

HOUSING AUTHORITY OF CLACKAMAS COUNTY

PROCUREMENT POLICY

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PROCUREMENT POLICY

Table of Contents

Section I – Policy and Application 1

Section II -- Procurement Classifications 2

Section III -- Procurement Methods 3

Section IV -- Procuring Professional/Personal Services 7

Section V – HACC Procurement Rules 8

Section VI – Federal Procurement and Contract Standards 9

Section VII – Appeals and Remedies 14

Section VIII – Policy for Disposition of Personal Property 15

Amendment
*Procurement Policy for American Recovery and Reinvestment Act
Capital Fund Stimulus Grant 16*

HOUSING AUTHORITY OF CLACKAMAS COUNTY

PROCUREMENT POLICY

SECTION I --- POLICY AND APPLICATION

- A. The purpose and intent of this policy is to provide a system of contracting for goods and services in a responsible, economical, and efficient manner consistent with law, and to provide for open and fair competition between suppliers.
- B. The Executive Director or designee is responsible for procurement and contract administration. Where contracts are required, the person initiating the contract will forward the proposed contract and supporting documentation to the Executive Director for review. The authority for final approval of contracts on behalf of the Housing Authority shall be vested as described in Section V.
- C. All procurement activities and contracts will comply with the requirements of Federal and State law. Applicable laws include without limitation the following:
 - 1. 24 Code of Federal Regulations (CFR) 85.36
 - 2. 24 CFR Part 941
 - 3. 24 CFR Part 135 - Section 3 of HUD Act of 1992
 - 4. 24 CFR Part 964 - Contracts with resident management corporations
 - 5. 24 CFR Part 968 – Public Housing Modernization
 - 6. ORS 279A through 279C – Oregon Public Contracting Code
- D. The Housing Authority of Clackamas County (Housing Authority) will also comply with current policies and rules of the Department of Housing and Urban Development (HUD), including HUD handbook 1344.1 Rev. 1 regarding federal labor standards and HUD handbook 7460.8.
- E. Where this policy is silent as to procurement or contracting procedures, the Housing Authority will follow the Clackamas County Local Contract Review Board Rules and Procurement Manual if applicable. Provided, however, that such local procedures do not conflict with any Federal or State law; in which case State law will control over local rules, and Federal law will control over State law.
- F. Per ORS 279A.065, the Housing Authority is adopting this Procurement Policy and not directly following the Oregon Attorney General’s Model Public Contract Rules (Model Rules).

SECTION II --- PROCUREMENT CLASSIFICATIONS

Levels of procurement are classified as Small Purchases for Goods and Equipment, Trade Related Services Contracts, Personal/Professional Services, Capital Improvements and Capital Fund Program (CFP), and Contracts with Other Public Agencies. Procurement methods shall be chosen based on the nature and anticipated dollar value of the purchase.

1. **Small Purchases for Goods and Equipment** – Contracts include formal agreements and purchase orders used to procure goods and equipment. Goods and equipment are items or implements that are necessary to carry out the department’s mission. Generally, any purchase or contract not exceeding \$100,000 in the aggregate may be made in accordance with the small purchase procedures authorized in Section III.
2. **Trade Related Services Contracts** – Contracts in the construction, maintenance or repair of Housing Authority owned facilities and are generally performed by a skilled worker in a particular trade that are not Capital Improvements or part of the Capital Fund Program (CFP). Trade related contracts under \$100,000 are treated as small purchases as described in this section and must consider prevailing wage rates ORS 279C.800 to 279C. 870. For trade related contracts over \$100,000, formal written solicitation shall be utilized.
3. **Professional/Personal Services Contracts** – A contract for personal and/or professional services is a contract that calls for specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment. Qualifications and performance history, expertise, knowledge and creativity, and the ability to exercise sound professional judgment are typically the primary considerations when selecting a Personal Services Contractor, with price being secondary. The following are not personal service contracts:
 - i. Contracts, even though in a professional capacity, if substantially and predominately for a product, e.g. a contract with a landscape architect to design a garden is for personal services, but a contract to design a garden and supply all the shrubs and trees is predominately for a tangible product.
 - ii. A service contract to supply labor which is of a type that can generally be done by any competent worker, e.g., janitorial, security guard, crop spraying, laundry and landscape maintenance service contracts.
 - iii. Contracts for trade-related activities considered to be labor and materials contracts.
 - iv. Contracts for services of a trade-related activity, even though a specific license is required to engage in the activity. Examples are repair and/or maintenance of all types of equipment or structures.

Please refer to Section IV Procuring Professional/Personal Services for specific procurement requirements.

4. **Capital Improvements and Capital Fund Program (CFP)** – Capital Improvements are projects for construction, reconstruction or major renovation on real property by or for the Housing Authority. Capital Improvements do not include emergency work, minor alteration, ordinary repair or maintenance necessary in order to preserve a public improvement. CFP is for the development, financing, and modernization of public housing developments and for management improvements. Refer to Sections III through VI.
5. **Exemption.** As set forth in ORS 456.122, no Oregon law with respect to the acquisition, operation or disposition of property by other public bodies applies to the Housing Authority, unless specifically provided. Contracts for such activities are not subject to Housing Authority Procurement Policies based upon Oregon law, and this exemption prevails over any other conflicting provision of this Procurement Policy.
6. **Contracts with Other Public Agencies** – The Board of County Commissioners executes all Intergovernmental Agreements (IGAs), with the following exceptions:
 - a. For IGAs not exceeding \$5,000, the Executive Director is delegated the authority to execute.
 - b. IGAs between Clackamas County Affiliated Governments and/or departments: The County Administrator and Director of Human Services are delegated the authority to execute agreements between County Affiliated Government and/or departments.

SECTION III --- PROCUREMENT METHODS

One of the following procurement methods shall be chosen based on the nature and anticipated dollar value of the purchase:

1. **PETTY CASH PURCHASES** – Purchases under \$100 may be handled through the use of a petty cash account. Petty Cash Accounts may be established at each Housing Authority Office in an amount of \$200 to cover small purchases made during a month. For all Petty Cash Accounts, the Housing Authority shall ensure that security is maintained and only authorized individuals have access to the account. These accounts should be replenished and reconciled periodically. The total of the cash on hand, Petty cash slips and receipts will be kept in a lock box. The total of these 3 should always equal \$200.
2. **PURCHASING CARDS** - Purchasing card usage shall follow the rules for all other small purchases. Therefore, no single purchase can exceed the \$2,000 limit without requiring three informal quotes. No single month cumulative purchases shall exceed \$7,500.

Several items or services are restricted from purchase by the program policy. The following is a representative list and is not intended to be all-inclusive. Alcoholic Beverages, Government Services, Ammunition/Firearms, Pagers, Capital Equipment, Personal Care Services, Cash Advances, Cash Refunds, Personal Items, Capital Goods, Prescription Drugs, Cellular Phones Service, Professional and Membership & Organizations Services, Consulting Services, Instructors & Guest Speakers, Salary and Wages, Contracted Services, Services Agreements, Entertainment Providers, Annual Maintenance Contracts, Fuel Dispenser, Automated.

3. SMALL PURCHASE PROCEDURES—Small purchases shall not exceed \$100,000. Purchase and contract requirements shall not be artificially divided so as to constitute a small purchase under this section. Please refer to Section IV Rules governing signature authority.
 - c. For Small Purchases of \$2,000 or less only one quotation need be solicited if the price received is considered reasonable. Price reasonableness must be determined based on a comparison of competitive quotes received, catalog or market prices or comparison with other recent competitive purchases of the same item. The procurement file must be documented with the basis for the price accepted.
 - d. Small purchases between \$2,001 and \$5,000 require three informal quotes when practicable. The procurement file must be documented with the basis for the price accepted.
 - e. Small purchases between \$5,001 and \$100,000 require a written record of obtaining three competitive quotes when practicable. If three quotes are not available, a written record will be made. Copies of quotes will be attached to the original purchase order. Awards shall be made to the offerer providing the lowest acceptable quotation, unless justified in writing based on price and other specified factors. If non-price factors are used, they shall be disclosed to all those solicited. The names, addresses and/or telephone numbers of the offerers and persons contacted, and the date and amount of each quotation shall be recorded and maintained as a public record.

4. SEALED BIDS—Sealed bids are generally used for purchases over \$100,000.
 - 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. For procurements under the Capital Fund Program (CFP), sealed bidding shall be used for all construction and equipment contracts exceeding the small purchase limitation. For professional services contracts, sealed bidding should not be used.

- 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, if it is found by the Housing Authority to be in the public interest to make an award, the award will be made to the lowest responsible bidder whose bid meets the requirements of the invitation for bids. The invitation for bids shall state the time and place for both the receipt of bids and the public bid opening. There shall be at least 14 days between the date of last publication of advertisement for bids and the date of bid opening. For some construction work, 21-35 days is advisable. Advertisement for receipt of bids shall be made in at least one newspaper or journal of general circulation, and run not less than once each week for two consecutive weeks and affirmative action steps shall be taken as required by federal rules. An invitation to all known local appropriate firms may also be done. A bidder may withdraw its bid at any time prior to bid opening.
- c. Bid Opening and Award—Bids shall be opened publicly and in the presence of at least one witness. An abstract of bids shall be recorded and the bids shall be available for public inspection. Contract award may be communicated orally or by written notice to the successful bidder and may be announced publicly through local journals. If equal low bids are received from responsible bidders, award shall be made by drawing lots or similar random method, unless otherwise provided in State or local law and stated in the invitation for bids. If only one responsive bid is received from a responsible bidder, award shall not be made unless a cost or price 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, correction 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, 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 made by the Executive Director (or designee) and shall be supported by a written determination.

5. 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 conditions are not appropriate for the use of sealed bids. An adequate number of qualified sources shall be solicited.

- b. Solicitation—The request 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 offerers, identity of the offerers, and the contents of their proposals. The proposals shall be evaluated only on the criteria stated in the request for proposals.
- c. Negotiations—Unless there is no need for negotiations with any of the offerers, negotiations shall be conducted with offerers 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. Such offerers 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 offerers of the deficiencies in both the technical and price aspects of their proposals so as to assure full understanding of and conformance to the solicitation requirements. No offerer shall be provided information about any other offerers proposal, and no offerer shall be assisted in bringing its proposal up to the level of any other proposal. Offerers 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 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 Housing Authority.

6. 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:
 - (i) The item is available only from a single source or seller, based on good faith review of available sources.
 - (ii) An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the Housing Authority, as may arise by reason of a flood, earthquake, epidemic,

riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement methods and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency. An Emergency Declaration must be kept on file as a public record.

- (iii) After solicitation of a number of sources, competition is determined inadequate.
 - (iv) Capital Fund Stimulus Grant funds where sole source contracts are allowed.
- 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 Executive Director.
 - c. Price Reasonableness—The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing cost and price analysis.

SECTION IV --- PROCURING PROFESSIONAL/PERSONAL SERVICES

- A. Small purchase or competitive proposal procedures generally will be the preferred method for procuring professional services.
- B. Professional services contracts will not have terms exceeding five years without HUD approval.
- C. Specific Considerations—Architectural/Engineering (A/E) Services
 - 1. Architect/engineer services in excess of the small purchase limitation may be obtained by either the competitive proposals method or qualifications-based selection procedures. Under qualification-based selection procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to the negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. Qualifications-based selection procedures shall not be used to purchase other types of services even though architect/engineer firms are potential sources.
 - 2. The Housing Authority will not allow an A/E firm to prepare an application on a “no fee” basis, and then compensate that A/E firm by paying a contingent fee or contracting with them on a sole-source basis to do the design and construction phases.

3. There are several alternatives the Housing Authority may employ in contracting A/E services.
 - a. A “full-service” approach may be used where the Housing Authority solicits offers using competitive proposal procedures for qualification-based selection for assistance in preparing the CFP application and preparing for Joint Review, with options for doing the design and construction phases for a specific CFP project.
 - b. The Housing Authority may choose to separate the CFP Application/Joint Review work from the design/construction phase work. In that event, Housing Authority will first solicit and contract for the Application/Joint Review work, and then the design/construction phase will be solicited and contracted.
 - c. The Housing Authority may wish to procure services for more than one specific project and may solicit for an indefinite quantity of A/E services. In this event the contract will contain a clause precluding the successful A/E from competing on related A/E work solicited by the Housing Authority during the term of the contract if the other A/E work would result in an organizational conflict of interest.

D. Specific Considerations—Legal Services

1. Employment of House Counsel is exempt from Section III, (Procurement Methods). House Counsel is ineligible to receive procurement contracts for legal services under Section III.
2. Contracts for litigation services must meet the requirements of the HUD Litigation Handbook 1530.1 Rev. -5 dated May 18, 2004 and HUD Notice PIH 2003-24 issued September 26, 2003.
3. HUD concurrence will be sought for contracts in connection with litigation, per HUD’s Litigation Handbook 1530.1 Rev 5 dated May 18th, 2004, that exceed \$100,000.00.
4. Fixed-price proposals will be approved only where the issues are uncomplicated, extensive preparation probably is not required, and any trial that may ensue probably will not be lengthy.

SECTION V --- HACC PROCUREMENT RULES

The following provisions are rules of the Housing Authority concerning procurement actions:

- A. Authority to sign contracts on behalf of the Housing Authority shall be vested only as follows:
 - (i) The Executive Director shall have authority to sign contracts up to \$50,000;

- (ii) The Director of Human Services shall have authority to sign contracts on behalf of the Housing Authority greater than \$150,000.
 - (iii) Contracts exceeding \$150,000 require Board Approval.
- B. Review and approval by Housing Authority legal counsel will be obtained for all contracts submitted in excess of \$50,000 and for such other contracts as the Executive Director may determine.
- C. All construction contracts or subcontract under CFP which exceed \$25,000 shall require a 5% bid guarantee bond and either (1) a performance and payment bond for 100% of the contract price, or (2) separate performance and payment bonds, each for 50% or more of the contract price.
- D. Labor contracts will follow Bureau of Labor and Industries (BOLI) wage laws as applicable.
- E. Authority to make small purchases up to \$50,000 shall exist as delegated by the Executive Director in writing.
- F. Records documenting procurement actions shall be retained for three years.
- G. The Housing Authority may utilize the results of competitive bidding by another public agency and award contracts to the party to whom the contract was awarded by the other public agency, as long as the price is the same or lower than that paid by the other public agency and the bid process used by the other public agency substantially complies with major features of the Housing Authority procurement policy. Intergovernmental or interagency agreements to this effect may be utilized when feasible. Insurance may be purchased through the Housing Authorities Risk Retention Pool (HARRP), or the City/County Insurance Services, or other similar pooling arrangements.
- H. All real property acquisitions shall comply with the Real Property Acquisition Policy.
- I. When HUD funds are involved, service contracts will be let for periods not to exceed five years.
- J. The Housing Authority may waive requirements of compliance with formalities of the bidding process when the Executive Director determines in writing that it is clearly in the public interest to do so.
- K. The Housing Authority may waive requirements of compliance with formalities of the bidding process when contracts are related to Federal Stimulus Capital Fund expenditures where sole sourcing is allowed.

SECTION VI --- FEDERAL PROCUREMENT AND CONTRACT STANDARDS

The following provisions of 24 CFR 85.36 are set forth for the purpose of describing current federal procurement and contract standards followed by the Housing Authority. If the federal regulations are changed in a manner which conflicts with the provisions set forth below, then current federal regulations will prevail.

1. Housing Authority Procurement Code of Conduct

85.36(b)(3) and Section 19 of the ACC: Conflict of Interest:

No employee, officer or agent of the Housing Authority shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- a. The employee, officer or agent,
- b. Any member of his immediate family,
- c. His or her partner, or
- d. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The Housing Authority's officers, employees or agents will neither solicit nor accept gratuities, favors or any thing of monetary value from contractors, potential contractors, or parties to subagreements. Housing Authority staff will not disclose confidential information to any person not authorized by the Contracting Officer to receive such information.

Prohibition Against Contingent Fees (24 CFR 85.36 (c) and (b)(8): Contractors wanting to do business with the Housing Authority must not hire a person to solicit or secure a contract for a commission, percentage, brokerage, or contingent fee, except for the retention of bona fide established commercial selling agencies.

Sanctions (24 CFR 85.36(b)(11) and (12): All employees shall follow the Ethical Standards Governing Employee Conduct as defined in the Housing Authority's Personnel Policy, Section XIV and shall be disciplined according to the Personnel Policy's, Section XVI.

2. 85.36(b)(8) -- Responsible Contractors:

The Housing Authority will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

3. 85.36(b)(9) -- Maintenance of Records:

The Housing Authority will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

4. 85.36(b)(10) -- Time and Materials Contracts:

The Housing Authority will use time and material type contracts only:

- a. After a determination that no other contract is suitable, and
- b. If the contract includes a ceiling price that the contractor exceeds at its own risk.

5. 85.36(c)(1) -- Open Competition:

- a. All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of 85.36. Some of the situations considered to be restrictive of competition include, but are not limited to:
 - (i) Placing unreasonable requirements on firms in order for them to qualify to do business,
 - (ii) Requiring unnecessary experience and excessive bonding,
 - (iii) Noncompetitive pricing practices between firms or between affiliated companies,
 - (iv) Noncompetitive awards to consultants that are on retainer contracts,
 - (v) Organizational conflicts of interest,
 - (vi) Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement, and
 - (vii) Any arbitrary action in the procurement process.

6. 85.36(c)(2) -- Geographic Preferences Prohibited:

The Housing Authority will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

7. 85.36(c)(3) -- Solicitation and Selection Standards:

The Housing Authority will ensure that all solicitations:

- a. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, 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, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equal description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerers shall be clearly stated; and
- b. Identify all requirements which the offerers must fulfill and all other factors to be used in evaluating bids or proposals.

8. 85.36(e) -- Affirmative Action:

The Housing Authority will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps shall include:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
- f. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e) (i) through (v) of this section.

9. 85.36(f) -- Cost or Price Analysis:

The Housing Authority will perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, must include an independent estimate before receiving bids or proposals. A cost analysis must be performed when the offerer 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. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

10. 85.36(i) -- Required Contract Provisions:

The Housing Authority's contracts must contain provisions of this section when HUD funds are involved. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Procurement Policy.

- a. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts other than small purchases)
- b. Termination for cause and for convenience by the grantee or subgrantee including, the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)
- c. Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)
- d. Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)
- e. Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by federal grant program legislation)
- f. Compliance with Sections 103 and 107 of the Contract Work hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers)
- g. Notice of awarding agency requirements and regulations pertaining to reporting.

- h. Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
- i. Awarding agency requirements and regulations pertaining to copyrights and rights in data.
- j. Access by the grantee, the subgrantee, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination excerpts, and transcriptions.
- k. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.
- l. Compliance with all applicable standards, orders or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)
- m. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

SECTION VII --- APPEALS AND REMEDIES

- A. GENERAL—It is the Housing Authority’s policy to resolve all contractual issues informally at the Housing Authority level, without litigation, whenever possible. When appropriate, the Housing Authority may consider the use of informal discussions between the parties by individuals who did not participate substantially in the matter in dispute, to help resolve the differences. When HUD funds are involved, disputes shall not be referred to HUD until all administrative remedies have been exhausted at the Housing Authority level. HUD will only review protests in cases of violations of federal law or regulations and failure of the Housing Authority to review a complaint or protest. Disclosure of information about any dispute involving HUD funds will be made to HUD.
- B. BID PROTESTS—Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this policy. Any protest against a solicitation must be received before the due date for receipt of bids or proposals, and any protest against the award of a contract must be received within ten calendar days after bid opening, or the protest will not be considered. All bid protests shall be in writing, submitted to the Executive Director or designee, who shall issue a written

decision on the matter. The Executive Director may, at his discretion, suspend the procurement pending resolution of the protest, if warranted by the facts presented.

- C. CONTRACT CLAIMS—All claims by a contractor relating to performance of a contract shall be submitted in writing to the Executive Director or designee for a written decision. The contractor may request a conference on the claim. The Executive Director’s decision shall inform the contractor of its subsequent appeal rights to the Director of the Department of Human Services.

SECTION VIII --- POLICY FOR DISPOSITION OF PERSONAL PROPERTY

- A. Surplus personal property will not be sold or exchanged for less than its fair market value unless the sale or exchange involves a Resident Initiative Program, a nonprofit agency or provides a direct benefit to public housing residents, as long as all residents have an equal opportunity to obtain the benefit (for example, the sale of items on which all residents have an opportunity to bid).
- B. Excess personal property with an estimated value of \$10,000.00 or less may be disposed of without Board approval by any method deemed cost effective by the Executive Director.
- C. Property valued above \$10,000.00 will be disposed of after Board approval in one of the following methods:
1. By soliciting three oral bids and providing 7 days notice to bidders.
 2. By sealed bidding procedures, and soliciting bidders at least 14 days prior to such bidding by:
 - a. Advertising in at least one newspaper of general circulation in Clackamas County; or
 - b. Sending notice to all pertinent Clackamas County departments; or
 - c. Any other outreach method deemed effective by the Executive Director.
 3. By negotiating a fair market sale with a governmental or non profit agency.
 4. By exchanging for trade-in value toward the procurement of like products, where the purchase otherwise meets the requirements of these rules, taking into account the trade-in price offered.
- D. Property of no value may be certified as such by the Executive Director and disposed of. If a question as to the existence of value arises, the procedures outlined in paragraph B above shall be followed.

Generally, property determined to be of no value, or of minimal value, that has been abandoned in Housing Authority owned or managed units will be donated to nonprofit organizations.

- E. For all disposition actions, complete records including participants, bids and all other pertinent information will be kept. A bill of sale shall be issued for each transaction. Such information will be kept for 3 years.
- F. Board members, Housing Authority employees, and their families shall not be eligible to obtain any goods through this disposition policy.
- G. Dwelling components, such as door, cabinets and appliances, determined to have no value by the contracting officer (or designee), may be disposed of by independent contractors as part of modernization projects.

Amendment Procurement Policy for American Recovery and Reinvestment Act (ARRA) Capital Fund Stimulus Grant (CFSG)

On February 17, 2009, the American Recovery and Reinvestment Act (ARRA) became law, making funds available to public housing authorities. The ARRA imposed strict funding obligations and expenditure deadlines. HACC was awarded Capital Fund Stimulus Grant (CFSG) funds on March XX, 2009. HACC must obligate 100 percent of the grant within 1 year of the date on which the Grant became available and expend 60 percent of the Grant within 2 years of the date which the Grant became available and expend 100% of the Grant within 3 years of the date on which the Grant became available. Failure to meet such deadlines will result in recapture of all or a portion of the Grant.

In order to facilitate the expeditious and efficient obligations of the Grant and to comply with the ARRA and its related HUD Notices (including PIH 2009-12 and 2009-31), HACC has, by Resolution 1873, adopted the ARRA Procurement Policy. This amendment to HACC's Procurement Policy provides additional and superseding procurement requirements for all Projects identified as CFSG Projects.

- 1) Noncompetitive Proposals: According to 24 CFR 85.36(d)(4), if solicitation of a proposal is only from one source or if HACC finds that after solicitation of a number of sources, that competition is inadequate, HACC may award the contract noncompetitively where small purchase procedures, sealed bids or competitive proposals are infeasible and one of the circumstances in 85.36(d)(4)(i) applies. One such circumstance is public exigency that will not permit a delay resulting from competitive solicitation (85.36(d)(4)(i)(B)). If HACC finds that other competitive methods of procurement are infeasible, HUD will support HACC's use of the public

exigency circumstance based on the purpose and requirements of the Recovery Act. Section 3 of the Recovery Act provides that these funds shall be managed and expended to achieve the purposes specified including commencing expenditures and activities as quickly as possible consistent with prudent management. Further the Recovery Act has imposed expeditious obligation and expenditure requirements on the Capital Fund Stimulus Grants and directs HUD to assist HACC as necessary to expedite and facilitate the use of these grants. HACC may use the noncompetitive proposals method, but must do so on a contract-by-contract basis and in compliance with all Part 85 requirements including the requirement for a cost analysis and the conflict of interest requirement. HACC must ensure that the noncompetitive proposals process followed is clearly captured in their amended Capital Fund Stimulus Grant Procurement Policy. Further, HACC must maintain records sufficient to detail the significant history of each contract's procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price (85.36(b)(9)). No HUD pre-award review is required for noncompetitive proposals as stated in Section 8.4(C), Chapter 8 of HUD Handbook No. 7460.8 Rev 2. However, HACC must make available upon HUD's request the HACC's Capital Fund Stimulus Grant Procurement Policy and any documents requested related to procurement activity as stated in 24 CFR 85.36(g).

- 2) State and Local: Any requirements relating to the procurement of goods and services arising under state and local laws and regulations shall not apply to Capital Fund Stimulus Grants. HACC shall instead follow the Part 85 requirements.
- 3) Part 85 Compliance: HACC shall amend their procurement standards and policies as necessary in order to expedite and facilitate the use of the funds. This amended policy can be used only for procurements related to Capital Fund Stimulus Grants. Specifically, HACC shall remove all procurement standards that are contrary to Part 85 or the Recovery Act. Where permitted by Part 85, HACC may insert their own procedures provided that they are not contrary to the purposes of the Recovery Act.
 - a. For example, HACC may use their existing protest procedures, written codes of standards for employees engaged in the award and administration of the contracts and other procedures as long as they are not contrary to Part 85.
 - b. It is important to note that HACC shall continue to follow all Part 85 requirements regarding conflicts of interest, contract cost and price.
- 4) Buy American: HACC shall follow Buy American requirements of section 1605 of the Recovery Act and use only iron, steel and manufactured goods produced in the United States in their projects.
- 5) Force Account: To the extent feasible, HACC will consider employing existing or additional force account laborers on either a permanent or a temporary basis to

perform Capital Fund stimulus grant work. See 24 CFR 968.105 and 968.120. No prior HUD approval is required specifically for force account labor, but such work must be incorporated into the Capital Fund planning, budgeting and reporting documents.