

HARRISBURG HOUSING AUTHORITY



PROCUREMENT POLICY

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**HARRISBURG HOUSING AUTHORITY
PROCUREMENT POLICY**

A. General Provisions

The purpose of the Harrisburg Housing Authority's Procurement Policy is to:

1. provide for the fair and equitable treatment of all persons or firms involved in purchasing by the Authority;
2. assure that goods, services and construction are procured efficiently, effectively, and at prices most favorable to the HA;
3. promote competition in contracting;
4. provide safeguards in maintaining a procurement system of quality and integrity; and
5. assure that HHA purchases are in full compliance with applicable Federal standards, HUD regulations, and State and local laws.

The following outlines: applicability of this policy; procurement administration responsibilities; procurement methods, equal employment opportunity, requirements for contracting with small businesses, women-owned firms, minority-owned firms and labor surplus area firms, Section 3 businesses, MBE/WBE/SBE goals and objectives; appeals and remedies; and Code of Conduct.

B. Applicability

This Policy is applicable to all contracts for the procurement of supplies, equipment, services, and construction entered into by the Authority.

It is applicable to every expenditure of public funds by the Authority for public purchasing, irrespective of the source of funds, including contracts which do not involve an obligation of funds (such as concession contracts).

Nothing in this Policy shall prevent the Authority from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with law.

C. Procurement Authority and Administration

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1. Procurement activity shall be administered by the President or other individuals authorized by the President.

The President shall be responsible for developing procedures, procurement forms and documents to implement this Policy and a system of sanctions for violations of the ethical standards described in this Agency's Code of Conduct and Code of Ethics.

2. It is the President's responsibility to ensure that:
 - a. procurement requirements are subject to an annual planning process to assure efficient and economical purchasing;
 - b. procurement documents clearly specify the desired products, construction effort, and/or services, and the history of each procurement is fully documented; including the method of procurement, the selecting of contract type, rationale for selecting offers, and the basis for the contract price;
 - c. for all procurements other than micro and small purchases, public notice is given at least ten (10) days before solicitation, responses to notices are honored to the maximum extent practical, that a minimum of fifteen (15) days is allowed for preparation and submission of bids or proposals, and to make notices of awards available to the public;
 - d. solicitation procedures are conducted consistent with 24 CFR 85.36 and in full compliance with the more stringent of Federal standards and State and local laws;
 - e. independent cost estimates are prepared before solicitations and are safeguarded for procurements above the small purchase limitation. A cost or price analysis is conducted of responses received for all procurement;
 - f. contract award is made to the responsive and responsible bidder offering the lowest price; or contract award is made to the offeror whose proposal offers the greatest value to the HHA, considering

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price and technical factors, as specified in the solicitation (competitive proposal situations);

- g. unsuccessful firms are notified within ten (10) days after contract award;
- h. there are sufficient unencumbered funds available to cover the anticipated cost before a contract award or modification, work is inspected before payment, and payment is made (net 30) promptly for work accepted; and,
- i. the Authority complies with applicable HUD review requirements.

D. Procurement Methods

Upon determination that the required goods or services will be purchased directly by the Authority, one of the following procurement methods will be chosen, based on the nature and anticipated dollar value of the total requirement.

1. Small/Informal Purchase Procedures

General. Any purchase of \$10,000. or less may be made in accordance with the purchase procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase, thereby avoiding the more formal requirements associated with the other procurement methods discussed below.

The Harrisburg Housing Authority Board of Commissioners accepts the premise that, should legislation be passed, thresholds would be increased accordingly.

- a. Petty Cash Purchases. Any purchase of \$100. or less which can be satisfied by local sources may be processed through the use of a cash fund and shall be supported by receipts. A per transaction amount is established at \$20 maximum per purchase. The Accounting Department shall ensure that:

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- (1) the account is established in an amount sufficient to cover small purchases made during one (1) week;
- (2) security is maintained and only authorized individuals have access to the fund;
- (3) the fund is periodically reconciled and replenished by submission of a voucher to the HHA finance officer or designee ; and
- (4) the account is periodically audited by the finance officer or designee to validate proper use and that the fund total equals cash on hand plus the total of accumulated vouchers.

- b. Micro Purchases. Micro purchases are those purchases over \$100, and not exceeding \$2,000.

Such purchases shall require one price quote if the price received is considered reasonable. These purchases shall be distributed equitably among qualified sources. If practicable, a quotation shall be solicited from other than the previous source before placing a repeat order.

- c. Small/Informal Purchases. Purchases and contracts ranging over \$2,000.0 and not exceeding \$10,000. shall be made on the basis of at least three price quotes obtained orally, by telephone; or in writing, by facsimile, U.S. mail, e-mail or electronic submission (as solicited through confidential e-procurement methods, i.e., reverse auctions, NAHRO-supported "Transpire" e-procurement system, public agency surplus auctions), as allowed by State or local laws. Award shall be to the offeror providing lowest acceptable quotation, unless justified in writing, based on price and other specific factors. If non-price factors are used, they shall be made known to all those solicited.

The names, addresses, and/or telephone numbers of the firms/persons contacted, the date and amount of each quote

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received, shall be recorded and maintained as a public record unless otherwise provided in State or local law.

These purchases as stated in b. and c. above shall be made via standard purchase order or applied to a corporate credit card as approved by the President or his designee.

2. Competitive Proposals

- a. Goods and services costing over \$10,000. generally shall be procured on the basis of competitive proposals when there is an adequate method for evaluating proposals and use of sealed bids is not appropriate
- b. Solicitation. The requests for proposals (RFP) shall clearly identify the relative importance of price and other evaluation factors and sub factors, including the weight given to each technical factor and sub factor. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals. The proposals shall be evaluated only on the criteria stated in the request for proposals. MBE/WBE/Section 3 goals shall be included as an evaluation factor in RFPs to the maximum extent feasible. Solicitation is permitted via e-procurement methods capable of maintaining confidentiality.
- c. Negotiations. Unless there is no need for negotiations with any of the offers, negotiations shall be conducted with offerors who submit proposals determined to have a reasonable chance of being selected for award, based on evaluation against the technical and price factors as specified in the RFP. These offers shall be determined by the HHA to be in the competitive range based on a cost/price analysis. Such offerors shall be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. The purpose of negotiations shall be to seek clarification with regard to and advise offerors of the deficiencies in both the technical and price

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aspects of their proposals so as to assure full understanding of and conformance to the solicitation requirements. No offeror shall be provided 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. Offerors shall not be directed to reduce their proposed prices to specific amount in order to be considered for award. A common deadline shall be established for receipt of proposal revisions based on negotiations.

- d. Award. After evaluation of proposal revisions, if any, the contract shall be awarded to the responsible firm whose qualifications, price and other factors considered, are the most advantageous to the HHA.

- e. Architectural/Engineering services in excess of the small purchase limitation may be obtained by competitive proposals or qualifications-based selection procedures mandated by State law. Under the qualifications-based selection procedures:
 - the RFP shall identify the factors to be evaluated, and;

 - based on evaluation of those factors, the most qualified firm is selected, subject to negotiation of fair and reasonable compensation.

3. Sealed Bids

- a. This method will be used when: (1) complete, adequate, realistic specifications or descriptions are available, (2) two or more responsible bidders are available and willing to compete (3) procurements lend themselves to firm fixed price contracts, and (4) selection of winners can be made principally on the basis of price.

- b. Sealed bids for expenditures in excess of \$10,000. do not apply to the types of expenditures listed below. The Authority shall use sealed bids or competitive proposals for expenditures exceeding

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\$10,000., or for non-competitive proposals for expenditures meeting criteria as outlined in Section 4.

- (1) a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the Authority's residents or to preserve the property of the Authority;
- (2) a procurement necessary to preserve or protect the public health or safety of the residents;
- (3) a procurement necessary because of unforeseen damage to public machinery, equipment, or other property;
- (4) a procurement for personnel or professional services which does not qualify for small purchase process shall be processed through the competitive proposal method;
- (5) a procurement for work that is performed and paid for by the day as the work progresses;
- (6) a purchase of land or a right-of-way;
- (7) a procurement of items that are available from only one source, including:
 - (A) items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies;
 - (B) films, manuscripts, or books;
 - (C) electricity, gas, water, and other utility services;
 - (D) captive replacement parts or components for equipment; and

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- (E) books, papers, and other library materials that are available only from the persons holding exclusive distribution rights to the materials;
- (8) personal property sold:
 - (A) at an auction by a state licensed auctioneer;
 - (B) at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; or
 - (C) by a political subdivision of this state, a state agency of this State, or an entity of the Federal government.
- 4. Sealed and Competitive Bidding Procedure Applicable to a Contract

If the Housing Authority is to award a contract for a service, for a commodity, or if for construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property on the basis of competitive bids, and if the contract requires an expenditure exceeding \$10,000. from the funds of the HHA, the bidding on the contract shall be accomplished in the following manner.

a. Advertisement of Bids

The Authority shall advertise for bids. The advertisement for bids shall include a notice that:

1. describes the work;
2. states the location at which the bidding documents, plans, specifications, or other data may be examined by all bidders; and
3. states the time and place for submitting hard copy paper bids and/or the deadline for electronic submission of bids if solicitation is via e-procurement methods, and the time and place that bids will be opened, when applicable.

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- b. For purchases and contracts exceeding \$10,000., (except for expenditures itemized in #1 through #8 (part 3b above) the Contracting Officer, at his/her discretion, shall decide upon the appropriate solicitation method including any of the following methods:

Formal advertisement in one local newspaper; notification to interested bidders in file; issuance of solicitation via e-procurement methods, posting notices in public places, or a combination of any of these such means.

- c. The advertisement shall be made on or before the tenth (10th) day before the bid deadline. The notice should also indicate requirements for MBE/WBE/Section 3 participation.

- d. The Housing Authority shall deliver (either hard copy via mail or electronically via facsimile or e-mail) a notice containing the information required under subsection (a) to any organization that:

1. requests in advance that notices for bids be sent to it;
2. agrees in writing to pay the actual cost of delivering the notice; and
3. certifies that it circulates notices for bids to the construction trade in general.

5. Bonding

Construction contracts, construction equipment contracts and facility improvement contracts or subcontracts exceeding \$25,000 require a bid guarantee as follows:

- (1) A bid guarantee from each bidder equivalent to five per cent of the bid price; and one of the following:

Performance & Payment bonds apply to all construction work over \$100,000.

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(2) Assurance of Completion

This assurance to be:

(Contracting Officer shall select applicable items)

- (a) A performance and payment bond in a penal sum of 100 percent of the contract price; or, as may be required or permitted by State law; or
- (b) A separate performance and payment bonds, each for 50 percent or more of the contract price; or
- (c) A 20 percent cash escrow; or
- (d) A 25 percent irrevocable letter of credit.

6. Opening of Bids

- a. Bids may be opened only by the Board of Commissioners of the HHA at a public meeting, or by an officer or employee of the HHA in an office of the Housing Authority. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price.
- b. The above criteria does not change the common law right of a bidder to withdraw a bid due to a material mistake in the bid.
- c. Corrections in bids may be permitted only when bidders can show clearly that a mistake of a non-judgmental nature was made, the nature of the mistake and the bid price actually intended.
- d. Written determinations signed by the Authority's contracting officer is prepared when correction or withdrawal of bid mistakes are allowed.

1. Mistakes in Bids

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- (A) Correction or withdrawal of inadvertently erroneous bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the invitation for bids prior to the time set for bid opening.
- (B) After bid opening, corrections in bids shall be permitted only if the bidder can show by clear and convincing evidence that a mistake of a non-judgmental character was made, the nature of the mistake, and the bid price actually intended.
- (C) A low bidder alleging a non-judgmental 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.
- (D) After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the HHA or fair competition shall be permitted.
- (E) All decisions to allow correction or withdrawal of bid mistakes shall be supported by a written determination signed by the Purchasing Agent.

7. Award of Contract

Other than approval of this Procurement Policy, approval by the Board Commissioners of the Housing Authority shall be required for procurement actions exceeding the \$50,000 threshold, inclusive of indefinite quantities contracts. Rather, it is the responsibility of the President to ensure that all procurement actions are conducted in accordance with the policies contained herein.

- a. The Housing Authority is entitled to reject any and all bids.

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- b. The Housing Authority will evaluate bids in response to this solicitation and shall award and contract to the responsible bidder whose bid the most advantage to the Housing Authority considering price and other factors. The Housing Authority reserves the right to accept other than the lowest bidder and waive minor irregularities in bids received. The Housing Authority may reject any bid as nonresponsive, if it is materially unbalanced or if the bidder has a history of nonperformance documented by the Housing Authority.

- c. If only one responsive bid is received, award will be made only when a cost or price analysis verifies reasonableness of price.

Note: In determining who is a responsible bidder, the HHA may take into account the safety record of the bidder, provided, however, that the HHA has adopted a written definition and criteria for accurately determining the safety record of a bidder and has given notice to prospective bidders, in the bid specifications, that the safety record of a bidder may be considered in determining the responsibility of that bidder and, provided further, that such determinations are not arbitrary and capricious.

- d. The Contractor and/or HHA shall incorporate into the language of the Contract the required MBE/WBE/Section 3 Clauses

8. Non-Competitive Proposals

Procurement by non-competitive proposals may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids, or competitive proposals, and one of the following applies:

- a. The item is available only from a single source.

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- b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
- c. After solicitation of a number of sources, competition is determined inadequate.

Each procurement based on non-competitive proposals shall be supported by written justification of the circumstances requiring uses of such procedures, approved in writing by the President and shall be subject to cost analysis to ensure reasonableness of price.

If the proposed award exceeds any HUD established threshold, it will be forwarded to HUD for pre-award review and approval.

The HA self-certifies procurement procedures are conducted consistent with 24 CFR 85.36 and in full compliance with the more stringent of Federal standards and State and local laws.

9. Cost and Price Analysis

a. General. A cost or price analysis shall be performed for all procurement actions including contract modifications (unless expenditure is for obtaining products or services of a commercial nature). The degree of analysis shall depend on the facts surrounding each procurement in accordance with HUD Handbook 7460.8 Rev. 2 - Section 10-3. Generally the following will apply:

(1) Small Purchases require price analysis.

(2) Sealed Bidding over \$10,000 requires price analysis. However, cost analysis will be required in certain situations when only one bid is received.

(3) Competitive Proposals depend on the type of procurement.

(a) Cost reimbursement/firm fixed fee approach requires a cost analysis utilizing cost principles in HUD Handbook 2210.18.

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- (b) Fixed Price approach requires a limited cost analysis. Procurement under \$100,000. requires a price analysis to determine a fair and reasonable total price may be performed. For procurement of \$100,000. and over, an analysis of all cost elements will be required. However, agreement between the Contractor and agency on all cost elements is not necessary to determine an agreement on total price. The objective of the agency is to negotiate total prices that are fair and reasonable, costs and other factors considered.

 - (4) Non-competitive Proposals require cost analysis, except as provided in HUD Handbook 7460.8 Rev. 2 Section 10.3.B.

 - (5) Contract Modifications require cost analysis based on HUD Handbook 2210.18 unless contract modifications are based on pricing terms established in contract document.

 - (6) Contract Termination requires cost analysis to arrive at termination settlement.

 - (7) Cost Reimbursement Contracts require cost analysis and use of principles in HUD Handbook 2210.18.

 - (8) Architect/Engineer Contracts and Modifications require a cost analysis except for contracts for equipment and other kinds of personal property. The agency shall determine allowable costs per HUD Handbook 2210.18.
- b. Required Contractor Documentation. If the procurement is based on noncompetitive proposals, or when only one (1) offer is received, or for other procurements as deemed necessary by the HHA (e.g., when contracting for professional, consulting, or architect/engineer services) the contractor shall be required to submit:
- (1) a cost breakdown showing projected costs and profit;

 - (2) commercial pricing and sales information, sufficient to enable the HHA to verify the reasonableness of the

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- proposed price as a catalog or market price of a commercial product sold in substantial quantities to the general public; or
- (3) documentation showing that the offered price is set by law or regulation.
- c. Cost Analysis. Cost analysis shall be performed if an offeror/contractor is required to submit a cost breakdown as part of its proposal. When a cost breakdown is submitted: a cost analysis shall be performed of the individual cost elements; and profit shall be analyzed separately. Costs shall be allowable only to the extent that they are consistent with applicable Federal cost principles (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation, 48 CFR Chapter 1). In establishing profit, the Authority shall consider factors such as complexity and risk of the work involved, the contractor's investment and productivity, amount of subcontracting, quality of past performance, and industry profit rates in the area for similar work.
- d. Price Analysis. A comparison of prices shall be used in all cases other than those described in paragraph c above.
10. Cancellation of Solicitations
- a. An invitation for bids, request for proposals, or other solicitation may be canceled before offers are due if: the Authority no longer requires the supplies, services or construction; funds will not be available; proposed changes are of such magnitude that a new solicitation would be needed; or similar reasons.
- b. A solicitation may be canceled and all bids or proposals that have already been received may be rejected if: the supplies, services, or construction are no longer required; the HHA's solicitation was inadequate; prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds; there is reason to believe that bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or for

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good cause of a similar nature when it is in the best interest of the Authority.

- c. The reasons for cancellation shall be documented in the procurement file and the reasons for cancellations and/or rejection shall be provided upon request to any offeror solicited.
- d. A notice of cancellation shall be sent to all offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any re-solicitation or future procurement of similar items.
- e. If all otherwise acceptable bids received in response to an invitation for bids are at unreasonable prices, or only one bid is received and the price is unreasonable, the HHA shall cancel the solicitation and either:
 - (1) re-solicit using a request for proposals; or
 - (2) complete the procurement by using the competitive proposals method, or by using the noncompetitive proposals method; provided, that the Contracting official determines in writing that such action is appropriate, all bidders are informed of the HHA's intent to negotiate, and each responsible bidder is given a reasonable opportunity to negotiate.

11. Inter-Governmental Agreement

The HHA may enter into State and local inter-governmental agreements to procure or use common goods and services.

The decision to use an inter-governmental agreement or conduct a direct procurement shall be based on economy and efficiency.

If used, the inter-governmental agreements 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.

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12. Types of Contracts and Clauses

a. Contract Types

Any type of contract which is appropriate to the procurement and which will promote the best interests of the HHA may be used, provided that the cost-plus-a-percentage-of-cost and percentage of construction cost methods are prohibited. All procurements shall include the clauses and provisions necessary to define the rights and responsibilities of the parties. A cost reimbursement contract shall not be used unless it is likely to be less costly or it is impracticable to satisfy the HHA's needs otherwise, and the proposed contractor's accounting system is adequate to allocate costs in accordance with applicable cost principles (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation (FAR), found in 48 CFR Chapter 1). Time and material contracts may be used only if a determination is made that no other contract type is suitable, and the contract includes a ceiling price that the contractor exceeds at its own risk.

b. Options

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

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13. Specifications

a. General

All specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying the HHA's needs. Specifications shall be reviewed prior to solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. Functional or performance specifications are preferred. Detailed product specifications shall be avoided whenever possible. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase (but see Paragraph F, Contracting With MBE, WBE Enterprises, above). For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

b. Limitations

The following specifications limitations shall be avoided: geographic restrictions not mandated or encouraged by applicable Federal law (except for architect-engineer contracts, which may include geographic location as a selection factor if adequate competition is available); unnecessary bonding or experience requirements; brand name specifications (unless a written determination is made that only the identified item will satisfy the HHA's needs); brand name or equal specifications (unless they list the minimum essential characteristics and standards to which the item shall conform to satisfy its intended use). Nothing in this procurement policy shall preempt any State licensing laws. Specifications shall be scrutinized to ensure that organizational conflicts of interest do not occur (for example, having a consultant perform a study of the HHA's computer needs and then allowing that consultant to compete for the subsequent contract for the computers).

14. Contractor Qualifications and Duties

a. Contractor Responsibilities

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Procurements shall be conducted only with responsible contractors, i.e., those who have the technical and financial competence to perform and who have a satisfactory record of integrity. Before awarding a contract, the HHA shall review the proposed contractor's ability to perform the contract successfully, considering factors such as the contractor's integrity (including a review of the List of Parties Excluded from Federal Procurement and Non-procurement Programs published by the U.S. General Services Administration), compliance with public policy, record of past performance (including contracting previous clients of the contractor, such as other HA's), and financial and technical resources. If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the contract file, and the prospective contractor shall be advised of the reasons for the determination.

b. Suspension and Debarment

Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined ineligible by HUD in accordance with HUD regulations (24 CFR Part 24) when necessary to protect the HHA in its business dealings. Documentation of Housing Authority review will be maintained in the contract/procurement file.

c. Qualified Bidders' Lists

Interested businesses shall be given an opportunity to be included on qualified bidder's lists. Any pre-qualified lists of persons, firms, or products which are used in the procurement of supplies and services shall be kept current and shall include enough qualified sources to ensure competition. Firms shall not be precluded from qualifying during the solicitation period. Solicitation lists of potential contractors shall include, but not be limited to, such pre-qualified suppliers. Vendors are encouraged to register upon the web-based e-procurement website, Transpire. This allows for automatic electronic notification to bidders of HHA solicitations.

15. Equal Employment Opportunity

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The HHA will incorporate or cause to be incorporated into any contract for construction or modification work which is paid for in whole or in part with funds obtained under the ACC, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

- a. The contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated properly during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the HHA setting forth the provisions of this equal opportunity clause.
- b. The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, or national origin.
- c. The contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the HA advising the labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The contractor shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

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- e. The contractor shall furnish all information and reports required by Executive Order No. 11246 and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to his books, records, and accounts by the Government and the Secretary for Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- f. In the event of the contractor's noncompliance with the equal opportunity clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further contract in accordance with procedures authorized in Executive Order No. 11246 and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

- g. The contractor shall include the portion of the sentence immediately preceding Paragraph (1) and the provisions of Paragraph (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 so that such provisions shall be binding upon each subcontractor or vendor. The contractor shall take such action with respect to any subcontract or purchase order as the Government may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Government, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The HHA will assist and cooperate actively with the Government and the Secretary of Labor in obtaining compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, and will furnish the Government and the Secretary of Labor such

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information as they may require for the supervision of such compliance, and will otherwise assist the Government in the discharge of the Government's primary responsibility for securing compliance.

The HHA will not enter into any contract modification subject to Executive Order No. 11246 with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon contractors and subcontractors by the Government or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

The HHA will not participate in a contractual or other relationship that has the effect of subjection of a qualified applicant(s) with a handicap(s) or an employee(s) with handicaps to discrimination prohibited by Federal regulation. The relationships referred to in this paragraph include relationships with employment and referral agencies, labor union, organizations providing or administering fringe benefits to employees of the HHA, and organizations providing training and apprenticeship programs.

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**Business Type
Definitions**

- A. A **small business** is one which is: independently owned; not dominant in its field of operation; and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in 13 CFR 121 shall be used, unless the HHA determines that their use is inappropriate.
- B. A **minority-owned business** is one which is at least fifty-one percent (51%) owned by one or more minority group members; or, in the case of a public-owned business, one in which at least fifty-one percent (51%) of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans and Asian Indian Americans, and Hasidic Jewish Americans.
- C. A **women's business** enterprise is one that is at least fifty-one percent (51%) owned by a woman or women who are U.S. citizens and who also control or operate the business.
- D. A **labor surplus area** business is one which, together with its immediate subcontractors, will incur more than fifty percent (50%) of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the U.S. Department of Labor in 20 CFR 654, Subpart A, and in lists of labor surplus areas published by the Employment and Training Administration.
- E. A business concern located in the area of the development, is defined as an individual or firm located within the relevant **Section 3** covered development area, as determined pursuant to CFR 135.36, listed on HUD's registry or eligible business concerns, and meeting the definition of small business above. A business concern owned in substantial part by persons residing in the area of the development is one which is fifty-one percent (51%) or more owned by persons residing within the Section 3 covered development, owned by persons considered by the U.S. Small Business Administration to be socially or economically disadvantaged, listed on HUD's registry of eligible business concerns, and meeting the definition of small business above.

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Contracting With Small and Minority-Owned Firms, Women's Business Enterprises, Labor-Surplus Area Firms and Section 3 Business Concerns

Requirements. The HHA will take all necessary affirmative efforts to ensure that small and minority-owned firms, women's business enterprises, and labor surplus area firms are used when possible. Such efforts shall include, but not be limited to the following:

1. including such firms, when qualified, on solicitation lists;
2. encouraging their participation through direct solicitation bids or proposals whenever they are potential sources;
3. dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by such firms;
4. establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
5. using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
6. including in contracts and solicitations, a Section 3 clause requiring contractors, to the greatest extent feasible, to provide opportunities for training and employment for low-income residents of the development area and to award subcontracts for work in connection with the development to business concerns which are located in, or owned in substantial part by persons residing in the area of the development; and
7. requiring prime contractors, when subcontracting is anticipated, to take the affirmative steps listed in 1. through 6. above.

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Minority Business Enterprises

A "minority business enterprise" (MBE) is one that is owned or controlled by one or more socially or economically disadvantaged persons. Such persons include Blacks, Hispanic Americans, American Indians, Eskimos, Aleuts, Hasidic Jews, Asian Pacific Americans, and Asian Indians.

"Owned or controlled" by one or more socially and economically disadvantaged persons means that a socially and economically disadvantaged person or persons, or a for-profit business, or a non-profit organization controlled by such person or a for-profit business, or a non-profit organization controlled by such person or persons, possesses at least fifty-one percent (51%) of the ownership of the business, and its management and daily business operation are controlled by such persons.

The Housing Authority will take the following actions to provide every feasible opportunity for minority business enterprises (MBEs) to participate in bidding for HA work.

- A. The HA will have a goal to award at least twenty percent (20%) of the dollar value of approved funds to contractors with MBE construction contractors, A/E's, or consultants (for both physical and management improvements). Where the main construction contract is awarded to an MBE, the HA will count the entire dollar amount of the contract toward its MBE goal. Where the main construction contract is not awarded to an MBE, but one or more of the subcontract(s) is awarded to an MBE, the HA will count the dollar value of such subcontracts toward the MBE goal. The HA will not double count the dollar value of the main construction contract and its subcontracts. The HA will report its MBE progress on Form HUD-2516, Contract and Subcontract Activity Report for Public and Indian Housing Programs.

- B. To ensure that MBE's are aware of HHA's bidding opportunities, the Housing Authority will, in addition to its existing procedures for publicizing upcoming Invitations for Bid or Requests for Proposals, may;
 - 1. purchase timely advertisement in media with a largely minority audience;
 - 2. solicit bids or requests for proposals directly from existing MBE's lists;

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3. post signs around developments and in the HA management office and local stores;
 4. notify community organizations, public or private institutions, and local minority business organizations and trade associations;
 5. notify resident organizations;
 6. notify The Mayor's office of Economic Development of opportunities.
- C. The HA will take appropriate affirmative action to assist women's business enterprises and maintain information and reports about such enterprises.
- D. The HA will have a goal to award MBE's at least twenty percent (20%) of the dollar value of the total contracts awarded and purchases made under the development program.
- E. The HA will have a goal to award MBE's at least ten percent (10%) of the total amount expended for management operations (i.e., expenditures for contracts and purchases for supplies and services, as distinguished from salaries, wages and benefits). A listing of the account numbers affected by MBE reporting is in HUD Notice PIH 88-11

MBE/WBE Consideration in Professional Selections

In furtherance of the stated policy the HA;

1. will give preference points in evaluations;
2. recognize all related certifications;
3. encourage responses that include consultants and/or joint venture opportunities with MBEs or WBEs;
4. engage in outreach endeavors to encourage MBE/WBE participation in the RFP process.

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**Section 3
Clause, Plan, Certification**

Section 3 Clause

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD assisted projects covered by section 3, shall to the greatest extent feasible, be directed to low and very low income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR, part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has been found in violation of the regulations in 24 CFR, part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

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F. Non compliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

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Section 3 Plan

Employment Opportunities for Business and Low-Income Persons in Connection with Federally-Assisted Projects

A. Purpose:

To ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

B. Policy:

It shall be the policy of the Harrisburg Housing Authority:

1. To comply with Federal regulations as required by Section 3 of the Housing and Urban Development Act of 1968, as amended. (12 U.S.C., 1701u)
2. To provide an ongoing program which assures the opportunity for job training, employment and recruitment of low-income persons within the metropolitan area (or non-metropolitan county) in which the assistance is expended.
3. To assure that contract work in connection with projects be awarded to business concerns which are located in the project metropolitan area, or owned in substantial part by area residents.
4. To ensure maximum compliance with Section 3 regulations, by requiring a written Section 3 Action Plan from all prospective bidders, along with the submission of all bid proposals. Prospective bidders shall be required to submit their utilization goals which shall be reviewed for its compliance with the Housing Authority Section 3 Plan as a part of their contract.
5. To encourage firms outside the project area to joint venture proposals with local area firms in the bidding process.

C. Definitions:

1. HHA - The Harrisburg Housing Authority, herein referred to as “HHA”
2. Applicant - The Harrisburg Housing Authority located in Harrisburg, Pennsylvania (HHA).
3. Contracting Party - The Harrisburg Housing (HHA).
4. Contractor - The individual, company, corporation, partnership, or other entity which contracts to perform work generated by the expenditure of Section 3 covered assistance in connection with a Section 3 covered project.
5. Business Concerns Located Within the Area - Individuals or firms located in the City of Harrisburg, Pennsylvania, employing primarily, residents of the City, or owned principally by residents of the City, which qualify as a small business under the small business size standards of the Small Business Administration, U.S. Department of Commerce.
6. Project Area - Technically it is the entire area encompassed within the City of Harrisburg, Pennsylvania, and as entire metropolitan area. The authority to determine this project area resides with either the Regional Administrator or Field Office Manager at the HUD Regional Office.
7. Section 3 Business Concern Means a Business Concern as Defined Below:
 - a. That is fifty-one (51) percent or more owned by Section 3 residents;
or;
 - b. Whose permanent, full-time employees include persons, at least thirty (30) percent of whom are currently Section 3 residents, or within three (3) years of the date of first employment with the business concern were Section 3 residents; or
 - c. That provides evidence of a commitment to subcontract in excess of twenty-five (25) percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs 1. and 2. in this definition of “Section 3 business concern.”

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8. Low-Income Residents - Any individual who resides in the metropolitan area and whose family income does not exceed eighty (80) percent of the median income for the Standard Metropolitan Statistical Area, in which the project is located.
9. Section 3 - Section 3 of the Housing and Urban Development Act of 1968. (12 U.S.C. 1701u) (Section 3).
10. Section 3 Clause - The contract provisions set forth in 24 CFR 135.38.
11. Section 3 Covered Programs - Section 3 applies to direct financial assistance awarded, provided or otherwise made available under any program administered by HUD, in the form of loans, grants, (including community development block grants), cooperative agreements, subsidies, contributions, or other types of financial assistance provided in aid of housing, urban planning development, redevelopment, or general, public or community facilities, and new community development.
12. No Thresholds for PHAs and Their Contractors and Subcontractors - HUD maintains that a dollar threshold in Section 3 cover programs is inconsistent with the statute.
13. Subcontractor - Any entity which has agreed to undertake a portion of the Contractor's obligations under a contract with the HHA.

D. Bidding Requirements:

The HHA will require prospective bidders to provide with the bid, a written Section 3 Action Plan showing their intent to comply with the Plan. Prior to execution of a contract, a preliminary statement of work force needs (skilled, semiskilled labor, and trainees, which the HHA will supply a list of potential candidates for the program) where known.

The "Invitation for Bid" shall advise prospective contractors of the requirements of Section 3 regulations as part of the contract specification. Eligible business concerns shall be recruited for covered projects by either; personal contacts, local media, community organizations and public and private institutions which serve the project area.

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E. Contractual Requirements: (Section 3 Clause)

In all contracts for work in connection with a project, a Section 3 Clause shall be included as part of the bid package.

F. Employment and Training – Utilization of Low-Income Residents As Trainees:

To ensure that each Contractor or Subcontractor undertaking work in connection with a Section 3 covered project, utilizes low-income residents of the area as trainees to the greatest extent feasible, the HHA shall require evidence that effort has been made to:

1. Utilize the maximum number of persons in the various training categories.
2. Fill all vacant training positions (if any) with low-income project area residents except for those training positions which remain unfilled after a good faith effort has been made to fill them with eligible low-income project area residents.

G. Establishing the Number of Trainees:

1. For the building construction occupations, the number of trainees or apprentices shall be that number which can reasonably be utilized in each occupation on each phase of a Section 3 covered project and in no event shall that number be less than the number of apprentices determined pursuant to regulations by the Secretary of Labor for each building construction occupation.

The awarded contractor should take into consideration the wages and benefits that for workers and trainees and the maximum dollars under his/her contract that should be allocated to resident training in comparison with the duration of the job, and plan for maximum participation throughout the project.

2. The HHA will monitor the ratio of apprentices to employees pursuant to regulations of the Secretary of Labor, and may establish ratios of apprentices to employees based upon usual local employment practices for occupations which do not have ratios established by the Secretary of Labor.

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H. Good Faith Effort:

In order to demonstrate that good faith effort has been made after the contractor uses all of the HHA resident applicants, to employ low-income residents, each contractor or subcontractor shall set forth evidence that it has:

1. Attempted to recruit from the Section 3 area the necessary number of low-income residents through:
 - a. Local media advertising;
 - b. Signs placed at the proposed site for the project, and community organizations, public or private institutions within or serving the project area, such as the State Employment Service offices, local business offices, etc.
2. Maintained a list of all low-income area residents who have applied, either on their own or on referral from any source, and employ such person if otherwise eligible and if a trainee vacancy exists.
3. Show evidence that it has not filled vacant employment positions in its organization immediately prior to undertaking work, in an attempt to circumvent Section 3 regulations.
4. Reviewed and determined if low-income residents meets minimum hiring qualifications. Such applicants meeting such minimum qualifications, but not hired due to lack of vacancies or for other operational reasons, will be placed on a priority hiring list and offered positions upon the occurrence of the first available appropriate vacancy.

I. Utilization of Low-Income Residents As Employees:

To ensure that each contractor or subcontractor undertaking work in connection with a Section 3 covered project fulfills his obligations to utilize low-income project area residents as employees to the greatest extent feasible, the HHA will require that each contractor or subcontractor:

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1. Identify the number of positions (vacant and occupied) in the various occupational categories including skilled, semi-skilled and unskilled labor, needed to perform each phase of the Section 3 covered project.
2. Identify the position in paragraph "A" above, and the number of positions in the various occupational categories which are currently occupied by regular permanent employees.
3. Identify the positions in paragraph "A" above, and the number of positions in the various occupational categories which are not currently occupied by regular permanent employees.
4. Establish the positions identified in paragraph "C" above, and set a goal which is consistent within each occupational category, of the number of positions to be filled by low-income residents of the Section 3 project area.
5. Make a good faith effort to fill all of the positions identified in paragraph "D" with low-income project area residents.

J. Utilization of Business Located in or Owned in Substantial Part by Persons Residing in the Area:

Each contractor or subcontractor undertaking work on a Section 3 covered project shall assure that to the greatest extent feasible, contracts for work to be performed in connection with the project area are awarded to business concerns located within the Section 3 covered project area or business concerns owned in substantial part (at least 51%) by persons residing in the Section 3 covered area by submitting an "Assurance of Compliance" to the HHA prior to contract award.

K. Grievance and Compliance:

1. The contractor or subcontractor shall understand that any low-income resident of the project area, for himself/herself or as a representative of persons similarly situated, seeking employment or job training opportunities in the project area, or any eligible business concerns seeking contract opportunities, may file a grievance if a good faith effort was not followed.

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2. A grievance shall be filed with HUD not later than ninety (90) calendar days from the date of the action (or omission) upon which the grievance is based.

L. Record Keeping:

The HHA will require the contractor and subcontractor to maintain all records related to employment and job training of low-income residents and to supply the HHA with such records upon request. There is also a bi-weekly and monthly report required as part of the submission. Other such records may include copies of advertisements placed in local media, brochures or publications, assurances of compliance from subcontractors and other materials.

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**Section 3
Contractor's Certification**

The Bidder certifies that they are () are not () a Section 3 Contractor as defined by the Housing and Urban Development Act of 1968 as amended, and defined in the definitions found at 24 CFR 135.5, as follows:

Section 3 business concern means a business concern, as defined in this section-

- (1) That is 51 percent or more owned by section 3 residents; or
- (2) Whose permanent, full-time employees include persons, at least 30 percent of whom are currently section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents; or
- (3) That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of "section 3 business concern."

(Corporate Seal)

Before me, the undersigned notary public, this day personally appeared

_____ of _____ who being dully

sworn to law, deposes and says that the foregoing is true and correct.

Sworn; to me this _____ day of _____ 20____

Notary Public

*to be notarized only when claiming

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16. Appeals and Remedies

1. General

- a. The resolution of disputes arising from the solicitation and award of procurement of contracts, bid protests, and contract performance claims shall be conducted in full compliance with the applicable HUD regulations.

Efforts shall be made to resolve all disputes at HHA level, without litigation.

- b. All irregularities, unacceptable performance and violations by contractors shall be brought to the attention of HUD when all administrative remedies have been exhausted at the Authority level.

2. Bid Protests

- a. Actual or prospective contractors may protest solicitation or award of a contract for serious violations of principles of this procurement policy.
- b. Protests against a solicitation shall be received before the due date for receipt of bids or proposals.
- c. Protests against award of a contract shall be received within ten (10) calendar days after contract award.
- d. All protests shall be in writing, submitted to the contracting officer or designee, who shall issue a written decision on the matter.
- e. If warranted, the President may suspend the procurement pending resolution of the protest.

3. Contract Claims

Claims by a contractor relating to contract performance shall be submitted in writing to the HA President or designee, or to the Purchasing Agent. for a written decision. The contractor may request a conference on the claim. The President's decision shall inform the

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contractor of its appeal rights to a higher level, such as the designated Board committee, or a Procurement Appeals Board.

17. Code of Conduct

- a. No employee, officer or agent of the Authority shall participate in the selection or in the award of administration of contract if a conflict, real or apparent, would be involved.

Such conflict would arise when financial or other interest in a firm selected for award is held by:

1. an employee, officer or agent involved in making the award;
2. any member of his/her immediate family including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepbrother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister;
3. his/her partner, or;
4. an organization which employs or is about to or plans to employ any of the above.

- b. Authority officers, employees or agents shall not solicit or accept gratuities, favors or anything of monetary value from vendors, contractors, potential contractors, or parties to subcontracts and shall not knowingly use confidential information for actual or anticipated gain.

18. Contract Administration

The Authority shall maintain a contract administration system designed to insure that contractors perform in accordance with their contracts.

The operational procedures required in previous section shall contain guidelines for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on construction contracts, and similar matters.

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19. Public Access to Procurement Information

Procurement information shall be a matter of public record to the extent provided in the State laws and shall be available to the public as provided in that statute.