

# **WARM SPRINGS HOUSING AUTHORITY**

## **PROCUREMENT POLICY**

**Amended March 30, 2004**

**Amended June 19, 2014**

**Amended June 6, 2024**

## **GENERAL PROVISIONS**

### **1.1 Purpose**

The purpose of this Procurement Policy is to: provide for the fair and equitable treatment of all persons or firms involved in purchasing by the Warm Springs Housing Authority (WSHA); assure that supplies, services, and construction are procured efficiently, effectively, and at the most favorable prices available to the WSHA; promote competition in contracting; provide safeguards for maintaining a procurement system of quality and integrity; assure that WSHA purchasing actions are in full compliance with applicable Federal standards, HUD regulations, and State and local laws; and ensure compliance with the Indian Preference requirements for procurement and contracting opportunities.

### **1.2 Application**

This Procurement Policy applies to all contracts for the procurement of supplies, services, and construction entered into by the WSHA after the effective date of this Policy. It shall apply to every expenditure of funds by the WSHA for public purchasing using program funds, including contracts which do not involve an obligation of funds (such as concession contracts); however, nothing in this Policy shall prevent the WSHA from complying with the terms and conditions of any grant, contract, gift, or bequest that is otherwise consistent with law. The term "procurement" as used in this Policy includes both contracts and modifications (including change orders) for construction or services, as well as purchase, lease, or rental of supplies and equipment.

## **2. AUTHORITY, ADMINISTRATION AND APPROVAL**

### **2.1 Authority**

It is the intent of the WSHA to comply with all applicable provisions of 24 CFR 85.1 which in turn implements the provisions of 2 CFR 200. The WSHA shall also comply with all procurement actions intended to be covered by this Policy. If the WSHA is using any source of funds that have another set of applicable procurement requirements, the WSHA shall apply those requirements to procurements using those funds only. Authority is given to the Contracting Officer, in this case the Executive Director or his or her designee, to administer the provisions of this Policy.

### **2.2 Administration**

Administration of this Policy is the responsibility of the Contracting Officer and shall be accomplished using sound business judgment. With a goal to protect the interests of the WSHA, administration principles to be followed include, but are not limited to:

- a. All contracts and modifications are to be in writing and clearly specify the desired supplies, services, or construction to be received;
- b. All contracts, and modifications must state the length of the contract, the terms of payment and the remedy for nonperformance.

C. Documentation shall be retained regarding the method of procurement, the contract type, and the basis of selection,

d. For procurements other than small purchases less than \$250,000, public notice of the invitation of bids or request for proposals is given at least once a week for two consecutive weeks not less than seven days before, not more than 21 days prior to bid opening date for preparation and submission of bids or proposals; and notice of contract awards is made available to the public.

An independent cost estimate must be made before receiving bids or proposals for each purchase above the small purchase limitation set out above.

A cost or price analysis is conducted of the responses received for all procurements \$50,000 or greater.

### 2.3 Approval

Approval of contracts shall be accomplished through the following methodology, regardless of the procurement method. It is the Board's expressed intent to approve various budget items for expenditure within the broadly assigned duty to administer programs with fiscal responsibility. Approval of all procurement actions shall be as follows:

The Executive Director or his designee shall be authorized to approve purchases and/or contracts of less than \$250,000 (either as a single contract or in aggregate) as is deemed in the best operating interests of the WSHA without approval by the Board of Commissioners.

The Board of Commissioners must give prior approval to all purchases/contracts of \$250,000 or more.

## 3. PROCUREMENT METHODS

### 3.1 Selection of Method

If it has been decided that the WSHA will directly purchase the required items, one of the following procurement methods shall be chosen, based on the nature and anticipated dollar value of the total requirement.

### 3.2 De Minimis Procurement (Less than \$5000)

Pursuant to 24 CFR 1000.26(a)(11)(i), A recipient shall not be required to comply with 2 CFR 200.318 through 200.326 with respect to any procurement, using a grant provided under NAHASDA, of goods and services with a value of less than \$5,000. Therefore, any procurement of goods and services that involves an amount less than \$5000 will not be subject to this Procurement Policy, except that the following subsection entitled "Petty Cash Purchases" shall continue to apply to such procurements.

Petty Cash Purchases: Small purchases under \$100 which can be satisfied by local sources may be processed through the use of a petty cash account. The Contracting Officer shall ensure that

the account is established in an amount 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 Authority's Finance Officer; and the account is periodically audited by the Finance Officer.

### 3.3 Micro-purchases

(i) Micro-purchase thresholds. The WSHA is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, risk evaluation, and documented procurement procedures. This threshold will be based on 2 CFR 200.320 and 48 CFR 2.101 and set as follows:

- (1) For acquisitions of construction services subject to 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction) and 2 CFR 200, Appendix II D: **\$2,000**
- (2) For acquisitions of services subject to 41 U.S.C. chapter 67, Service Contract Labor Standards such as repair services: **\$2,500**
- (3) For acquisition of Supplies and Equipment other than for construction services or services contracts, **\$10,000**

(ii) Micro-purchase awards. Micro-purchases below the above thresholds may be awarded without soliciting competitive price or rate quotations if the WSHA considers the price to be reasonable based on research, experience, purchase history or other information and documents the files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the WSHA.

Items purchased costing up to \$10,000 can be purchased by either inquiring prices by telephone or by periodically comparing prices on products and materials regularly used by staff for day-to-day operations, to assure that the products and materials are purchased at competitive prices. Contract requirements shall not be artificially divided so as to constitute a petty cash purchase.

(iii) Distribution. To the maximum extent practicable, the WSHA should distribute micro-purchases equitably among qualified suppliers. Thus for repetitive purchases of the same commodity, the WSHA should solicit a different vendor from the preceding purchase. [e.g., Purchase 1 – Vendor A, Purchase 2 – Vendor B, Purchase 3 – Vendor C and then repeat.]

### 3.4 Small Purchase Procedures

a. General: Any contract not exceeding \$150,000 may be made in accordance with the small purchase procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section (except as may be necessary to comply with Section 8 of this Policy).

b. Small purchases over \$10,000: For small purchases in excess of \$10,000 but not exceeding \$250,000, no less than three offerors shall be solicited to submit price quotations, which must be in writing. Award shall be made to the offeror providing the lowest acceptable quotation, unless justified in writing based on price and other specified factors, such as for architect-engineer contracts.

c. Small Purchase Solicitation Method

The WSHA may elect to make small purchases by soliciting price quotations by phone, letter, or other informal (electronic) procedure that allows participation by a reasonable number of competitive sources. When soliciting quotations, the WSHA shall inform the sources solicited of the specific items(s) being procured, the time by which quotations must be submitted, and the information required to be submitted with each quotation. The WSHA shall obtain written quotations; however, the written quotation may be a confirmation of a previous oral quotation only if it is submitted within 5 days of the oral quotation or by the due date for submitting quotations. The names, addresses, and/or telephone numbers of the persons contacted, and the date and amount of each quotation shall be recorded.

The WSHA shall attempt to obtain quotations from a minimum of three qualified sources and document the procurement file with a justification whenever it has been unable to obtain at least three quotations. Solicitation of fewer than three sources is acceptable if the WSHA has attempted but has been unable to obtain at least three quotations. Fewer than three quotations may be accepted only in unusual circumstances (such as an emergency threatening public health and safety).

All procurement transactions for the acquisition of property or services required must be conducted in a manner providing full free and open competition. Such purchases must be distributed equitably among qualified sources if available. Repeat orders shall contact at least three vendors, one of which shall be the winner of the prior award and the remaining vendors should be different than the prior solicitation. [e.g., Purchase 1 – solicit A, B, and C; Purchase 2 – solicit A (past winner), D and E; Purchase 3 – solicit D (prior winner), F and G].

If non-price evaluation factors are used; they shall be disclosed to all those solicited in the solicitation document.

The names, addresses, and/or telephone numbers of the offerors and persons contacted, date and amount of each quotation shall be recorded and maintained as a public record.

d. Small Purchase Award.

i. Award based on price. For small purchases awarded on price and fixed specifications (i.e., not subject to negotiation) the WSHA shall make award to the qualified Indian-owned economic enterprise or organization with the lowest responsive quotation if it is reasonable and two or more qualified Indian-owned economic enterprises or organizations submitted price quotes. If no responsive quotation from at least two qualified Indian-owned economic enterprises or organizations then award shall be made to the source with the lowest responsive quotation.

ii. Award based on factors other than price. For small purchases to be awarded based on factors other than price, a formal solicitation (request for proposals or request for quotations) shall be issued, including evaluation factors and a rating system to evaluate each proposal or quotation. The solicitation shall identify all evaluation factors, including cost or price. The solicitation shall

reserve 10% - 15% of the total evaluation points for providing Indian preference. Award shall be made to the best proposal or quotation in accordance with the stated rating system.

e. Nothing in this Section 3.3 shall limit the Contracting Officer from selecting another more stringent procurement method such as sealed bids (Section 3.5) or competitive proposals (Section 3.6). If the Contracting Officer, in his or her sole discretion, determines that another procurement method is appropriate based on the nature of services sought and the anticipated dollar amount, the Contracting Officer shall comply with the procedure for the selected procurement method, and shall ensure that bids or proposals are evaluated in an efficient and minimally burdensome fashion.

### 3.4 Common Use Items

a. General: This procedure is to be used for certain identified categories of supplies where the total value of the purchases does not exceed \$250,000 per year.

Bulk Purchase Procedures: For small, common, and recurring items less than \$250,000 on an annual basis, an annual purchase assessment will be performed as described in Section 11 of this Policy and a selected vendor list will be established for these items. Purchase of any items from this list will be made from the selected vendor for the established time period. Subsequent time periods will be distributed as discussed above under 3.3c.

b. Annual analysis: Each year an analysis will be completed to establish a list of common use items, as follows:

1. determine the common use items purchased in the prior year;
2. determine the normal purchasing schedule per the following categories:
  - monthly
  - quarterly
  - annually
  - primarily on emergency basis
3. determine if the normal purchasing schedule and method provides the best price for the product. For example should an entire month (or quarters) supply of an item be purchased at one time to achieve the best price and avoid emergency purchases;
4. determine if prices for items changed significantly over the year;
5. establish reasons for significant changes - are the changes the result of normal inflation, seasonal variation, market forces, availability, or vendor selection?
6. from the information gathered on purchasing patterns, determine the best purchasing pattern and method to achieve the best price over a fixed period.

c. Categories: Once analysis is completed, establish the categories to be included in Bulk Purchasing, for example office supplies, small tools, maintenance supplies, etc.

d. Time period: The next step is to establish the time period over which the vendor selection for each category will be effective. Timeframes for distinct categories may be different.

e. Vendor lists: A list of vendors is developed by doing the following:

1. contact firms using internet, catalogs or advertising on a local, regional, or national basis.

f. Item lists: Using one of the methods below, identify items to be used to select a vendor in each category.

1. use all items purchased in the previous year for each category, or
2. analyze previous year's total purchase cost for each item and establish list of indicator items (items that constitute at least 75% of the total expenditures for the category in the previous year).

g. Vendor selection: To select a vendor, the following procedure should be used:

1. at least annually, or the timeframe established in the purchasing pattern analysis, obtain a minimum of three priced quotes for:
  - items (normally used for higher-priced items); or
  - categories using indicator items (normally used when a few items drive the cost of the entire category); or
  - categories using all items purchased in the previous year (normally used when the annual cost of all items purchased are similar).
2. determine the costs of items that will be used to select a vendor. Costs include purchase price plus delivery price less any discount offered by the vendor.
3. select the vendor based on lowest price, using Indian preference if applicable.

h. Selection sheet: A selection sheet, as approved by the Executive Director, is used to document the procurement. The selection sheet includes the following information:

1. price comparison analysis of at least three vendors;
2. time period the selection will be effective; and
3. any limitation to the procurement process.

i. Exceptions: Purchases of any items in the category will be made from the selected vendor for the established period unless the following exists:

1. a documented emergency to prevent collateral damage and expense, procurement from an exception can be made to the selected vendor if approved by the Executive Director.
2. lower price if the cost of an item from another vendor is below an item's cost

### 3.5 Sealed Bids:

a. Conditions for Use: Contracts shall be awarded based on competitive sealed bidding if the following conditions are present: a complete, adequate, and realistic specification or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; the procurement lends itself to a firm fixed price contract; and the selection of the successful bidder can be made principally on the basis of price. However, the WSHA may reject any bid based on that contractor's past performance (i.e., contract performance and/or quality of work). Sealed bidding is the preferred method for construction procurement. For professional service contracts, sealed bidding should not be used. WSHA must make independent estimates of Price before receiving bids.

b. Solicitation and Receipt of Bids: An invitation for bids shall be issued including specifications

and all contractual terms and conditions applicable to the procurement including a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the invitation for bids. The evaluation factors for award must be clearly stated.

The invitation shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. However, such description must not contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. If a “brand name or equivalent” description is used as a means to define the performance or other salient requirements of procurement, then the specific salient features of the named brand which must be met by offers must also be clearly stated.

The invitation for bids must be publicly advertised such that bids are solicited from an adequate number of qualified sources, typically at least statewide. The invitation for bids shall state the time and place for both the receipt of bids and the public bid opening. The solicitation must providing sufficient response time prior to the date set for opening the bids, typically two to four weeks. All bids received shall be time-stamped but not opened and shall be stored in a secure place until bid opening. A bidder may withdraw its bid at any time prior to bid opening.

c. Bid Opening, Evaluation and Award: Bids shall be opened publicly and in the presence of at least one witness. Bidders shall be identified and all requirements for submission shall be disclosed. An abstract of bids shall be recorded and the bids shall be made available for public inspection.

Bids shall be ranked by price. Bids may be rejected if price determined to be unreasonable based on a price analysis. Ranking shall then be adjusted by applying price related factors - Indian Preference, discounts, transportation cost, and life cycle costs. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts can be taken advantage of by WSHA. The lowest adjusted bidder shall then be evaluated to determine responsiveness – conformance with all the material terms and conditions of the invitation for bids. Non-responsive bids shall be rejected. The lowest responsive bid shall then be evaluated to determine responsibility. Non-responsible bidders shall be rejected. Award shall be made to the lowest responsive, responsible bidder. Any or all bids may be rejected if there is a sound documented reason.

Award shall be made as provided in the invitation for bids by written notice to the successful bidder. If equal low bids are received from responsible bidders, award shall be made the following order of priority:

- (1) Indian Business concerns.
- (2) Other minority business concerns.
- (3) Other small business concerns.

If two or more bidders still remain equally eligible after application of paragraph above, awards shall be made by drawing lots or similar random method, unless otherwise provided in the invitation for bids. If only one responsive bid is received from a responsible bidder, award shall not be made unless a cost analysis verifies the reasonableness of the price.



d. Mistakes in Bids:

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. After bid opening the contracting officer shall request from the bidder a verification of the bid, calling attention to the suspected mistake. Any clerical mistake, apparent on its face in the bid, may be corrected by the contracting officer before award to include decimal point errors, transposition, errors in addition or multiplication. Correction of the bid shall be affected by attaching the verification to the original bid and a copy of the verification to the duplicate bid. Correction shall not be made on the face of the bid; however, it shall be reflected in the award document.

The authority to permit correction of bids is limited to bids that, as submitted, are responsive to the invitation and may not be used to permit correction of bids to make them responsive.

If the correction would result in displacing one or more lower bids, such a determination shall not be made unless the existence of the mistake and the bid actually intended are ascertainable from the invitation and the bid itself. 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.

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.

All decisions to allow correction or withdrawal of bid mistakes shall be supported by a written determination signed by the Contracting Officer. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the WSHA or fair competition shall be permitted.

e. Bonds: In addition to the other requirements of this Policy, for construction contracts exceeding \$250,000, contractors shall be required to submit the following, unless otherwise required by State or local laws or regulations:

- A bid guarantee for each bidder equivalent to 5% of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified; and
- A performance bond for 100% of the contract price and if the contract price increases, an additional amount equal to 100 percent of the increase; and
- A payment bond for 100% of the contract price and if the contract price increases, an additional amount equal to 100 percent of the increase. The amount of the payment bond must be no less than the amount of the performance bond.
- Bonds must be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223.

### 3.6 Competitive Proposals:

a. Conditions for Use: Competitive proposals (including turnkey proposals for development) may be used if there is an adequate method of evaluating technical proposals and where the WSHA determines that conditions are not appropriate for the use of sealed bids. The Request for Proposals must be publicly advertised such that offers are solicited from an adequate number of qualified sources, typically at least statewide.

b. Solicitation: The request for proposals (RFP) shall clearly identify the relative factors and sub-factors, and their relative importance including the importance of price and other evaluation weight given to each technical factor and sub-factor. Technical evaluation factors must have a greater weight than the price factor. Indian Preference must be a technical evaluation factor. Contractors shall be required to submit technical proposals separate from cost proposals which shall be evaluated separately. Contractor shall submit a cost breakdown in the cost proposal in the format specified by WSHA.

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. If the solicitation of proposals is for small purchases in excess of \$10,000 but not exceeding \$250,000, the Contracting Officer shall comply with this section regarding disclosure. The proposals shall be evaluated only on the criteria stated in the request for proposals.

c. Evaluation: The proposals shall be evaluated only on the criteria stated in the RFP. Each proposal shall be scored by the technical evaluation committee comprising at least three individuals with expertise in the topical area concerned. Where not apparent from the evaluation criteria, WSHA shall establish an Evaluation Plan for each RFP. WSHA shall predetermine the evaluation protocol using either point scalar, 10-point max, graded (A, B, C, D or F) or pass/fail methodology for each evaluation factor. Price shall be evaluated and scored separately from the technical factors. At the discretion of the Executive Director, an RFP may be evaluated by an Evaluation Committee appointed by the Executive Director. 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.

d. Negotiations: Unless there is no need for negotiations with any of the offerors, negotiations may be conducted with offerors who submit proposals determined to have a reasonable chance of being selected for award (competitive range), based on evaluation against the technical and price factors as specified in the RFP, or negotiations may be conducted with the top-rated proposer(s) only if, in the opinion of the Authority's Executive Director it is in the best interests of the Authority to do so. An arbitrary cutoff score or an arbitrary number of offerors shall not be used. 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 advising offerors of the deficiencies in both the technical and price

aspects of their proposals so as to assure full understanding and conformance to the solicitation requirements. Prior to negotiations, WSHA shall conduct a cost analysis of offers in the competitive range. The results of the cost analysis shall be used to negotiate costs so as to eliminate unallowable costs (as defined in 48 CFR Part 31.2) and unnecessary, unreasonable, or unallocable costs. 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 a specific amount in order to be considered for award. A common deadline shall be established for receipt of proposal revisions and best and final offer based on negotiations.

e. Award: After evaluation of proposal revision/best and final offers, if any, the contract shall be awarded to the responsible firm whose qualifications, price and other factors considered, are the most advantageous to the WSHA.

f. Architect/Engineer Services: All architect/engineer services shall be procured on the basis of the competence and qualifications of the architect/engineer and not on the basis of competitive fees whereby offeror's qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. Qualifications-based selection procedures shall not be used to purchase other types of services (i.e., construction contracts) even though architect engineer firms are potential sources.

g. Requests for Qualifications: For some professional planning or consulting services, it may become advantageous to issue a Request for Qualifications (RFQ) where the services are of a nature that requires professional or specialized services. This procurement approach shall be considered a competitive proposal in accordance with the provisions above, however, shall be evaluated solely on the basis of qualifications to ensure that the specific needs of the agency are met.

h. Indefinite Quantities Contract: Where applicable or where the specific scope of a project cannot be defined at the time of solicitation, the Authority may elect to issue an Indefinite Quantities Contract (IQC) for a period not to exceed 5 years. This IQC shall state to general terms of the contract, the potential scope, and a not-to-exceed award amount for the contract term. Specific work will be authorized through the use of Task Orders, negotiated, and approved by the Contracting Officer. If the Authority elects to issue an IQC, the request document (either RFP or RFQ) shall clearly state this intent and provide instructions on the process for Task Order submission and approval.

### 3.7 Noncompetitive Proposals:

a. Conditions for Use: Procurements shall be conducted competitively to the maximum extent possible. Procurement by noncompetitive 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:

- The item is available only from a single source, based on a good faith review of available sources;
- An emergency exists that seriously threatens the public life, health, or safety of persons,

or the or public exigency endangers the welfare, property, or would otherwise cause serious harm to the WSHA, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction which will not permit a delay resulting from publicizing a competitive solicitation and such that the need cannot be met through any other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency;

- The Funding Agency expressly authorizes the use of noncompetitive proposals based on a submitted detailed rationale; or
- After solicitation of a number of sources, competition is determined inadequate.

b. Justification: Each procurement based on noncompetitive proposals shall be supported by a written justification for using such procedures. The justification shall be approved in writing by the Contracting Officer. The justification must show the necessity for a non-competitive procurement and the impact that the delay of a competitive procurement would cause. If the goods or services are only available from a single source, the justification must show due diligence in the finding of a lack of competitive sources.

c. Price Reasonableness: The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing a cost analysis, as described below.

### 3.8 Cost and Price Analysis:

a. General: A cost or price analysis may be performed for all procurement actions \$250,000 and above, including contract modifications and shall be required for all procurements in excess of the small purchase threshold. The extent of the analysis shall be contingent on the magnitude of the procurement. The degree of analysis shall depend on the facts surrounding each procurement. The method of analysis shall be determined as follows.

b. Submission of Cost or Pricing Information: If the procurement is based on noncompetitive proposals, or when only one offer is received, or for other procurements as deemed necessary by the WSHA (e.g., when contracting for professional, consulting, or architect/engineer services) the offeror shall be required to submit:

- A cost breakdown showing projected costs and profit;
- Commercial pricing and sales information, sufficient to enable the WSHA to verify the reasonableness of the proposed price as a catalog or market price of a commercial product sold in substantial quantities to the general public; or,
- Documentation showing that the offered price is set by law or regulation.

c. Cost Analysis: A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking,

and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation.

Cost analysis shall be performed if an offeror/contractor is required to submit a detailed cost breakdown as part of its proposal. When a cost breakdown is submitted - a cost analysis shall be performed of the individual cost elements; the WSHA shall have a right to audit the contractor's books and records pertinent to such costs; and profit shall be analyzed separately.

Costs shall be allowable only to the extent that they are consistent with applicable Federal cost principals (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation, 48 CFR Chapter 1).

In establishing profit, the WSHA shall consider factors such as the complexity and risk borne by the contractor for the work involved, the contractor's investment and productivity, the amount of sub-contracting, the quality of its past performance, and industry profit rates in the surrounding geographical area for similar work.

d. Price Analysis: A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price. A comparison of prices shall be used in all cases other than those described above.

#### 4. Cancellations of Solicitations:

a. An invitation for bids (IFB) , request for proposals, or other solicitations may be canceled before offers are due if:

- the WSHA no longer requires the supplies, services, or construction;
- they can no longer reasonably expect to fund the procurement;
- proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable; or similar reasons.

b. An invitation for bids (IFB) may be canceled after bids are due and all bids that have already been received may be rejected if:

- (1) Inadequate or ambiguous specifications were cited in the invitation(IFB);
- (2) Specifications have been revised;
- (3) The supplies or services being contracted for are no longer required;
- (4) The invitation did not provide for consideration of all factors of cost to WSHA;
- (5) Bids received indicate that the needs of WSHA can be satisfied by a less expensive article differing from that for which the bids were invited;

(6) All otherwise acceptable bids received are at unreasonable prices, or only one bid is received, and the contracting officer cannot determine the reasonableness of the bid price;

(7) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith;

(8) No responsive bid has been received from a responsible bidder.

(9) A cost comparison shows that performance by WSHA is more economical; or

(10) For other reasons, cancellation is clearly in the public's interest.

c. A Request for Proposal (RFP) may be canceled after offers are due and all proposals that have already been received may be rejected if:

(1) The supplies or services being contracted for are no longer required;

(2) For other reasons, cancellation is clearly in the public's or WSHA's interest.

d. The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request to any offeror solicited.

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 WSHA shall cancel the solicitation and either:

- Re-solicit using a request for proposals; or
- Complete the procurement by using the competitive proposals method when more than one otherwise acceptable bid has been received; or
- by using the noncompetitive proposals method when only one bid is received at an unreasonable price; provided that the Contracting Officer determines in writing that such action is appropriate, all bidders are informed of the WSHA's intent to negotiate, and each responsible bidder is given a reasonable opportunity to negotiate.

#### 4.1 Contractor Responsibility

Procurement shall be conducted only with responsible contractors, WSHA shall award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Before awarding a contract, the WSHA 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 contacting previous clients of the contractor, such as other housing authorities); and financial and technical resources. If a prospective contractor is found to be nonresponsible, a written determination of non-responsibility shall be prepared and included in the contract file, and prospective contractor shall be advised of the reasons for the determination.

#### 4.2 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 WSHA in its business dealings. A contract cannot be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 and 12689. WSHA shall conduct a SAM.gov investigation of all contracts proposed for award. WSHA shall also determine if the proposed contractor is debarred by a state or other tribal governments. WSHA shall require all contractors proposed for award to self-certify as to debarment, suspension, or exclusion by a Federal, state, or tribal entity.

#### 4.3 Qualified Bidder's List

Interested businesses shall be given an opportunity to be included on qualified bidder's lists. Any pre-qualified lists of persons, firms, or products that 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 mailing lists of potential contractors shall include, but not be limited to, such prequalified suppliers.

### CONTRACTS AND CONTRACT ADMINISTRATION

#### 5.1 Contract Types

Any type of contract which is appropriate to the procurement and that will promote the best interests of the WSHA 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 otherwise impracticable to satisfy the WSHA's needs, 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). A time and material contract may be used only if a written determination is made that no other contract type is suitable, and the contract includes a ceiling price that the contractor exceeds at its own risk.

#### 5.2 Options

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

- (i) the option is contained in the solicitation;
- (ii) the option is a unilateral right of the WSHA;
- (iii) the contract states a limit on the additional quantities and the overall term of the contract;

- (iv) the options are evaluated as part of the initial competition;
- (v) the contract states the period within which the options may be exercised;
- (vi) the options may be exercised only at the price specified in or determinable from the contract; and
- (vii) the options may be exercised only if determined to be more advantageous to the WSHA than conducting a new procurement.

### 5.3 Contract Clauses

In addition to containing a clause identifying the contract type, all contracts shall include any clauses required by Federal statutes, executive orders, and their implementing regulations, as provided in 2 CFR 200, Appendix II including, where applicable, the following:

1. Termination for convenience;
2. Termination for default;
3. Equal Employment Opportunity;
4. Anti-Kickback Act
5. Davis-Bacon Act;
6. Contract Work Hours and Safety Standards Act,
7. Reporting requirements;
8. Patent rights;
9. Rights in data;
10. Examination of records by Comptroller General,
11. retention of records for three years after closeout;
12. Clean air and water;
13. Energy efficiency standards;
14. Bid protests and contract claims;
15. Value engineering; and
16. Payment of funds to influence certain Federal Transaction.

### 5.4 Contract Administration

A contract administration system designed to ensure that contractors perform in accordance with their contracts shall be maintained.

## 6. SPECIFICATIONS

### 6.1 General

All specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying the WSHA'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 Section 8 below). For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.



## 6.2 Limitations

The following specifications limitations shall be avoided:

- the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference (except for architect-engineer contracts, which may include geographic location as a selection factor if adequate competition is available). Nothing in this procurement policy shall preempt any State licensing laws;
- unnecessary bonding or experience requirements;
- brand name specifications (unless a written determination is made that only the identified item will satisfy the WSHA's needs);
- brand name or equal specifications (unless they specify "or equal" and list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use).

Specifications shall be scrutinized to ensure that organizational conflicts of interest do not occur (for example, having a consultant perform a study of the WSHA's computer needs and then allowing that consultant to compete for the subsequent contract for the computers). Contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements.

## 7. APPEALS AND REMEDIES

### 7.1 General

It is the WSHA's policy to resolve all contractual issues informally at the WSHA level, without litigation. Disputes shall not be referred to the Funding Agency until all administrative remedies have been exhausted at the Contracting Officer's level. When appropriate, the WSHA may consider the use of informal discussions between the parties by individuals who did not participate in the matter in dispute, to help resolve the differences. The Funding Agency will only review protests in cases of violations of applicable law or regulations and failure of the WSHA to review a complaint or protest.

### 7.2 Protests

Any actual or prospective contractor may protest a contract award, solicitation, pre-award status, or any other decision, finding, or action made or taken by the WSHA regarding a contract, bid, solicitation, pre-award status, or project, for serious violations of the principles of this Procurement Policy ("Protests"). All Protests shall be submitted in writing, to the Contracting Officer or designee, within ten (10) calendar days of being notified in writing of the WSHA's decision, finding, or action. Failure to comply with the terms and procedures herein shall result in an automatic denial of the Protest. The Contracting Officer shall issue a written decision of the Protest within thirty (30) calendar days after receipt of the Protest. Pending the WSHA's written

decision on the Protest, the Contracting Officer or designee may, at his or her discretion, suspend the bid process, solicitation, preaward status, procurement, or, if warranted by the facts and circumstances, take other action needed on the matter.

### 7.3 Contract Claims

All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer or designee for a written decision. The contractor may request a conference on the claim. The Contracting Officer's decision shall inform the contractor of its appeal rights to a higher level in the WSHA.

## 8. INDIAN PREFERENCE REQUIREMENTS

### 8.1 Rule

All WSHA funds are subject to Section 7(b) of the Indian Self Determination and Education Assistance Act (25 U.S.C.450e(b)). Section 7(b) provides that any contract, subcontract, or grant administered by the WSHA shall require that, to the greatest extent feasible:

- Preference and opportunities for training and employment shall be given to Indians, and
- Preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian -owned economic enterprises.

In accordance with the 24 CFR 1000 regulations the WSHA shall:

- a. Certify to HUD that the policies and procedures adopted by the Indian Regulatory Act (IRA) will provide preference in procurement activities consistent with the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act.
- b. Advertise for bids or proposals limited to qualified Indian organizations and Indian owned economic enterprises; or
- c. Use the two-stage preference solicitation procedure.

### 8.2 Definitions

The Indian Self-Determination and Education Assistance Act defines "Indian" to mean a person who is a member of an Indian tribe and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community including any Alaska Native village or regional or village corporation as defined or established pursuant to the Alaska Native Claims Settlement Act.

In Section 3 of the Indian Financing Act of 1974, "economic enterprise" is defined as any Indian owned commercial, industrial, or business activity established or organized for the purpose of profit, except that Indian ownership must constitute not less than 51% of the enterprise. This act defines "Indian organization" to mean the governing body of any Indian tribe or entity established or recognized by such governing body.

### 8.3 Two Stage Procurement Procedure

Stage 1: Invite or otherwise solicit Indian owned economic enterprises to submit a statement of intent to respond to a bid advertisement or request for proposals limited to Indian owned firms.

Stage 2: If responses are received from more than one Indian enterprise found to be qualified, advertise for bids or proposals limited to Indian organizations or Indian owned economic enterprises.

If fewer than two (2) qualified Indian owned economic enterprises or organizations submit responsive bids, all bids shall be rejected (unless it falls within the exception noted below for single bid approval) and the solicitation shall be readvertised inviting responses from non-Indian owned firms and Indian owned economic enterprise or organization with the lowest responsible responsive bid if it is within the budgeted amount for the project or activity and is no more than (X) higher than the lowest responsible bid. X is determined as follows:

When the lowest responsive bid is:	X = Lesser of:
Less than \$100,000	10% of that bid or \$9,000
At least \$100,000 but less than \$200,000	9% of that bid or \$16,000
At least \$200,000 but less than \$300,000	8% of that bid or \$21 ,000
At least \$300,000 but less than \$400,000	7% of that bid or \$24,000
At least \$400,000 but less than \$500,000	6% of that bid or \$25,000
At least \$500,000 but less than \$1 million	5% of that bid or \$40,000
At least \$1 million but less than \$2 million	4% of that bid or \$60,000
At least \$2 million but less than \$4 million	3% of that bid or \$80,000
At least \$4 million but less than \$7 million	2% of that bid or \$105,000
\$7 million or more	1.5% of the lowest responsive bid

If the WSHA selects a method of providing preference that results in fewer than two responsible qualified organizations or enterprises submitting a statement of intent, a bid or proposal to perform the contract at a reasonable rate, the WSHA shall:

- a. Readvertise the contract again to solicit bids and proposal from Indian owned economic enterprises or Indian organizations; or
- b. Re-advertise the contract without limiting the advertisement for bids or proposals to Indian organizations or enterprises; or
- c. If one approvable bid or proposal is received, request the Area ONAP review and approval of the proposed contract and related procurement documents, in accordance with 24 CFR 85.36, in order to award the contract to the single bidder or offeror for HUD contracts.

#### 8.4 Additional Requirements

All preferences shall be publicly announced in the advertisement and bidding or proposal solicitation documents.

In accordance with 48 CFR 1480.201, WSHA shall require contractors to provide evidence that shows that:

- the combined Indian or Indian Tribe ownership must constitute not less than 51 percent of the enterprise;
- the Indians or Indian Tribes must, together, receive at least a majority of the earnings from the contract; and
- the management and daily business operations of an enterprise must be controlled by one or more individuals who are Indians.
- To ensure actual control over the enterprise, the individuals must possess requisite management or technical capabilities directly related to the primary industry in which the enterprise conducts business.
- The enterprise must meet these requirements throughout the following time periods:
  - (1) At the time an offer is made in response to a written solicitation;
  - (2) At the time of contract award; and
  - (3) During the full term of the contract.

### 9. ASSISTANCE TO SMALL AND OTHER BUSINESS

#### 9.1 Required Efforts

Consistent with Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, the WSHA shall make efforts to ensure that small and minority owned businesses, women's business enterprises, labor surplus area businesses, and individuals or firms located in or owned in substantial part by persons residing in the area of a WSHA development are used when possible. Such efforts shall include, but shall not be limited to:

- Including such firms, when qualified, on solicitation mailing
- Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
- Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
- Including in contracts a clause requiring contractors, to the greatest extent feasible, to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with the project to business

concerns which are located in, or owned in substantial part by persons residing in the area of the project, as described in 24 CFR 135; 9-1 requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed above in this section (1-6).

Goals may be established by the WSHA periodically for participation by small businesses, minority owned businesses, women's business enterprises, labor surplus area businesses, and business concerns which are located in, or owned in substantial part by persons residing in the area of the project in the WSHA's prime contracts and subcontracting opportunities.

## 9.2 Definitions:

A small business is defined as a business 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 WSHA determines that their use is inappropriate.

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

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

A labor surplus area business is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or under-employment, 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

A business concern located in the area of the project is defined as an individual or firm located within the relevant Section 3 covered project area, as determined pursuant to 24 CFR 135.15, listed on HUD's registry of 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 project is defined as a business concern which is 51 % or more owned by persons residing within the Section 3 covered project, 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.

## 10. ETHICS IN PUBLIC CONTRACTING

### 10.1 General

The WSHA shall adhere to the following code of conduct, consistent with applicable State or local law.

## 10.2 Conflict of Interest

No employee, officer, or agent of this WSHA shall participate directly or indirectly in the selection or in the award or administration of any contract if a conflict, real or apparent, would be involved. Such conflict would arise when a financial or other interest in a firm selected for award is held by:

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

has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

## 10.3 Gratuities, Kickbacks, and Use of Confidential Information

WSHA officers, employees or agents shall not solicit or accept unsolicited gratuities, favors, or anything of intrinsic monetary value from contractors, potential contractors, or parties to subcontracts, and shall not knowingly use confidential information for actual or anticipated personal gain.

## 10.4 Contingent Fees

Contractors shall not retain a person to solicit or secure a WSHA contract or a commission, percentage, brokerage, or contingent fee, except for bona fide employees or bona fide established commercial selling agencies. WSHA shall have the right to annul the contract without liability or, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee. Contingent fee means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a WSHA contract.

## 10.5 Enforcement

Any WSHA staff who violate the provisions of this Section 10 will be subject to disciplinary action, up to and including termination.

The WSHA will take all appropriate legal steps against Contractors or Vendors who violate the provisions of this Section 10, including but not limited to civil action in a court of competent jurisdiction.