

PROCUREMENT POLICY OF THE  
REDEVELOPMENT AND HOUSING AUTHORITIES  
OF THE COUNTY OF CUMBERLAND

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I. General Provisions

- A. Purpose - The purpose of this Procurement Policy (the “Policy”) is to: provide for the fair and equitable treatment of all persons or firms involved in purchasing by the Authorities; assure that supplies, services and construction are procured efficiently, effectively and at the most favorable prices available to the Authorities; promote competition in contraction; provide safeguards for maintaining a procurement system of quality and integrity; and assure that the Authorities’ purchasing actions are in full compliance with applicable Federal standards, HUD regulations, and State and local laws.
- B. Application - This Procurement Policy applies to all contracts for the procurement of supplies, services and construction entered into by the Redevelopment Authority of the County of Cumberland and the Housing Authority of the County of Cumberland (hereinafter the “Authorities”) after the effective date of this Policy. It shall apply to every expenditure of funds by the Authorities for public purchasing, irrespective of the source of funds, including contracts which do not involve an obligation of funds (such as concession contracts); however, nothing in this Policy shall prevent the Authorities from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with law. The term “procurement,” as used in this Policy, includes both contracts and modifications (including change orders) for construction or services, as well as purchase, lease or rental of supplies and equipment. In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with these Policies, automatically supersede these Policies.
- C. Public Access to Procurement Information - Procurement information shall be a matter of public record to the extent provided in the Pennsylvania Right to Know Act at 65 P.S. §66 and shall be available to the public as provided in that statute.
- D. Definitions
1. Business Concern Located in the Area of the Project. An individual or firm located within the relevant Section 3 covered project area, as determined pursuant to 24 CFR 135.15, listed on HUD’s registry of eligible business concerns, and meeting the definition of small business below. 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.

2. Labor Surplus Area Business. A business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the U.S. Department of Labor in 20 CFR 654, Subpart A, and in lists of labor surplus areas published by the Employment and Training Administration.
3. Minority-owned Business. 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, Asian Indian Americans and Hasidic Jewish Americans.
4. Small Business. 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 Authorities determine that their use is inappropriate.
5. Women's Business Enterprise. 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.

## II. Procurement Authority and Administration

A. Procurement Transactions - All procurement transactions shall be administered by the Contracting Officer, who shall be the Executive Director or Deputy Executive Director or any other individual they have authorized in writing and shall be in compliance with HUD Handbook 7460.8 REV 2. The Executive Director shall pursue sanctions for violations of the ethical standards described in Section IX below, consistent with state law.

B. Executive Director's Duties - The Executive Director or the Deputy Executive Director or their 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 are 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, the rationale for selecting or rejecting offers, and the basis for the contract price;
3. for procurements other than small purchases, all solicitations are to be publicly advertised at least once in one newspaper of general circulation, published or circulated in Cumberland County, a minimum of fifteen (15) days prior to the date fixed for the opening of bids; and notice of contract awards is made available to the public;
4. solicitation procedures are conducted in full compliance with Federal standards stated in 24 CFR 85.36, or State and local laws that are more stringent, provided they are consistent with 24 CFR 85.36;
5. an independent cost estimate is prepared before solicitation issuance and is appropriately safeguarded for each procurement above the small purchase limitation, and a cost or price analysis is conducted of the responses 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 Authorities, considering price, technical and other factors as specified in the solicitation (for contracts awarded based on competitive proposals); unsuccessful firms are notified within ten (10) days (or other time period required by State or local law) after contract award;
7. 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; and
8. the Authorities comply with applicable HUD review requirements, as provided in HUD Handbook 7460.8 REV 2 supplementing this Policy.
9. that records sufficient to detail the significant history of each procurement action are maintained. 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 (as prescribed in this policy);
- E. A copy of the contract documents awarded or issued and signed by the Contracting Officer; and
- F. Related contract administration actions.

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

Records are to be retained for a period of three (3) years after final payment and all matters pertaining to the contract are closed.

- C. Later Changes. - This Policy and any later changes shall be submitted to the Board of Directors of each Authority for approval. The Boards appoint and delegate procurement authority to the Executive Director and are responsible for ensuring that any procurement policies adopted are appropriate for the Authorities.

### III. Procurement Methods

- A. Selection of Method - If it has been decided that the Authorities will directly purchase the required items, one of the following procurement methods shall be chosen, based on the nature and anticipated dollar value of the total requirement.
- B. Small Purchase Procedures –
  - 1. General. Any contract not exceeding the base amount of \$19,400<sup>1</sup> may be made in accordance with the Small Purchase Procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section (except as may be reasonably necessary to comply with Section VIII of this Policy).
  - 2. Petty Cash Purchases. Small purchases under \$100.00 which can be satisfied by local sources may be processed through the use of a petty cash account. The Contracting Officer shall ensure that: the account is

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<sup>1</sup> Adjustments to the base amounts specified under Sections III.B.1, III.B.4., and III.C.1 shall be made in accordance with the provisions of 35 P.S. 1551 (b.3), as amended.

established in an amount sufficient to cover small purchases made during a reasonable period; security is maintained and only authorized individuals have access to the account; the account is periodically reconciled and replenished by submission of a voucher to the Authorities' finance director; and, the account is periodically audited by the finance director or designee to validate proper use and to verify that the account total equals cash on hand plus the total of accumulated vouchers.

3. Small Purchases of \$2,000 or less. For small purchases below \$2,000, only one quotation need be solicited if the price received is considered reasonable. A contract shall be executed for the purchase of services. Purchase orders shall be used for all materials purchases below \$2,000. Such purchases must be distributed equitably among qualified sources. If practicable, a quotation shall be solicited from other than the previous source before placing a repeat order.
4. Small Purchases over \$2,000. For small purchases in excess of \$2,000, but not exceeding the base amount of \$19,400, written or telephonic price quotations from at least three (3) qualified and responsible contractors/suppliers shall be requested. In lieu of price quotations, a memorandum shall be kept on file showing that fewer than three (3) qualified contractors/suppliers exist in the market area within which it is practicable to obtain quotations. If only one response is received, the Contracting Officer should include a statement of reasonableness in the contract file. Prior to soliciting quotations, written specifications for services to be furnished shall be prepared. A written record of telephonic price quotations shall be made and maintained as a public record for a period of three (3) years and shall contain at least the date of the quotation; the name of the contractor/supplier and the contractor's/supplier's representative; the construction, reconstruction, repair, maintenance, work, or supplies which was the subject of the quotation; and price. Award shall be made to the offeror providing the lowest acceptable quotation, unless justified in writing based on price and other specified factors, such as for architect-engineer contracts. If non-price factors are used, they shall be disclosed to all those solicited. For service contracts, written specifications shall be attached to the final contract. For materials purchased, a purchase order, at a minimum, shall be required.

C. Sealed Bids

1. Conditions for Use. Contracts exceeding the base amount of \$19,400 shall be awarded based on competitive sealed bidding in accordance with the provisions of the Housing Authorities Act, 35 P.S. 1551, without any

exception, or if the following conditions are present for contracts not included in the provisions of the Housing Authorities Act, as aforesaid: A complete, adequate, and realistic specification or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; the procurement lends itself to a firm fixed price contract; and the selection of the successful bidder can be made principally on the basis of price. For professional services contracts, sealed bidding should not be used.

2. Solicitation and Receipt of Bids. An invitation for bids shall be issued including specifications and all contractual terms and conditions applicable to the procurement; including a statement that the award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the invitation for bids. The invitation for bids shall state the time and place for both the receipt of bids and the public bid opening. 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.
3. Bid Opening and Award. Bids shall be opened publicly and in the presence of at least one (1) 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 invitation for bids 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 State or local law and stated in the invitation for bids. If only one responsive bid is received from a responsible bidder, award shall not be made unless a cost or price analysis verifies the reasonableness of the price.
4. Mistakes in Bids.
  - a. Correction or withdrawal of inadvertently erroneous bids may be permitted, where appropriate, before bid opening, by written or telegraphic notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only if the bidder can show by clear and convincing evidence that a mistake of a non-judgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a non-judgmental mistake and further evidencing that a clerical mistake was due to an unintentional and substantial mathematical error or there was an unintentional omission of a substantial quantity of

work, labor, material or services made directly in the compilation of the bid, may be permitted to withdraw its bid if a written request to do so is made to the authorities within two (2) business days after the opening of bids and the withdrawal of the bid will not result in the awarding of the contract on another bid of the same bidder, as partner, or to a corporation or business venture owned by or in which he has a substantial interest. No bidder who is permitted to withdraw a bid shall supply any material or labor to or perform any subcontract or other work agreement for any person to whom a contract or subcontract is awarded in the performance of the contract for which the withdrawn bid was submitted without the written approval of the Authorities.

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

D. Competitive Proposals

1. Conditions for Use. Other than on those contracts for which the Authorities are required to obtain sealed bids, competitive proposals may be used if there is an adequate method of evaluating technical proposals and where the Authorities determine that conditions are not appropriate for the use of sealed bids. An adequate number of qualified sources shall be solicited.
2. Solicitation. The Request for Proposals (RFP) shall clearly identify the relative importance of price and other evaluation factors and subfactors, including the weight given to each technical factor and subfactor. 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 Requests for Proposals.
3. 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 the 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 negotiations shall be to seek clarification with regard and advise offerors 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.

4. Award. After evaluation of any proposal revisions, the contract shall be awarded to the offeror whose proposal is the most advantageous to the Authorities when considering qualifications, price and other factors.
  
5. Architect/Engineer Services. Architect/Engineer services in excess of the small purchase limitation may be obtained by either the competitive proposals method or qualifications-based selection procedures, unless otherwise mandated by State law; however, sealed bidding should not be used. 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. 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, except for projects undertaken by the Redevelopment Authority alone and for which all of the following apply:
  - a. The types of services to be procured are design professional services. "Design professional services" are defined as those professional services within the scope of the practice of architecture, geology, engineering, landscape architecture or land surveying, including studies, investigations, surveying, mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual design, plans and specifications, value engineering, maintenance manuals and other related services associated with research, planning, development, design, construction, alteration or repair of real property. The term includes services provided under the supervision of a professional engineer to develop engineering software which will aid design professionals in performing their work. The term does not include those services which are not exclusively within the scope of architecture, geology, engineering or landscape architecture but which are related to capital improvements such as, but not limited

to, environmental hygienic, construction management, exhibit design, fine arts or lesser arts and crafts, even though an architect geologist, engineer or landscape architect may provide such services.

- b. A committee is chosen by the Redevelopment Authority to review the qualifications, experience and work of the design professionals and provide a recommendation to the Board of the Redevelopment Authority.
- c. Federal, state and local laws and regulations, applicable to the project, do not otherwise prohibit the use of qualifications-based selection procedures.

6. Mixed-Finance Procurements (Housing Authority Developments). The requirements of 24 CFR Part 85 are applicable to public/private partnerships for the mixed finance development of public housing units, subject to the following two (2) provisos:

- a. The Housing Authority may select a partner using competitive proposal procedures for qualifications-based procurement (subject to negotiation of fair and reasonable compensation, including total development cost and other applicable cost limitations; and
- b. An owner entity (which, as a private entity, would normally not be subject to part 24 CFR part 85) shall be required to comply with 24 CFR part 85 if HUD determines that the Housing Authority or Housing Authority instrumentality exercises significant functions within the owner entity with respect to managing the development of the proposed units. HUD may, on a case-by-case basis, exempt such an owner entity from the need to comply with 24 CFR part 85 if it determines that the owner entity has developed an acceptable alternative procurement plan.

#### E. Non-Competitive Proposals

1. Conditions for Use. - Procurements shall be conducted competitively to the maximum extent possible. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids (other than as required by law), or competitive proposals, and one of the following applies:

- a. The item is available only from a single source, based on a good

faith review of available sources;

- b. An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the Authorities, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency;
- c. HUD or Authority (in compliance with applicable law) authorizes the use of noncompetitive proposals; or
- d. After solicitation of a number of sources, competition is determined inadequate.

2. Examples of HUD/Authority Authorized Use.

- a. The HUD Appropriations Act for Fiscal Year 1992 provided that a public housing authority and nonprofit entities associated with public housing authorities are authorized to purchase insurance coverage without regard to competitive selection procedures when it purchases it from a non-profit entity owned and controlled by public housing authorities approved by HUD in accordance with standards established by regulation.
- b. The Redevelopment Authority authorizes the purchase of insurance coverage without regard to competitive selection procedures when the cost of insurance does not exceed the Small Purchases amount identified in Section III B. 1. or it is purchased from a non-profit entity owned and controlled by public housing authorities approved by HUD and it is purchased in conjunction with the Housing Authority's purchase of insurance from the same non-profit entity.
- c. The Redevelopment Authority and the Housing Authority authorize the purchase of supplies, services and construction without regard to competitive selection when the cost does not exceed the Small Purchases amount identified in Section III. B. 1. and is purchased from an approved GAS/CoStars provider.

3. Justification. Each procurement based on noncompetitive proposals shall be supported by a written justification for using such procedures. The justification shall be approved in writing by the Contracting Officer.
4. Price Reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing a cost analysis, as described in Section III.F below.

F. Cost and Price Analysis

1. General. - A cost or price analysis shall be performed for all procurement actions, including contract modifications. The method and degree of analysis shall depend on the facts surrounding each procurement and shall be determined as follows. As a starting point, independent estimates shall be performed before receiving bids or proposals.
2. Submission of Cost or Pricing Information. - If the procurement is based on noncompetitive proposals, or when only one offer is received, or for other procurements as deemed necessary by the Authorities (e.g. when contracting for professional, consulting or architect/engineering services) the offeror shall be required to submit:
  - a. a cost breakdown showing projected costs and profit;
  - b. commercial pricing and sales information sufficient to enable the Authorities 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
  - c. documentation showing that the offered price is set by law or regulation.
3. Cost Analysis. - Cost analysis shall be performed if an offeror/contractor is required to submit a cost breakdown as part of its proposal. When a cost breakdown is submitted: a cost analysis shall be performed of the individual cost elements; the Authorities shall have a right to audit the contractor's books and records pertinent to such costs; and profit shall be analyzed separately.
4. Profit. - In establishing a fair and reasonable profit, the Authorities 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 area for

similar work.

5. Allowable Costs. Costs or prices based on estimated costs shall be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with applicable Federal cost principles (see 24 CFR 85.22 and OMB Circular No. A-87).
6. Price Analysis. A comparison of prices shall be used in all cases other than those described in Section III.F.3 above to determine the reasonableness of the proposed contract price.
7. Prohibited Cost Methods. The cost plus a percentage of cost and percentage of construction costs methods of contracting shall not be used.

#### G. Bonds

1. The standards under this section apply to construction contracts that exceed \$25,000. In addition to the other requirements of this Policy, the following requirements apply:
  - a. For construction contracts exceeding \$25,000, contractors shall be required to submit the following, unless otherwise required by State or local laws or regulations:
    - (1) a bid guarantee from each bidder equivalent to 5% of the bid price; and
    - (2) a performance bond for 100% of the contract price; and
    - (3) a payment bond for 100% of the contract price.
  - b. For all construction contracts in which the estimated construction cost exceeds \$1,000,000, the contractor shall provide or submit to a project cost certification performed by one or more independent, third-party certified public accountants establishing the actual total construction costs incurred and paid by the Authorities.
2. There are no bonding requirements for contracts that do not exceed \$25,000 or for competitive proposals. The Authorities may require bonds in these circumstances when deemed appropriate.

#### H. Cancellation of Solicitations

1. An invitation for bids, request for proposals or other solicitation may be cancelled before offers are due if: the Authorities no longer require the

supplies, services or construction; the Authorities 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.

2. 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 Authorities; prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds; there is reason to believe that bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or for good cause of a similar nature when it is in the best interest of the Authorities.
3. 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.
4. 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 resolicitation or future procurement of similar items.
5. If all otherwise acceptable bids received in response to an invitation for bids are at unreasonable prices, or only one bid is received and the price is unreasonable, the Authorities shall cancel the solicitation and either:
  - a. resolicit using a request for proposals; or
  - b. complete the procurement by using the competitive proposals method, following Sections III.D.3 and III.D.4 above (when more than one otherwise acceptable bid has been received), or by using the noncompetitive proposals method and following paragraph III.E.2 above (when only one bid is received at an unreasonable price); provided, that the Contracting Officer determines in writing that such action is appropriate, all bidders are informed of the Authorities' intent to negotiate, and each responsible bidder is given a reasonable opportunity to negotiate.

I. Cooperative Purchasing

1. The Authorities may enter into State and local inter-governmental 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 Authorities are encouraged to use Federal or State Tax excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs.

IV. Contractor Qualifications and Duties

- A. Responsible Contractors - 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 Authorities 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 Nonprocurement Programs published by the U.S. General Services Administration), compliance with public policy, record of past performance (including contacting previous clients of the contractor, such as other Authorities), and financial and technical resources. If a prospective contractor is found to be nonresponsible, a written determination of nonresponsibility shall be prepared and included in the contract file, and the prospective contractor shall be advised of the reasons for the determination.
- B. Suspension and Debarment - Contracts shall not be awarded to debarred, suspended or is otherwise excluded from or ineligible to participant in federal assistance programs. Contractors may be suspended, debarred, or determined ineligible by HUD in accordance with HUD regulations (24 CFR 24) when necessary to protect the Authorities in their business dealings. Prior to awarding any bid or proposal the Authority shall search and determine whether or not the contractor is an excluded party under the Excluded Parties List System (<https://www.sam.gov/portal/public/SAM>)
- C. Qualified Bidder's Lists - Interested businesses shall be given an opportunity to be included on qualified bidder's lists. Any prequalified 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 not be limited to, such prequalified suppliers.

V. Types of Contracts, Clauses and Contract Administration

- A. Contract Types - Any type of contract which is appropriate to the procurement and which will promote the best interests of the Authorities may be used, provided that the cost plus a percentage of cost and percentage of construction cost methods are prohibited. All procurements shall include the clauses and provisions necessary to define the rights and responsibilities of the parties. A cost reimbursement contract shall not be used unless it is likely to be less costly or it is impracticable to satisfy the Authorities' needs otherwise, and the proposed contractor's accounting system is adequate to allocate costs in accordance with applicable cost principles (see 24 CFR 85.22 and OMB Circular No. A-87). A time and materials 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.
- B. Options - Options for additional quantities or performance periods may be included in contracts, provided that: (i) the option is contained in the solicitation; (ii) the option is a right of the Authorities; (iii) the contract states a limit on the additional quantities and the overall term of the contract; (iv) the options are evaluated as part of the initial competition; (v) the contract states the period within which the options may be exercised; (vi) the options may be exercised only at the price specified in or reasonably determined from the contract; and (vii) the options may be exercised only if determined to be more advantageous to the Authorities than conducting a new procurement.
- C. Contract Clauses – General – Authorities will include in contracts a clause requiring contractors, to the greatest extent feasible, to comply with the Authorities' applicable MBE/WBE Policies and Procedures.
- D. Contract Clauses – HUD Financed Projects
1. Contracts For Less Than \$100,000 -
- a. Except in the case of bid specifications and contracts for construction or maintenance work in excess of \$2,000 (see paragraphs b. and c., below), purchases, including purchase orders, that are less than \$100,000, are subject only to the mandatory clauses are set forth on Appendix A.



- b. For construction contracts greater than \$2,000, but not more than \$100,000 the clauses contained in form HUD-5370-EZ or HUD-5370 (as appropriate), General Conditions for Small Construction/Development Contracts, and the applicable Davis-Bacon wage decision must be incorporated.
- c. For maintenance contracts (including non-routine maintenance work) greater than \$2,000, but not more than \$100,000 the clauses contained in Table 5.1, Section II of form HUD-5370-C, General Conditions for Non-Construction Contracts, and the applicable Davis-Bacon wage decision must be incorporated.

2. Contracts For More Than \$100,000 -

- a. For construction/development contracts greater than \$100,000 the clauses contained in form HUD-5370, General Conditions of the Contract for Construction, and the applicable Davis-Bacon wage decision must be incorporated.
- b. For non-construction contracts (without maintenance work) greater than \$100,000 the clauses contained in Section I of form HUD-5370-C, and General Conditions for Non-Construction Contracts must be incorporated.
- c. For maintenance contracts (including non-routine maintenance work) greater than \$100,000, the clauses contained in Sections I and II of form HUD-5370-C and General Conditions for Non-Construction Contracts must be incorporated. The operational procedures required by Section II.A of this Statement shall contain the text of all clauses and required certifications (such as require non-collusive affidavits) used by the Authorities.

E. Contract Administration

- 1. A contract administration system designed to insure that contractors perform in accordance with their contracts shall be maintained.
- 2. The Contracting Officer shall establish guidelines for inspection of supplies, services or constructions, as well as monitoring contractor performance, status reporting on construction contracts, and similar matters. For Federally funded cost reimbursement contracts with commercial firms, costs are allowable only to the extent that they are

consistent with the cost principles in HUD Handbook 2210.18.

3. The Authorities will ensure that goods and services are not received, approved, and paid by the same staff member in accordance with the Authorities' Procedures for Payment of Invoices.
4. All goods and services must be received, approved and acceptable prior payments being made.

## VI. Specifications

- A. General - All specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying the Authorities' 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 VIII below). For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.
- B. Limitations - The following specification limitations shall be avoided: geographic restrictions not mandated or encouraged by applicable Federal or, as applicable, state law (except for architect-engineer contracts, which may include geographic location as a selection factor if adequate competition is available); unnecessary bonding or experience requirements; brand name specifications (unless a written determination is made that only the identified item will satisfy the Authorities' needs); brand name or equal specifications (unless they list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use). Nothing in this procurement policy shall preempt any State licensing laws. Specifications shall be scrutinized to ensure that organizational conflicts of interest do not occur (for example, having a consultant perform a study of the Authorities' computer needs and then allowing that consultant to compete for the subsequent contract for computers).

## VII. Appeals and Remedies

- A. General - It is the Authorities' policy to resolve all contractual issues informally at the Authorities level, without litigation. Disputes shall not be referred to HUD, or other applicable governmental agency providing oversight for the sources of funds, until all administrative remedies have been exhausted at the Authorities level. When appropriate, the Authorities 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 regulations and failure of the Authorities to review a complaint or protest.

- B. Bid Protests - Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy. Any protest against a solicitation must be received before the due date for receipt of bids or proposals, and any protest against the award of a contract must be received within ten (10) calendar days after contract award, or the protest will not be considered. All bid protests shall be in writing, submitted to the Contracting Officer or designee, who shall issue a written decision on the matter. The Contracting Officer may, at his or her discretion, suspend the procurement pending resolution of the protest, if warranted by the facts presented.
- C. Contractor Claims - All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer or designee for a written decision. The contractor may request a conference on the claim. The Contracting Officer's decision shall inform the contractor of its appeal rights to a higher level in the Authorities, such as a designated Board member or a Procurement Appeals Board. For HUD financed projects, contractor claims shall be governed by the Changes clause in form HUD-5370.

VIII. Assistance to Small and Other Businesses and Preferences for New Employment, Training, and Contracting Opportunities

A. Required Efforts

- 1. Consistent with Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968 (the "Section 3"), the Authorities shall make efforts to ensure that small 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 an Authorities project are used when possible. Moreover, with respect to Housing Authority of the County of Cumberland (the "Housing Authority") procurement, the Housing Authority shall provide a preference to low- and very low-income residents of the community where Housing Authority funds are expended, and the businesses that substantially employ these persons for new employment, training, and contracting opportunities created from the usage of Housing Authority funds. 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;
- c. Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by such firms;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by such individuals and firms;
- e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
- f. For Housing Authority procurements:
  - (1) Including in contracts a clause requiring contractors, to the greatest extent feasible, to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with the project to business concerns which are located in, or owned in substantial part by persons residing in the area of the project, as described in 24 CFR 135;
  - (2) Complying with the applicable procedures as set forth in Appendix B to notify Section 3 residents and business concerns about training, employment, and contracting opportunities generated by Section 3 covered assistance and providing a preference to low- and very low-income residents of the community where Housing Authority funds are expended, and the businesses that substantially employ these persons for new employment, training, and contracting opportunities created from the usage of Housing Authority funds;
  - (3) Facilitating the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns;
  - (4) Assisting and actively cooperating with the U.S. Department of Housing and Urban Development in making contractors and subcontractors comply with Section 3 requirements;
  - (5) Refraining from entering into contracts with contractors that are in violation of Section 3 regulations;
  - (6) Documenting actions taken to comply with Section 3; and
  - (7) Submitting Section Annual Summary Reports (form HUD-

60002) in accordance with 24 CFR Part 135.90.

- g. Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed in Section VIII.A.1.a through VIII.A.1.f above.
2. Goals may be established by the Authorities periodically for participation by small businesses, minority-owned businesses, women's business enterprises, labor surplus area businesses and business concerns which are located in, or owned in substantial part by persons residing in the area of the project, in the Authorities' prime contracts and subcontracting opportunities.

## IX. Ethics in Contracting

### A. General

The purpose of the following policy is to prevent the personal interest of staff members, officers, and Board of Directors' members from interfering with the performance of their duties to the Authorities, or resulting in personal, financial, professional, and/or political gain on the part of such persons at the expense of the Authorities.

### B. Definitions

1. Conflict of Interest (Conflict) – A conflict of interest or conflict means a conflict or the appearance of a conflict between the private interest and official responsibilities of a person in a position of trust. Persons in a position of trust include staff members, officers, and directors of the Authorities.
2. Director – Means an individual member of the Board of Directors.
3. Governing Board or Board – Means the Boards of Directors of the Authorities.
4. Staff Member – Means a person who receives all or part of his/her income from the payroll of the Redevelopment Authority.

C. Policy

1. Actual Conflicts of Interest – In some situations, directors, officers, and staff members are prohibited from doing certain things in order to avoid an actual conflict of interest. These restrictions come from statutes, regulations, and internal policies, and are summarized below:
  - a. No Financial Assistance to Staff Members, Officers, and Directors – Except as otherwise authorized by the U.S. Department of Housing and Urban Development (HUD) and applicable HUD regulations, no direct financial assistance of any kind may be given to staff members, officers, and directors of the Authorities. In addition, no financial assistance may be given to any entity in which staff members, officers, or directors has an ownership interest.
  - b. Work-Related Fees – Fees paid to staff members by outside sources, which pertain directly to their position and work for the Authorities must be paid to the Authorities directly. In the event that these fees are paid directly to the staff member, the payment must be endorsed promptly to the Authorities. Notwithstanding the foregoing, in the event the staff member provides services to an outside source by using a personal/vacation day and is compensated for said services by the outside source, the staff member may retain any such earned fees.
  - c. Prospective Employment – No director, officer, or staff member may participate in any transaction involving a person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment.
  - d. Personal Loans by Staff Members, Directors, or Officers – No staff member, officer or director shall make a personal loan to or investment in a business or home borrower that has received financing from the Authority.
  - e. Family Member Expenses – No staff member may supervise, approve expenses or reimbursement for, or sign a check for another staff member who is also a member of his or her immediate family.
  - f. Gifts/Confidential Information – No officer, director, or staff member shall knowingly accept any non-incidental tangible or

intangible gift when it could reasonably be inferred that the gift was intended to influence or reward an official action on his or her part and shall not knowingly use confidential information for actual or anticipated personal gain.

2. Potential Conflicts of Interest – There are situations beyond those listed above that may still raise the possibility that a conflict of interest exists. The Authorities do not have a blanket rule to prohibit these situations from arising, but rather considers them on a case-by-case basis. In these situations, the director, officer, or staff member must disclose the existence of a potential conflict before action is taken on the matter and have it reviewed by the Board. The Board shall determine whether a conflict of interest exists and, if so, the Board shall vote to authorize or reject the transaction and/or condition. Both votes shall be by a majority vote without counting the vote of any interested director, if applicable, even if the disinterested directors are less than a quorum, provided that at least one dissenting director is disinterested.

Directors, officers, and staff members shall disclose to the Executive Director of the Authorities in writing potential conflicts of interest. The Executive Director shall provide the notification of the potential conflict of interest to the Board. An interested director, officer, or staff member shall not participate in any discussion or debate of the Board in which the subject of discussion is a contract, transaction, or a situation in which there may be a potential conflict of interest. No director, officer, or staff member shall participate in the selection, award, or the administration of a procurement transaction in which federal or state funds are used, where, to his/her knowledge, any of the following has a financial interest in that transaction:

- a. Staff member, officer, or director;
- b. Any member of his/her immediate family;
- c. His/her partner;
- d. An organization in which any of the above is an officer, director, or employee, or
- e. A person or organization with whom any of the above is negotiating or has any arrangement concerning prospective employment.

D. Prohibition Against Contingent Fees

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

X. Self Certification

The Authorities self-certify that this Procurement Policy, and the Authorities' procurement system, complies with all applicable federal regulations and, as such, the Authorities are exempt from prior HUD review and approval of individual procurement action.



## Appendix A

The following contract clauses are required in contracts pursuant to **24 CFR 85.36(i) and Section 6002 of the Solid Waste disposal Act, as amended by the Resource Conservation and Recovery Act**. HUD is permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy. The PHA and contractor are also subject to other Federal laws including the U.S. Housing Act of 1937, as amended, Federal regulations, and state law and regulations.

**Examination and Retention of Contractor's Records.** The PHA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until three years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

**Right in Data and Patent Rights (Ownership and Proprietary Interest).** The PHA shall have exclusive ownership of all proprietary interest in, and the right to full and exclusive possession of all information, materials, and documents discovered or produced by Contractor pursuant to the terms of this Contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of the Contract.

**Energy Efficiency.** The contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under this contract is performed.

### **Procurement of Recovered Materials**

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of completion. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the items; or (3) are only available at an unreasonable price.
- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the items under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

### **Termination for Cause and for Convenience (contracts of \$10,000 or more).**

- (a) The PHA may terminate this contract in whole, or from time to time in part, for the PHA'S CONVENIENCE OR THE FAILURE OF THE Contractor to fulfill the contract obligations (cause/default). The PHA shall terminate by delivering to the Contractor a written Notice of

Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the PHA all information, reports, papers, and other materials accumulated or generated in performing the contract, whether completed or in process.

- (b) If the termination is for the convenience of the PHA, the PHA shall be liable only for payment for services rendered before the effective date of the termination.
- (c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (cause/default), the PHA may (1) require the Contractor to deliver to it, in the manner and to the extent directed by the PHA, any work described in the Notice of Termination; (2) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the PHA; and (3) withhold any payments to the Contractor, for the purpose of set-off or partial payment, as the case may be, of amounts owned by the PHA by the Contractor. In the event of termination for cause/default, the PHA shall be liable to the Contractor for reasonable costs incurred by the Contractor before the effective date of the termination. Any dispute shall be decided by the Contracting Officer.

## Appendix B

This Appendix B provides specific procedures for implementation of the Section 3 contracting preference authorized in 24 CFR 85.36(d).

1. Small Purchase Procedures. For Section 3 covered contracts aggregating no more than \$18,900, the methods set forth in this paragraph 1. shall be followed.

- A. Where multiple price quotations are received and the contract is to be awarded based upon the lowest price, the contract shall be awarded to the Section 3 business concern, as defined at 24 CFR 135.5, with the lowest responsive quotation, if it is reasonable and no more than 10 percent higher than the quotation of the lowest responsive quotation from any qualified source. If no responsive quotation by a Section 3 business concern is within 10 percent of the lowest responsive quotation from any qualified source, the award shall be made to the source with the lowest quotation.
- B. Where the Section 3 covered contract is to be awarded based on factors other than price, a request for quotations shall be issued by developing the particulars of the solicitation, including the rating system for the assignment of points to evaluate the merits of each quotation. The solicitation shall identify all factors to be considered, including price or cost. The rating system shall provide for a range of 15 to 25 percent of the total number of available rating points to be set aside for the provision of preference for Section 3 business concerns. The purchase order shall be awarded to the responsible firm whose quotation is the most advantageous, considering price and all other factors specified in the rating system.

2. Sealed Bids. Preference to the award of Section 3 covered contracts that are awarded under a sealed bid process shall be provided as follows:

- A. Bids shall be solicited from all businesses (Section 3 business concerns and non-Section 3 business concerns). An award shall be made to the qualified Section 3 business concern with the highest priority ranking and with the lowest responsive bid if that bid –
  - a. is within the maximum total contract price established in the Housing Authority's budget for the specified project for which bids are being taken, and
  - b. is not more than "X" higher than the total bid price of the lowest responsive bid from any responsible bidder. "X" is determined as follows:

	X = lessor of
When the lowest responsive bid is less than \$100,000	10% of that bid, or \$9,000
When the lowest responsive bid is:	
At least \$100,000, but less than \$200,000	9% of that bid, or \$16,000
At least \$200,000, but less than \$300,000	8% of that bid, or \$21,000
At least \$300,000, but less than \$400,000	7% of that bid, or \$24,000
At least \$400,000, but less than \$500,000	6% of that bid, or \$25,000
At least \$500,000, but less than \$1 million	5% of that bid, or \$40,000
At least \$1 million, but less than \$2 million	4% of that bid, or \$60,000
At least \$2 million, but less than \$4 million	3% of that bid, or \$80,000
At least \$4 million, but less than \$7 million	2% of that bid, or \$105,000
\$7 million or more	1 ½% of the lowest responsible bid, with no dollar limit

- B. If no responsive bid by a Section 3 business concern meets the requirements of paragraph 2.A. of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

3. Procurement under the competitive proposals method of procurement (Request for Proposals (RFP)).

- A. For contracts and subcontracts awarded under the competitive proposals method of procurement (24 CFR 85.36(d)(3)), a RFP shall identify all evaluation factors (and their relative importance) to be used to rate proposals.
- B. One of the evaluation factors shall address both the preference for Section 3 business concerns and the acceptability of the strategy for meeting the greatest extent feasible requirement (Section 3 strategy), as disclosed in proposals submitted by all business concerns (Section 3 and non-Section 3 business concerns). This factor shall provide for a range of 15 to 25 percent of the total number of available points to be set aside for the evaluation of these two components.
- C. The component of the evaluation factor designed to address the preference for Section 3 business concerns must establish a preference for these business concerns in the order of priority ranking as described in 24 CFR 135.36.
- D. With respect to the second component (the acceptability of the Section 3 strategy), the RFP shall require the disclosure of the contractor's Section 3 strategy to comply with the Section 3 training and employment preference, or contracting preference, or both, if applicable. A determination of the contractor's responsibility will include a review of an acceptable Section 3 strategy submitted by the contractor. The contract award shall be made to the responsible firm (either Section 3 or non-Section 3 business concern) whose proposal is determined most advantageous, considering price and all other factors specified in the RFP.

ADDENDUM TO PROCUREMENT POLICY OF THE  
REDEVELOPMENT AND HOUSING AUTHORITIES  
OF THE COUNTY OF CUMBERLAND

- I. The Housing Authority of the County of Cumberland (the “Housing Authority”) is in receipt of a Fiscal Year 2009 Public Housing Capital Fund Grant (the “Recovery Act Capital Funds”) being provided in accordance with the American Recovery and Reinvestment Act of 2009 (the “Recovery Act”). Pursuant to the funding requirements of the Recovery Act, HUD Notice PIH 2009-12 (HA), and HUD Notice PIH 2009-31 (A) (hereinafter the “HUD Notices”) the Recovery Act funding is subject to specific procurement requirements. In accordance with the Recovery Act and HUD Notices, the Procurement Policy of the Redevelopment and Housing Authorities of the County of Cumberland (the “Procurement Policy”) is amended to provide that the following shall apply solely to Recovery Act Capital Funds provided to the Housing Authority:
- A. The procurement requirements under state and local laws and regulations that are incorporated into the Procurement Policy shall not apply to Recovery Act Capital Funds, except when permitted by 24 CFR Part 85 and as described in HUD Notice PIH 2009-12 (HA).
  - B. Incorporated into the Procurement Policy are the provisions on Buy American in HUD Notice PIH 2009-12 (HA) and HUD Notice PIH 2009-31 (HA), and Office of Management Guidance on the Buy American provisions at 2 CFR Part 176.
  - C. Incorporated into the Procurement Policy are the 24 CFR Part 85 Compliance, Noncompetitive Proposal, and Force Account provisions of HUD Notice PIH 2009-12 (HA).
- II. The Redevelopment Authority of the County of Cumberland (the “Redevelopment Authority”) is in receipt of a United States Environmental Protection Agency Grant (the “EPA Funds”). Pursuant to the funding requirements of the EPA the EPA Funds are subject to specific procurement requirements of 40 CFR 35 and 31. In accordance with EPA Funds, the Procurement Policy of the Redevelopment and Housing Authorities of the County of Cumberland (the “Procurement Policy”) is amended to provide that the following shall apply solely to EPA Funds provided to the Redevelopment Authority:
- A. The procurement requirements under state and local laws and regulations that are incorporated into the Procurement Policy shall not apply to EPA Funds, except when permitted by 40 CFR Part 35 and 31.
  - B. All Federal subawards of EPA Funds shall contain the following clause “The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements.