



SPRINGFIELD  
HOUSING  
AUTHORITY

# PROCUREMENT POLICY

Amended February 10, 2016

In accordance with HUD's Procurement Handbook for PHAs, 7460.8 vers2

**Adopted by the Board of Commissioners on**

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## **SECTION 1 – INTRODUCTION**

This Procurement Policy (Policy) shall comply with the Consolidated Annual Contributions Contract (ACC), as amended, between the Springfield Housing Authority (SHA) and the U.S. Department of Housing and Urban Development (HUD), the procurement standards of 2 CFR Part 200, Massachusetts General Law (M.G.L) Chapter 30B, M.G.L. Chapter 149, M.G.L. Chapter 30, §39M, HUD Handbook 7460.8 vers2, and other applicable federal and state regulations. Nothing contained within this policy should be construed by its users to amend, modify, override or nullify the applicability of federal, state or local laws governing the procurement policy of the SHA.

### **1.1 PURPOSE AND SCOPE**

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 SHA; assure that construction and non-construction supplies and services are procured efficiently, effectively and at the most favorable prices available to the SHA; promote competition in contracting; provide safeguards for maintaining a procurement system of quality and integrity; and assure that SHA purchasing actions are in full compliance with applicable Federal and state laws, regulations, and standards.

### **1.2 APPLICATION**

This Procurement Policy applies to all contracts for the procurement of construction and non-construction supplies and services entered into by the SHA after the effective date of this Policy. It shall apply to disposition of surplus equipment or surplus supplies. It shall apply to every expenditure of funds of SHA for public purchasing, irrespective of the source of funds, including contracts that do not involve an obligation of funds (such as concession contracts); however, nothing in this Policy shall prevent the SHA 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 for the purchase, lease or rental of supplies and equipment, and disposition of surplus supplies and equipment.

### **1.3 PUBLIC ACCESS TO PROCUREMENT INFORMATION**

Procurement information shall be a matter of public record to the extent provided in M.G.L. Chapter 66, M.G.L. Chapter 149, and the Federal Freedom of Information Act and shall be available to the public as provided therein. All records involving procurements shall be maintained for a period of seven (7) years from the date of final payment under the contract.

### **1.4 SHA’s WEBSITE POSTING AND PUBLICATION**

The terms “Publicize” or “Publication” as used in this Policy refer to the process of notifying vendors about solicitations. The SHA may provide notification to vendors either by electronic (electronic mail) or written communications. The terms “Posting” or “Posted” as used in this Policy refers to the process of placing a solicitation on the SHA’s

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Website and thereby making it immediately available for printing or downloading. The SHA may post contract awards on the SHA website.

## **SECTION 2—PROCUREMENT AUTHORITY AND ADMINISTRATION**

### **2.1 GOVERNING STATUTES**

Procurement and contracting activities of the SHA shall be conducted in accordance with all applicable provisions of M.G.L. Chapter 30B, M.G.L. Chapter 30, Section 39M, and M.G.L. Chapter 149, and Sections 44A-J. In addition, all procurement and contracting activities shall be conducted in accordance with the Common Rule, codified at 2 CFR Part 200, HUD Handbook 7460.8 vers2, HUD Handbook, 2210.18, HUD Handbook 1344.1, and shall incorporate all provisions of that regulation.

### **2.2 AUTHORIZED PROCUREMENT AUTHORITY & ADMINISTRATION**

- A. The Board of Commissioners (“Board”) is responsible for adopting an appropriate procurement policy for SHA. The Board hereby appoints and delegates to the Executive Director Procurement authority, as the Chief Procurement Officer (“CPO”) as further described in this Policy. The Executive Director shall have the authority to execute intergovernmental agreements, contracts, purchase orders and/or modifications of less than twenty five thousand dollars (\$25,000) without the approval of the Board. Approval of the Board shall be required for contracts and contract modifications, that alone or in the aggregate, total an amount in excess of twenty five thousand dollars (\$25,000).
- B. All procurement transactions shall be administered by the CPO or other individual whom he or she has authorized in writing (e.g., Purchasing Agent). In accordance with M.G.L. Chapter 30B, the CPO may delegate certain powers and duties of the CPO to SHA staff at his/her discretion. Any and all delegations must be in writing and be on file with the Office of the Inspector General. The delegation must include the signature of the CPO, the activity or function authorized and any limitations. The CPO or his/her designee shall ensure that all procurement activities of the SHA are carried out in accordance with governing federal and state regulations and this policy. Further, the CPO may revoke or amend a delegation whenever he/she determines that revocation or amendment is in the best interests of the SHA. A delegation of power or duties by a procurement officer and any revocation or amendment thereof shall not take effect until a copy of the same has been filed with the Office of the Inspector General.
- C. Additionally, the CPO shall issue operational procedures to implement this Policy, which shall be based on the procurement standards contained in 2 CFR Part 200 and Massachusetts General Laws. The CPO shall also establish a system of sanctions for violations of the ethical standards described in Section 10, consistent with federal and state law.

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- D. The CPO or his/her designee shall ensure that:
- (1) Procurement requirements are subject to an annual planning process to assure efficient and economical purchasing;
  - (2) Contracts and modifications are in writing, clearly specifying the desired supplies, services, or construction, and supported by sufficient documentation regarding the history of the procurement, including as a minimum the method of procurement chosen, the selection of the contract type, and the rationale for selecting or rejecting offers, and the basis for the contract price;
  - (3) For procurement other than small purchases, public notice is given of each upcoming procurement a minimum of two weeks prior to the time specified for the receipt of bids or proposals; responses to such notice are honored to the maximum extent practical; a minimum of two weeks is provided for preparation and submission of bids or proposals; and notice of contract awards is made available to the public;
  - (4) Solicitation procedures are conducted in full compliance with Federal standards stated in 2 CFR Part 200, or M.G.L. c. 30B, et al. 149 30B/39, or local laws that are more stringent, provided they are consistent with 2 CFR Part 200;
  - (5) An independent cost estimate is prepared before solicitation issuance and is appropriately safeguarded for each procurement \$25,000 or more, and a cost or price analysis is conducted of the response received for all procurements;
  - (6) Contract award is made to the responsive and responsible bidder offering the lowest price (for sealed bid contracts) or contract award is made to the offeror whose proposal offers the greatest value to the SHA, considering price, technical and other factors specified in the solicitation (for contracts awarded based on competitive proposals);
  - (7) Successful firms are notified within ten (10) days after contract award (Unsuccessful firms will be given procurement results upon request);
  - (8) There are sufficient unencumbered funds available to cover the anticipated cost of each procurement before contract award or modification (including change orders), work is inspected before payment, and payment is made promptly for contract work performed and accepted;
  - (9) The SHA complies with applicable HUD review, requirements, as provided in the operational procedures supplementing this Policy; and

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- (10) This Policy and any amendments shall be submitted to the Board for approval. The Board appoints and delegates procurement authority to the Executive Director and is responsible for ensuring that any procurement policies adopted are appropriate for the SHA.

### **2.3 INITIATION OF PROCUREMENT ACTION**

Documents authorized to initiate a procurement action shall include, but are not limited to, the following:

- A. Initial Procurement Start-Up Package (Procurement Request Form, Scope of Work, Cost Estimate);
- B. SHA's Encumbrance Journal Voucher and/or CFO Memorandum; and
- C. Justification memo for non-competitive proposals (if applicable) or other forms that are developed and approved by the CPO (or designee) to facilitate the procurement action in compliance with SHA's Contracts and Procurement Procedures Manual and this Policy.

## **SECTION 3 – PROCUREMENT METHODS**

### **3.1 SELECTION OF PROCUREMENT METHOD**

- A. If the CPO (or his/her designee) determines that the SHA will directly purchase the required items, one of the procurement methods outlined in this section (Section 3) shall be chosen, based on the nature and anticipated dollar value of the procurement. All procurement transactions will undergo a procurement selection rationale process to determine which of the procurement methods identified in this section is best applicable, based on the complexity of the scope of work and the estimated dollar amount of the procurement in accordance with this Policy.
- B. All procurements must be based on a written purchase description, the words used in a solicitation to describe the supplies or services to be purchased. The purchase description must describe the supplies or services to be procured in sufficient detail to ensure that the received bids or proposals can be evaluated in a fair and equal manner. A purchase description typically includes detailed specification of supplies, including any drawings, scope of services, or both. It also includes actual or estimated quantities, a schedule for performance, and delivery terms. The description must be sufficiently detailed to ensure successful procurement of the required supplies or services; however, the description must not be defined so as to unnecessarily restrict competition.

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The purchase description must be written prior to soliciting quotes. It may be read over the telephone, but each vendor must be given the same description. The written purchase description must be included in the documentation supporting each procurement.

An explanation of selection procedures follows below. Appendix A, Appendix B, and Appendix C illustrate the breakdown of procurements by purchase category, value, procurement method, and selection procedures.

- C. All procurements shall be documented. Petty cash expenditures shall be supported by receipts. Expenditures from \$50 to \$5000 shall be supported by a standard form purchase order. Expenditures in excess of \$5,000 but not exceeding \$25,000 shall be supported by a written contract in the form of a standard purchase order. The purchase of any non-stock specialty item will require additional approval by the CPO or his or her designee or the Assistant Executive Director of Finance. Approval must be requested by way of a “Non-Stock/Specialty Item Purchase Approval Form.”
- D. No contract shall be solicited or awarded for a term greater than 3 years, under Chapter 30B including extensions, renewals and options, unless first approved and authorized by majority vote of the Board of Commissioners prior to solicitation. Each contract which exceeds one year shall contain a clause indicating it is contingent upon an annual appropriation. A contract for more than three (3) years needs prior approval of the Board of Commissioners before solicitations are published. Chapter 30B Section 12(a).

### **3.2 PUBLIC ADVERTISING OF PROCUREMENTS**

- A. All procurements of \$25,000 or more (\$10,000 for Building Construction Related Services) shall be conducted in accordance with the appropriate publicly advertised procurement method depending on the category of purchase as identified in this section. The CPO or his/her designee shall be responsible for ensuring that the procurement method used is appropriate to the required supply or service and that the procurement is conducted in full accordance with applicable statutes and/or regulations. Purchases from the Commonwealth of Massachusetts’ consolidated contracts (i.e. state contracts) shall not be subject to public notice requirements.
- B. Notices for all Publicly Advertised Bids and Publicly Advertised Proposals must be published and awarded in accordance with M.G.L. 30B or with 2 CFR Part 200 . All advertising efforts must be documented. Any bid or proposal pursuant to M.G.L. Chapter 30B and in excess of \$100,000 must be published in the Goods and Services Bulletin. Bids and proposals made in accordance with either M.G. L. Chapter 149 or M.G.L. Chapter 30, Section 39M must be published in the Central Register.

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### **3.3 PETTY CASH**

The CPO or his/her designee at his/her discretion may establish petty cash funds, which shall be overseen by the Director of Finance and/or Accounting Manager. Petty cash funds can be used for small purchases. The maximum amount of each purchase shall be one hundred dollars (\$100.00). Each petty cash fund shall not exceed five hundred dollars (\$500.00).

### **3.4 CREDIT CARD**

The Executive Director shall be responsible for the written authorization of credit card issuance use for the SHA staff. Credit cards may only be used in those cases where:

- A. A vendor requires a credit card to secure the ordering of goods or services; or
- B. To secure travel and making related reservations; or
- C. A vendor will not accept a purchase order; or
- D. An emergency requires the use of a credit card.

The maximum amount of each purchase shall be less than three thousand dollars (3,000.00). The use of a SHA credit card for personal use is strictly prohibited and subject to disciplinary action including but not limited to suspension and/or termination.

### **3.5 SMALL PURCHASE PROCEDURES**

- A. Any contract of a value less than \$25,000 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. The SHA, its Board of Commissioners, and staff/employees, shall not cause or conspire to cause the splitting or division of any procurement, specification, invitation for bids, request for proposals, proposals, solicitation, or quotation for the purpose of circumventing or evading a requirement of this policy or any applicable law or regulation.
- B.. Small Purchases of less than \$3,000.00 (not construction related): The Springfield Housing Authority will exercise "Sound Business Practice." One oral quote may be sufficient.
- C. Small Purchases of \$3,000.00 but less than \$34,999.00 (not related to construction): At least three (3) quotes must be solicited that may be oral or in writing.
- D Construction-related services including renovation and repairs (\$2,000 to \$10,000): For construction and repairs between \$2,000 and \$10,000.00, no less

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than three (3) written quotes shall be solicited. Quotes must be based on a purchase description as discussed in Section 3.1(B) above; and all bidders must quote on the exact same scope of work. All work over \$5,000.00 must have a written contract. Additionally, a payment bond in half (1/2) of the contract amount shall be required for ALL construction related contracts of \$25,000.00 or more.

In accordance with M.G.L. c.149 § 26, the SHA shall obtain prevailing wage rates for all public works construction projects regardless of the cost or size of the project. Further, the SHA shall also obtain Davis-Bacon prevailing wage rates for construction-related contracts/projects valued in excess of \$2,000.00.

### **3.6 COMPETITIVE SEALED BID/PROPOSAL SELECTION REQUIREMENTS**

The following selection procedures shall apply to procurements totaling \$25,000 and above (\$10,000 for building construction related services):

- A. For non-Construction Related Supplies and Services of \$25,000 or more, Competitive Sealed Bids or Competitive Sealed Proposals are required in accordance with M.G.L. Chapter 30B.
- B. Construction Related Supplies (\$25,000 and above). The procurement of Construction Related Supplies in the amount of \$25,000 or more requires a Competitive Sealed Bid in accordance with M.G.L. Chapter 30 § 39M or M.G.L. Chapter 30B.
- C. Public Works Related Construction, a.k.a. "Horizontal" Construction (\$10,000 and above). In order to procure public works related Construction in excess of \$10,000, a Competitive Sealed Bid is required. Procurements of this type must be made in accordance with M.G.L. Chapter 30 §39M.
- D. Public Building Related Construction (\$10,000 to \$100,000). For Public Building Related Construction in excess of \$10,000 but less than \$100,000, a Competitive Sealed Bid is required. Procurements of this type must be made in accordance with M.G.L. Chapter 30 §39M procedures for public bids.
- E. Public Building Related Construction (\$100,000 and above). For Public Building Related Construction in excess of \$100,000, a Competitive Sealed Bid is required. Procurements of this type must be made in accordance with M.G.L. Chapter 149, § 44 A-J.

### **3.7 SEALED BID/PROPOSAL METHOD – INVITATION FOR BIDS**

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## **SEALED BID**

- 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 of 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. Sealed bidding is the preferred method for construction procurement. For procurements under the Code of Federal Regulations, 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 (IFB) shall be issued including specifications and all contractual terms and conditions applicable to the procurement, including a Policy that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the IFB. The IFB shall state the time and place for both the receipt of bids and the public bid opening. 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. All bidders shall certify under the pains and penalties of perjury that the bid was made in good faith and without collusion or fraud with any other person.
  
- 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. Award shall be made as provided in the IFB by written notice to the successful bidder. If equal low bids are received from responsible bidders, award shall be made by drawing lots or similar random method, unless otherwise provided in federal, state or local law and stated in the IFB. 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 IFB 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 nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made.

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All decisions to allow correction or withdrawal of bid mistakes shall be supported by a written determination signed by the CPO or his/her designee. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the SHA or fair competition shall be permitted.

### **3.8 COMPETITIVE PROPOSALS – REQUESTS FOR PROPOSALS**

- A. Conditions for Use. Competitive proposals may be used if there is an adequate method of evaluating technical proposals and where the SHA determines that 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 offerors, identity of the offerors, and the contents of their proposals. The proposals shall be evaluated only on the criteria stated in the RFP.
- C. Negotiations. Unless there is no need for negotiations with any of the offerors, negotiations shall be conducted with offerors who submit proposals determined to have a reasonable chance of being selected for award, based on evaluation against technical and price factors as specified in the RFP. Such offerors shall be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. The purpose 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 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 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 SHA.

### **3.9 NON-COMPETITIVE PROPOSALS**

- A. Conditions for Use. Procurements shall be conducted competitively to the maximum extent possible. The non-competitive method of procurement is the solicitation of a proposal from only one source. This includes initial procurements under the competitive method where, after solicitation of a number of sources, competition is determined inadequate. Procurement by noncompetitive proposals

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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, based on a good faith review of available sources; is for an amount less than \$10,000 and the Chief Procurement Officer certifies that only one practicable source for the supply or service exists;
- (2) An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the SHA, 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, and/or construction necessary to meet the emergency;
- (3) HUD authorizes the use of noncompetitive proposals; or
- (4) After solicitation of a number of resources, competition is determined inadequate.

B. Justification. Each procurement based on noncompetitive proposals shall be supported by a written justification for the selection of this method. The justification shall be approved in writing by the responsible Contracting Officer. Poor planning or lack of planning is not justification for emergency or sole-source procurements. The justification, to be included in the procurement file, should include the following information:

- (1) Description of the requirement;
- (2) History of prior purchases and their nature (competitive vs. noncompetitive);
- (3) The specific exception in 2 CFR Part 200(
- (4) Statement as to the unique circumstances that require award by noncompetitive proposals;
- (5) Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);
- (6) Statement as to efforts that will be taken in the future to promote competition for the requirement;

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- (7) Signature by the Contracting Officer's supervisor (or someone above the level of the Contracting Officer); and
- (8) Price Reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing an analysis, as described in this Policy.

### **3.10 QUALIFICATIONS-BASED SELECTION PROCESS**

- A. Condition for Use. The qualifications-based selection method of procurement involves the selection of the most qualified vendor based upon qualifications and where price is not used as an initial selection factor. In a qualifications-based procurement, the price is determined after vendors are initially selected based only on an evaluation of their qualifications. The selection is based on either (i) additional evaluation factors including price, or (ii) negotiation of fair and reasonable price with the highest ranked vendor. The SHA shall comply with M.G.L. Chapter 7 and DHCD designer selection process for the solicitation and selection of A/E services for all state funded projects. The SHA shall also comply with 2 CFR Part 200 for the solicitation and selection of federally funded A/E contract services.
- B. Architect/Engineer (A/E) Services. Architect/engineer services in the excess of the small purchase limitation (or less if required by federal, state or local law) may be obtained by either the competitive proposals method or qualifications-based selection procedures, unless state law mandates the specific method. 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. Under qualifications-based selection procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to the negotiation of fair and reasonable compensation.
- C. Solicitation. A Request for Services (or a Request for Qualifications) shall be issued requesting technical qualifications statement from prospective contractors, which the SHA will then rank technically. The Request for Services (RFS) must include a description of the work, qualifications required of the applicants, the construction budget, the A/E fee, project schedule and other administrative requirements important to the A/E. Once the proposals are ranked technically, the SHA shall engage in negotiations with the top-ranked firm to reach agreement on a fair and reasonable price.
- D. Award. After evaluation of proposal (and 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 SHA.

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### **3.11 EMERGENCY PROCUREMENTS**

When the time required to comply with the policy and procedures outlined herein would endanger the health or safety of persons or property, the CPO or his/her designee may initiate a procurement without following the policies and procedures in full. An emergency procurement shall be limited to the essential supplies or services necessary to meet the emergency, and shall conform to established procurement policy to the fullest extent practicable. A true emergency occurs when the emergency condition could not have been foreseen in advance or in sufficient time to avoid the resulting damage to health, safety or property. Conditions which occur as a result of deferred maintenance or poor planning are not emergencies and may not be addressed by emergency procurements. The SHA employees are required to contact and consult with the Purchasing Agent or the General Counsel prior to initiating an emergency procurement (the Executive Director or the Deputy Director may be contacted if the Purchasing Agent or General Counsel are not available). All required requests for emergency procurement waivers to the Department of Capital Asset Management (formerly Department of Capital Planning and Operations) ("DCAM/DCPO") or any other governmental oversight agency shall be issued either by the Chief Procurement Officer or his/her designee.

Under Chapter 30, Section 39M (public works in excess of \$25,000) contracts may be awarded without competitive bids:

- (1) In cases of extreme emergency caused by enemy attack, sabotage, or other such hostile actions, or resulting from explosion, fire, flood, earthquake, hurricane, tornado or other such catastrophe;
- (2) As necessary for temporary repair and restoration of service;
- (3) To protect the health and safety of persons and property; and
- (4) So long as permanent reconstruction and repair isn't undertaken.

The SHA is required to secure a waiver of the public advertisement of a M.G.L. c. 30 § 39M procurement from the Commonwealth of Massachusetts' Division of Capital Asset Management (DCAM) prior to awarding a contract to address an extreme emergency condition.

In order to contract for goods and services under M.G.L. Chapter 30B (procurements, including those involving buildings and public works under \$34,999 ), without complying with statutory advertising requirements, the SHA must keep records specifying the contractor's name, the amount and type of procurement contract, a listing of the supply or service provided, and the basis for determining the need for an emergency procurement. In addition, the record of an emergency procurement must also be submitted to the Goods and Services Bulletin for publication.

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If an emergency is in excess of \$25,000, and/or would be subject to public bidding in accordance with M.G.L. Chapter 149 Sections 44A-J, a waiver of these requirements must be obtained from DCAM. In addition, HUD approval shall be obtained prior to the award of an emergency procurement exceeding \$100,000 which is funded in whole or in part from Federal sources.

Due either to the nature of the emergency or to the unavailability of DCAM staff, the SHA may contract for necessary work without DCAM approval, provided that: DCAM approval is sought at the earliest possible time afterward, and if DCAM does not approve the emergency determination, all work is promptly discontinued.

Additionally, the SHA shall maintain a record of its emergency procurement, documenting the basis for determining that an emergency exists, the name of the vendor with whom the SHA will be contracting, the amount and type of contract, and a list of the supplies or services purchased under each contract. The SHA will also describe the procedures it used to solicit competition, and will submit a record of the emergency procurement to the Good and Services Bulletin for publication as soon as possible.

### **3.12 COST AND PRICE ANALYSIS**

- A. General. In order to determine price reasonableness of a bid or fee proposal, a cost or price analysis shall be conducted prior to contract award or approval for all procurement actions including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement, but as a starting point an independent cost or price analysis shall be performed before receiving bids or proposals.
- B. Submission of Cost or Pricing Information. If the procurement is based on noncompetitive proposals, or when only one offer, bid, or proposal is received, or for other procurements as deemed necessary by the SHA (e.g., when contracting for professional, consulting, or architect/engineer services) the offeror shall be required to submit:
  - (1) A cost breakdown showing projected costs and profit;
  - (2) Commercial pricing and sales information, sufficient to enable the SHA 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
  - (3) Documentation showing that the offered price is set by law or regulation.
- C. Cost Analysis. Cost analysis shall be performed if an offeror/contractor is required to submit a cost breakdown as part of its proposal. A cost analysis shall be necessary when adequate competition is lacking, and for sole source

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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 regulations. When a cost breakdown is submitted: a cost analysis shall be performed of the individual cost elements; the SHA 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 principles (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation (FAR), 48 CFR Chapter 1). Profit shall be negotiated as a separate element when a cost analysis is required. In establishing profit, the SHA shall consider factors such as the complexity and risk of the work involved, the contractor's investment and productivity, the amount of subcontracting, the quality of past performance, and industry profit rates in the areas for similar work.

C. Price Analysis. A comparison of prices shall be used in all cases other than those described in cost analysis.

### **3.13 CANCELLATION OF SOLICITATIONS**

An IFB, RFP, or other solicitation may be cancelled before offers are due if: the SHA no longer requires the supplies, services or construction; the SHA 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.

A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if: the supplies, services or construction are no longer required; ambiguous or otherwise inadequate specifications were part of the solicitation; the solicitation did not provide for consideration of all factors of significance to the SHA; prices exceed available funds and it would be appropriate to adjust quantities to come within available funds; there is reason to believe that bids or proposals may not have been independently arrived at in good faith; or for good cause of a similar nature when it is in the best interest of the SHA.

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 or similar items.

If all otherwise acceptable bids received in response to an IFB are at unreasonable prices, or only one bid is received and the price is unreasonable, the SHA shall cancel the solicitation and either:

A. Re-solicit using a request for proposals; or

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- B. 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 bid is received at an unreasonable price); provided, that the CPO determines in writing that such action is appropriate, all bidders are informed of the SHA's intent to negotiate, and each responsible bidder is given a reasonable opportunity to negotiate.

### **3.14 COOPERATIVE PURCHASING**

The SHA may enter into state and local intergovernmental agreements to purchase or use common goods and services. The decision to use an intergovernmental agreement or conduct a direct procurement shall be based on economy and efficiency. 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. The SHA is encouraged to use federal or state excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs.

## **SECTION 4 – CONTRACTOR QUALIFICATIONS AND DUTIES**

### **4.1 CONTRACTOR RESPONSIBILITIES**

Procurements shall be conducted only with responsible contractors, i.e., those who have the technical and financial competence to perform, and who have a satisfactory record of integrity. Before awarding a contract, the SHA 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 on SHA and other jobs (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 non-responsible, a written determination of non-responsibility shall be prepared and included in the contract file, and the prospective contractor shall be advised of the reasons for determination. All general bidders who bid for work under M.G.L. Chapter 149 must be certified by the Massachusetts Division of Capital Planning Asset Management.

### **4.2 SUSPENSION AND DEBARMENT**

Contractors may be suspended, debarred, or determined ineligible by HUD, in accordance with HUD regulations (24 CFR Part 24). The SHA shall review the List of Parties Excluded from Federal Procurement and Non-Procurement Programs published by the U.S. General Services Administration—Office of Acquisition Policy, or by other Federal and state agencies (i.e. Department of Labor for violation of labor regulations) when necessary to protect the SHA in its business dealings. Moreover, the SHA's contracts shall not be awarded to debarred, suspended or ineligible contractors.

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#### **4.3 QUALIFIED BIDDERS LIST/VENDOR OUTREACH**

- A. Interested businesses shall be given an opportunity to be included on qualified bidder's lists. Any pre-qualified lists of persons, firms, or products which are used in the procurement of supplies and services shall be kept current and shall include enough qualified sources to ensure competition. Firms shall not be precluded from qualifying during the solicitation period. Solicitation mailing lists of potential contractors shall include, but are not limited to, such pre-qualified suppliers.
- B. When determined by the PO, SHA may place a notice in the Republican and/or other regional newspapers or publications announcing procurement opportunities that are to be posted. Interested parties may obtain a copy of SHA solicitations through one of the following methods:
  - (1) Posted solicitations (available on the SHA's website) for printing and/or downloading; or
  - (2) Picking-up hard copies of the solicitations at SHA's headquarters building. The SHA may charge a per-page fee for receipt of hardcopies of solicitations.

#### **4.4 CONTRACTING WITH SECTION 3 BUSINESS AND RESIDENT-OWNED BUSINESS CONCERNS**

Section 3 of the Housing Act of 1968, as amended, requires SHA to use appropriate efforts to provide employment and training opportunities to low and very-low income persons receiving subsidy from SHA, and contracting opportunities with Resident-Owned Business and Section 3 business concerns related to activities funded by covered HUD assistance.

Pursuant to HUD regulations, SHA shall use appropriate efforts with respect to all contracts and subcontracts involving the purchase of services or having a significant service component funded by covered HUD assistance. These efforts will also apply to the entire assisted activity, even if it is only in part, funded by covered HUD assistance.

The SHA shall comply with its Section 3 Policy, as may be amended from time to time and the requirements of 2 CFR Part 200. The SHA may contract with businesses owned in substantial part (at least a majority) by housing authority residents (resident-owned) for services and/or construction by using an alternative procurement process.

### **SECTION 5 – TYPES OF CONTRACT, CLAUSES AND CONTRACT ADMINISTRATION**

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## 5.1 CONTRACT TYPES

Any type of contract that is appropriate to the procurement and that will promote the best interests of the SHA 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. A cost reimbursement contract shall not be used unless it is likely to be less costly or it is impracticable to satisfy the SHA's needs otherwise, and the proposed contractor's accounting system is adequate to allocate costs in accordance with applicable principles (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation (FAR), found in 48 CFR Chapter 1).
- B. 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.
- C. A firm fixed-price contract will typically be awarded on a sealed bid.

## 5.2 OPTIONS, EXTENSIONS AND RENEWALS

- A. Options, extensions and renewals for additional quantities or performance periods may be included in contracts, provided that (i) the option, extension or renewal is contained in the solicitation; (ii) the option, extension or renewal is a unilateral right of the SHA; (iii) the contract states a limit on the additional quantities and the overall term of the contract; (iv) the options, extensions or renewals are evaluated as part of the initial competition; (v) the contract states the period within which the options, extension or renewals may be exercised; (vi) the options, extensions or renewals may be exercised only at the price specified or reasonably determinable from the contract; and (vii) the options, extensions or renewals may be exercised only if determined to be more advantageous to the SHA than conducting a new procurement. The SHA shall retain sole discretion in exercising the option, and no exercise of an option shall be subject to agreement or acceptance by the contractor.
- B. Unless authorized by majority Board vote, the CPO or his/her designee shall not award a contract for a term exceeding three (3) years, including any renewal, extension, or option. Such authorization may apply to a single contract or to any number or types of contracts, and may specify a uniform limit or different limits on the duration of any such contracts.
- C. Prior to the exercise of an option or at any time during an initial or option term, the SHA may require that contractors submit updated disclosures information for the SHA review. The SHA will review the disclosure information to assess possible conflicts of interest.

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- D. The IFB, RFP, or other solicitation of any contract for a term exceeding one (1) year, including a renewal, extension or option, shall state, in addition to the other information required by this Section 5.2:
- (1) The amount of supplies or services required for the proposed contract period, and whether such amount is the actual amount required or an estimate;
  - (2) That the bidder or offeror shall give a unit price for each supply or service, and that the unit price shall remain the same throughout the contract, except to the extent that the solicitation and resulting contract provides for price adjustments;
  - (3) That the procurement officer shall cancel the contract if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal year succeeding the first year;
  - (4) Whether the bidder or offeror shall submit prices for:
    - (a) the first fiscal year only;
    - (b) the entire time of performance only; or
    - (c) both the first fiscal year and the entire time of performance.
  - (5) How the award will be determined, including, if the contractor submits prices for the first fiscal year and the entire time of performance, how the prices will be compared.

### **5.3 CONTRACT CLAUSES**

In addition to containing a clause identifying the contract type, all contracts shall include any clauses required by Federal or State statutes, executive orders and their implementing regulations, as provided in 2 CFR Part 200, such as the following:

- A. Termination for convenience;
- B. Termination for default;
- C. Equal Employment Opportunity;
- D. Anti-Kickback Act;
- E. Davis-Bacon Act;
- F. Contract Work Hours and Safety Standards Act, reporting requirements;
- G. Patent rights;
- H. Rights data;

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- I. Examination of records by Comptroller General, retention of records for three years after closeout;
- J. Clean air and water;
- K. Energy efficiency standards;
- L. Bid protests and contract claims;
- M. Value engineering; and
- N. Payments of funds to influence certain Federal transactions.
- O. Additionally, the forms HUD-5369, 5369-A, 5369-B, 5370, 5370-C, and 51915-A, which contain all HUD-required clauses and certifications for contracts of more than \$100,000, as well as any forms/clauses as required by HUD for small purchases, shall be used in all corresponding solicitations and contracts issued by the SHA.

The operational procedures required by Section 2.2 (c) of this Policy shall contain the text of all clauses and required certifications (such as required non-collusive affidavits used by the SHA).

#### **5.4 CONTRACT ADMINISTRATION**

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

#### **5.5 CHANGE ORDERS/CONTRACT MODIFICATION**

The SHA shall maintain procedures for administering change orders/contract modifications. Contract change orders/contract modifications may be modified only when the change or modification is within the original scope of work. Change order/contract modifications shall be based upon cost estimates and/or negotiated fees in accordance with 2 CFR Part 200. A cost analysis shall be conducted on all contract modifications and change orders. The level of the analysis shall be determined by the amount and/or the complexity of the modification or change order.

#### **5.6 PROHIBITED CONTRACT TYPES**

In accordance with 2 CFR Part 200(f)(4), the use of the following types of contracts is prohibited:

- A. Cost-plus-percentage-of-cost. This type of contract is prohibited because it obligates the SHA to pay all costs incurred throughout the contract plus a commission based on the percentage of future costs. In this type of pricing arrangement, the contractor's profit increases in proportion to its costs incurred in

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the performance of the contract. The contractor has a clear incentive to increase costs.

- B. Cost-plus-percentage-of-construction-cost. The cost for individual construction-related services is determined by applying a percentage of actual construction costs as a fee, such as an A/E contract in which the fee is determined based on the total construction cost. Such an arrangement allows the possibility of the contractor designing an overly expensive construction project in order to increase profits.

## **SECTION 6 – PROCUREMENT 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 SHA'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 9 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 specification limitations shall be avoided: geographic restrictions not mandated or encouraged by applicable federal law (except for architect-engineer contracts, which may include geographic location as a selection factor if adequate competition is available); unnecessary bonding or experience requirements; brand name specifications; brand name or equal specifications (unless they list the minimum essential characteristics and standard use). Nothing in this Policy shall preempt any federal, state or local licensing laws. Specifications shall be scrutinized to ensure that organizational conflicts of interest do not occur for example, having a consultant perform a study of the SHA's computer needs and then allowing that consultant to compete for the subsequent contract for the computers).

## **SECTION 7 – APPEALS AND REMEDIES**

### **7.1 GENERAL**

It is the SHA's policy to attempt to resolve all contractual issues informally at SHA without litigation. Protests and disputes shall not be referred to HUD or DHCD (or the Office of the Massachusetts Attorney General, in the case of construction related solicitations or contract) until all administrative remedies at SHA have been exhausted and only if a violation of federal or state law or this Policy has been alleged. When

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appropriate, the SHA 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. HUD will only review protests in cases of violations of federal law or regulations, and failure of the SHA to review a compliant or protest.

## **7.2 SOLICITATION (BID) AND AWARD PROTESTS**

Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of the Policy. Any protest against a solicitation must be received five (5) calendar days prior to the bid opening or the due date for receipt of bids or proposals, and any protest against the award of a contract must be received within ten (10) calendar days after the contract award, or the protest will not be considered by the SHA. All bid protests shall be in writing, submitted to the CPO or his/her designee, who shall issue a written decision on the matter. The CPO or his/her designee may, at his or her discretion, suspend the procurement pending resolution of the protest, if warranted by the facts presented. In addition, bid protests may be lodged at the Office of the Inspector General, the Office of the Attorney General, or in court.

## **7.3 CONTRACT CLAIMS**

All claims by a contractor relating to performance of a contract shall be submitted in writing to the CPO or his/her designee for a written decision. The contractor may request a conference on the claim. The CPO's or his/her designee's decision shall inform the contractor of its appeal rights to a higher level in the SHA, such as the CPO or a designated Board member, or a Procurement Appeals Board.

# **SECTION 8 – DISPOSITION OF SUPPLIES AND REAL PROPERTY**

## **8.1 DISPOSAL/SALE OF SUPPLIES AND/OR REAL PROPERTY**

The disposal or resale of supplies and/or real property shall be made by resolution of the Board authorizing the Executive Director or CPO to dispose of such property in the following manner:

- A. If the estimated net resale value of the personal property offered for disposal or resale is less than \$5,000.00, the CPO or his/her designee may negotiate a sale in the open market (including public auction) after such informal inquiry as he or she considers necessary to ensure a fair return to the SHA. The CPO or his/her designee may also solicit informal bids orally, by telephone, or in writing from known prospective purchasers and a tabulation of all such bids received shall be prepared and retained as part of the procurement record. The sale shall be documented by appropriate bill of sale.
- B. For sales of \$5,000.00 or more the award of such contract shall be made only after advertising for formal bids. Such advertising shall be at least two (2) weeks prior to award of the sales contract and shall be by advertisement in local newspapers or circular letters to all prospective purchasers. In addition, notices shall be

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posted in public places. Bids shall be opened publicly at the time and place specified in the advertisement. A tabulation of all bids received shall be prepared and filed with the contract as part of the permanent record. The award shall be made to the highest bidder as to price.

- C. The sale of supplies or real property to a public body for public use may be negotiated at its fair value subject to prior approval of the Board. The transfer shall be documented by an appropriate bill of sale.
- D. The SHA may by a majority vote of the Board, dispose of a tangible supply no longer useful to the authority but having resale or salvage value, at less than the fair market value to a charitable organization (nonprofit) which has received a tax exemption from the United States Treasury Department by reason of its charitable nature.

## **8.2 DESTRUCTION, ABANDONMENT OR DONATION OF SUPPLIES OR REAL PROPERTY**

SHA property shall not be destroyed, abandoned or donated without prior approval of the Board if its acquisition value was \$1,000 or more. The CPO or his/her designee shall make every effort to dispose of supplies or real property as outlined above. However, if the property has no scrap or salvage value and a purchaser cannot be found, a statement shall be prepared by the CPO or his/her designee listing the prospective bidders solicited and all other efforts made to sell the property, together with recommendations as to the manner of disposition. This statement shall be referred to the Board for its approval. A copy of the Board's approval, together with the complete documentation in support of the destruction, abandonment, or donation, shall be retained as part of the permanent procurement records.

## **SECTION 9 – ASSISTANCE TO SMALL AND OTHER BUSINESSES**

### **9.1 REQUIRED EFFORTS**

Consistent with Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, the SHA 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 the SHA project are used when possible. Such efforts shall include, but shall not be limited to:

- A. Including such firms, when qualified, on solicitation mailing lists;
- B. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;

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- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- D. Establishing delivery schedules, where the requirement permits, which encourages participation by such firms;
- E. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the U.S. Department of Commerce;
- F. 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 SHA's 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; and
- G. Requiring prime contractors, when subcontracting is anticipated, to take positive steps listed in 9.1(A) through 9.1(F) above.

## **9.2 GOALS**

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

## **9.3 DEFINITIONS**

- A. 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 SHA determines that their use is inappropriate.
- B. 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.
- C. A 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.

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- D. 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 the area of concentrated unemployment or underemployment, as defined by the U.S. Department of Labor in 20 CFR 654, Subpart A, and in lists of labor surplus area published by the U.S. Employment and Training Administration.
- E. 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 or eligible business concerns, and meeting the definition of small business above. A business concern owned in substantial part by persons residing in the area of the 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.

## **SECTION 10 – ETHICS IN PUBLIC CONTRACTING**

“The basis of effective government is public confidence, and that confidence is endangered when ethical standards falter or appear to falter.” – John F. Kennedy’s Address to Congress, April 27, 1957

### **10.1 GENERAL**

The SHA shall adhere to the following code of conduct, consistent with applicable federal, state or local laws and regulations.

### **10.2 CONFLICT OF INTEREST**

Transactions with any person, corporation, or other entity doing business or attempting to do business with SHA shall be conducted within the ethical framework established herein. Prior to a contract award and as an ongoing condition of continuing to contract with the SHA, the SHA may require that potential and existing contractors submit disclosure information for the SHA’s review. The SHA will review the disclosure information to assess possible conflicts of interest. All SHA contracts will include terms that incorporate applicable provisions of this policy.

Additionally, business dealings with entities doing business or attempting to do business with SHA shall not result in unusual gains for those entities or SHA employees or their relatives (as defined herein). An unusual gain refers to bribes, product bonuses, special fringe benefits, unusual price breaks, and other windfalls designed to ultimately benefit the employer, the employee, or both. Promotional plans that could be interpreted to involve unusual gain require advance written approval by the CPO or his/her designee. Actual or potential conflicts of interest occur when an employee or commissioner is in a

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position to influence a SHA business decision and that decision may result in personal and/or financial gain to that commissioner, employee, his/her relative, business associate or organization which employs, is negotiating to employ or has an arrangement concerning prospective employment of that employee, commissioner, relative or business associate. For purposes of this Policy, the term “immediate relative(s)” means the spouse, mother, father, brother, sister, or child of a covered person (whether related as a full blood relative or as a “half” or “step” relative, e.g., a half-brother or stepchild), daughter-in-law, son-in-law, father-in-law, mother-in-law, partner, or a significant other of such person living in the same household.

Each staff/employee, commissioner or agent of SHA or an SHA sub-grantee shall be strictly prohibited from participating directly or indirectly in the selection, or in the award or administration of a SHA contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when a financial or other interest in a firm selected for award is held by:

- A. The employee, commissioner, or agent;
- B. Any immediate relative of the employee, commissioner or agent; or
- C. An organization which employs or is about to employ any of the above.

If an employee, staff, or commissioner has any conflict of interest or the ability in any way to influence the SHA transactions with an outside firm, including purchases, contracts, or leases, then he or she must disclose the existence of any actual or potential conflict of interest to the CPO or his/her designee, as soon as possible. The CPO or his/her designee shall determine whether the conflict is an actual conflict of interest. In the case of a conflict of interest, the CPO or his/her designee may exclude the outside firm from contracting with the SHA, terminate the contract for breach of contract terms, or may impose such conditions as he/she deems reasonable to alleviate the conflict of interest.

Staff/employee or commissioner personal gain or their immediate relatives’ (as defined herein) gain, is strictly prohibited. A prohibited personal gain may result when an employee, the employee's immediate relative or a commissioner, the commissioner's immediate relative has an ownership or other financial interest in a firm that does business with the SHA, or when that employee, commissioner, or immediate relative receives any kickback, bribe, gift, or special consideration as a result of any transaction or business dealing involving the SHA.

No SHA commissioner, staff/employee who exercises or has exercised any function or responsibility with respect to activity in connection with any SHA transaction, or who is in a position to participate in a decision-making process or gain inside information with regard to such activity, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect to the activity or

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the proceeds thereunder, either for himself or herself, or for those with whom he or she has a relative (as defined herein) or business ties, during his or her tenure or for one (1) year thereafter. Neither the SHA nor any of its contractors or their subcontractors may enter into any contract, subcontract, or arrangement in connection with a project under a HUD Annual Contributions Contract in which any of the following classes of persons have an interest, direct or indirect, during his or her tenure or for one year thereafter:

- (1) Any present or former SHA commissioner or their relatives. There is excepted from this prohibition any present or former resident commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking positions with the SHA;
- (2) Any employee of the SHA who formulates policy or influences decisions with respect to the project(s) or their relatives; or
- (3) Any public official, member of the local governing body, or State or local legislator, who exercises functions or responsibilities with respect to the project(s) of the SHA, or their immediate relatives.

### **10.3 GRATUITIES, KICKBACKS, AND USE OF CONFIDENTIAL INFORMATION**

The SHA commissioners, staff/employees or agents shall not solicit or accept for themselves, their immediate relatives (as defined herein), or their businesses or other organizations, 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. The CPO or his/her designee shall determine whether the action was an actual violation of this subsection. In such case, the CPO or his/her designee may bar the outside firm from contracting with the SHA.

In cases where an employee, officer or agent of the SHA is in doubt as to a potential conflict of interest regarding procurement matters, the Executive Director, his/her designee, or in the Executive Director's case the Board, shall, on behalf of the SHA, seek an opinion from the State Ethics Commission and/or the Inspector General's Office.

### **10.4 PROHIBITION AGAINST CONTINGENT FEES**

Contractors shall not retain a person to solicit or secure a contract from the SHA for a commission, percentage, brokerage, or contingent fee, except for bona fide employees of established commercial selling agencies who are compensated in this manner in the ordinary course of business.

### **10.5 PENALTIES**

In the event any commissioner, employee, agent or contractor of SHA has been determined to have violated any of the provisions of the ethics section of this policy, such commissioner, employee, agent or contractor may be disciplined up to and including, but

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not limited to, termination and/or removal, to the extent permitted by Federal, State or local law or regulations.

By approving this policy, the Board hereby establishes the following sanctions for violation of the ethical standards of this Policy:

- A. Oral or written warnings or reprimands;
- B. Suspension with or without pay for specified periods of time; or
- C. Termination of employment.

Additionally, the value of anything received by an employee or non-employee in breach of the ethical standards of this policy shall be recoverable by the SHA. All procedures under this policy shall be in accordance with due process requirements and existing law. In addition, notice and an opportunity for a hearing shall be provided before imposing any suspension or termination of employment. Remedies against contractors may include notification to (DCAM) Division of Capital Asset Management in Boston, HUD, or an applicable federal, state or local law enforcement agency.

## **SECTION 11 – PROCUREMENT OF LEGAL & OTHER PROFESSIONAL SERVICES**

### **11.1 LEGAL SERVICES**

- A. General. When contracting for legal services, the goal is to acquire the services of a highly qualified firm at a reasonable price. Under the sealed bid method, only price is considered. Since qualifications and experience can be as important as price, the procurement of legal services should follow the competitive proposal procedures. The employment of a SHA employee is not covered by 2 CFR Part 200. The SHA General Counsel is ineligible to receive procurement contracts for legal services. All services of the SHA General Counsel would be part of the employment contract and are not to be procured separately. Where legal services are desired outside of the scope of services provided by SHA General Counsel, SHA may use small purchase procedures if the effort is not expected to exceed \$25,000 in the aggregate. If the SHA is unsure as to the total dollar amount of services that may be needed, then a formal contract should be awarded using the competitive proposals method of procurement.
- B. Litigation Services. Contracts for litigation services must meet the requirements of the HUD Litigation Handbook 1530.1. As provided therein with the exception of litigation involving the SHA acting as a Section 8 private developer, the SHA must submit to HUD Regional Counsel for prior written concurrence any contract with a private attorney for litigation services involving the SHA program, project or activity receiving loan, grant or subsidy assistance from HUD. HUD

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concurrence is not necessary if the services are estimated to cost not more than \$25,000.

## **11.2 HUD REVIEW**

- A. The SHA's contracts for legal services shall make provision for reasonable fees and reimbursement of necessary expenses. If additional funding or budget revision will be required to cover the cost of litigation services, the SHA shall consult appropriate HUD Field and Regional Offices staff.
- B. No contract attorney's fees for litigation services entered into by the SHA that calls for an estimated maximum price in excess of \$100,000 may be approved by the HUD Regional Counsel without the prior concurrence of the Program Associate General Counsel.

## **SECTION 12 – AWARD OF SUB-GRANT**

### **12.1 GENERAL**

Any award of sub-grant made by the SHA shall be made in accordance with this section.

### **12.2 DESCRIPTION OF SUB-GRANT**

For purpose of this Policy, a sub-grant exists when:

- A. the SHA will provide financial assistance in the form of money, property or other resources with a monetary value;
- B. the sub-grantee is a government or other legal entity (not individual persons);
- C. the award is made by the SHA under a written agreement obligating the sub-grantee to comply with requirements similar in nature to those imposed by the underlying grant on the SHA and which also requires the sub-grantee to account to the SHA for use of all funds and/or resources received; and
- D. the SHA has determined the eligibility of the sub-grantee in accordance with Section 12.3 below and has awarded the sub-grant in accordance with Section D below.

### **12.3 ELIGIBILITY OF SUB-GRANTEES**

Sub-grants shall be awarded only to responsible government or legal entities (not individual persons). Before awarding a sub-grant, the SHA shall review the proposed sub-grantee's ability to perform the sub-grant successfully, considering factors such as the sub-grantee's integrity, compliance with public policy, record of past performance (including contacting previous clients of the sub-grantee, such as other Housing Authorities), ability to meet the obligations established by the underlying grant and imposed on the sub-grantee by the sub-grantee agreement with the SHA and financial and

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technical resources. If a prospective sub-grantee is found to be non-responsible, the written determination shall be prepared and included in the contract file, and the prospective sub-grantee shall be advised of the reasons for the determination.

Sub-grantees may be suspended, debarred or determined ineligible by HUD in accordance with HUD regulations (24 CFR Part 24) or by other federal agencies when necessary to protect the SHA in its business dealings. Sub-grants shall not be awarded to debarred, suspended, or ineligible sub-grantees.

#### **12.4 METHOD OF AWARD OF SUB-GRANT**

A sub-grant may only be awarded to eligible sub-grantees when the following have occurred:

- A. Pre-approval obtained from HUD to enter into sub-grantee agreement; and
- B. The terms of the Notice of Funding Availability and the Grant Agreement allow for the award and processing of the sub-grant in the manner contemplated and the underlying Federal, State or local grant expressly authorizes the SHA to utilize grant funds for the award of sub-grants; and
- C. The Chief Procurement Officer or his /her designee approves the use of noncompetitive procurement process to award a contract to the sub-grantee, provided the price is fair and reasonable and in the best interest of the SHA.

### **SECTION 13 – HUD REVIEW REQUIREMENT**

As a general rule, HUD will not review or approve procurement actions except as referenced in 2 CFR Part 200 and other relevant federal regulations.

#### **14.1**

### **SECTION 14 – BONDING REQUIREMENTS**

The standards under this section apply to construction contracts that exceed \$100,000. There are no bonding requirements for small purchases or for competitive proposals. The SHA may require bonds in these latter circumstances when deemed appropriate; however, non-construction contracts should generally not require bid bonds.

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- A. Bid Bonds. For construction contracts exceeding \$100,000, offerors shall be required to submit a bid guarantee from each bidder equivalent to 5% of the bid price.
- B. Payment Bonds. For construction contracts exceeding \$100,000, the successful bidder shall furnish an assurance of completion. This assurance may be any one of the following four:
  - (1) A performance and payment bond in a penal sum of 100% of the contract price; or
  - (2) Separate performance and payment bonds, each for 50 % or more of the contract price; or
  - (3) A 20 % cash escrow; or
  - (4) A 25 % irrevocable letter of credit.
- C. These bonds must be obtained from guarantee or surety companies acceptable to the U. S. Government and authorized to do business in the State where the work is to be performed. Individual sureties shall not be considered. U. S. Treasury Circular Number 570 lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies on this circular is mandatory.

## **SECTION 15 – DOCUMENTATION AND FILE RETENTION**

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

- A. Rationale for the method of procurement, if not self-evident;
- B. Rationale of contract pricing arrangement, also if not self-evident;
- C. Reason for accepting or rejecting the bids or offers;
- D. Basis for the contract price;
- E. A copy of the contract documents awarded or issued and signed by the Contracting Officer;
- F. Basis for contract modifications; and
- G. Related contract administration actions.

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

Records are to be retained for a period of three years after final payment and all matters pertaining to the contact are closed.

## **SECTION 16 – EVALUATION COMMITTEES**

This section establishes the procedures for the evaluation review process and shall apply to the evaluation of all competitive proposals above the federal small purchase threshold. The evaluation process must be impartial, consistent and fair.

### **16.1 ESTABLISHMENT OF AN EVALUATION PANEL**

- A. A committee will be appointed by the Contracting Officer or his/her designee to evaluate technical proposals in accordance with a written evaluation plan. The Contracting Officer may serve as a panel member.
- B. A minimum of three persons (or a larger group having an odd number of designated voting members) must be selected.
- C. A designated chairperson shall be responsible for the deliberations of the committee and other duties as outlined below. The Contracting Officer may serve as Chairperson.
- D. Panel members who have a conflict of interest or relationship, financial or otherwise, or that may be construed as a conflict of interest, must disclose the existence of the conflict and, if necessary, excuse themselves from the panel.

### **16.2 ESTABLISHMENT OF A WRITTEN PLAN**

Prior to the issuance of the RFP, a written plan for evaluating technical and cost proposals should be established. However, where practical, the evaluation criteria set forth in the RFP can serve as the written plan for the evaluation.

The evaluation criteria as set forth in the RFP shall be the basis for all evaluations. Factors not specified in the RFP shall not be considered.

### **16.3 CONDUCT OF EVALUATION**

Prior to a formal meeting to discuss the proposals and evaluations, the Contracting Officer shall provide each evaluator with a copy of each qualified proposal, a rating sheet and a nondisclosure certificate, which must be executed by the panel member and returned to the Chairperson. The rating sheet will list each evaluation criterion and the weights assigned to it, as reflected in the RFP. The rating sheets should require the evaluator to assign both an adjectival rating for each evaluation criterion and a narrative justification to support the ratings given.

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The evaluation committee will then meet to discuss the proposals. Initially the proposals should be compared on an individual basis, separately, against the requirements stated in the RFP, not analyzed in comparison with each other. During the evaluation, the committee members should only evaluate the content of the proposals; personal knowledge that is not based on the proposer's written submission, except for relevant past performance information, should not be part of the initial technical evaluation.

The evaluation committee members will perform the following functions:

- A. Review all of the proposals using as the standard the evaluation criteria as set forth in the RFP;
- B. Meet to discuss the evaluations, the ratings of each evaluator and the reasons for such ratings; and
- C. Complete the ratings sheet including both an adjectival and narrative justifications for each proposal submitted.

The chairperson is responsible for collecting the individual rating sheets from each committee member, preparing a summary rating sheet which reflects an overall adjectival rating for each rating criterion, and preparing a formal written report to the Contracting Officer regarding the evaluation committee meeting and discussions (such as the minutes from the evaluation committee meeting). This written report shall rank the proposers and shall describe how the scores were determined. The chairperson shall then forward the individual rating sheets, the summary rating sheet and the written narrative report to the Contracting Officer.

#### **16.4 NEGOTIATIONS**

If necessary, negotiations will be conducted with all proposers in the competitive range. The extent of involvement of committee members in these negotiations will be determined by the Contracting Officer. These negotiations will be conducted in accordance with applicable agency policies/procedures.

#### **16.5 DISCLOSURE OF INFORMATION**

The evaluators shall not disclose any information included in any of the proposals (such as the names and number of proposers or rating scores) to anyone during the solicitation and evaluation period. Proposers submit proposals in confidence and expect their proposals and proprietary information contained therein to be protected from disclosure to other proposers or individuals. At the appropriate time, the Contracting Officer and/or his designee shall discuss information regarding the solicitation and award.

**APPENDIX A  
BIDDING SUMMARY**

**Emergency Procurements**

<b>Value of Purchase</b>	<b>CATEGORY OF PURCHASE</b>	<b>Procurement Method and Selection Procedure</b>
<b>\$0 and above</b>	All Goods and Non-Construction Related Services	EMERGENCY PROCUREMENT: In accordance with Chapter 30B
<b>\$0 to \$25,000</b>	Public Works and Public Building Related Construction Services	EMERGENCY PROCUREMENT: In accordance with Chapter 30B
<b>\$25,000 and above</b>	Public Works Related Construction Services	EMERGENCY PROCUREMENT: In accordance with Chapter 30 § 39M
<b>\$25,000 and above</b>	Public Building Related Construction Services	EMERGENCY PROCUREMENT: In accordance with Chapter 149 § 44A-44J

**EMERGENCY PROCUREMENTS**

Whenever the time required to comply with a requirement of this policy would endanger the health or safety of people or their property, the CPO or his/her designee may make an emergency procurement without following that requirement. An emergency procurement shall be limited to only supplies or services necessary to meet the emergency and shall conform to the requirements of this chapter to the extent practicable under the circumstances. The procurement officer shall make a record of each emergency as soon after the procurement as practicable, specifying each contractor's name, the amount and the type of each contract, a listing of the supply or service provided under each contract, and the basis for determining the need for an emergency procurement.

The procurement officer shall submit a copy of this record at the earliest possible time to the state secretary for placement in any publication established by the state secretary for the advertisement of procurements.

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**APPENDIX B  
BIDDING SUMMARY  
PROCUREMENT OF SUPPLIES AND SERVICES MGL c.30B-HUD Procurement  
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<b>EXAMPLE - TYPE</b>	<b>BIDDING PROCEDURES</b>
<p><b>SUPPLIES:</b> Appliances, Bathroom Fixtures, Vehicles, Snow Plowing Equipment, Office Furniture, Office Equipment, Stationery supplies etc.</p> <p><b>SERVICES:</b> Hiring of Consultants, Exterminating Services, Yard Maintenance, Cleaning Services, etc.</p>	<p style="text-align: center;"><b>\$0 - \$3000</b></p> <ul style="list-style-type: none"> <li>▪ GL MGL c.30B §5—Use Sound Business Judgment</li> <li>▪ Prepare Scope of Work or Product Description</li> <li>▪ Purchase may be made via Purchase Order</li> <li>▪ One oral quote may be sufficient</li> <li>▪ 25% CAP on additional contract expenditures</li> </ul>
	<p style="text-align: center;"><b>\$3,000-\$34,999</b></p> <ul style="list-style-type: none"> <li>▪ MGL c.30B §5—Solicit three oral or written quotes</li> <li>▪ Prepare a Scope of Work or Product Description</li> <li>▪ Requires a fully executed contract (not vendors)</li> <li>▪ 25% CAP on additional contract expenditures</li> <li>▪ Contracts in excess of \$10,000 are subject to DHCD approval</li> </ul>
<p><b>COMPETITIVE SEALED BIDS/PROPOSALS</b></p>	<p style="text-align: center;"><b>\$34,999 or more</b></p> <ul style="list-style-type: none"> <li>▪ IFB = Invitation to Bid. Award based on lowest price</li> <li>▪ MGL c.30B §5 - Advertise in Newspaper for Sealed Bids. <i>If greater than \$100K also advertise in Goods &amp; Services Bulletin</i></li> <li>▪ Prepare a Scope of Work or Product Description in</li> </ul>

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	<p>IFB</p> <ul style="list-style-type: none"> <li>▪ Requires a fully executed contract (not vendors) which is part of IFB</li> <li>▪ 25% CAP on additional contract expenditures</li> </ul> <p><b>OR</b></p> <ul style="list-style-type: none"> <li>▪ RFP = Request for Proposals (used more for services). MGL c.30B §6 - Develop criteria for each task. The RFP process requires bids to be submitted in two separate sealed envelopes: One for non-price proposal and price proposal. Allows contract award to bidder who has highest rating, not necessarily the lowest price</li> </ul>
<p><b>SOLE –SOURCE PROCUREMENTS</b></p>	<p style="text-align: center;"><b>\$0 - \$25,000</b></p> <ul style="list-style-type: none"> <li>▪ MGL c.30B §7 &amp; §14. After jurisdiction justifies by way of reasonable investigation why only one source is practical</li> <li>▪ You must maintain a written record of every sole-source procurement which must include the contractor’s name, contract type &amp; amount, the supplies or services procured and why it was determined to use this process</li> <li>▪ If more than \$25,000 must still advertise;</li> </ul>
<p><b>DISPOSITION OF SURPLUS SUPPLIES</b></p>	<p style="text-align: center;"><b>\$0 - \$4,999</b></p> <ul style="list-style-type: none"> <li>▪ GL MGL c.30B §15—Use “Sound Business Judgment”</li> <li>▪ For a supply with an estimated net value of less than \$5,000</li> <li>▪ The SHA may sell to another Housing Authority or make a charitable contribution</li> <li>▪ The SHA Board of Commissioners must authorize</li> </ul>

<p><b>DISPOSITION OF SURPLUS SUPPLIES</b></p>	<p style="text-align: center;"><b>\$5,000 or More</b></p> <p>For supplies with resale or salvage value of more than \$5,000 you have the following options for disposal and award to the highest offeror:</p> <ul style="list-style-type: none"> <li>▪ Dispose through Sealed Bids;</li> <li>▪ Dispose through Public Auction;</li> <li>▪ Dispose through Established Market (Commodities that are sold in wholesale lots w/prices set by open competition</li> <li>▪ LHA may trade-in a supply listed for trade-in in the invitation for bids or request for proposals.</li> <li>▪ Advertise notice of bid date for sealed bids or auction date in Newspaper once 2 weeks before bid opening; Post notice</li> <li>▪ If value is greater than \$100K also advertise in Goods &amp; Services Bulletin;</li> <li>▪ Requires a fully executed contract</li> </ul> <p>The SHA by majority vote of its Board dispose of a tangible supply no longer useful to the SHA, but having a resale value or salvage value, at less than the fair market value to a charitable organization.</p>
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**APPENDIX C  
CONSTRUCTION BIDDING SUMMARY  
BUILDING RELATED WORK – MGL c.149 §44A-M**

<b>TYPE OF WORK</b>	<b>BIDDING PROCEDURES</b>
<p><b>Vertical Construction—</b> Building related work, labor &amp; materials, labor only, estimated cost to cost <b>\$0 - \$1,999.00</b></p>	<p>Use Sound Business Practices</p>
<p><b>Vertical Construction—</b> Building related work, labor &amp; materials, labor only, estimated to cost between <b>\$2,000.00-\$24,999.00</b></p>	<p>Solicit written quotes through public notification process in accordance with M.G.L. c.149, §44A (2) (B), as amended by C.193 of the Acts of 2004. Notice shall include a scope of work statement defining the work to be performed and work requirements.. Apply for prevailing wages &amp;/or Davis Bacon.</p>
<p><b>Vertical Construction—</b> Building related work labor and materials estimated to cost between <b>\$25,000.00 - \$100,000.00;</b></p>	<p>Public bid in accordance with M.G.L. c.149, §44A (2) (C), as amended by C.193 of the Acts of 2004. No DCAM certification or filed sub-bids required. Apply for prevailing wages &amp;/or Davis Bacon. 5% Bid Deposit Required. Minimum payment bond in amount ½ of contract amount. On DHCD jobs full performance &amp; payment bonds are required if cost is estimated over \$50,000.00. No DCAM Certification; No filed Sub Bids</p>
<p><b>Vertical Construction—</b> Building related work labor and materials estimated to cost between <b>\$100,000.00 - \$10,000,000.00;</b></p>	<p>Public bid in accordance with M.G.L. c.149, §44A (2) (D), amended by C.193 of the Acts of 2004. GC must be DCAM certified and 100% Performance &amp; payment bonds required for GC. Filed sub-bids required if estimated greater than \$20K &amp; performance &amp; payment bonds at the request of GC. Generals &amp; subs must provide a 5% bid deposit with its bid. DCAM Certification for Generals. Effective 12/31/05 filed subcontracts must be DCAM certified.</p>

<p><b>Vertical Construction—</b> Building related work labor and materials estimated to cost <b>\$10,000,000.00 or more</b></p>	<p>Public bid in accordance with M.G.L. c.149, §§ 44(D½) &amp; 44D¾) new section added by C.193 of the Acts of 2004. AA must pre-qualify General's &amp; Filed Subs via RFQ before Advertising for Bids; AA must establish a pre-qualification committee; GC's &amp; Subs must be DCAM certified; 100% Performance &amp; payment bonds required for the GC &amp; AA must require for Sub's in RFQ. Filed sub-bids required if estimated greater than \$20K. Effective 01/1/05.</p>
<p><b>TYPE OF WORK</b></p>	<p><b>BIDDING PROCEDURES</b></p>
<p><b>Horizontal Construction—</b> Non-building related construction work estimated to cost \$10K or more including labor &amp; materials or just construction materials</p>	<p>MGL c.30 §39M—Wage Rates required. Advertise for Sealed Bids - Central Register + Newspaper. Contracts \$2,000 or more require a payment bond in ½ of contract amount. DHCD requires 100% Performance &amp; Payment for all work estimated to cost \$50K or more. 5% Bid Deposit is required; Certificates of Insurance which comply to specification;</p>
<p><b>Horizontal Construction -</b> Non-building related construction work estimated to cost \$0 to \$4,999.00 including labor &amp; materials.</p>	<p>MGL c.30B—Use Sound Business Judgment; Wage Rates required and a payment bond is required in ½ of contract amount if contract is more than \$2,000. A purchase order may be used for procurements less than \$5,000.00.</p>
<p><b>Horizontal Construction -</b> Non-building related construction work estimated to cost \$5,000 to \$10,000 including labor &amp; materials.</p>	<p>MGL c.30B—Obtain three oral or written quotes; Wage Rates required, ½ payment bond required and executed contract.</p>
<p><b>Horizontal Construction -</b> Non-building related construction work estimated to cost \$10,000 to \$25,000 including labor &amp; materials</p>	<p>MGL c.30B—Advertise in newspaper of general circulation and post notice at LHA; Wage Rates required, ½ payment bond required and executed contract;</p>

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<b>Purchase of construction/ building-related materials</b> <i>(NO LABOR)</i> estimated to cost between \$0 to \$34,999.00.	MGL c.30B - Obtain three oral or written quotes; and executed contract required if more than \$5,000;
<b>Purchase of construction/ building-related materials</b> <b>(NO LABOR)</b> Any \$\$ amount.	You may purchase off the Statewide Service Contract List; If contract does not exist for particular procurement and is estimated to cost \$3,000.00 or advertise in accordance with MGL c.30B §5 or in accordance with MGL c.30 §39M.