured. The insurance requirement will be noted in each procurement method were bidder/offerors shall provide a copy of their current insurance certificate. In general, each successful contractor must carry:

1. General Liability - \$1,000,000 per occurrence for bodily injury, personal injury and property damage, and an aggregate limit of \$2,000,000; and/or
2. Automobile Liability - \$1,000,000 per accident for bodily injury and property damage (if necessary and applicable to the contract); and/or
3. Workers Compensation or Employer's Liability - \$500,000 per accident for bodily injury or disease; and/or
4. Error and Omission Liability (if necessary) - \$1,000,000 per occurrence and an aggregate limit of \$1,000,000; and/or
5. Bodily Injury Liability (if the contract involves motor vehicles or mechanized

equipment) - \$1,000,000 per occurrence for bodily injury and/or personal injury and/or property damage.

## **VIII. CONTRACTOR QUALIFICATIONS AND DUTIES**

### **A. Contractor Responsibility**

The AAHC will not award any contract until the prospective contractor (i.e., low responsive bidder or successful offeror) has been determined to be responsible. A responsible bidder/offeror must:

1. Have adequate financial resources to perform the contract, or the ability to obtain them;
2. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all the bidder's/offeror's existing commercial and governmental business commitments;
3. Have a satisfactory performance record;
4. Have a satisfactory record of integrity and business ethics;
5. Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
6. Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and
7. Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended, debarred or under a HUD-imposed Limited Denial of Participation.

If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the official contract file, and the prospective contractor shall be advised of the reasons for the determination.

### **B. Acceptable Evidence of Responsibility**

It is incumbent upon bidders/offerors to provide acceptable evidence of their ability to meet the requirements in paragraph 1.5.A. Acceptable evidence normally consists of a commitment or explicit arrangement that will be in existence at the time of contract award to rent, purchase, or otherwise acquire the needed facilities, equipment, financing, personnel, or other resources.

### **C. Researching Responsibility**

The Contracting Officer will need to conduct research to determine that a prospective contractor is responsible. Only that information deemed necessary to determine the

offeror's responsibility will be requested, obtained, and reviewed, some methods include:

1. **Financial Capability** such as credit bureau reports, lines of credit, account balances etc;
2. **Compliance with Delivery and Performance Schedules** such as information on all other active contracts the offeror is performing and verify their status with those buyers;
3. **Performance Record** such as information for recent contracts that the offeror has performed to ascertain the quality of performance, including timeliness of delivery/completion, quality of work, compliance with terms and conditions of the contract, and cost control, if applicable;
4. **Integrity and Business Ethics** such as information from recent and previous customers to verify their dealings with the offeror, verification from the BBB, local offices of Code Compliance and Business Licenses, or other regularly agencies, including but not limited to the compliance with payments, wages rates, and affirmative action requirements;
5. **Necessary Organization, Experience, Accounting and Operational Controls, and Technical Skills** such as verification of experience with other customer, copies of audit reports and availability of necessary personnel.
6. **Necessary Production, Construction, and Technical Equipment and Facilities** such as verification of all necessary equipment and facilitates needed or capability to obtain;
7. **Eligible to Receive an AAHC Contract** such as verification that the offeror has not been suspended, debarred or is under a HUD LDP.

#### **D. Responsible at Time of Award**

Bidders/offerors must be determined to be responsible at the time of award. For sealed bidding this means at the point where the low, responsive bidder has been determined. For the competitive proposal method, this means after the successful offeror has been selected for award. Bidder/offeror may be afforded the opportunity to provide acceptable evidence of their ability to meet the stated requirements after bid opening (sealed bidding) or contractor selection (competitive proposal method). The Contracting Officer must clearly indicate to potential bidders/offerors the time frame in which they are required to submit evidence that they meet the above requirements.

#### **E. Determination of Non-Responsibility**

A determination of non-responsibility will be a matter of judgment on the part of the AAHC, given the preponderance of the evidence. IF the facts indicate that the bidder/offeror fails to meet the requirements for responsibility, the Contracting Officer shall document the finding of fact that led him/her to make the determination.

#### **F. Notifying Bidders/Offerors of Non-Responsibility**

The Contracting Officer should notify low bidders or otherwise successful offeror who are determined to be non-responsible. The Contracting Officer shall document the results in the procurement file.

## G. Suspension and Debarment

The AAHC will determine whether contractors have been restricted from participation in HUD or Government Services Administration (GSA) contracts.

1. LDP – HUD imposed sanction against a contractor
2. Suspension and Debarment – AAHC will not make award any contractor or individual who has been suspended or debarred and whose name appears on the GSA list of Parties excluded from Procurement and Non-procurement programs.
3. AAHC Responsibility in LDP's, Debarment, and Suspension – AAHC will determine if a contractor or individual has been debarred or suspended or if HUD has issued a LDP. AAHC will advise potential contractors of their responsibility to confirm in their proposals the acceptability of their subcontractors.
4. Enforcement – If the AAHC materially fails to comply with any term of an award whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, there are a number of enforcement actions that HUD may exercise, including those listed at 24 CFR 85.43 (a).

## H. Vendor Lists

All interested businesses shall be given the opportunity to be included on vendor mailing lists. 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.

## IX. CONTRACT TYPES, CLAUSES & CONTRACT ADMINISTRATION

### A. Contract Types

Any type of contract which is appropriate to the procurement and which will promote the best interests of the AAHC may be used, **provided the cost-plus-a-percentage-of-cost and percentage-of-construction-cost methods are prohibited.** All procurements and contracts shall include the clauses and provisions necessary to define the rights and responsibilities of both the contractor and the AAHC. **A cost reimbursement contract shall not be used unless:**

1. it is likely to be less costly or it is impracticable to satisfy the AAHC's requirements otherwise;
2. the proposed contractor's accounting system is adequate to allocate costs in accordance with applicable cost principles (see OMB Circular A-87 which replaced HUD Handbook 2210.18); and
3. the contractor is paid only reasonable allowable and allocable costs.

A **time and materials contract** may be used only if a written determination is made that no other contract type is suitable, and the contract includes a ceiling price that the

contractor exceeds at its own risk. A time and materials contract is a cost reimbursement contract. The contract must include a ceiling price which the contractor exceeds at its own risk; and includes reasonable, allowable, and allocable (labor and materials) costs necessary to complete the work. Time and materials contracts shall have fixed hourly rates. Fee or profit from materials is prohibited in a time and materials contract.

## **B. Options**

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

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

## **C. Contract Clauses**

All contracts should identify the contract pricing arrangement as well as other pertinent terms and conditions, as determined by the AAHC. Additionally, applicable **HUD forms 5369, 5369A, 5369B, 5369C, 5370, 5370C, 51915, and 51915-A**, which contain all HUD-required clauses and certifications for public housing 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 AAHC.

For improvements to Real Property, the contract between the contractor and AAHC for an improvement that exceeds \$75,000 shall contain the following provisions set for at Michigan Compiled Laws, Chapter 125, Section 125.1592:

(a) That if a contractor discovers 1 or both of the following physical conditions of the surface or subsurface at the improvement site, before disturbing the physical condition, the contractor shall promptly notify the governmental entity of the physical condition in writing:

(i) A subsurface or a latent physical condition at the site is differing materially from those indicated in the improvement contract.

(ii) An unknown physical condition at the site is of an unusual nature differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the improvement contract.

(b) That if the governmental entity receives a notice under subdivision (a), the governmental entity shall promptly investigate the physical condition.

(c) That if the governmental entity determines that the physical conditions do materially differ and will cause an increase or decrease in costs or additional time needed to perform the contract, the governmental entity's determination shall be made in writing and an equitable adjustment shall be made and the contract modified in writing accordingly.

(d) That the contractor cannot make a claim for additional costs or time because of a physical condition unless the contractor has complied with the notice requirements of subdivision (a). The governmental entity may extend the time required for notice under subdivision (a).

(e) That the contractor cannot make a claim for an adjustment under the contract after the contractor has received the final payment under the contract.

The provisions set forth at Michigan Compiled Laws, Chapter 125, Section 125.1561 regarding architects and professional engineers are replaced by the more stringent requirements of form HUD 5370 when federal funds are used.

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

1. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold);
2. Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000);
3. 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 awarded in excess of \$10,000 by grantees and their contractors or subgrantees);
4. Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair);
5. Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by AAHC when required by Federal grant program legislation);
6. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327A 330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by AAHC in excess of \$2000, including other contracts which involve the employment of mechanics or laborers);

7. Notice of awarding agency requirements and regulations pertaining to reporting;
8. Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract;
9. Awarding agency requirements and regulations pertaining to copyrights and rights in data;
10. Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions;
11. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed;
12. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000);
13. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94A 163, 89 Stat. 871);
14. Bid protests and contract claims;
15. Value engineering; and
16. Payment of funds to influence certain Federal transactions.

**D. Standardized Forms/Mandatory Contract Clauses for Public Housing** –The AAHC may be further bound by certain State and local requirements. AAHC will also include HUD developed forms which contains the contract clauses required for small purchases related to construction and maintenance work for public housing.

1. HUD-5370-EZ form - Mandatory Requirement for Construction Contracts greater than \$2,000 but not more than \$10,000.
2. HUD-5370-form – Mandatory Requirement for Construction/Development Contracts greater than \$100,000. May be used in lieu of HUD 5370-EZ if the former is more appropriate given the nature of work.
3. HUD-5370-C Form – Mandatory Requirement for Maintenance Contracts (including non-routine maintenance work) greater than \$2,000 but not more than \$100,000.
4. Applicable HUD or Davis-Bacon Wage decision.

**E. Mandatory Forms/Contract Provisions for Public Housing** - AAHC shall include with the solicitation/bid package the following mandatory forms, which contain all mandatory contract provisions.

1. HUD-5369-B form – Instruction to Offerors – Non Construction.
2. HUD-5369-C form – Certifications and Representations of Offerors – Non Construction Contract.
3. HUD-2530 form – Previous Participation Certification (if required for that procurement)

## **F. Contract Administration**

The AAHC 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 OMB Circular A-87. Operational Procedures shall contain guidelines for inspection and acceptance of supplies, services and construction.

## **X. SPECIFICATIONS, STATEMENT/SCOPE OF WORK**

### **A. General**

All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying the AAHC's needs. Specifications shall be reviewed by the Executive Director/Procurement Manager or designee 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.

### **B. Limitation**

The following types of specifications shall be avoided:

1. geographic restrictions not mandated or encouraged by applicable Federal law (except for architect/engineer contracts, which may include geographic location as a selection factor if adequate competition is available);
2. brand name specifications (unless the specification is a standardized material used throughout the AAHC properties).

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.

## **XI. CONTRACT TERMINATIONS**

### **A. Termination of public housing contracts**

The AAHC shall terminate Public Housing contracts for default or convenience, as prescribed in the termination clauses on Forms HUD 5370, 5370-EZ and 5370-C.

## **B. Termination Notice**

The Procurement Manager shall terminate contracts either for convenience or default only by a written notice to the contractor. The notice shall be sent by certified mail with a return receipt requested. The notice shall state, at a minimum, the following:

1. The contract is being terminated for the convenience of the AAHC or for default under the cited contract clause authorizing the termination;
2. Whether the contract is being terminated in whole or in part (for partial terminations, AAHC shall identify the specific items being terminated);
3. If terminated for default, the acts or omissions constituting the default, the Procurement Manager's determination that failure to perform is not excusable, AAHC's rights to charge excess costs of re-procurement to the contractor, and the contractor's appeal rights;
4. The effective date of termination;
5. The contractor's right to proceed under the non-terminated portion of the contract;
6. Any special instructions; and
7. Copies of the notice shall be sent to the contractor's surety, if any, and any assignee.

## **C. Termination for Convenience**

Contracts may be terminated for convenience when the AAHC no longer needs or desires the supplies or services under contract or can no longer fund the procurement.

1. **Settlement** – Settlement of contracts terminated for convenience may be settled through negotiations or by a unilateral determination by the Procurement Manager. The contractor shall submit a settlement proposal promptly to the Procurement Manager for any amounts claimed as a result of the termination. Whenever possible, the Procurement Manager should negotiate a fair and prompt settlement with the contractor and should settle by determination only when mutual agreement cannot be reached.
2. **Compensation** – A settlement should compensate the contractor fairly for work performed, for other cost incurred under the contract, and for preparations made for the terminated portions of the contract, including a reasonable allowance for profit. However, no profit shall be allowed for settlement expenses. In addition,

the Procurement Manager shall not allow profit if it appears that the contractor would have incurred a loss had the entire contract been completed. Fair compensation is a matter of judgment and cannot be measured exactly. The Procurement Manager shall use prudent business judgment in the settlement process, as opposed to strict accounting principles. The parties may agree to a total amount to be paid to the contractor without agreeing on individual cost items or profit.

#### **D. Termination for Default**

A contract may be terminated for default because of a contractor's actual or anticipated failure to perform its contractual obligations. Under a termination for default, the AAHC is not liable for the contractor's costs on undelivered work and may be entitled to the repayment of progress payments. If the contractor fails to make progress so as to endanger performance of the contract, the Procurement Manager shall issue a written notice to the contractor (generally called a "Cure Notice") specifying the failure and providing a period of 10 days in which to cure the failure. After the 10 days, the Procurement Manager may issue a notice of termination for default, unless the failure to perform has been cured.

1. **Notice** – If the contractor has failed to perform within the required time and a termination for default appears appropriate, the Procurement Manager shall notify the contractor in writing of the possibility of termination. This notice shall call the contractor's attention to the contractual liabilities if the contract is terminated for default, and request the contractor to "show cause" why the contract should not be terminated. If the response to this "show cause" notice is inadequate or insufficient, the contract shall be terminated for default.
2. **Alternatives to Termination** – Alternatives to termination for default include the following (at AAHC's discretion):
  - a. Allow alternative dispute resolution (arbitration or mediation) as agreed to by both parties;
  - b. Allow the contractor or the surety to continue performance of the contract under a revised delivery schedule (in exchange for a reduced contract price or other consideration);
  - c. Permit the contractor to continue the performance of the contract by means of a subcontract or other business arrangement with an acceptable third party, provide the rights of the AAHC are adequately protected; or
  - d. If the contractor is not liable to the AAHC for damages, execute a co-cost termination settlement agreement.
3. **Repurchase** – When the supplies, services, or construction activities are still required after the termination, the Procurement Manager shall seek to contract

for the same or similar items as soon as possible. The Procurement Manager may use any appropriate contracting method for the procurement, providing competition is solicited to the maximum extent practicable to secure the lowest price obtainable under the circumstances in order to mitigate damages.

## **XII. APPEALS AND REMEDIES**

### **A. General**

It is the AAHC's policy to resolve all contractual issues informally and without litigation. Disputes will not be referred to HUD unless all administrative remedies at the AAHC level have been exhausted. When deemed necessary by the Procurement Manager, a mediator may be used to help resolve differences.

### **B. Informal Appeals Procedure**

The AAHC shall adopt an informal bid protest/appeal procedure for contracts of less than \$100,000. Under these procedures, the bidder/contractor must request to meet with the Procurement Manager or designee.

The decision of the Procurement Manager shall be the final determination. For solicitations/contracts over \$100,000, the Procurement Manager's decision shall inform the contractor of its formal appeal rights to the Executive Director.

### **C. Formal Appeals Procedure**

A formal appeals procedure shall be established for solicitations/contracts of more than \$100,000. Under these procedures, the bidder/contractor must request to meet with the Procurement Manager. Decisions of the Procurement Manager may be appealed to the Executive Director for resolution. **The Executive Director shall be the final authority of AAHC disputes and or claims.**

- 1. Bid Protest.** Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy. Any protest against a solicitation must be received before the due date for the receipt of bids or proposals, and any protest against the award of a contract must be received within ten (10) calendar days after contract award, or the protest will not be considered. All bid protests shall be in writing, submitted to the Procurement Manager or designee, who shall issue a written decision on the matter. The Procurement Manager or designee may, at his/her discretion, suspend the procurement pending resolution of the protest if the facts presented so warrant.
- 2. Contractor Claims.** All claims by a contractor relating to performance of a contract shall be submitted in writing to the Procurement Manager or designee for a written decision. The contractor may request a conference on the claim. The Procurement Manager's decision shall inform the contractor of its appeal

rights to the Executive Director and or the AAHC Board of Commissioners. Contractor claims regarding public housing shall be governed by the Changes clause in the HUD 5370, 5370-EZ, or 5370-C.

3. **Filing Claims.** The AAHC should make every effort to resolve claims informally and expeditiously to avoid time losses or expensive delays. However, if the dispute cannot be resolved by mutual agreement, the following steps must be taken:
  - a. The contractor must submit the claim to the AAHC's Contracting Officer in writing within the timeframe specified in the contract documents.
  - b. The claim must identify the nature and scope of the claim, including extra costs or time sought by the contractor.
  
4. **Rendering Decisions on Claims.** The Contracting Officer shall review the facts pertinent to the claim and secure any necessary assistance from legal, technical, or other advisors and shall issue a final written decision promptly and within the timeframe stated in the contract documents. (As provided by forms HUD-5370 and 5370-C, if the Contracting Officer does not issue a final decision within 60 days after written request by the contractor for a final decision, or longer period if mutually agreed upon by both parties, then the contractor may proceed as if an adverse decision has been received.) The written decision should include:
  - a. A description of the claim;
  - b. A reference to the pertinent contract clauses;
  - c. A statement of the factual areas of agreement or disagreement;
  - d. A statement of the Contracting Officer's decision with support rationale; and
  - e. A statement referencing appeal rights as provided in the AAHC's Procurement Policy.
  
5. **Records of Claims.** The Contracting Officer shall immediately furnish a copy of the decision to the contractor by certified mail, with return receipt requested.

The AAHC shall maintain a complete written and dated record of any actions that may result in a dispute or claim for damages. An example would be records of weather conditions during the course of a contract, delays in receiving materials ordered by the AAHC, or other items that may result in requests for time delays that may be disputed. These records protect the AAHC's interests during any litigation that may arise later. At a minimum, the AAHC should maintain records of the following:

- a. A complete and detailed job record; and
- b. A disputes and claims file, including a cross-reference to other pertinent files (such as a separate file for a particular subcontractor), any correspondence related to a dispute, written minutes of meetings

between the AAHC and architects, or job meetings where decisions or agreements were made regarding disputes.

### **XIII. ASSISTANCE TO SMALL AND OTHER BUSINESSES**

#### **A. Required Efforts**

Consistent with Presidential Executive Orders 11625, 12138, and 12432, Section 3 of the HUD Act of 1968, all 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 AAHC's project are used when required by law. Such efforts can include, but shall not be limited to:

1. Including such firms, when qualified, on solicitation mailing lists;
2. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
5. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
6. Including in contracts a clause requiring contractors, to the greatest extent feasible, to provide opportunities for training and employment 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 ("Section 3 Businesses");
7. Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed above.

Goals shall be established periodically for participation by small businesses, minority-owned businesses, women-owned business enterprises, labor surplus area businesses, and Section 3 business concerns in the AAHC prime contracts and subcontracting opportunities.

### **XIV. ALTERNATIVE PROCUREMENT PROGRAM**

#### **A. General**

The Executive Director shall be authorized to establish an Alternative Procurement Program pursuant to 24 CFR 963 as a method to solicit and contract with eligible and qualified resident owned businesses for public housing supplies, services, or construction. The solicitation is limited to resident owned businesses.

A resident owned business is a business concern of which 51% is owned and controlled by one or more public housing residents. The management and daily business operations shall be controlled by one or more residents. All securities which constitute ownership or control of a corporation for purposes of establishing the business shall be held directly by then public housing resident(s). No securities held in trust by any guardian for a minor shall be considered as held by the public housing resident(s) in determining the ownership or control of a corporation. The term includes sole proprietorships.

## **B. Conditions for Use**

Contracts awarded may not exceed \$1,000,000 (million) individually or in aggregate. If the resident owned business is not a sole proprietorship, **the resident owned business must:**

1. **Be a Legally Formed Business** - The business must certify that it was formed in accordance with Michigan State Law.
2. **Be a Resident Owned Business** - The business must certify that it is a resident owned business.
3. **Have the Responsibility to Complete the Contract** - The business shall submit evidence to demonstrate that the business has the ability to perform successfully under the terms and conditions of the proposed contract.
4. **Certify on Previous Alternative Procurement Contract Awards** - The business shall certify on the number of contracts awarded and the dollar amounts of contracts awarded under the Alternative Procurement Program.

If the resident owned business is a sole proprietorship, AAHC shall not award an employment type contract.

Under the alternative procurement process, AAHC shall:

1. Prepare an independent cost estimate for the procurement;
2. Select the appropriate methods of procurement (small purchase, sealed bidding, competitive proposals, noncompetitive proposals);
3. Solicit a bid, proposal or offer from one or more resident owned businesses;
4. Ensure that the resident owned responses include a certification regarding previous contracts:

5. Performs a cost or price analysis to determine price reasonableness;
6. Awards to the bidder/offeror/respondent whose bid/offer/proposal is most advantageous to AAHC consistent with the evaluation factors stated in the solicitation;
7. Ensure the selected resident owned business is capable of performing satisfactorily; and
8. Ensure the procurement files are documented.

## **XV. DISPOSITION OF SURPLUS PROPERTY**

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

## APPENDIX A

### List of Direct Payments

The following is a list of direct payments that are exempt from competitive procurement.

1. Utility bills (water, sewer, electricity, natural gas, and other regulated utility expenses),
2. Postage and other purchases from the U.S. Postal Service.
3. Licenses, permits, and fees from governmental or regulatory entities at the federal, state, or local level.
4. Purchases from other governmental entities where the governmental entity provides goods or services not available from the private sector.
5. Emergency housing for AAHC residents at motels/hotels with which the AAHC has executed an Emergency Housing Agreement.
6. Service or user fees paid to governmental cooperative purchasing organizations.
7. Credit card charges for gasoline and emergencies while on travel status.
8. Legal services such as arbitration fees, litigation fees, expert witness fees, witness fees, court costs, and related expenses (but not the cost of outside counsel, investigations or related matters if funded by a federal grant).
9. Payments of litigation/administrative settlements and judgment and claims against the AAHC.
10. Renewal of existing annual proprietary maintenance or support agreements, and software license renewals for computer and telecommunication-related services.
11. Travel expenses for AAHC's employees, residents, program participants, volunteers, or members of the Board necessary to conduct AAHC's business.
12. Training registration fees and tuition for pre-established, non-AAHC specific, off-site classes, seminars, workshops, etc. for the AAHC employees, residents, program participants, volunteers and members of the Board.
13. Testing and travel expenses of employment applicants (including moving expenses for eligible personnel). This includes travel expenses of certain out-of-state job applicants.
14. Conference and convention expenses and fees for AAHC employees, residents, program participants, volunteers, or members of the Board conducting AAHC business.
15. Advertisements for employment opportunities, purchasing and contracting solicitations, sale of surplus items, public announcements, and outreach, etc. This exception does not include printing, design, or graphics services.
16. Freight bills, express shipping, common carriers, and delivery services.
17. Honoraria and stipends.
18. Insurance deductible and/or retained losses.
19. Taxi, public transportation, and toll fares; mileage and incidental parking expenses.
20. Publications and subscriptions.
21. Mailing lists.
22. Professional association membership dues, fees, licenses accreditation, and certifications.
23. Financial Institutions

## APPENDIX B

### GLOSSARY OF TERMS

**Acceptance** – The act of an authorized representative of the AAHC acknowledging that the supplies or services delivered to or received by the AAHC conform to contract requirements.

**Amendment** – A written revision made to a solicitation.

**Annual Contributions Contract (ACC)** – A contract between HUD and the AAHC setting forth requirements for the operation and development of Public Housing.

**Architect/Engineer (A/E)** – A licensed person (or company) usually responsible for developing the plans and specifications of a building or development and, in some cases, supervising the construction effort.

**Bid** – In the sealed bidding method of procurement, this is the price submitted by a bidder.

**Bidder's List** – General list of persons or firms who may be interested in submitting bids in response to an Invitation to bid and in contracting opportunities with the AAHC.

**Bonding (Bid Bonds)** – A bid bond or guarantee ensures that, if awarded the contract, the bidder will accept and perform the work under the contract; ensures the bidder will not attempt to withdraw or otherwise not fulfill the contract; and ensures the bidder will execute the contractual documents that are required within the time specified in the solicitation, or forfeit all or part of the guarantee.

**Bonding (Performance Bonds)** – A performance bond ensures the contract is successfully completed. The performance bond also ensures that if a contractor is unable to complete the contract, the surety company, which issues the bond, will step in to complete the work. In the case of a letter of credit or cash escrow, AAHC may use these funds to complete the contract work.

**Bonding (Payment Bonds)** – A payment bond ensures the contractor pays the subcontractors and suppliers. AAHC will allow the performance bond and the payment bond to be combined.

**Change Order** – Modification to the contract that is a unilateral action taken by the AAHC Contracting Officer or designee within the scope of the contract to modify the drawings, design, specifications, method of shipping or packaging, place of inspection, delivery, acceptance, or other such contractual requirement.

**Competitive Proposals** – Method of procurement used when small purchases and sealed bidding methods are not appropriate. The AAHC solicits proposals which allows for the selection and award of contracts based on technical considerations and the

negotiation of price/cost by using either a Request for Proposal (RFP) or a Request for Qualifications (RFQ) *See definitions of each type of competitive proposal.*

**Competitive Range** – The range of scores of proposals submitted in response to a RFP that, after technical evaluation by the AAHC’s evaluation panel and considering price, have a reasonable chance of receiving the award.

**Conflict of Interest** – A real or apparent participation in the selection, award, or administration of a contract that results in personal gain.

**Contract** – A mutually binding legal relationship obligating the seller to furnish the supplies, services, or construction and the AAHC to pay for the supplies, services, or construction. Contracts include all types of commitments that obligate the AAHC to expend funds and, except as otherwise authorized, are in writing.

**Contract Administration** – All the actions taken with regard to a contract after its award. Administration includes monitoring the contractor’s performance to ensure compliance with the contract requirements, terms, and conditions.

**Contract Modification** – Any written alteration to the specifications, delivery point, date of delivery, contract period, price, quantity, or other clause, of an existing contract.

**Contracting Officer** – The Executive Director or an official of AAHC, officially delegated in writing, to enter into and / or administer contracts and make related determinations and findings.

**Cost Analysis** – An evaluation of the separate elements (e.g., labor, materials, etc.) that make up a contractor’s total proposal to determine if they are reasonable, allowable and directly related to the requirement. Cost analysis is required whenever there is no price competition.

**Cost Reimbursement Contract** – Contract in which the AAHC and the contractor agree on an estimate of contract costs. Under this type of contract, the AAHC agrees to reimburse the contractor for reasonable, allowable, and allocable costs necessary to complete the work. Also, an additional fee is usually paid to the contractor over and above the costs incurred.

**Cure Notice** – A document originating by the AAHC Contracting Office or designee sent to the contractor stating the contract may be terminated unless performance is corrected within a specified number of days.

**Emergency** – An emergency condition is an immediate threat to health and safety of the residents or employees of the AAHC.

**Exigent Condition** – An exigent condition is a situation or condition requiring immediate aid or action. Only the Executive Director or designee has the authority to declare an exigent condition.

**Firm Fixed Price Contract** – A contract pricing arrangement under which the price is not subject to change or adjustment based on the cost experience of the contractor in performance of the contract.

**Independent Cost Estimate (ICE)** – An estimate obtained or developed by the AAHC prior to obtaining offers.

**Inspection** – The examination and/or testing of supplies and services to determine whether they conform to the contract requirements.

**Intergovernmental Agreement** – An agreement between the AAHC and a Federal, State, or local government agency (including other Public Housing Agencies) for the provision of procuring supplies or services. For the purpose of this Policy, the terms Cooperative Agreement, Intergovernmental Agreement, Interagency Agreement, Consortium Agreement, or Memorandum of Agreement are interchangeable.

**Invitation to bids (ITB)** – Solicitation type used under the sealed bidding method of procurement.

**Micro-Purchasing** – A method of purchasing below \$2,000 for federal grants and below \$10,000 for all other funding sources. This type of purchasing requires one (1) quote.

**Minority Owned Business** - A minority-owned business is defined as a business which is at least 51% owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to African Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and Subcontinent Asian Americans..

**Negotiation** – Discussions with offerors in the competitive range regarding technical and/or price proposals to award a contract using the competitive proposals or noncompetitive proposals method of procurement or when issuing modifications to existing contracts.

**Noncompetitive Proposals** – The method of procurement in which proposals are solicited from only one source because award of a contract is not feasible under the small purchase procedure, sealed bids or competitive procedure as a result of: 1) the item or service is available only from a single source; 2) public exigency or emergency will not allow enough time for a competitive procurement; 3) inadequate response to a competitive solicitation; or 4) HUD approves the use of noncompetitive proposals. The method is also known as “sole source”.

**Offer** – A response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract.

**Offeror** – The general term for the entity that submits a response to a solicitation.

**Price Analysis** – The evaluation of a proposed price (bottom line) for reasonableness, without evaluating the separate elements of cost.

**Procurement** - The term “procurement,” includes the procuring, purchasing, leasing, or renting of: 1) goods, supplies, equipment, and materials; 2) construction and maintenance; 3) consultant services; 4) Architectural and Engineering (A/E) services; 5) Social Services; and 6) other services. The term Procurement also includes selling, including concessions and disposal of surplus material and equipment.

**Proposal** – The offer submitted by a potential contractor in the competitive or noncompetitive proposals type of procurement.

**Qualifications Based Selection (QBS)** – A form of procurement of Architect/Engineering (A/E) or development services by competitive proposals in which proposals in which price is not requested in the Request for Qualifications (RFQ) or used as an evaluation factor.

**Quotation** – The price or cost submitted by a vendor in the small purchase procedures method of procurement.

**Request for Proposal (RFP)** – Solicitation method used under both the competitive and noncompetitive methods of procurement. Proposal evaluation and contractor selection are based on the evaluation criteria and factors, including price, for award as stated in the RFP. Contract award is based on the best approach to the requirements of the statement of work resulting in the greatest benefit to the AAHC, price and other factors considered.

**Request for Qualifications (RFQ)** – Solicitation method used under the competitive and non-competitive methods of procurement. Evaluation and contractor selection are based on the evaluation criteria for award as stated in the RFQ. Price is not obtained until the highest ranking firm(s) is selected based on qualifications and negotiations for a fair and reasonable price have started.

**Resident Owned Business** – A resident owned business is any business concern that is owned and controlled by public housing residents.

**Responsible Bidder** – A bidder who is: 1) able to comply with the required or proposed delivery or performance schedule; 2) has a satisfactory performance record; 3) has a satisfactory record of integrity and business ethics; 4) has the necessary organization and operational skills, or the ability to obtain them; 5) has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and 6) is otherwise qualified and eligible to receive an award under applicable laws and regulations (including the fact the bidder is not suspended, debarred or under a HUD or AAHC imposed Limited Denial or Participation).

**Responsive Bid** – A bid that conforms to the requirements in the Invitation to bids (ITB).

**Sanctions** – Measures that may be evoked by the AAHC or HUD to exclude or disqualify contractors, AAHC staff or agents acting on behalf of the AAHC from participation in HUD programs (such as limited denial of participation or debarment), or measures the AAHC may take regarding employees, officers, agents, or others who violate the ethical standards of the Procurement Policy (such as dismissal, reassignment, removal from position, etc.).

**Sealed Bidding** – A method of procurement inviting sealed bids. This method requires: 1) specifications that are clear, accurate, and complete; 2) a public bid opening; and 3) evaluation of bids and award of the contract based on the lowest price submitted by a responsive and responsible contractor. Sealed bidding is the preferred method for construction.

**Section 3 Business** - A “Section 3 business concern” is defined under 24 CFR Part 135.

**Show Cause Letter** – A document sent by the Contracting Officer or designee notifying a defaulting contractor that the contract may be terminated for default unless the contractor can provide adequate justification for not terminating within a specified time period (usually 10 days).

**Small Business** - A small business is defined as a business that is: 1) independently owned; 2) not dominant in its field of operation; and 3) not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in 13 CFR 121 should be used to determine business size.

**Small Purchase Procedure** – A simplified method for acquiring supplies, materials, and services (including construction) that do not exceed the AAHC threshold of \$100,000.

**Solicitation** – The general term for the AAHC’s request for offers from potential offerors.

**Specifications or Scope** – Description of the technical requirements of a solicitation or resulting contract.

**Statement of Work (SOW)** – Written description of work to be performed that establishes the standards sought for the supplies or services furnished under the contract; typically used for service contracts.

**Termination for Cause** – Termination of a contract by the AAHC on a unilateral basis when the contractor fails to perform, fails to make progress so as to endanger performance, or commits a default as specified in the contract.

**Termination for Convenience** – Termination of a contract by the AAHC on a unilateral basis when the product or service is no longer needed or when it is in the best interest of the AAHC.

**Vendor List** – List of persons interested in or qualified to do business with the AAHC.

**Women Business Enterprise** - Women's business enterprise is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.