

PROCUREMENT POLICY

Linn-Benton Housing Authority
PROCUREMENT POLICY

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PROCUREMENT POLICY

Established for the Linn-Benton Housing Authority by action of the Board of Commissioners on May 16, 2000. This Procurement Policy complies with HUD Annual Contributions Contract (ACC), HUD Handbook 7460.8, "Procurement Handbook for Public Housing Agencies", and the procurement standards of 24 CFR §85.36.

I. GENERAL PROVISIONS

- A. **PURPOSE:** To provide for fair and equitable treatment of all persons or firms involved in purchasing by the Linn-Benton Housing Authority (HA); to assure that supplies, services and construction are procured efficiently, effectively and are in full compliance with applicable Federal standards, HUD regulations and State and local laws.
- B. **APPLICATION:** This Policy shall apply to every expenditure of funds for public purchasing including contracts not involving an obligation of funds, (i.e. concessions contracts) contracts and modifications, purchase, lease, or rental of supplies and equipment; however, nothing in this Policy shall prevent the HA from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with law.
- C. **PUBLIC ACCESS TO PROCUREMENT INFORMATION:** Procurement information shall be a matter of public record and available to the public to the extent provided in the State Freedom of Information Act.

II. PROCUREMENT AUTHORITY AND ADMINISTRATION

- A. The Executive Director or delegate shall be responsible for contract administration and procurement. Operational procedures shall be based on HUD Handbook 7460.8.
- B. The Executive Director or delegate shall ensure that:
 - 1. procurement requirements are subject to an annual budget.
 - 2. contracts and modifications are in writing and are supported by documentation including the method of procurement, the contract type, the rationale for selection or rejection of offers and the basis for the contract price.
 - 3. solicitation procedures are in full compliance with Federal standards or State and local laws that are more stringent if they are consistent with 24 CFR §85.36.
 - 4. there are sufficient unencumbered funds available to cover the anticipated cost, work is inspected before payment, and payment is made promptly for contract work performed and accepted.
 - 5. the HA complies with applicable HUD review requirements.

- C. This Policy and any later changes shall be submitted to the Board of Commissioners for approval. The Board appoints and delegates procurement authority to the Executive Director, is responsible for adopting policies that are appropriate for the HA and will provide for penalties, sanctions or other disciplinary actions for misconduct of the HA, agents or contracts in accordance with State and local laws.

Authorization by the Board of Commissioners shall be required for purchases of \$25,000 or more. In addition, the Board shall be responsible for awarding contracts for amounts of \$75,000 or more if procurement by sealed bids is to be used.

III. PROCUREMENT METHODS

- A. Requests for supplies/services will be referred to the Executive Director or delegate who will weigh the merits and needs of the HA to assure necessity. Those items deemed necessary will be procured by one of the following methods.

B. SMALL PURCHASE PROCEDURES

1. Petty Cash Purchases: Expenditures under \$150 may be made from Petty Cash which is established in a sufficient amount to cover small purchases made during a reasonable period. It shall be supported by receipts, periodically reconciled and replenished by submission of a voucher to the HA Finance Officer. The Executive Director shall adopt procedures for audit of the petty cash fund to eliminate abuse and misuse.
2. Small Purchases of \$5,000 or less: The Executive Director or his delegate shall make purchases of less than \$5,000 in the open market using small purchase procedures, including petty cash and blanket purchase agreements. Only one quotation need be solicited if the price received is considered reasonable. The agency should, where feasible, obtain competitive quotes. Such purchases must be distributed equitably among qualified sources.
3. Small Purchases of - more than \$5,000 - \$75,000: For purchases and contracts from \$5,000 - \$75,000 the Executive Director or delegate shall invite bids orally, by telephone, or in writing from at least three suppliers if they are available in the locality. The agency shall keep a written record of the source and amount of the quotes received.
4. Open-end Supply Contracts: When the Authority does not know the exact quantity it will need of a frequently used item it may enter into open-end supply contracts for periods of up to one year. The estimated quantity required for the period will be stated in the invitation to bid.

C. PROCUREMENT BY SEALED BIDS: (formal advertising):

The sealed bid method is the preferred method for procuring construction. Bids are publicly solicited and a firm-fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bid, is the lowest in price.

For professional services contracts, sealed bidding should not be used. Competitive proposals shall be solicited for these procurements and the most qualified competitor selected.

Prior HUD review and approval is required when the HA's procedures or practices fail to comply with 24 CFR §85.36 for procurement in excess of \$100,000 and without competition; when only one bid was received; where a "brand name" product is specified; where the HA plans to award the contract to other than the lowest bidder; or where the proposed contract modification changes the scope by more than \$100,000.

When the sealed bid method is used, the following procedures will be followed:

1. Solicitation and Receipt of Bids: All advertisements for bids shall be in compliance with 24 CFR part 85 or state and local law if more stringent.
 - (a) The invitation will be publicly advertised and bids shall be solicited from two or more responsible bidders willing and able to compete, providing them sufficient time prior to the date set for opening the bids.
 - (b) Complete and accurate specifications or purchase descriptions will be included.
 - (c) All bids received shall be time-stamped, left unopened and shall be stored in a secure place until bid opening. A bidder may withdraw its bid at any time prior to bid opening.
 - (d) The procurement lends itself to a firm fixed price contract and the selection of successful bidder can be made principally on the basis of price.
2. Bid Opening and Award:
 - (a) All bids shall be in writing and will be publicly opened at the time and place prescribed in the invitation to bid. If equal low bids are received from responsible bidders, award shall be made by drawing lots or other random method, unless otherwise provided by State and local law and stated in the invitation.

- (b) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost may be used in determining lowest bidder.

"Lowest responsible bidder" means the lowest bidder who has substantially complied with all prescribed public bidding procedures and requirements and who has not been disqualified or debarred as stated under Section V Paragraph B.

- (c) The Housing Authority may reject any bid not in compliance with all prescribed public bidding procedures and requirements, and may reject for good cause any or all bids upon a finding of the agency that it is in the public interest to do so;
- (d) If only one bid is received, award shall not be made unless a cost price analysis verifies the reasonableness of the price.

3. Mistakes in Bids:

- (a) Correction or withdrawal of bids will be allowed without penalty if requested before the opening of the bids. After bid opening, corrections shall be permitted only if bidder can show clear evidence that a non-judgmental error was made, the nature of the error, and the bid price actually intended.
- (b) Bids will be rejected if incomplete, if they fail to conform to the invitation, or if the contractor is on the PHA, HUD or Labor Department debarment list. Late bids will be returned unopened.

4. Bonds:

For construction contracts exceeding \$100,000 contractors shall be required to submit the following, unless more stringent amounts are required by State or local laws:

- (a) bid guarantee equivalent to 5% of the bid price; and
- (b) a performance bond for 100% of the contract price; and
- (c) a payment bond for 100% of the contract price.

- D. **COMPETITIVE PROPOSALS:** Competitive procurement includes Requests for Proposals (RFP's), auctions, interagency pools, time and materials contracting, service contracts, etc. under \$75,000. Service contracts including legal, banking and auditing services will be for a two-year period unless HUD approval is received for a longer duration.

The HA will use financial evaluation techniques when appropriate including but not limited to, net present value (NPV), payback, internal rate of return (IRR), etc. Competitive proposals are conducted with more than one source submitting an offer. The following requirements apply:

1. Requests for proposals are to be publicized with all evaluation factors and their relative importance.
2. Proposals will be solicited from adequate number of qualified sources.
3. The HA will use an objective method to conduct technical evaluations of proposals.
4. Awards will be made to the responsible firm whose proposal is most advantageous, with price and other factors considered.
5. For architect and engineering in excess of small purchases limitation services, the HA may select based on the most qualified competitor subject to negotiation of fair and reasonable compensation. Sealed bidding shall not be used.

- E. **NONCOMPETITIVE PROPOSALS:** Procurement shall be conducted competitively to the maximum extent possible. 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:

1. The item is available only from a single source.
2. Public emergency will not allow time for delay from competitive solicitation. Emergency: a situation which could affect health, welfare, safety or the financial interests of the HA in an adverse way unless immediate action is taken.
3. HUD authorizes the use of noncompetitive proposals; or
4. After solicitation of a number of sources, competition is determined inadequate.

5. Each procurement based on noncompetitive proposals shall supported by written justification and approved in writing by the Contracting Officer.
6. A price reasonableness for all procurements based on noncompetitive proposals shall be determined by a cost analysis.

F. COST AND PRICE ANALYSIS

1. A cost or price analysis shall be done for all procurement actions in excess of \$5,000, including contract modifications. An analysis determining the need for single source contracting will be done.
2. When a cost breakdown is submitted, the HA shall have a right to audit the contractor's books and records pertinent to such costs; profit shall be analyzed separately.
3. For each contract in which there is no price competition, profit will be negotiated as a separate element of the price. In all cases other than emergencies, prior review and approval will be sought from the awarding agency.
4. If a project is competitively bid and all responsible bidders exceed the public agency's cost estimate, the public agency, in accordance with rules adopted by the public agency, may negotiate with the lowest responsive, responsible bidder, prior to awarding the contract, in order to solicit value engineering and other options to attempt to bring the project within the agency's cost estimate.

A negotiation with the lowest responsive, responsible bidder pursuant to this paragraph shall not result in the award of the contract to that bidder if the scope of the project is significantly changed from the original proposal.

Notwithstanding any other provision of law, the records of the bidder used in contract negotiation in accordance with this paragraph are not subject to public inspection until after the negotiated contract has been awarded or the negotiation process has been terminated.

G. CANCELLATION OF SOLICITATIONS

1. Cancellation for solicitation for all bids or proposals that are due or may already have been received may occur:
 - (a) if the HA no longer requires the supplies, services, construction; or
 - (b) if the HA can no longer expect to fund the procurement or prices exceed available funds, or

- (c) ambiguous or inadequate specifications were part of the solicitation; and the solicitation did not provide for all significant factors or similar reasons.
- 2. A notice of cancellation shall be sent to all offerors and reasons for cancellation shall be documented in the procurement file and shall be provided upon request to any offerors solicited.
- 3. If all bids received are unreasonable, the HA shall cancel the solicitation and re-solicit for proposals or use the competitive proposals method.

H. DISQUALIFICATION OF BIDDER

- 1. The Housing Authority may disqualify any person as a bidder on a public contract if the agency finds:
 - (a) The person does not have sufficient financial ability to perform the contract. If a bond is required to insure performance of a contract, evidence that the person can acquire a surety bond in the amount and type required shall be sufficient to establish financial ability;
 - (b) The person does not have equipment available to perform the contract;
 - (c) The person does not have key personnel available of sufficient experience to perform the contract; or
 - (d) The person has repeatedly breached contractual obligations to public and private contracting agencies.
- 2. The public contracting agency may make such investigation as is necessary to determine whether a person is qualified. If a bidder or prospective bidder fails to supply promptly information as requested by the public contracting agency pursuant to such investigation, such failure is grounds for disqualification.
- 3. Any information voluntarily submitted by a bidder or prospective bidder pursuant to an investigation under subsection 2 of this section or in a pre-qualification statement required by the HA shall be deemed a trade secret.

- I. **APPEAL OF DISQUALIFICATION:** Any person who wishes to appeal disqualification as a bidder shall, within three business days after receipt of notice of disqualification, notify the Housing Authority that the person appeals the disqualification. Immediately upon receipt of such notice of appeal, the HA shall notify the appropriate board.

- J. **COOPERATIVE PURCHASING:** When available and cost effective, the HA will use Consolidated Supply Contracts and State Purchasing Agreements as procurement aids. If used, the intergovernmental agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment and other relevant terms and conditions.

IV. SPECIFICATIONS AND LIMITATIONS

The procedure shall not:

1. place unreasonable requirements on firms in order for them to qualify;
2. require unnecessary experience and excessive bonding;
3. allow noncompetitive pricing practices between firms or between affiliated companies;
4. allow noncompetitive awards to consultants that are on retainer contracts;
5. allow organizational conflict of interest;
6. allow the specifying of a "brand name" product, specifying a brand name for reference, the term "or Equal" must follow the brand name;
7. allow any arbitrary action in procurement process.

- V. **CONTRACTOR QUALIFICATIONS AND DUTIES:** The Housing Authority may adopt a rule, resolution, ordinance or other regulation requiring mandatory pre-qualification for all persons desiring to bid for public contracts that are to be let by the agency as long as the mandatory pre-qualification complies with 24 CFR 85 or state and local law if more stringent.

- A. **CONTRACTOR RESPONSIBILITY:** The HA will also consider factors such as contractor integrity, compliance with public policy, corporate social policy, record of past performance, and financial and technical resources (including availability of maintenance and repair capabilities). If a prospective contractor is found to be non-responsible, a written determination shall be included in the contract file and the contractor advised of the reasons for the determination.

- B. **SUSPENSION AND DEBARMENT:** Contracts shall not be awarded to Contractors who may be suspended, debarred, or determined ineligible by HUD in accordance with 24 CFR Part 85.35 when necessary to protect the HA in its business dealings. Ineligible contractors are listed with Labor Relations in Seattle

at the following address: HUD – Labor Relations, 1321 Second Avenue, Seattle, WA 98101-2058, phone (206) 442-4867.

- C. **QUALIFIED BIDDER'S LIST:** Any pre-qualified lists of persons, firms or products which are used in procurement of and services shall be kept current, and shall include enough sources to ensure competition. Mailing lists of potential contractors shall include, but not be limited to pre-qualified suppliers.

VI. TYPES OF CONTRACTS, CLAUSES, AND CONTRACT ADMINISTRATION

- A. **CONTRACT TYPES:** Any type of contract which is appropriate and best promotes the interests of the HA may be used, provided that the cost-plus-a-percentage-of-cost and percentage of construction cost methods are prohibited. A cost reimbursement contract shall not be used unless it is less costly or impracticable to satisfy the HA's need otherwise.

A time and material contract may be used only when no other contract is suitable. Such contracts will include a ceiling price, which the contractors exceed at their own risk.

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

Termination for convenience or default; Equal Employment Opportunity; Anti-Kickback Act; Davis-Bacon Act; Contract Work Hours and Safety Standards Act, reporting requirements; Patent rights; Rights in data; Examination of records by Comptroller General, retention of records for three years after closeout; Clear air and water; Energy efficiency standards; Bid protests and contract claims; Value engineering; Payment of funds to influence certain Federal transactions; and Administrative, contractual or legal remedies.

VII. APPEALS AND REMEDIES

Disputes in procurement of goods and services will be settled by exercising good administrative practice and sound judgment. Violations of law will be referred to the Local, State or Federal Authority having proper jurisdiction. A protestor must exhaust all administrative remedies with the grantee or sub-grantee before pursuing a protest with the HA.

Grantees and sub-grantees will have protest procedures and shall resolve disputes relating to their procurements. All disputes with grantees and sub-grantees shall be reported to the awarding agency (HA).

VIII. ASSISTANCE TO SMALL AND OTHER BUSINESSES

The Housing Authority shall take affirmative steps to assure that small businesses (SBE), minority firms (MBE), women business enterprises (WBE) and labor surplus area firms as defined in 24 CFR §135.15 are used when possible. These include but are not limited to:

1. placing these qualified firms on the solicitation lists.
2. assuring that these firms are solicited when they are potential sources.
3. dividing total requirements into smaller tasks or quantities, when feasible.
4. establishing delivery schedules that encourage SBE, MBE and WBE participation.
5. requiring the prime contractor to take the affirmative steps above if subcontracting is to be anticipated.

IX. ETHICS IN PUBLIC CONTRACTING

No employee, officer or agent or any member of his/her immediate family, or his/her partner, employer, or organization about to employ any of the above, shall participate in selection, award or administration of a contract if a conflict of interest (real or apparent) would be involved as defined in 24 CFR §85.36 (b) Procurement Standards 1 through 3.

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

Contractors shall not retain a person to solicit or secure a HA contract for a commission, percentage, brokerage, or contingent fee, except for bona fide employees or bona fide established commercial selling agencies.

X. WHEN FEDERAL LAW PREVAILS:

Pursuant to ORS 279.056 the applicable federal laws, rules and regulations shall govern in any case where federal funds are involved and the federal laws, rules and regulations conflict with any of the provisions of state or local law or require additional conditions in public contracts not authorized by ORS 279.011 to 279.063.