

Procurement Policies

9/23/13 Adopted by the BHA Board of Commissioners

Physical and Mailing Address		
600 Park Avenue, Bremerton, WA 98337		
Phone Number	FAX Number	Web Site
(360) 479-3694	(360) 616-8550	www.bremertonhousing.org

RECORD OF ADOPTION AND REVISIONS

Type of Approval Action*	Description of Action	Revision No.	Date
Board	Initial Adoption of Policies	N/A	09/23/13
Board	Revision of Policies	1	01/25/16
Board	Revision of Policies	2	09/26/16
Board	Revision of Policies	3	10/23/17
Board	Revision of Policies	4	08/26/19

TABLE OF CONTENTS

CHAPTER 1: GENERAL PROVISIONS	1
1.1 Purpose	1
1.2 Application	1
1.3 Scope	2
1.4 Compliance with Laws and Regulations	3
1.5 Responsibilities	4
1.6 Approval of Policies	5
1.7 Approval of Procedures	6
1.8 Procurement and Contract Files	6
1.9 Public Records	6
1.10 Ethical Standards	7
CHAPTER 2: PROCUREMENT METHODS	9
2.1 General	9
2.2 Small Purchases and Informal Solicitations	9
2.3 Sealed Bidding/Invitation to Bid (ITB)	11
2.4 Competitive Proposals (RFP/RFQ)	12
2.5 Non-Competitive Procurement	15
2.6 Cooperative Purchasing/Intergovernmental Agreements	16
2.7 Solicitations and Advertising	16
2.8 Time Period for Submission of Bids	17
2.9 Cancellation of Solicitations	17
2.10 Credit (or Purchasing) Cards	18
CHAPTER 3: EXPENDITURE AUTHORITY	19
3.1 General	19
3.2 Executive Director	19
3.3 Department Directors	19
3.4 Third-Party Property Managers	19
3.5 Managers	19
3.6 Purchasing Card Holders	19
CHAPTER 4: INTERNAL BHA REVIEW OF PROCUREMENT ACTIONS	21
4.1 Development of Procedures	21
4.2 Procurement Actions Subject to Review	21
4.3 Expenditure Authority Amounts	21
4.4 Delegation of Authority	21

TABLE OF CONTENTS

4.5	Review by Counsel	22
CHAPTER 5: ELIGIBILITY TO CONTRACT WITH BHA		23
5.1	Contractor Responsibility	23
5.2	Suspension and Debarment Status Review	23
5.3	Compliance with IRS Regulations	23
5.4	Performance Evaluation Program	24
5.5	Vendor Lists	24
5.6	Bonding Requirements	24
CHAPTER 6: CONTRACTS		26
6.1	Overview of Contract Types	26
6.2	Mandatory Contract Clauses	27
6.3	Cost Reimbursement Contract Types	27
6.4	Length of Contracts	27
6.5	Contract Extensions	27
6.6	Options	28
6.7	Contract Clauses	28
6.8	Contract Administration	28
6.9	Specifications	28
CHAPTER 7: ENSURING REASONABLE COSTS		30
7.1	Thresholds for Application of this Chapter	30
7.2	Independent Cost Estimates	30
7.3	Price Analysis	31
7.4	Cost Analysis	31
7.5	Analysis Based on Procurement Method	31
CHAPTER 8: DISPUTES, APPEALS, AND PROTESTS		33
CHAPTER 9: TYPES OF PURCHASES		34
9.1	Equipment, Materials, Supplies and Non-Consultant Services	34
9.2	Consultant Services	34
9.3	Architectural & Engineering (A&E) Consultant Services	35
9.4	Distinguishing Between A&E Work and Non-A&E Work:	35
9.5	Construction Services	36
9.6	Maintenance Services	38
9.7	Procurement of Recovered Materials	39

TABLE OF CONTENTS

9.8	Purchasing, Travel and Gas Cards	40
9.9	Direct Payments List	40
<i>CHAPTER 10: DISPOSAL OF SURPLUS PROPERTY</i>		43
<i>CHAPTER 11: DIVERSITY IN CONTRACTING</i>		44
11.1	Diversity in Contracting	44
11.2	Participation by WMBEs	44
11.3	HUD Section 3 Requirements	44

CHAPTER 1: GENERAL PROVISIONS

1.1 Purpose

The purpose of these BHA Procurement Policies is to establish a broad framework of policies and guidelines to ensure that BHA's purchasing and contracting functions promote administrative flexibility and efficiency, while at the same time maintaining prudent internal controls and compliance with applicable statutes and regulations.

Specific purposes of these Procurement Policies include, but are not limited to, the following:

1. Fairness and Objectivity: Providing a fair, objective, and equitable selection and contracting environment for all individuals and firms seeking to do business or contracting with BHA.
2. Ensuring Reasonable Costs: Promoting competition, and negotiation (where applicable), to ensure that BHA receives the most favorable prices and terms in its contracts.
3. Efficiency: Ensuring that supplies and services (consultant, construction, social services, etc.) are obtained efficiently and effectively.
4. Accountability: Promoting accountability of contracting actions by BHA employees and encouraging employees to protect BHA's financial and other interests.
5. Value-Added Procurement: Facilitating a procurement process that provides service and value to BHA in obtaining goods and services.
6. Ethical Standards: Ensuring that BHA's procurement activities are implemented with the highest regard for integrity, avoid conflicts of interest, and are consistent with applicable ethical standards.
7. Legal Considerations: Complying with all applicable federal, state, and local statutes and regulations.

1.2 Application

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

HUD procurement regulations shall be applied to the total project. If funds and work can be separated and work can be completed by a new contract, then regulations applicable to the source of funding may be followed.

1.3 Scope

Funding Sources

BHA receives funds from federal, non-federal, and private funding sources. As such, in its procurement activities, BHA shall develop procedures designed to ensure compliance with applicable laws and regulations without necessarily imposing a higher standard than is necessary to ensure compliance.

- a) Where a requirement in these policies is based only on state requirements, BHA's Contracting Officer or their designee may, on a case-by-case basis, apply a less stringent standard than outlined in the federal requirements, provided, however, that it is otherwise consistent with applicable policies and that all State or other legal requirements are met.
- b) Nothing in these Procurement Policies will prevent BHA from complying with the terms and conditions of any grant, contract, gift, or bequest that is otherwise consistent with law.
- c) The Finance Department shall maintain a list of BHA funds, specifying for each whether they are federal or non-federal funding sources, and shall make such list available to BHA employees upon request.

Included in Scope

The following shall be governed by these Procurement Policies:

Procuring, Purchasing, Leasing, or Renting:

- Goods, Supplies, Equipment, Materials
- Construction and Maintenance
- Consultant Services
- Architectural and Engineering (A&E) Consultant Services
- Social Services
- Other Services

Selling

- Concessions
- Disposal of Surplus Material and Equipment

Excluded from Scope

The following shall not be governed by these Procurement Policies:

- Real Estate Purchase and Sale Transactions. (Surveys, appraisals, environmental site assessments, and financing analyses are considered Consultant services and are governed by these Procurement Policies.)
- Loan transactions and documents.
- Sub-recipient or sub-grantee agreements and related change orders.
- Employment contracts.
- Limited partnership agreements.
- Award of housing or other vouchers to non-profit agencies.
- Housing Assistance Payment contracts.

1.4 Compliance with Laws and Regulations

Applicable Laws and Regulations

In adopting these Procurement Policies, the Board of Commissioners and Executive Director affirm that the policies are in compliance with all applicable federal, state, and local laws and regulations, which may include, but not be limited to, the following¹:

Federal

- 2 CFR 200.318 through 200.326 (HUD Procurement Regulations)
- 29 CFR Part 1, Procedures for Predetermination of Wage Rates
- 29 CFR Part 3, Payment and Reporting of Wages Applicable to Federally Financed and Assisted Construction Contracts
- 29 CFR Part 5, Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction
- 29 CFR Part 7, Practice Before the Wage Appeals Board
- ACC (Consolidated Annual Contributions Contract Between BHA and HUD), Form HUD-53012A

State

- Chapter 35.82 RCW (Housing Authorities Law)
- Chapter 39.04 RCW (Public Works)
- Chapter 39.08 RCW (Contractor's Bond)
- Chapter 39.12 RCW (Prevailing Wages on Public Works)
- Chapter 39.80 RCW (Contracts for Architectural and Engineering Services)
- Chapter 42.23 RCW (Code of Ethics for Municipal Officers – Contract Interests)
- Chapter 60.28 RCW (Liens for Labor, Materials, Taxes on Public Works)
- Chapter 296-127 WAC (Prevailing Wages)

Procurement Procedures

Procurement procedures and contract language adopted administratively by the Executive Director or his/her designee must also comply with all applicable laws and regulations.²

HUD Handbooks and Guidelines

Consistent with 2 CFR 200.105 that refers to “handbooks and other non-regulatory materials,” BHA recognizes HUD Handbooks and Guidelines as non-regulatory, non-binding advice, except to the extent that Handbooks or Guidelines articulate statutory or regulatory requirements. Where applicable, these policies rely on HUD Handbook 7460.8 Rev 2.

Transition to 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Guidance

The uniform guidance, 2 CFR 200, was applicable to HUD as of December 26, 2013. HUD adopted 2 CFR 200 as requirements for Federal financial assistance programs by the interim final rule published December 19, 2014, with one exception: §200.110(a) was revised to give a one-year grace period for implementation of the procurement standards. Non-federal entities were allowed to delay the implementation by one additional fiscal year. BHA chose to delay implementation and complied with OMB Circular A-110 until approval of the revisions to the BHA Procurement Policy by Resolution No. B16-12 on September 26, 2016 to conform to the requirements of 2 CFR §200.110(a).

Conflicts between Policies and Other Laws or Regulations

In the event of a conflict between these Procurement Policies and any applicable law or regulation, the law or regulation will prevail.

Changes in Laws and Regulations

In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with these Procurement Policies, automatically supersede these Procurement Policies, and the Executive Director shall ensure that appropriate modifications to the policies and procedures are made.

1.5 Responsibilities

Executive Director

The Executive Director is responsible for the management of all procurement for BHA and shall hold Department Directors and other staff accountable for complying with these Procurement Policies and related Procurement Procedures to be adopted administratively by the Executive Director or his/her designee. The Executive Director shall ensure that all procurement activities of BHA are conducted consistent with the best interests of BHA and applicable laws and regulations.

Department Directors

Department Directors are responsible for managing the procurement-related activities of their department and for ensuring compliance with these Procurement Policies.

Executive Department

The Executive Department is responsible for:

- Working in partnership with departments in implementing this Procurement Policy, developing and negotiating contracts, and maintaining the official and original contract files for BHA.

Finance Department

The Finance Department is responsible for:

- Working in partnership with departments in managing their budgets and ensuring that sufficient funding exists to accomplish the work prior to execution of contracts and change orders.

1.6 Approval of Policies

Adoption by Board of Commissioners

These Procurement Policies were initially adopted by the BHA Board of Commissioners on September 23, 2013 and certain subsequent revisions were adopted on September 26, 2016. Any substantive changes to the policies must also be approved by the Board.

Self-Certification of Policies to HUD

Consistent with 2 CFR 200.324(c)(2), which authorizes a housing authority to self-certify to HUD that its procurement policies are in compliance with all applicable laws and regulations, the BHA Board of Commissioners, in adopting these revisions, certifies that the Procurement Policies are in compliance with all applicable laws and regulations, specifically including but not limited to 2 CFR 200.318 through 200.326. Furthermore, the BHA Board of Commissioners authorizes the Executive Director to submit these Procurement Policies to HUD and to self-certify BHA's procurement system.³

BHA will ensure that its systems are available for review. This self-certification does not limit HUD's right to review the system.⁴

Interpretation of Policies

In the event of an ambiguity, contradiction, or unforeseen situation not addressed clearly or directly in these policies, the Executive Director, either directly or through his/her designee, shall use his/her best professional judgment in making a decision that will best protect the interests of BHA and ensure BHA's compliance with applicable statutory and regulatory requirements.

Revision of Existing Procurement Policies

These revisions shall become effective upon approval by the Board of Commissioners and shall revise the Procurement Policies, adopted by the Board of Commissioners on

September 23, 2013, revised on September 26, 2016, and revised on October 23, 2017.

1.7 Approval of Procedures

Delegation of Approval Authority

In adopting a Procurement Policy and subsequent revisions, the Board of Commissioners authorizes the Executive Director or his/her designee to approve and implement appropriate Procurement Procedures that are consistent with these Procurement Policies. The Board shall hold the Executive Director responsible for ensuring the appropriateness of any Procurement Procedures adopted.

1.8 Procurement and Contract Files⁵

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

- Rationale for the method of procurement (if not self-evident);
- Rationale for contract pricing arrangement (if not self-evident);
- Rationale for selection of contract type (if not self-evident);
- Reason for accepting or rejecting the bids or offers;
- Basis for the contract price (as prescribed in these Policies);
- A copy of the contract documents awarded or issued and signed by the Contracting Officer;
- Basis for contract modifications; and
- Related contract administration actions.

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

Per 2 CFR 200.333, records are to be retained for a period of three years after final payment and all matters pertaining to the contract are closed unless state retention laws are more stringent. The most current state retention guidelines may be found at: <https://www.sos.wa.gov/archives/RecordsManagement/UsingtheLocalGovernmentComm onRecordsRetentionScheduleCORE.aspx>

1.9 Public Records

Applicable Law

BHA procurement information shall be a matter of public record to the extent provided for in RCW 42.56 (the State of Washington Public Records law), and will be made available upon request and as provided in that statute.⁶

Photocopying Charges

BHA may charge fifteen cents per page for each photocopy of public records requested.⁷

Contractor Payroll Reports

Payroll reports received by BHA from contractors and subcontractors on construction and maintenance projects, for the purpose of monitoring prevailing wage requirements, shall not be released to outside parties *unless* the employees' personal identifiers are first obscured.⁸

1.10 Ethical Standards

BHA hereby establishes this code of conduct regarding procurement issues and actions including selection, award and administration of contract. This code of conduct is consistent with applicable federal, state or local law.

BHA has defined unacceptable conduct, levels of offense, and sanctions for violations in the BHA Personnel Policy Manual as approved by the Board of Commissioners. Violations of the following ethical standards will be treated as a violation of BHA's standards of conduct as defined in its Personnel Policy Manual.

Conflicts of Interest

No BHA employee shall participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict of interest would arise when the employee, officer, or agent, any members of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.⁹

No BHA employee shall own or hold an interest in any contract or property or engage in any business, transaction, or professional or personal activity that would¹⁰:

- Be, or appear to be, in conflict with the employee's official duties, or
- Secure, or appear to secure, an unwarranted privilege or advantage for the employee, or
- Prejudice, or appear to prejudice, the employee's independence of judgment in the exercise of his or her official duties relating to BHA.

Gifts and Gratuities

Prohibition¹¹

An employee may not solicit or accept gifts, entertainment, gratuities, favors, or anything of monetary value from contractors or subcontractors, or potential contractors or subcontractors that could influence, or be perceived to influence, contracting or purchasing decisions.

A “gift” is defined as anything of economic value, not including campaign contributions, informational materials exclusively for official or office use, memorials, trophies, and plaques of no commercial value, gifts valued at \$20.00 or less for bona fide, non-recurring, ceremonial occasions or any gifts which are not used and which within thirty days after receipt are returned to the donor, or donated to a charitable organization without seeking a tax deduction.¹² Employees whose BHA job descriptions include procurement and/or contract administration may not solicit or accept gifts of any value.

Contracting with former BHA Employees

The following shall apply to contracts financed in whole or in part with federal funds:

One Year Prohibition

Within one year after an employee leaves BHA, BHA shall not contract with such employee if the employee was responsible for formulating policy or influencing decisions with respect to the project(s) being contracted for.¹³

Waiver

For good cause, HUD may waive the one year prohibition requirement.¹⁴

Prohibition Against Contingent Fees¹⁵

Contractors wanting to do business with BHA 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.

CHAPTER 2: PROCUREMENT METHODS

2.1 General

The Board authorizes procurement through the budget process. Employees with expenditure authority shall be responsible for ensuring compliance with these BHA Procurement Policies.

The procurement methods used include small purchase, competitive, and non-competitive methods. A cost/price analysis will be performed for each procurement activity. The extent and complexity of the cost/price analysis will be directly proportionate to the complexity of the procurement activity. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach.¹⁶ Under no circumstances will a procurement activity be split into smaller parts for the purpose of minimizing the complexity of the bid or analysis process;¹⁷ however, BHA will consider consolidating or breaking out procurements when those actions would result in a more economical purchase.¹⁸

BHA will avoid acquisition of unnecessary or duplicative items.

Procurement practices that restrict competition are prohibited, such as using overly restrictive requirements or specifications to limit the selection of vendors/contractors, non-competitive awards of work not indicated in the contract scope of work or of a substantial dollar amount if indicated to consultants that are on retainer contracts, or brand specificity.¹⁹

2.2 Small Purchases and Informal Solicitations²⁰

Petty Cash Purchases

A small purchase under \$75, which can be satisfied by local sources, may be processed through the use of a Board of Commissioners' approved petty cash account. The Executive Director and the Accounting Operations Manager shall ensure that: the account is established in an amount not to exceed Board of Commissioner approved levels and sufficient to cover small purchases made during a reasonable period; security is maintained and only authorized individuals have access to the account; the account is periodically reconciled and replenished by submission of a voucher to the BHA Finance Department; and the account is periodically audited by the Accounting Operations Manager or designee to validate proper use and to verify that the account total equals cash on hand plus the total of accumulated vouchers.

Small Purchases up to \$10,000 or \$2,000 if Davis Bacon Applies (Micro Purchases)

For small purchases of up to \$10,000 (or \$2,000 if Davis Bacon applies²¹), BHA will require only one quote as long as the quote is considered reasonable.

Competition

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

Quotes

Quotes may be obtained orally (either in person or by phone), by fax, in writing or through e-procurement for items under \$10,000 (or \$2,000 if Davis Bacon applies).

Award

Award shall be made to the qualified vendor that provides the best value to BHA. If award is to be made for reasons other than lowest price, documentation shall be provided in the contract file.

Small Purchases of up to \$250,000:

Definition:

2 CFR 200.88 specifies that procurements costing the amount of the Simplified Acquisition Threshold (\$250,000²²) or less qualify as “small purchases” that are not subject to formal advertising or publication as part of the selection process. While these procurements may be conducted under less formal selection procedures, obtaining and comparing competitive prices from more than one vendor represents good public policy, and is required for the purchase of all goods, supplies, equipment, and materials costing \$10,000 or more.

Evaluation Criteria

When Informal Solicitations are used for small purchases, price and other factors shall be used as the evaluation criteria.

The geographic location of vendors submitting quotes may not be used as an evaluation criterion.

Informal Solicitation/Quotes

For goods, supplies, equipment and materials costing \$10,000 or more but less than \$250,000, a minimum of three quotes (preferably five) will be obtained.

Competition

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

Quotes

Items over \$10,000 but under \$250,000 must be quoted in writing and submitted via

mail, fax, hand delivery or electronic means.

Award

Award shall be made to the responsive and responsible vendor that provides the best value to BHA. Documentation of vendors ranking and evaluation shall be provided in the contract file.

Breakdown of Requirements²⁴

BHA shall not break down requirements aggregating more than the small purchase threshold into several purchases that are less than the applicable threshold merely to:

- Permit use of the small purchase procedures; or
- Avoid any requirements that apply to purchases that exceed the Micro Purchase threshold.

Small Works Roster

As codified by the State of Washington in RCW 39.04.155, the housing authority may create and maintain a Small Works Roster to award contracts for construction, building, renovation, remodeling, alteration, repair or improvement of real property for public works projects up to \$300,000 (or \$250,000 if federal funds are used). In the event such roster is created, pursuant to a Board of Commissioners' approved resolution, BHA shall publish at least once per year in a newspaper of general circulation within the jurisdiction or advertise through other methods a notice of the existence of the roster and solicit the names of contractors wishing to be added to the roster.²⁵ BHA reserves the right to utilize Small Works Rosters maintained by other agencies in lieu of maintaining a BHA Small Works Roster through the use of Cooperative Intergovernmental Agreements.

2.3 Sealed Bidding/Invitation to Bid (ITB)²⁶

Sealed bidding shall be used for all contracts that exceed the Simplified Acquisition Threshold and that do not meet the requirements to be deemed competitive proposals or non-competitive proposals, as these terms are defined in these Policies. Under sealed bids, BHA publicly solicits bids and awards a firm fixed-price contract (lump sum or unit price) to the responsible bidder whose bid, conforming with all the material terms and conditions of the ITB, 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 \$250,000 using federal funds or over \$300,000 for public works contracts using state or local funds.

Conditions for Using Sealed Bids²⁷ – BHA shall use the sealed bid method if the following conditions are present:

- A complete, adequate, and realistic statement of work, specification, or purchase description is available;
- Two or more responsible bidders are willing and able to compete effectively

- for the work;
- The contract can be awarded based on a firm fixed price; and
- The selection of the successful bidder can be made principally on the lowest price.

Solicitation and Receipt of Bids²⁸ – An ITB issued will include the specifications, pertinent attachments, and all contractual terms and conditions applicable to the procurement. The solicitation will define the items or services requested so that the bidder is able to respond appropriately. It will also include a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the solicitation. Sufficient response time will be allowed the bidders prior to the date set for opening the bids. The ITB will 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.

Bid Opening and Award – Bids shall be opened publicly. All bids received shall be recorded on an abstract (tabulation) of bids, and then made available for public inspection. If equal low bids are received from responsible bidders, selection shall be made by drawing lots or other similar random method. 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 analysis.

Rejection of Bids – Any or all bids may be rejected if there is a sound, documented reason.²⁹

Mistakes in Bids – Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written or electronic 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 low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made. All decisions to allow corrections or withdrawal of a bid shall be supported by a written determination signed by the Contracting Officer. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of BHA or fair competition shall not be permitted.

2.4 Competitive Proposals (RFP/RFQ)³⁰

The competitive proposal method permits:

- Consideration of technical factors other than price;
- Discussion with offerors concerning offers submitted;

- Negotiation of contract price or estimated cost and other contract terms and conditions;
- Revision of proposals before the final contractor selection; and
- 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 BHA, 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.

Conditions for use – Where conditions are not appropriate for the use of sealed bidding, competitive proposals may be used. Competitive proposals are the preferred method for procuring professional services that will exceed the Simplified Acquisition Threshold.

- For procurement of Telecommunications and Data Processing (computer) equipment or software this process may be used.
- Depending on the complexity and type of the service or product being solicited, BHA will use either the RFP or RFQ process to ensure that all needs and requirements are addressed.

Form of Solicitation – Other than A&E services, competitive proposals shall be solicited through the issuance of a Request for Proposal (RFP). The RFP shall clearly identify the importance and relative value of each of the evaluation factors as well as any sub-factors and price. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established **before** the solicitation is issued. Proposals shall be handled so as to prevent any disclosure of the number of offerors, identity of the offerors, and the contents of their proposals until after award. BHA may assign price a specific weight in the evaluation criteria, or BHA may consider price in conjunction with technical factors. In either case, the method for evaluating price shall be established in the RFP.

Method of Solicitation – Competitive proposals will be solicited formally using two or more of the following methods: e-procurement, BHA website, outreach to appropriate contractors registered with the MRSC roster, direct outreach to contractors, or advertisement in a newspaper or trade publication.

Evaluation – The proposals shall be evaluated only on the criteria stated in the RFP and as described in the established written Evaluation Plan for each RFP.³¹ Generally, all RFPs shall be evaluated by an appropriately appointed Evaluation Committee. The Evaluation Committee shall be required to disclose any potential conflicts of interest and to sign a non-disclosure statement. An Evaluation Report, summarizing the results of the evaluation, shall be prepared prior to award of a contract.

Negotiations - Negotiations shall be conducted with all offerors who submit a

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

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 BHA provided that the price is within the maximum total project budgeted amount established for the specific property or activity.

A/E Services³² – BHA must contract for Architectural and Engineering (A/E) services using Quality Based Selection (QBS) procedures, utilizing a Request for Qualifications (RFQ). Sealed bidding shall not be used for A/E solicitations. Under QBS procedures, competitor's qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable

compensation. Price is not used as a selection factor under this method. QBS procedures **shall not** be used to purchase other types of services in situations where A/E firms may respond but the services being solicited are not architectural or engineering services.

2.5 Non-Competitive Procurement³³

Procurement by non-competitive 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:

- **Sole Source:** Occasions may arise when competition among potential vendors is not possible for a particular procurement. These situations may occur: (a) when there is clearly and legitimately only one source capable of supplying the subject matter in a timely fashion; (b) when there are special facilities or market conditions that result in only one source, (c) in the event of emergencies; and (d) when there is only one source capable of supplying the subject matter in a timely fashion such that seeking competitive prices would be impractical.
 - **Used Equipment:** Used equipment is generally one of a kind and similar to the sole source.
- **Emergency:** An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to BHA, as may arise by reason of a flood, earthquake, epidemic, fire, riot, equipment failure, or similar event, and the needs “will not permit a delay resulting from competitive solicitation.” 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.
- HUD authorizes the use of non-competitive proposals.
- After solicitation of a number of sources, competition is determined inadequate.

Use of the non-competitive procurement method requires that profit be negotiated as a separate element of price.³⁴

Entering into non-competitive procurement arrangements and contracts requires written justification. This justification shall be approved in writing by the responsible Contracting Officer. Poor planning or lack of planning is not justification for emergency or sole-source procurements.

The justification, to be included in the procurement file, should include the following information:

- Description of the requirement;
- History of prior purchases and their nature (competitive vs. noncompetitive);

- The specific exemption in 2 CFR 200.320(f) (1) through (4) which applies;
- Statement as to the unique circumstances that require award by noncompetitive proposals;
- Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);
- Statement as to efforts that will be taken in the future to promote competition for the requirement;
- Signature by the Contracting Officer's supervisor (or someone above the level of the Contracting Officer); and
- 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.

2.6 Cooperative Purchasing/Intergovernmental Agreements

Consistent with the requirements of 2 CFR 200.318 (e) and RCW 39.34.080, BHA may enter into agreements with other governmental agencies and regional or joint national intergovernmental purchasing networks or associations to purchase or use common supplies, equipment, or services. The decision to use an interagency agreement instead of conducting a direct procurement shall be based on economy and efficiency. If used, the interagency agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. BHA may use federal and state excess and surplus property instead of purchasing new equipment and property if feasible and if it will result in a reduction of project costs. The goods and services obtained under a cooperative purchasing agreement must have been procured in accordance with 2 CFR 200.317 through 200.326. In evaluating the use of a cooperative intergovernmental agreement, the Executive Director or his/her designee shall review for reasonableness the standards in the competitive selection process conducted by the other agency.

2.7 Solicitations and Advertising

Method of Solicitation

- Petty Cash (under \$75) and Micro Purchases (under \$10,000 threshold or \$2,000 for Davis Bacon) – BHA may contact only one source if the price is considered reasonable.
- Small Purchases (over \$10,000 or \$2,000 for Davis Bacon but less than \$250,000) – Quotes may be solicited in written form and received via fax, electronically, or by any other reasonable method.
- Sealed Bids and Competitive Proposals³⁵ – Solicitations must be done publicly. BHA must use two or more of the following solicitation methods, provided that the methods employed provide meaningful competition.
 - Advertisement in newspapers or other print media of local or general circulations.
 - Advertisement in various trade journals or publications (for construction).

- E-Procurement – BHA may conduct its public procurements through the Internet using e-procurement systems. However, all e-procurements must otherwise be in compliance with 2 CFR 200.317 through 200.326, state and local requirements, and BHA's procurement policy.
- Advertisement on the BHA website.
- Outreach to appropriate contractors registered with the MRSC roster (this method must be used in combination with a more formal advertisement method listed above).

Time Frame

For purchases of more than \$250,000, the public notice should run not less than once each week for two consecutive weeks.

Form

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

Ensuring Full and Open Competition

BHA will publicize the solicitation in a manner that ensures full and open competition and on a scale that is proportionate to the value and significance of the procurement.³⁶

2.8 Time Period for Submission of Bids

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

2.9 Cancellation of Solicitations³⁷

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

- The supplies, services or construction is no longer required;
- The funds are no longer available;
- Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best; or
- Other similar reasons.

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

- The supplies or services (including construction) are no longer required;
- Ambiguous or otherwise inadequate specifications were part of the solicitation;
- All factors of significance to BHA were not considered;
- Prices exceed available funds, and it would not be appropriate to adjust quantities to come within available funds;
- An inadequate level of response is received;
- 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

- For good cause of a similar nature when it is in the best interest of BHA.

The reasons for cancellation shall be documented in the procurement file, and the reasons for cancellation and/or rejection shall be provided upon request.

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.

If all otherwise acceptable bids received in response to an ITB are at unreasonable prices, an analysis should be conducted to see if there is a problem in either the specifications or BHA's cost estimate. If both are determined adequate and if only one bid is received and the price is unreasonable, the contracting officer may cancel the solicitation and either:

- Resolicit using an RFP; or
- Complete the procurement by using the negotiation phase of the competitive proposal method. The contracting officer must determine, in writing, that such action is appropriate, must inform all bidders of BHA's intent to negotiate, and must give each bidder a reasonable opportunity to negotiate.

If problems are found with the specifications, BHA should cancel the solicitation, revise the specifications, and resolicit using an ITB.

2.10 Credit (or Purchasing) Cards

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

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

CHAPTER 3: EXPENDITURE AUTHORITY

3.1 General

Expenditure Authority refers to the delegation of responsibility to various BHA employees and contracted third-party management to recommend, commit, and expend BHA financial resources up to a particular dollar limit, for a cost center or business unit over which the employee or third-party manager has control. Expenditure Authority does not include authority to execute contracts or agreements on behalf of BHA without previous written authorization and budget authority.

3.2 Executive Director

The Executive Director shall be responsible for providing oversight and management of all expenditures for the agency. Only the Executive Director may authorize BHA commitments and expenditures of more than \$10,000 and above.

If there is an expenditure that is unbudgeted and exceeds \$50,000, the Executive Director must receive Board approval before authorizing that expenditure.

3.3 Department Directors

Department Directors may approve financial commitments and expenditures up to \$10,000 without written concurrence of the Executive Director.

3.4 Third-Party Property Managers

For third-party property managers who are under contract with BHA for management of properties, the following expenditure authority applies:

- No expense over \$2,000 will be made without BHA's prior approval.
- No emergency expense over \$2,000 will be made without BHA's prior approval, unless emergency repairs that exceed this amount up to \$5,000 are needed to avoid endangering life or property.

3.5 Managers

At the discretion of the Department Directors, Managers may be given expenditure authority up to \$2,000. At the Discretion of the Executive Director, Managers may be given expenditure authority up to \$10,000.

3.6 Purchasing Card Holders

All purchasing card holders shall automatically be delegated with expenditure authority up to the amount of their pre-transaction limit.

EXPENDITURE AUTHORITY AND THE BOARD OF COMMISSIONERS

DESCRIPTION OF EXPENDITURE	AUTHORITY TO EXPEND WITHOUT FURTHER BOARD OF COMMISSIONER APPROVAL
\$0 – \$10,000:	Department Directors; Department Directors may delegate expenditure authority of up to \$2,000 to managers. Managers may be delegated expenditure authority of up to \$10,000 with written authorization of the Executive Director.
\$10,000 – \$50,000:	Executive Director Executive Director Authorized Contract Officer
\$50,000 – Above and IS Expressly Provided for in the Board of Commissioner Approved Annual Budget	Executive Director Executive Director Authorized Contract Officer
\$50,000 – Above and is NOT Expressly Provided for in the Board of Commissioner Approved Annual Budget	Requires Board of Commissioner Approval

The Executive Director has authority to execute contracts or agreements on behalf of BHA, including change orders and amendments to contracts without further Board of Commissioner approval, so long as the contracts or agreements are a) compliant with the provisions of the Procurement Policy; b) are one (1) year or less in duration; and c) commit to expenditures of \$50,000 or less in amount; or if the commitment to expend is greater than \$50,000 it must be expressly provided for in the Board of Commissioner approved annual budget.

Contracts and agreements, including change orders and amendments, which are longer in duration than one (1) year, or which commit to expenditures greater than \$50,000 in amount and which are not expressly provided for in the Board of Commissioner approved annual budget, must be approved by the Board of Commissioners before the Executive Director may execute such contracts or agreements.

Expenditures made in accordance with contracts or agreements approved by the Board of Commissioners with an initial term greater than one (1) year in duration are not required to be brought back to the Board of Commissioners at the next fiscal year for approval (provided the terms remain the same and there are no change orders or amendments beyond the above stated limits). Upon executing the contract or agreement, it is the responsibility of the Executive Director to ensure funds for the remaining term are properly reserved in the respective fiscal year budgets presented to the Board of Commissioners for approval.

CHAPTER 4: INTERNAL BHA REVIEW OF PROCUREMENT ACTIONS

4.1 Development of Procedures

The Executive Director or his/her designee shall establish Procurement Procedures that will facilitate appropriate review of procurement-related actions. In developing such procedures, the Executive Director shall promote accountability and expediency, while at the same time ensuring that procurement-related actions are in compliance with applicable statutory and regulatory requirements.

4.2 Procurement Actions Subject to Review

Procurement Procedures shall address the internal review and approval process for the following non-exclusive list:

- Solicitation Documents: Request for Qualifications (RFQ), Request for Proposals (RFP), Invitation to Bid (ITB), Small Works Roster (SWR), Informal Solicitations.
- Individual Solicitation Evaluation Plans
- Selection Documents: Cost or Price Analysis, Selection and Award Recommendation, Notices of Award, Non-Competitive Selections
- Contracts: Purchase Orders, Construction Contracts, Consultant and Professional Services Contracts, A&E Consultant Contracts, Agency Service Agreements, Property Management Contracts, Change Orders.

4.3 Expenditure Authority Amounts

Employees with Expenditure Authority amounts less than or equal to the amount of a proposed action are authorized to make recommendations for various procurement-related actions without approval from a manager, supervisor, or Department Director. However, a Department Director may establish internal departmental procedures that require additional reviews and approvals. In making such a recommendation, an employee has a responsibility to ensure that he/she has appropriately coordinated the proposed action with other affected staff and outside agencies, and that he/she has determined there is adequate funding available for the proposed action.

4.4 Delegation of Authority

The Executive Director is responsible to enter into and/or administer contracts and make related determinations and findings. The Executive Director may authorize another official to perform these duties and become the Contract Officer for the respective contract.

If other than the Executive Director, written identification of the Contract Officer and the Executive Director's authorization shall be maintained in the contract file. Sound, practical judgment will be used when delegating this authority and therefore the Contract Officer will assume the spending authority of the Executive Director for only those contracts.

4.5 Review by Counsel

The Executive Director, Department Directors and authorized Managers shall consult with legal counsel whenever procurement-related actions are unique, outside of the norm, are particularly large, costly, or complex, or may have legal, political, or public relations implications.

CHAPTER 5: ELIGIBILITY TO CONTRACT WITH BHA

5.1 Contractor Responsibility

BHA shall not award any contract until the prospective contractor (i.e., low responsive bidder or successful offeror) has been determined to be responsible. A responsible bidder/offeror must:³⁸

- Have adequate financial resources to perform the contract, or the ability to obtain them;
- 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;
- Have a satisfactory performance record;
- Have a satisfactory record of integrity and business ethics;
- Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them.
- Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and
- 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.

BHA may use various methods to determine contractor responsibility including, but not limited to, reference checks and a consistently applied, methodical evaluation system.

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.

5.2 Suspension and Debarment Status Review³⁹

BHA shall ensure, prior to contract award, that the proposed business has not been suspended, debarred, or otherwise declared ineligible for award, by an applicable regulatory agency. The following non-exclusive list of sources shall be reviewed when required:

- a) Federal Government's "System for Award Management"
- b) U.S. Department of Housing and Urban Development's "Limited Denial of Participation" List
- c) State of Washington, Department of Labor and Industries list of debarred contractors for prevailing wage violations (only required on construction projects)

5.3 Compliance with IRS Regulations

Prior to making payment to a business, the Finance Department shall ensure that BHA receives from the business (if not already on file) a W-9 or W-9 substitute form.

5.4 Performance Evaluation Program⁴⁰

Ratings on construction bidding documents or previous contracts from such a performance evaluation program may be used in evaluating when a business is responsible and capable of performing proposed work and may also provide a mechanism for debarring businesses from contracting with BHA.

5.5 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 or services (including construction) shall be kept current and include enough sources to ensure competition.

5.6 Bonding Requirements

FEDERAL:⁴¹ The standards under this section apply to construction contracts exceeding \$250,000. There are no bonding requirements for small purchases or for competitive proposals. BHA may require bonds in these latter circumstances when deemed appropriate; however, non-construction contracts generally do not require bid bonds.

- **Bid Bonds**⁴² – For construction contracts exceeding \$250,000, bidders shall be required to submit a bid guarantee equivalent to 5% of the bid price.
- **Performance and Payment Bonds**⁴³ – For construction contracts exceeding \$250,000, the successful bidder shall furnish an assurance of completion. This assurance may be any one of the following four:
 - A performance and payment bond in a penal sum of 100% of the contract price; or
 - Separate performance and payment bonds, each for 50% or more of the contract price; or
 - A 20% cash escrow; or
 - A 25% irrevocable letter of credit.

These bonds must be obtained from guarantee or surety companies acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. Individual sureties shall not be considered. U.S. Treasury Circular Number 570 lists companies approved to act as sureties on bonds securing government contracts, the maximum underwriting limits on each contract bonded, and the states in which the company is licensed to do business. Use of companies on this circular is mandatory.⁴⁴

STATE PREVAILING: RCW 39.08, “Contractor’s Bond,” specifies the bonding requirements for public works contracts and shall be reviewed for contract applicability

with each prospective bid request. Generally stated, the following standards are required.

- **Surety:**
 - For contracts between \$0 and \$150,000, BHA may accept a full payment and performance bond for an individual surety or sureties.
 - For contracts \$150,000 and over, BHA may only accept a bond with a surety company as surety.
- **Retention** – For contracts between \$0 and \$150,000 and at the option of the contractor, BHA may, in lieu of the bond, retain 10% of the contract amount for a period of 30 days after the date of final acceptance or until receipt of all necessary releases from the Department of Revenue, the Employment Security Department, and the Department of Labor and Industries and settlement of any liens filed under Chapter 60.28 RCW, whichever is later.

CHAPTER 6: CONTRACTS

6.1 Overview of Contract Types⁴⁵

2 CFR 200.323 allows for the use of any type of contract appropriate to the procurement and that promotes the best interests of BHA, EXCEPT as noted below.

PROHIBITED CONTRACT TYPES: ⁴⁶	
➔	COST-PLUS-PERCENTAGE of COST
➔	PERCENTAGE-of-CONSTRUCTION COSTS (applies to construction and design contracts)

ACCEPTABLE CONTRACT TYPES:		
➔	FIRM FIXED-PRICE:	Used when the specification is clear and a total price can be agreed upon. The price will not vary regardless of the actual costs incurred to deliver the product or provide the service as designed or specified.
➔	INDEFINITE DELIVERY:	Used when the exact time(s) and/or quantity(s) of future deliveries are unknown at the time of contract award. If possible, fixed-unit prices shall be established. Funding is obligated when the order is placed.
	DEFINITE QUANTITY:	Known quantity but unknown delivery time so orders are issued as specific needs are identified.
	INDEFINITE QUANTITY:	Both quantity and delivery time are unknown so minimum and maximum quantities are established and purchase orders issued against them.
	REQUIREMENT	Both quantity and delivery time are unknown, therefore a realistic quantity estimate is provided and contractor is guaranteed that as needs are identified they will be fulfilled by only this vendor through placement of orders.
➔	COST-PLUS- FIXED-FEE:	Used when a fixed-price arrangement is not appropriate. An estimated cost and fixed-fee are agreed upon. The contractor is required to provide its best effort to achieve the contract's objectives in return for reimbursement of all reasonable, allowable and allocable costs. Requires more monitoring efforts than a firm-fixed price contract.
➔	TIME AND MATERIALS:	Used when it is impossible to accurately estimate the extent or duration of the work and no other contract type is suitable. The contractor is reimbursed for an agreed upon hourly rate consisting of direct and indirect labor,

	other indirect costs and profit, and all materials at cost. The contract includes a ceiling price that the contractor exceeds at its own risk.
--	--

6.2 Mandatory Contract Clauses

Contracts must contain certain clauses as identified in 2 CFR 200.326 which are determined by the contract value and services to be performed. The HUD Handbook No. 7460.8 Rev. 2 provides more definition on incorporating mandatory contract clauses in the following sections.

Section:	
5.10	Standardized Forms/Mandatory Contract Clauses (Includes Table 1)
10.5	Mandatory Contract Clauses
16.13	Mandatory Contract Clauses (Specialty Financing)

6.3 Cost Reimbursement Contract Types

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

6.4 Length of Contracts

Generally, a supply or service contract shall be established for one or two years, with an option to extend the contract for up to four additional one-year periods.⁴⁷ Under no circumstances will a contract be extended beyond five years except to allow an existing contractor to close out work on the contract that is ending. The decision on the length of a contract shall be determined on a case-by-case basis, provided that the Executive Director approves the contract length.

6.5 Contract Extensions⁴⁸

Price Negotiations

Contracts shall generally include provisions outlining the process or formula to be followed in negotiating the price for an extension of a contract's original term.

Available Funds

Contracts may be extended beyond the advertised or specified contract term in the event that sufficient, previously obligated funds remain available for the current contract and the contract does not extend beyond a five-year term.

6.6 Options⁴⁹

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

1. The option is contained in the solicitation;
2. The option is a unilateral right of BHA;
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 BHA than conducting a new procurement.

6.7 Contract Clauses

All contracts should identify the contract pricing arrangement as well as other pertinent terms and conditions as determined by BHA.

Additionally, the forms HUD-5369, 5369-A, 5369-B, 5370, 5370-C, and 51915-A which contain all HUD-required clauses and certifications for contracts of more than \$100,000, as well as any forms/clauses as required by HUD for small purchases (including HUD-5370-EZ as appropriate), shall be used in all corresponding solicitations and contracts issued by BHA.

6.8 Contract Administration

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

6.9 Specifications

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

*Limitation*⁵⁰ – The following types of specifications shall be avoided:

- Geographic restrictions⁵¹ not mandated or encouraged by applicable Federal law (except for A/E contracts, which may include geographic location as a selection factor if adequate competition is available);
- Brand name specifications⁵² (unless the specifications list the minimum essential characteristics and standards to which the item must conform to satisfy its intended user).

Contractors that assist in the development of a project's scope of work may not participate in the solicitation for that scope of work for that project.⁵³

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.

CHAPTER 7: ENSURING REASONABLE COSTS⁵⁴

As a public agency accountable to both the public and governmental funding agencies, BHA is committed to ensuring that the costs paid for obtaining necessary goods and services are reasonable and that BHA's interests are adequately protected.

7.1 Thresholds for Application of this Chapter

Non-Federally Funded Contracts⁵⁵

All non-federally funded public works projects require a written Independent Cost Estimate, Cost Analysis, or Price Analysis. BHA staff is expected to exercise prudent and conservative judgment in determining how extensive the analysis must be based on the expected value of the procurement.

Federally Funded Contracts

Consistent with the provisions of these policies which establish \$10,000 (\$2,000 for Davis Bacon) as the threshold for obtaining price competition, the requirements for written Independent Cost Estimates, Cost Analysis, or Price Analysis on federally funded contracts shall not be applicable to procurements or changes valued in the aggregate at less than \$10,000.

To prepare such a written analysis may require that BHA staff spend more time and money preparing the estimate or conducting the analysis than the value of the procurement. However, BHA staff is nevertheless expected to exercise prudent and conservative judgment in evaluating the reasonableness of a proposed expenditure of less than \$10,000. Such evaluation may include obtaining a breakdown of the contractor's or consultant's proposed costs.

7.2 Independent Cost Estimates

An Independent Cost Estimate (ICE) is an estimate of the anticipated costs of a contract or Change Order prepared by BHA staff or other independent party to assist BHA in evaluating the reasonableness of costs proposed by a contractor, consultant, or vendor.

ICES will be developed to assist BHA in evaluating the reasonableness of prices obtained through competition where price was used as a selection criterion or the reasonableness of prices proposed through a selection process where price was not used as a selection criterion. ICES are required before soliciting bids or proposals or prior to starting contract negotiations. The level of detail of the ICE will be commensurate with the cost and complexity of the item to be purchased.⁵⁶

7.3 Price Analysis

A price analysis is a written review and evaluation of competitive prices received by BHA to determine whether the proposed price of a contractor is reasonable when compared with prices provided by others in the market.

Price Analyses will be performed to ensure that the price BHA will be paying is reasonable based on existing competition in the market. They will be performed when BHA staff compares prices submitted as part of a competitive selection process. When price is used as the only selection criterion and competition exists, BHA must, prior to award of a contract, evaluate the price proposed for acquiring goods and services against responses received from competing firms.⁵⁷

7.4 Cost Analysis

A cost analysis is a written review and evaluation of whether the proposed cost of a contract, purchase order, or change order, not based on competitive prices received, is reasonable.

Cost Analyses will be performed to ensure that the proposed prices are reasonable, and shall include an analysis of individual components of the cost. A level of specificity and independence appropriate to the contract under review should be applied. For any contract subject to cost analysis, BHA must require that the contractor/consultant submit to BHA a sufficiently detailed cost breakdown.

When a cost analysis is performed, profit must be negotiated as a separate element of price.⁵⁸

7.5 Analysis Based on Procurement Method

Petty Cash and Micro Purchases

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

Small Purchases

A comparison with other offers shall generally be sufficient determination of the reasonableness of price and no further analysis is required. If a reasonable number of quotes is not obtained to establish reasonableness through price competition, the Contracting Officer shall document price reasonableness through other means, such as prior purchases of this nature, catalogue prices, the Contracting Officer's personal knowledge at the time of purchase, comparison to the ICE, or any other reasonable basis.

Sealed Bids

The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, and when the bid received is substantially more than the ICE, and where BHA cannot reasonably determine price reasonableness, BHA must conduct a cost analysis, consistent with federal guidelines, to ensure that the price paid is reasonable.

Competitive Proposals

The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, BHA 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, BHA must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable.

Contract Modifications

A cost or price analysis, consistent with Federal guidelines, shall be conducted for all contract modifications or change orders 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 \$250,000. The method and degree of analysis is dependent on the facts surrounding the procurement.⁵⁹

CHAPTER 8: DISPUTES, APPEALS, AND PROTESTS

It is BHA policy to resolve all contractual issues informally and without litigation. Disputes will not be referred to HUD unless all administrative remedies have been exhausted. When appropriate, a mediator may be used to help resolve differences.

BHA shall attempt to resolve all procurement-related (solicitation, award, and contractual) disputes, protests, and appeals internally without outside review by either HUD or the court system.

BHA shall notify HUD of procurement protests received by BHA; however, HUD will only review procurement-related protests against BHA if the matter is primarily a Federal concern. Violations of law will be referred to the local, state or Federal authority having proper jurisdiction.⁶⁰

Informal Appeals Procedure

BHA shall adopt an informal bid protest/appeal procedure for contracts of \$250,000 or less. Under these procedures, the bidder/contractor may request to meet with the appropriate contracting officer.

Formal Appeals Procedure

The following formal appeals procedure has been established for solicitations/contracts of more than \$250,000.

- Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy.
- All protests shall be in writing, submitted to the contracting officer or designee.
- Bid Protest – Any protest against a solicitation issued by BHA must be received by BHA before the bid or proposal submittal deadline, or it will not be considered.
- Award Protest
 - Protests against the award of an ITB must be received by BHA no later than two full business days after the bid submittal deadline, or before award of the contract, whichever is earlier.
 - Appeals of a decision by BHA to reject a bid submitted in response to an ITB must be received by BHA within two business days after receipt of written notification of BHA's decision.
 - Protests against the award of a contract based on an RFP or RFQ or appeal of a decision by BHA to reject a proposal must be received by BHA within three business days after receipt of written notification of BHA's decision.

All protests must be in writing, signed and explain the basis of the protest.

The initial review of the protest shall be handled by the appropriate department director or manager (as applicable) and a written decision shall be issued to the protestor. The protestor can further appeal this decision to the Executive Director (assuming the Executive Director did not handle the initial review), who shall issue BHA's final decision.

CHAPTER 9: TYPES OF PURCHASES

This chapter describes the various types of purchases that BHA may make. Please see Chapter 2 for specific information about each type of solicitation described to determine how to proceed in procuring a particular item or service.

9.1 Equipment, Materials, Supplies and Non-Consultant Services

This Section deals primarily with the purchase of supplies, equipment, materials, and certain non-consultant services, and is frequently referred to as “goods and supplies.”

Goods, Supplies and Certain Services under \$10,000

Generally, goods and supplies are obtained through the use of a Purchase Order. In addition, certain services, depending on their type and nature, may be obtained through the use of a Purchase Order.

Goods, Supplies and Certain Services under \$250,000⁶¹

Goods, supplies and non-consultant services under \$250,000 should be procured using the Informal Solicitation method.

Goods, Supplies and Certain Services over \$250,000⁶²

Goods, supplies and non-consultant services over \$250,000 should be procured using the Invitations to Bid method if the criteria listed in Section 2.3.A are met.

If the criteria for the Invitations to Bid method cannot be met, goods, supplies and non-consultant services over \$250,000 should be procured using the Request for Proposals method.⁶³

Telecommunications and Data Processing (Computer) Equipment or Software

Telecommunications and data processing (computer) equipment or software should be purchased using the Request for Proposals method.

Concessions

Competitive proposals, either informal solicitations or request for proposals, should also generally be used for various BHA concessionaires, including but not limited to, vending and laundry machine operation, cellular and other communication antenna space leases, etc.

9.2 Consultant Services

This Section addresses the procurement of consultant services other than architecture and engineering services. Consultants provide advice, recommendations, reports, analyses, evaluations, audits, surveys or other products of cognitive processes or expert or professional services.

Competitive Proposals – Request for Proposals

Competitive proposals (including turnkey proposals for development) may be used if there is an adequate method of evaluating technical proposals and where BHA determines that conditions are not appropriate for the use of sealed bids. An adequate number of qualified sources shall be solicited.

9.3 Architectural & Engineering (A&E) Consultant Services

This Section addresses Architectural & Engineering (A&E) Consultant Services which are a subset of Consultant Services. The primary distinction between the two is that BHA may not use cost as an evaluation criterion when selecting a firm for performing A&E work. Instead, consistent with the requirements of Chapter 39.80 RCW and 2 CFR 200.320 (d)(5), the evaluation criteria must be limited to factors that relate to a Consultant's qualifications and competence to perform the desired work. BHA must select the "most highly qualified"⁶⁴ A&E Consultant to provide the services.

Disciplines Covered:

Consistent with Chapter 39.80 RCW, the following four disciplines are included in the category of A&E Consultant Services:

1. Architecture
2. Engineering
3. Landscape Architecture
4. Land Surveying

Competitive Proposals – Request for Qualifications

BHA **must** contract for A&E services using Quality-Based Selection (QBS) procedures through a Request for Qualifications (RFQ).⁶⁵

A&E Consultant Roster

BHA may establish through the RFQ process a roster of qualified A&E Consultants who may be selected for specific scopes of work under an expedited proposal submittal process (informal solicitation). In establishing such a roster, BHA shall ensure that the roster is maintained with current information and that there are a sufficient number of qualified A&E Consultants on the roster to ensure maximum and free competition.⁶⁶

9.4 Distinguishing Between A&E Work and Non-A&E Work:

Because price may not be used as a criterion for selection of consultants performing A&E work, and price must be used as a criterion for selection of consultants performing other work, it is important to distinguish what work is A&E work and what is non-A&E work. The following information can be used to determine whether the work should be considered A&E:

- If State law does not require that the work in question be performed by someone licensed or registered in one of the four professions cited above, then the work

must be classified as non-A&E work and price must be used as an evaluation criterion.

- If State law requires that the work in question be performed by someone licensed or registered in one of the four professions cited above, then the work should be considered as A&E work and price may not be used as an evaluation criterion.⁶⁷
- The mere fact that the scope of services for a particular contract is likely to be performed by, or may be performed by, someone who is licensed or registered in one of the four professions cited as A&E above does not mean that the work is A&E work. In order for it to be considered A&E work, the type of service BHA is seeking must be required by State law to be performed by someone licensed or registered in one of these four professions. As an example, if the design of something requires the stamp of a licensed engineer, then the work must be performed by an engineer.

9.5 Construction Services

This Section discusses the procurement of construction services.

Public Works Construction Contracts

The term public work shall include all work, construction, alteration, repair or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein.⁶⁸

This definition of public work includes construction and repair but excludes ordinary maintenance. Ordinary maintenance is defined as work that is performed on a regular scheduled basis (not less frequently than once per year), to service, check, or replace items that are not broken; or work that is not regularly scheduled but is required to maintain the asset so that repair does not become necessary.

If the cost of a public works project exceeds applicable bid limits, BHA must use a competitive bid process, small works roster process, or limited public works process. The bid limits are as follows:

1. Projects over \$300,000 must be competitively bid (\$250,000 if federal funds involved).⁶⁹
2. If the estimated project cost is less than or equal to \$300,000 (\$250,000 if federal funds involved), the small works roster process⁷⁰ may be used.
 - a) If the estimated cost of the work is \$250,000 to \$300,000, and BHA solicits bids from less than all the appropriate contractors on the small works roster, then BHA must also notify the remaining contractors that quotations on the work are being sought. This notice can be made by publishing it in a legal

- newspaper in general circulation in the area where the work is to be done, mailing a notice, or sending a notice via electronic means.⁷¹
- b) If the estimated cost of the work is less than \$250,000, quotations from at least five contractors on the small works roster who have indicated their ability to perform the work being contracted must be solicited.⁷²
- c) If the estimated cost of the work is less than \$35,000, BHA may use the limited public works process⁷³, soliciting bids from a minimum of three contractors.

Bids versus Proposals

When the criteria outlined below are met, competitive bidding should be utilized for construction projects where evaluation is based solely on price:

- A complete, adequate, and realistic specification is available.
- Two or more responsible bidders are willing and able to compete effectively for the work.
- The project lends itself to a firm fixed-price contract, and the selection of the successful bidder can be made principally on the basis of price.

If the criteria cannot be met, evaluation will include price and other factors which may include schedule and an objective, consistent evaluation system to determine contractor responsibility.

Construction Contract Types and Negotiation

Design, Bid, and Build

Generally, most construction projects will employ a selection methodology in which a separate designer and contractor are hired to complete the project. Under the traditional "Design, Bid, Build" system, competitive bids will be received for construction projects, and the project will be awarded to the lowest responsive bid submitted by a responsible bidder.

General Contractor/Construction Manager (GC/CM)

The GC/CM or modified selection methodology may be used when the criteria in 2 CFR 200.320 (c) are not applicable. In such a situation, proposals may be received from contractors to serve as the GC/CM in which the contractor's price for performing certain elements of the contract are included in the evaluation criteria, along with criteria relating to the contractor's abilities to perform the contract.

Value Engineering

Value Engineering, the systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost, is one of the tasks that the GC/CM may be asked to perform.⁷⁴

Prevailing Wages

The prevailing wage rates applicable to a construction project will be determined by whether the project is funded with federal or non-federal funds.

- a. If a project is funded with non-federal funds only state prevailing wage requirements are applicable.
- b. If a project is funded with any federal funds (in part or entirely) both state and federal prevailing wage requirements apply – the higher of the two wage rates is required to be paid.
- c. Federal prevailing wage requirements shall apply only to construction projects funded by more than \$2,000 of federal funds.
- d. If Davis Bacon funds apply to the work, and the contract includes any version of HUD Form 5370, state prevailing wages are not applicable. A statement of intent and affidavit must still be filed with the Department of Labor & Industries, but the statements must declare that Davis-Bacon prevails.

9.6 Maintenance Services

This Section discusses the procurement of maintenance services.

If the cost of a public works maintenance project exceeds applicable bid limits, BHA must use a competitive bid process, small works roster process, or limited public works process. The bid limits are as follows:

- a. Projects over \$300,000 must be competitively bid (\$250,000 if federal funds involved⁷⁵).
- b. If the estimated project cost is less than or equal to \$300,000 (\$250,000 if federal funds involved), the small works roster process⁷⁶ may be used.
 - If the estimated cost of the work is \$250,000 to \$300,000, and BHA solicits bids from less than all the appropriate contractors on the small works roster, then BHA must also notify the remaining contractors that quotations on the work are being sought. This notice can be made by publishing it in a legal newspaper in general circulation in the area where the work is to be done, mailing a notice, or sending a notice via facsimile or other electronic means.

- If the estimated cost of the work is less than \$250,000, quotations from at least five contractors on the small works roster who have indicated their ability to perform the work being contracted must be solicited.⁷⁷
- If the estimated cost of the work is less than \$35,000, BHA may use the limited public works process⁷⁸, soliciting bids from a minimum of three contractors.

Bids versus Proposals

When the criteria outlined below are met, competitive bidding should be utilized for maintenance projects where evaluation is based solely on price:

- A complete, adequate, and realistic specification is available.
- Two or more responsible bidders are willing and able to compete effectively for the work.
- The project lends itself to a firm fixed-price contract, and the selection of the successful bidder can be made principally on the basis of price.

If the criteria cannot be met, evaluation will include price and other factors which may include schedule and an objective, consistent evaluation system to determine contractor responsibility.

Prevailing Wages

The prevailing wage rates applicable to a maintenance project will be determined by whether the project is funded with federal or non-federal funds.

- a) If a project is funded with non-federal funds, only state prevailing wage requirements are applicable.
- b) If a project is funded with any federal funds, HUD non-routine maintenance wage rates requirements apply.
- c) If Davis Bacon funds apply to the work, and the contract includes any version of HUD Form 5370, state prevailing wages are not applicable.
- d) A statement of intent and affidavit must still be filed with the Department of Labor & Industries, but the statements must declare that Davis-Bacon or HUD non-routine maintenance wage rates prevail.

9.7 Procurement of Recovered Materials

BHA and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the

quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

9.8 Purchasing, Travel and Gas Cards

BHA has authorized that certain employees be issued purchase, travel and/or gas cards in BHA's name, in order to expedite the purchasing and payment process and reduce the administrative costs of small purchase transactions. Issuance of these cards is authorized by the Directors or the Executive Director, and the Finance Department determines the procedures. Purchase cards shall be subject to the small purchase guidelines set in this policy, when applicable. Personal use of these cards is strictly prohibited. Directors and Managers per specific Executive Director delegation (or their designees) are responsible for monitoring usage of purchase cards by employees under their control.

9.9 Direct Payments List

The Direct Payments List (also known as Competitive Exceptions) is a list of transactions which, by the nature of the transaction, are impractical or impossible to competitively bid because of market or other conditions, and are thus exempt from competitive bidding requirements. These transactions do not have to be justified as a Non-Competitive Procurement (see Chapter 2) but may be obtained directly by an employee with adequate Expenditure Authority. Depending on the item, there may or may not be a contract or Purchase Order outlining the terms and conditions.

Modifications to Direct Payments List

The Executive Director, either directly or through the Accounting Operations Manager, may make modifications administratively to the Direct Payments List without seeking approval of the Board of Commissioners, provided that the changes are consistent with applicable statutory and regulatory requirements and that the current list is made readily available to BHA employees.

Interpretation of Direct Payments List

In the event of ambiguity or uncertainty as to whether an item is or is not subject to competition and whether it should be included on the Direct Payments List, the Executive Director or the Accounting Operations Manager shall review the matter and make the final decision.

Direct Payment List

The following items are on the Direct Payments List:

- Utility bills (Water, Sewer, Electricity, Natural Gas, and other regulated utility expenses)
- Postage and other purchases from the U.S. Postal Service
- Licenses, permits, and fees from governmental or regulatory entities at the federal, state, or local level.
- Purchases from other governmental entities (federal, state, city, local, port

districts, Public Development Authorities [PDAs], housing authorities, state colleges and universities, state hospitals, etc.) where the governmental entity provides goods or services not available from the private sector.

- Service or use fees paid to governmental cooperative purchasing organizations.
- Fuel card charges for gasoline and diesel.
- Charges for official BHA business on personal credit card while on BHA travel status.
- Legal services such as arbitration fees, litigation fees, witness fees, court costs, and related expenses (but not the cost of outside counsel, investigations, or related matters), when approved by the Executive Director.
- Legal settlements of disputed matters and judgment claims against BHA.
- Payments for existing annual maintenance, service, or support agreements for computer and telecommunication-related services.
- Payments for existing software license agreements. These require the approval of the Contracting and Procurement Officer or the Accounting Operations Manager.
- Traffic control (flagging) by off-duty police officers (only when required).
- Travel expenses for BHA employees, residents, program participants, volunteers, or members of the Board of Commissioners necessary to conduct BHA business.
- Training registration fees and tuition for pre-established, non-BHA specific, off-site classes, seminars, workshops, etc. for BHA employees, residents, program participants, volunteers, and members of the Board of Commissioners.
- Testing and travel expenses of employment applicants (including moving expenses for eligible personnel). This includes travel expenses of certain out-of-state job applicants. Travel expenses of job applicants must be approved by the Executive Director.
- Conference and convention expenses and fees for BHA employees, residents, program participants, volunteers, or members of the Board of Commissioners conducting BHA business.
- Advertisements for employment opportunities, purchasing and contracting solicitations, sale of surplus items, public announcements and outreach, etc. (all media). This exception does not include printing, design, or graphics services.
- Freight bills, express shipping, common carriers, and delivery services.
- Honoraria and stipends.
- Entertainment such as speakers, lecturers, musicians, performing artists. Only when such expenses are permitted by the grant funding the activity.
- Insurance deductible and/or retained losses.
- Taxi, public transportation, and toll fares; mileage and incidental parking expenses.
- Publications and subscriptions (newspapers, magazines, books, pre-printed materials, reprints, publishers page charges, electronic publications, online subscription services, pre-recorded audio or video cassettes, slide presentations, tapes, CDs, diskettes when purchased from the publisher or producer; etc.).
- Mailing lists (print or electronic).
- Professional association membership dues, fees, licenses, accreditation, and certifications.
- Royalties, broadcast rights, and film rentals from the producer or protected distributors.

- Petty cash purchases and reimbursements.
- Special items pre-approved by the Executive Director.

CHAPTER 10: DISPOSAL OF SURPLUS PROPERTY

The Executive Director shall be responsible for the disposition of surplus property (non-real property) no longer necessary for BHA's purposes and shall establish procedures for the transfer, sale, or disposal of such property, consistent with applicable laws and the policies as described herein.

Prior to disposition of any property, a determination of it being surplus to the needs of BHA must be documented along with an estimate of current fair market value of the item to be sold or disposed of. The Executive Director has the responsibility to determine items are surplus to the needs of the agency, but may delegate this responsibility to Directors or Managers who report directly to the Executive Director.

Surplus property must be sold through a process designed to ensure reasonable value is obtained for it. Listing for sale in a publicly offered medium (printed or internet based) and auctions are preferred as it affords increased price transparency through potentially greater buyer participation. Employees and Board Commissioners may only purchase items in an auction setting that is publicly offered to ensure price competition occurs. In the absence of such public price competition, employees and Board Commissioners shall not acquire surplus property, either by purchase or donation of zero (0) dollar value items.

Items to be disposed of that are no longer functional, or estimated to have no market value, may be discarded if appropriate. The determination of non-functional status and lack of market value must be documented.

Surplus Items may not be donated to other governmental or non-profit agencies, with the exception that items deemed surplus may be donated to another governmental entity or non-profit agency if "value" is being received by BHA in return (i.e., provision of service that BHA would otherwise be obligated to provide). Documentation of the determination of surplus status, estimation of market value, and valuation of services or goods provided in return must be maintained.

When surplus property is disposed of, a list of the property with the estimated value must be prepared and provided to the Finance Department so that asset accounts may be reduced as appropriate in the general ledgers, and this documentation shall be kept for auditing purposes.

CHAPTER 11: DIVERSITY IN CONTRACTING

11.1 Diversity in Contracting

BHA will take affirmative steps and encourage the use of women- and minority-owned businesses (WMBEs), businesses owned by economically disadvantaged persons, and small businesses as contractors, subcontractors, consultants, and service providers.

11.2 Participation by WMBEs

In reporting participation by WMBEs on BHA contracts, generally BHA will consider as WMBEs businesses that have been certified by appropriate agencies, although, where appropriate, BHA may also consider businesses as WMBEs that it can verify from available information to be owned by women or minorities.

11.3 HUD Section 3 Requirements

BHA will comply with Section 3 of the Housing Act of 1968, as amended by Section 915 of the Housing and Community Development Act of 1992, regarding use of Section 3 certified businesses and Section 3 eligible individuals.⁷⁹ BHA will provide a preference to Section 3 businesses in the award of contracts, regardless of funding source, as described below:

1. In awarding contracts based on bids (where price is the sole determining factor for award), BHA will award contracts to the low bidder; provided however, if a Section 3 business' bid exceeds the low bid by no more than 10%, BHA may award the contract to the Section 3 business at the price bid by the Section 3 business.
2. In awarding contracts based on proposals in which price is one factor in determining award, the evaluation criteria will provide for up to 15 points (out of 115) to be assigned to any qualified Section 3 business, unless the Executive Director, upon recommendation of the director of the department awarding the contract determines, based upon the circumstances, that fewer points should be established in the evaluation criteria. Qualified Section 3 businesses shall receive the maximum number of points authorized in this evaluation criterion.
3. Generally, BHA will evaluate Section 3 businesses that have been certified by appropriate agencies, although, where appropriate, BHA may also evaluate Section 3 businesses that it can verify from available information to meet the requirements to qualify as a Section 3 business.⁸⁰
 - a) A business may qualify as a Section 3 business if the business is owned by Section 3 qualified persons who live in the City of Bremerton and who meet the prescribed income limitations based on family size.
 - b) A business may qualify as a Section 3 business if 30% or more of their

permanent, full-time employees (core employees within the last 12 months) are Section 3 qualified persons who live in the City of Bremerton and meet the prescribed income limitations based on family size.

- c) A business may qualify as a Section 3 business based on a commitment to subcontract with other Section 3 businesses for more than 25% of the dollar amount of the contract with BHA.
4. Such businesses shall be required to submit with their bid or proposal a plan describing how they will implement the subcontracting commitment. Prior to an award or selection by BHA, the subcontracting plan shall be evaluated by BHA to determine if it is reasonable and attainable. BHA shall monitor the compliance of a selected Section 3 business with their subcontracting commitment. All solicitations and contracts shall include provisions for declaring a breach of contract for failure to meet the subcontracting commitment, and for assessing penalties or damages for such a breach.

END NOTES

¹ 2 CFR 200.318(a)

² 2 CFR 200.318(a)

³ 2 CFR 200.324(c)(2)

⁴ 2 CFR 200.324(c)(2)

⁵ 2 CFR 200.318(i)

⁶ RCW 42.56

⁷ RCW 42.56.120

⁸ HUD Handbook 1344.1 Rev. 2 Section 4-8

⁹ RCW 35.82.050(2) and 2 CFR 200.318(c)(1)

¹⁰ RCW 35.82.050(1)

¹¹ 2 CFR 200.318(c)(1) & Section 19 of Annual Contributions Contract (Form HUD-53012A)

¹² From BHA Personnel Policies (4/27/15) – Section 1.6 Definitions

¹³ Section 19 (A)(1)(ii) of Annual Contributions Contract (Form HUD-53012A)

¹⁴ Section 19(A)(3) of Annual Contributions Contract (Form HUD-53012A)

¹⁵ 2 CFR 200.318(h) & 2 CFR 200.319(a)

¹⁶ 2 CFR 200.318(d)

¹⁷ 2 CFR 200.319(a) & RCW 39.04.155(4)

¹⁸ 2 CFR 200.318(d)

¹⁹ 2 CFR 200.319(a) & RCW 39.04.155(4)

²⁰ 2 CFR 200.320

²¹ 2 CFR 200.320(a)

²² FAR 2.101

²³ 2 CFR 200.319(b)

²⁴ 2 CFR 200.319(a)(7)

²⁵ RCW 39.04.155(2)(c)

²⁶ 2 CFR 200.320(c)

²⁷ 2 CFR 200.320(c)(1)

²⁸ 2 CFR 200.320(c)(2)(i)

²⁹ 2 CFR 200.320(c)(2)(v)

³⁰ 2 CFR 200.320(d)

³¹ 2 CFR 200.320(d)

32 2 CFR 200.320(d)(5)
 33 2 CFR 200.320(f)
 34 2 CFR 200.323(b)
 35 HUD Procurement Handbook, 7460.8 Rev 2, Section 6.5.B and Section 7.1.F
 36 2 CFR 200.319
 37 HUD Procurement Handbook, 7460.8 Rev 2, Section 6.8 and Section 7.2.F.5
 38 HUD Procurement Handbook, 7460.8 Rev 2, Section 10.2
 39 HUD Procurement Handbook, 7460.8 Rev 2, Section 10.2.H
 40 2 CFR 200.318(h)
 41 2 CFR 200.325
 42 2 CFR 200.325
 43 2 CFR 200.325
 44 HUD Procurement Handbook, 7460.8 Rev 2, Chapter 6.11.C
 45 HUD Procurement Handbook, 7460.8 Rev 2, Section 10.1
 46 2 CFR 200.323(d)
 47 HUD Procurement Handbook, 7460.8 Rev 2, Section 10.8.C.2
 48 HUD Procurement Handbook, 7460.8 Rev 2, Section 10.8
 49 HUD Procurement Handbook, 7460.8 Rev 2, Section 10.8
 50 2 CFR 200.319(a)(1) & (a)(2)
 51 2 CFR 200.319(b)
 52 2 CFR 200.319(a)(6)
 53 2 CFR 200.319
 54 2 CFR 200.323(a)
 55 RCW 39.04.020
 56 2 CFR 200.323(a)
 57 2 CFR 200.323(a)
 58 2 CFR 200.323(b)
 59 2 CFR 200.323(a)
 60 2 CFR 200.318(k)
 61 2 CFR 200.320(b)
 62 2 CFR 200.320(c)
 63 2 CFR 200.320(d)
 64 Chapter 39.80 RCW
 65 2 CFR 200.320(d)(5) & RCW 39.80
 66 2 CFR 200.319(d)
 67 2 CFR 200.320(d)(5)
 68 RCW 39.04.010
 69 FAR 2.101
 70 FAR 2.101
 71 RCW 39.04.155(2)(c)
 72 RCW 39.04.155(2)(c)
 73 RCW 39.04.155(3)
 74 2 CFR 200.318(g)
 75 FAR 2.101
 76 FAR 2.101
 77 RCW 39.04.155(2)(c)
 78 RCW 39.04.155(3)
 79 24 CFR 135
 80 24 CFR 135.5