

# Philadelphia Housing Authority Controlled Policy & Procedure Issuance



TITLE: Procurement and Contract Administration Policy  
DEPT./DIVISION: All Divisions  
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APPROVED: Michael P. Kelly, Executive Director

Attached please find the PHA Procurement and Contract Administration Policy first approved by the Board of Commissioners on 9/25/91; revised on 4/28/98 and on 4/16/02; revised and approved on 4/26/12 via resolution no.11527.

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# I. GENERAL PROVISIONS

## A. PURPOSE

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

### 1. Adoption By Board of Commissioners:

This policy shall be effective immediately upon its adoption by the PHA Board of Commissioners and any substantive policy changes to this policy must also be approved by the Board.

### 2. Self-Certification of Policies to HUD:

Consistent with 24 CFR 85.36(g)(3)(ii), which authorizes a housing authority to self-certify to HUD that its procurement policies are in compliance with all applicable laws and regulations, the PHA Board of Commissioners, by adopting these policies, certified that these procurement policies are in compliance with all applicable laws and regulations, specifically including, but not limited to 24 CFR 85.36. Furthermore, the PHA Board of Commissioners has authorized the Executive Director to submit these procurement policies to HUD and to self-certify PHA's procurement system in accordance with as defined in 24 CFR 85.36(g)(3)(ii).

PHA Recognizes HUD's right to review these policies as referenced in 24 CFR 85.36 and other relevant federal regulations.

## B. APPLICATION

The procurement policy set forth in this Statement applies to all contracts for the procurement of supplies, services, materials and construction entered into by PHA after the effective date of this policy. It shall apply to every expenditure of funds by PHA 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 Statement shall prevent PHA 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 Statement, includes contracts, purchase orders, and modifications (including change orders) for construction, architectural and engineering services, social and other services, as well as purchase, lease, or rental of supplies, materials 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, to the extent inconsistent with these policies, shall supersede these policies.

## C. BOARD OF COMMISSIONERS' APPROVAL OF CERTAIN CONTRACT ACTIONS

All contracts where the base contract amount or any option exceeds One Hundred Thousand Dollars (\$100,000) are required to be pre-approved by the Board of Commissioners. In addition, all contract modifications in excess of One Hundred Thousand Dollars (\$100,000) or 20% of the current contract value whichever is greater or when the modification will cause the contract to exceed \$100,000 require pre-approval by the Board of Commissioners. Further, any modification in excess of \$1,000,000 regardless of percentage of contract value requires pre-approval by the Board of Commissioners.

D. 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, 65 P.S. Sec. 66.1 et seq., as amended and shall be available to the public as provided therein. All procurement documentation will be retained for at least four (4) years after contract closeout.

## II. PROCUREMENT AUTHORITY AND ADMINISTRATION

- A. All procurement transactions shall be approved and administered by a Contracting Officer, who shall be the Executive Director or another individual to whom the Executive Director has delegated this authority in writing. The Contracting Officer shall issue operational procedures to implement this policy, which shall be consistent with applicable federal and state law, federal and state regulations, policies and procedures including the Common Grant Rule (24 CFR 85.36) and HUD Procurement Handbook 7460.8 (collectively "Laws"). The Contracting Officer shall also establish a system of sanctions for violations of the ethical standards described in Section XIV below, consistent with federal and state law.
- B. The Contracting Officer shall ensure that:
  1. Procurement requirements are subject to an annual planning process to assure efficient and economical purchasing. Procurement planning should include a periodic review of previous and future procurements, individual procurement plans (IPPs), and equipment lease or purchase evaluations.
  2. Contracts and modifications shall be in writing, clearly specifying the desired supplies, services, materials or construction, 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 over \$10,000 for goods, maintenance, and construction, public notice shall be designed to reach a maximum number of potential suppliers.. PHA, state, and federal websites can be used to advertise PHA opportunities greater than \$10,000. If required by law, newspaper notices will also be used.
  4. Solicitation procedures are to be conducted in full compliance with all applicable Federal standards stated in 24 CFR 85.36, or State laws to the extent they are more stringent than and not inconsistent with 24 CFR 85.36;
  5. An independent cost estimate shall be prepared by or on behalf of PHA before issuance of any solicitation for all procurements over \$2,000, including contract modifications and task orders over \$2,000 and is appropriately safeguarded for each procurement and the cost estimate shall be kept confidential. A cost or price analysis shall be prepared for the responses received for all such procurements;
  6. Contract award shall be made to the responsive and responsible bidder offering the lowest price (for sealed bid contracts) or a contract award shall be made to the offeror whose proposal offers the best value to PHA, considering price, technical, and other factors as specified in the solicitation (for contracts awarded based on competitive proposals); unsuccessful firms shall be notified within ten days after contract execution;
  7. Contract requirements shall not be artificially divided for the purpose of circumventing or evading a requirement of this policy.
  8. The following shall apply to and be included as terms of all contracts:
    - a) There shall be sufficient unencumbered funds available to cover the anticipated cost of each procurement before contract award or modification (including change orders),
    - b) work shall be inspected before payment, and
    - c) payment shall be made promptly for contract work performed and accepted; and
    - d) PHA shall comply with applicable HUD review requirements, as provided in the operational procedures supplementing this policy.

### III. PROCUREMENT METHODS

#### A. SELECTION OF METHOD

If it has been decided that PHA will directly purchase items it requires, one of the following procurement methods shall be chosen, based on the nature and anticipated dollar value of the total requirement. Any contract that exceeds one year shall contain a clause indicating that the contract is contingent upon an annual appropriation and is based upon the availability of funds.

#### B. PETTY-CASH, MICRO-PURCHASE AND SMALL PURCHASE PROCEDURES

Procurement procedures for purchases equal to or less than \$10,000 shall be as follows:

1. Contracts between \$2,000 and \$10,000 ("Small Purchases") for goods and services shall be procured as provided herein. For all Small Purchases, the following are required: A detailed Independent Cost Estimate, a detailed Scope of Work, and a written description of criteria of selecting awardees. All offers shall be in response to the PHA solicitation. All offers shall be in writing. No less than three (3) written offers shall be received after solicitation by phone, fax, or e-mail. Award shall be made to the offeror providing the lowest responsive quotation, unless the award is to be 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. The names, addresses, and/or telephone numbers of the offerors and persons contacted, and the date and amount of each quotation shall be recored and maintained as a public record.
2. Petty cash and micro-purchases shall conform to the following rules:
  - a) Petty Cash Purchases. Petty Cash Purchases are purchases equal to or below \$35.00 which can be satisfied by local sources. These may be processed through the use of a petty cash account. No item that is stocked in the Central Warehouse or in the stockroom shall be purchased via the petty cash system. The Chief Financial Officer or his designee shall ensure that: the account is established in an amount sufficient to cover small purchases made during a reasonable period (e.g., one week); 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 a PHA finance officer; and, the account is periodically audited by the finance officer or designee to validate proper use and to verify that the account total equals cash on hand plus the total of accumulated vouchers.
  - b) Micro-purchases. For purchases between \$35 and \$2,000 ("Micro-Purchases") only one quotation need be solicited if the price received is considered reasonable. Determination of the reasonableness of a quotation can include verification of price offered versus previous prices paid for the same or similar items/service, or comparison with catalog or market prices. Such purchases must be distributed equitably among qualified sources. If practicable, a quotation shall be solicited from a source other than the previous source before placing a repeat order with that source.

#### C. SEALED BIDS (Invitation for Bids (IFB)) (Over \$10,000)

1. Conditions for Use. Contracts shall be awarded based on competitive sealed bidding if the following conditions are present: a complete, adequate, and realistic specification or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; the procurement lends itself to a firm fixed-price contract; and the selection of the successful bidder can be made principally on the basis of price.

Sealed bidding is the preferred method for construction, materials and equipment procurements. Sealed bidding shall not be used for the procurement of professional and consulting services. The Contracting Officer shall determine whether to use sealed bidding consistent with the forgoing principles.

2. Solicitation and Receipt of Bids. When an IFB is to be used, it shall include specifications and all contractual terms and conditions applicable to the procurement. The IFB shall include a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the IFB. Pre-Bid Conferences will be held, if needed, at the sole discretion of PHA. The IFB shall state the time and place for both the receipt of bids and the public bid opening. All bids received shall be date and time stamped and stored unopened in a secure place until bid opening. A bidder may withdraw its bid at any time prior to bid opening. A minimum of 14 days shall be provided for the preparation and submission of sealed bids; however, the Executive Director may allow a shorter period under extraordinary circumstances where adequate competition can be ensured. Unopened bids shall be brought to the public bid opening in a locked bid box and opened publicly at the stated bid opening date and time.
3. 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 made available for public inspection. Award shall be made as provided in the invitation for bids by written notice to the successful bidder. PHA shall disqualify any bid if mandatory elements required by the bid package are not submitted by a prospective bidder. PHA reserves the right to waive or allow correction of minor deficiencies in a bid. If equal low bids are received from responsible bidders, award shall be made by drawing lots or similar random method, unless otherwise stated in the IFB. If only one responsive bid is received from a responsible bidder, a cost analysis shall be performed if the bid differs substantially from the PHA estimate. A recommendation for contract award shall be submitted to the Board of Commissioners within 60 days of the bid opening by written notice to the lowest responsive bidder or all bids shall be rejected except as otherwise provided in this section. Extensions of the date for the award may be made by mutual written consent of the Contracting Officer and the lowest responsible bidder. Unsuccessful bidders will be provided written notification, which may occur as a result of PHA posting award information on its website.
4. Mistakes in Bids.
  - a) Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written or telegraphic notice from the bidder received in the office designated in the invitation for bids prior to the time set for bid opening.
  - b) Withdrawal of any bid after opening, is permitted only where the bidder alleges a clerical, non-judgmental mistake in price quoted, provided: (1) the bidder submits credible evidence of such mistake in writing after bid opening; and (2) the withdrawal of the bid does not result in the awarding of the contract to any other firm in which the bidder has a substantial interest. The bidder whose bid is permitted to be withdrawn may not serve as subcontractor or vendor to the successful contractor.
  - c) Correction, amendment or withdrawal of bids after bid opening. No bidder may correct a bid after bid opening in a manner that would cause the bidder to have the low bid unless the mistake is clearly evident from examining the bid documents, such as an extension of unit prices or mathematical errors. In addition, an otherwise low bidder may correct a mistake if the intended bid is obvious from the bid document or supported by written evidence dated before bid opening. No corrections due to errors in judgment (such as errors in profit margins) shall be permitted. The Contracting Officer may waive minor deficiencies or allow the bidder to correct them depending on which action is in the best interest of the housing authority. Minor deficiencies are matters of form rather than substance, evident from the

bid document, or insignificant mistakes that can be waived or corrected without prejudice to the other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. Examples include the failure of a bidder to: return the number of signed bids required by the IFB; sign the bid, provided that the unsigned bid is accompanied by other material indicating the bidder's intent to be bound (e.g., a signed cover letter or a bid guarantee); complete one or more certifications; or acknowledge receipt of an amendment to the IFB, provided that it is clear from the bid that the bidder received the amendment and intended to be bound by its terms, or the amendment had a negligible effect on price, quantity, quality, or delivery.

- d) All decisions to allow post-bid-opening correction or withdrawal of bids shall be supported by a written determination signed by the Contracting Officer.

5. Late Submissions, Modifications, and Withdrawal of Offers

- a) Any offer received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it –
  - i. Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (i.e. bids due by the 20th of the month must have been mailed by the 15th);
  - ii. Was sent by mail, or if authorized by the solicitation, was sent by telegram, facsimile, or by electronic mail, and it is determined by the PHA that the late receipt was due solely to mishandling by PHA and receipt at PHA;
  - iii. Was sent by U.S. Postal Service Express Mail Next Day Service – Post Office Addressee, not later than 5:00pm at the place of mailing two working days prior to the date specified for receipt of proposals. The term “working days” excludes weekends and U.S. Federal holidays; or
  - iv. Is the only offer received and is received within 48 hours after the exact time specified for receipt
- b) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail in the U.S. or Canadian Postal Service is a postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer, modification, or withdrawal shall be processed as if mailed late. “Postmark” means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a hand cancellation bull’s eye postmark on both the receipt and the envelope or wrapper.
- c) The only acceptable evidence to establish the time of receipt at PHA is the time/date stamp of PHA on the offer wrapper or other documentary evidence of receipt maintained by PHA.
- d) The only acceptable evidence to establish the date of mailing of a late offer, modification or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the “Express Mail Next Day Service-Post Office to Addressee” label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. “Postmark” has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull’s-eye postmark on both the receipt and the envelope or wrapper.

6. Bonds.

- a) For construction contracts between \$25,000 and \$100,000, PHA may require a performance bond and a payment bond of at least 50% of the contract price as well as a bid guaranty of at least 10% of the contract price. Cash or Letter of Credit may also be required in lieu of performance and payment bonds.
- b) For construction contracts exceeding \$100,000, contractors shall be required to submit the following:
  - i. a bid guarantee from each bidder of 5% of the bid price
  - ii. Upon award, the successful contractor shall furnish a performance and payment bond for 100% of the contract price

PHA, in its discretion, may require bonds on other than construction contracts including the requirement of a fiduciary bond on service contracts.

7. Insurance

Insurance requirements will be determined by PHA based on the products and services procured and the level of risk involved. For example, for A&E services, the contractor must evidence Errors and Omissions insurance. Failure to demonstrate the required insurance requirements will render a bidder's or offeror's bid or proposal non-responsive. Failure to maintain the required contractual insurance coverage may be grounds for contractor default.

D. COMPETITIVE PROPOSALS (Request for Proposals (RFP)) (Over \$10,000)

1. Conditions for Use. Competitive proposals (including turnkey proposals for development and professional services) may be used if there is an adequate method of evaluating technical proposals and where PHA determines that conditions are not appropriate for the use of sealed bids. An adequate number of qualified sources shall be solicited.
2. Solicitation. A minimum of 14 days shall be provided for the preparation and submission of proposals; however, the Executive Director may allow a shorter period under extraordinary circumstances where adequate competition can nevertheless be ensured. 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 including price, to the extent applicable. 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.
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. PHA shall disqualify proposals if mandatory elements required by the request for proposal package are not submitted by prospective offerors. Offerors shall be notified in the RFP if PHA reserves the right to award on receipt of initial proposals without discussions. Offerors within the competitive range (those offerors submitting the most competitive proposals and are the most likely to be considered for award) shall be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. The purpose of negotiations shall be to seek clarification with regard to and advise offerors of significant deficiencies in both the technical and price aspects of their proposals so as to assure full understanding of and conformance to the solicitation requirements and provide the best value to

PHA. No offeror shall be provided information about any other offeror's proposal, and no offeror shall be assisted by PHA in bringing its proposal up to the level of any other proposal.

Offerors shall not be directed to reduce their proposal prices to a specific amount in order to be considered for award. A common deadline (Best and Final Offer or "BAFO") shall be established for receipt of proposal revisions based on negotiations.

4. Award. After evaluation of proposal revisions, if any, the contract shall be awarded to the responsive and responsible firm whose qualifications, price and other factors considered, are the most advantageous to the PHA.

#### E. NONCOMPETITIVE 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 not feasible using small purchase procedures, sealed bids, cooperative purchasing or competitive proposals, and one of the following applies:
  - a) The item or service is available only from a single source;
  - b) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation. The procurement to address the public exigency or emergency shall be limited to those supplies, services, or construction necessary to meet the public exigency or emergency;
  - c) HUD authorized the use of noncompetitive proposals; or
  - d) After one (1) attempt at solicitation of a number of sources, competition is determined inadequate and the Contracting Officer so certifies. This certification shall be updated for repeat purchases of the same product or service pursuant to a noncompetitive proposal.
2. Justification. Each procurement based on noncompetitive proposals shall be supported by a written justification for using such procedures which shall be maintained in the contract file. The justification shall be approved in writing by the Contracting Officer, and include:
  - a) Description of the requirements
  - b) History of purchases of the same product or service
  - c) The specific exception in 24 CFR 85.36 (d)(4)(i) (a) through (d) as described in paragraph E.1.above that applies
  - d) Statement as to the unique circumstances that require award by noncompetitive proposal
  - e) Description of the effort made to find competitive sources
  - f) Statement as to efforts that will be taken in the future to promote competition for the requirement
  - g) Signature of the Contracting Officer and the Executive Director.

PHA employees are required to contact and consult with the Contracting Officer and Office of General Counsel prior to initiating an emergency procurement. All required requests for emergency procurement waivers or requests to any other governmental oversight agency shall be issued by the Contracting Officer after consultation and concurrence from the Office of General Counsel.

3. 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 IV below.

F. QUALIFICATIONS-BASED SELECTION PROCESS

1. Condition for Use. The qualification-based selection method of procurement involves the selection of the most qualified vendor based upon qualifications and where price is not used as the determining selection factor. In a qualification-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. PHA shall also comply with 24 CFR 85.36 for the solicitation and selection of federally funded architect and engineering contract services.
2. Architect/Engineer (A/E) Services. Architect/engineer services in 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 sole determinative 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. The PHA shall not use sealed bidding to acquire A/E services.
3. Solicitation. A Request for Services (or a Request for Qualifications) shall be issued requesting technical qualifications statement from prospective contractors, which PHA 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 proposal. Once the proposals are ranked technically, PHA shall engage in negotiations with the top-ranked firm to reach agreement on a fair and reasonable price.
4. Award. After evaluation of proposals 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 PHA.

## **IV. COST AND PRICE ANALYSIS**

- A. General. A cost or price analysis shall be performed for all procurement actions, including contract modifications. The method of analysis shall depend on the facts surrounding each procurement. A separate cost/price analysis is not required when obtaining products or services of a commercial nature.
- B. Submission of Cost or Pricing Information. For procurements based on noncompetitive proposals, or when only one offer is received, or for other procurements as deemed necessary by PHA (e.g., when contracting for professional, consulting, or architect/engineer services) or for modifications (including change orders), PHA is required to perform a cost analysis unless the price can be established on the basis of a catalog or market price of a commercial item sold in substantial quantities to the general public or the price is set by law or regulation.
- C. Cost Analysis. Cost Analysis is a review and evaluation of the separate elements of cost which comprise the contractor's cost proposal. Cost analysis shall be performed in the following instances: receipt of a single bid or proposals as a result of a published solicitation, sole source procurements, and when price analysis is inconclusive. A cost analysis shall be performed of the individual cost elements and an assessment of the proposed profit. Contractors must submit a certificate representing that the cost or pricing data is accurate, current and complete. Costs shall be allowable only to the extent that they are consistent with applicable Federal cost principles (for commercial firms, see HUD Directive 2210.18). In establishing profit, PHA 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.
- D. Price Analysis. For all procurements other than those identified in IV.B. above, greater than \$2,000 price analysis shall be performed. The Contracting Officer shall determine the level of detail required for the price analysis based on the procurement size, complexity, and extent of competition.

## V. AMENDING OR CANCELLING OF SOLICITATIONS

- A. Amending a Solicitation. PHA may amend any solicitation when necessary or when otherwise considered to be in the best interest of PHA.
1. Amendments Before the Proposal Due Date. If changes to the IFB or RFP are needed after it has been issued but before proposals are due, the Contracting Officer shall issue a written amendment to all potential offerors who were furnished a copy of the original solicitation. The amendment shall be provided with the original solicitation to those who request the solicitation after the amendment is made.
  2. Amendments After the Proposal Due Date. If changes to the IFB or RFP are needed after the due date for receipt, the Contracting Officer shall provide a written amendment to all offerors who submitted a proposal. If, however, the changes are significant enough that potential offerors who did not submit offers might have considered submitting an offer if the changes had been made before the proposal due date, PHA shall consider extending the bid or proposal due date.
  3. Amendments After Determination of the Competitive Range (RFPs only). If the need for changes is discovered after the Contracting Officer has determined the competitive range, the Contracting Officer shall provide the amendment to all offerors determined to be within the competitive range. If the changes may have had an impact on the acceptability of any offeror who was not included in the competitive range, the Contracting Officer should consider re-determining the range to include such offerors and provide them with the amendment.
  4. Changes Requiring Cancellation of the Solicitation. If at any time in the process any needed changes are substantial enough to constitute an essentially new requirement, the Contracting Officer shall cancel the solicitation, make the needed changes, and issue a new solicitation with a new bid or proposal due date. The Contracting Officer shall determine whether it is in the best interest of PHA to cancel a solicitation.
- B. Cancelling a Solicitation
1. An invitation for bid, request for proposal, or other solicitation may be cancelled before bids or offers are due and opened if: PHA no longer requires the supplies, services, materials or construction; PHA 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, materials or construction are no longer required; or, ambiguous or otherwise inadequate specifications were part of the solicitation; or, the solicitation did not provide for consideration of all factors of significance to PHA; or, prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds; or, 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, a condition for canceling a solicitation and resoliciting, as specified in paragraph B. 1. above, is met; or, for good cause of a similar nature when it is in the best interest of the PHA.
  3. The cancellation or rejection shall be documented in the procurement file and shall provide the rationale and supporting facts for the cancellation. Further, notice of the cancellation thereof shall be provided upon request to any offeror solicited. Such notice shall explain that the offeror will be given an opportunity to compete on any resolicitation or future procurement of similar items.

4. 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, PHA 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 paragraph III.D. above (when more than one otherwise acceptable bid has been received), or by using the noncompetitive proposals method and following paragraph III.E.. 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 PHA's intent to negotiate, and each responsible bidder is given a reasonable opportunity to negotiate.

## **VI. COOPERATIVE PURCHASING**

PHA may enter into Federal, State and local intergovernmental agreements to non-competitively purchase or use common goods and services in accordance with Section 1902 of Act 1998-57 (“Commonwealth Procurement Code”) and 24 CFR 85.36 (b)(5). The decision to use an intergovernmental agreement or conduct a direct procurement shall be based on economy and efficiency and the Contracting Officer must determine that the underlying contract(s) of the Federal, State or local agency must have been procured in accordance with 24 CFR 85.36. 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. Prior to making a decision to use an existing agreement, the Contracting Officer shall assess the reasonableness of the contract prices and ensure that all required clauses are included in the written agreement between the Federal, State, or Local Government organization and the supplier. PHA should use Federal or State excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs.

### **A. CONTRACTING WITH DEVELOPERS**

Contracts with developers for PHA sites shall require that all contracts awarded by the developer for construction, maintenance, and service contracts be awarded on a competitive basis. Developers shall maintain records for four (4) years after completion on their contract with PHA evidencing such competition.

## **VII. CONSTRUCTION MANAGEMENT SERVICES**

### A. SPECIAL PROVISIONS RELATING TO CONSTRUCTION MANAGEMENT CONTRACTS

The term "Construction Management" or "CM" means a private entity that is hired by the Authority to provide construction management services on a requirements basis for various construction projects. The specific construction projects for which services are to be required from time to time during the term of the CM contract will be identified by the Authority and transmitted to the CM on a task order basis (a "Construction Management Task Order"). The CM may enter into and supervise subcontracts for the performance of some of the construction work and, prior to entering into such subcontracts, the CM is required to conduct a competitive bid procedure for such subcontracts, and the successful bidder shall be selected by the CM. The CM is required to submit the approved sub-contractor's list to PHA.

### B. CM TASK ORDERS

1. PHA procures multiple CM contracts, and Task orders are issued under CM contracts when a construction management service is required by the Authority. To issue each task order, PHA follows the task order procurement process.
2. The Authority's Board will approve all CM task orders greater than \$250,000.
3. The CM then awards subcontracts for all services required under each task order and is responsible for the performance of the subcontractors.
4. Monthly reports listing subcontracts issued by the CM will be provided to the Board as notification of contractual activities.

### C. CM CHANGE ORDERS

1. A Change Order for CM contracts shall be authorized by resolution of the Authority's Board, if, on a Construction Management Task Order, the amount of the Change Order, together with the aggregate of all previously executed Change Orders, exceeds more than 15%. Further, any modification in excess of \$1,000,000 regardless of percentage of contract value requires pre-approval by the Board of Commissioners.
2. Capital Projects Report. Within 30 days following the end of each Calendar Quarter, the Board and the Executive Director will be provided with a Capital Project Report, covering the status of each active capital project contract as of the end of such Quarter, including the cumulative total dollar amount of Change Orders executed with respect to such contract by category.

## VIII. CONTRACTOR QUALIFICATIONS AND DUTIES

### A. CONTRACTOR RESPONSIBILITY

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 for purchases greater than \$10,000, PHA 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 PHAs), 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 the determination. PHA shall review the contractor's inclusion on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs for purchases greater than \$35 up to \$10,000, and such other relevant factors as PHA shall determine to review.

### B. SUSPENSION AND DEBARMENT

Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined ineligible by HUD in accordance with HUD regulations. PHA 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) in connection with any procurement matter when necessary to protect PHA in its business dealings.

PHA shall not make an award to any contractor or individual who has been suspended or debarred.

### C. QUALIFIED BIDDERS' LIST

Interested businesses shall be given an opportunity to be included on qualified bidders' lists. Any pre-qualified lists of persons, firms, or products which are used in the procurement of supplies and services or construction shall be kept current and shall include enough qualified sources to ensure competition. Firms shall not be precluded from qualifying during any contract solicitation period. Solicitation mailing lists of potential contractors shall include, but not be limited to, such pre-qualified suppliers.

### D. CONTRACTING WITH SECTION 3 BUSINESS AND RESIDENT-OWNED BUSINESS CONCERNS

Section 3 of the Housing Act of 1968 (24 CFR 135), as amended, requires PHA to use appropriate efforts to provide employment and training opportunities to low and very-low income persons receiving subsidy from PHA, and contracting opportunities with Resident-Owned Business and Section 3 business concerns related to activities funded by covered HUD assistance. Pursuant to HUD regulations, PHA 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 to comply with such Section 3 requirements. These efforts do not apply to the purchase of goods and/or equipment.

## **IX. TYPES OF CONTRACTS, CLAUSES, AND CONTRACT ADMINISTRATION**

### **A. CONTRACT TYPES**

Any type of contract, including blanket orders and indefinite delivery indefinite quantity contracts, which is appropriate to a procurement and which will promote the best interests of PHA, 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 PHA's needs otherwise, and the proposed contractor's accounting system is adequate to allocate costs in accordance with applicable cost principles (for commercial organizations, Subpart 31.2 of the Federal Acquisition Regulation (FAR), found at 48 CFR Chapter 1 and HUD Directive 2210.18). A time and material contract may be used only when the Contracting Officer has determined in writing that (1) no other contract type is suitable, for example, in recurrent emergency situations, and (2) the contract includes a ceiling price that the contractor exceeds at its own risk. The Contracting Officer shall document in the contract file the reason(s) for and amount of any subsequent change in the ceiling price.

### **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 unilateral right of PHA; (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 determinable from the contract; and (vii) the options may be exercised only if determined to be more advantageous to PHA than conducting a new procurement. Prior HUD approval shall be obtained for option periods on service contracts greater than two (2) years.

### **C. CONTRACT CLAUSES**

In addition to containing a clause identifying the contract type, all contracts shall include any clauses required by Federal statutes, executive orders, or their implementing regulations, as provided in 24 CFR 85.36 (i), the HUD Handbook and PHA-required clauses. Mandatory clauses can be incorporated by reference number in bid specifications and contracts. The list of required clauses include, but are not limited to the following:

1. Termination for convenience,
2. Termination for default,
3. Anti-Kickback Act,
4. Davis-Bacon Act,
5. Contract Work Hours and Safety Standards Act reporting requirements,
6. Patent rights,
7. Rights in data,
8. Examination of records by Comptroller General, PHA, and any other reviewing officer
9. Retention of records for four (4) years after closeout,
10. Clean air and water, and hazardous environmental substances,
11. Energy efficiency standards,
12. Bid protests and contract claims,
13. Value engineering,
14. Payment of funds to influence certain Federal transactions.
15. Flow down of certain provisions in Prime contractor's contract to Prime's sub-contractors,

16. Affirmative Action, Section 3, and Equal Employment Opportunity,
17. Steel Products Act (requiring use of American Steel Products, if applicable), and
18. Insurance, indemnification and warranty provisions.

The operational procedures required by Section II. A. of this Statement shall contain the text of all clauses and required certifications (such as required non-collusive affidavits) used by the PHA.

#### D. CONTRACT ADMINISTRATION

##### 1. Administration of Construction Contracts

PHA shall, at a minimum, include the following steps in the administration of construction and construction-related contracts:

- a. Hold a Pre-construction Conference and Issue a Notice to Proceed.
- b. Hold scheduled progress meetings.
- c. Inspect work on a frequent and thorough basis and include a managed corrective action process.
- d. Ensure that contractors adhere to the Davis-Bacon labor standards and HUD Labor Hour and Wage Rate Standards assigned to the contract.
- e. Make progress reports based on an approved schedule of amounts for contract payments, a properly executed HUD 51001 form, and upon satisfactory completion of all required reports such as payroll reports.
- f. Monitor construction performance and manage delays or extensions of time requests.
- g. Ensure adequate final completion of work, with the assimilation and approval of final project documentation such as:
  - v. Record of final inspection
  - vi. Records of post inspection meeting
  - vii. Certificate of Occupancy
  - viii. Notarized copies of the contractor's release
  - ix. Assignment of all guarantees and warranties to the PHA (Construction work shall be warranted for at least 365 days from the date of final acceptance).
- h. Make final payments to the contractor only after receipt of all payment documentation, inspection approvals, contractor's release, certified payroll reports, certificate of completion, and warranty information.

##### 2. Administration Of Non-Construction Contracts

PHA shall administer non-construction contracts based on the size and complexity of a given procurement. At a minimum, such administration shall include:

- a. Post-award briefings with the awarded contractor
- b. Establishment of an effective receiving system for materials, services, and/or goods
- c. The monitoring and inspection of materials, services, and goods along with a formal acceptance process
- d. A process of confirming the receipt of required compliance with specifications and established delivery timeframes.
- e. Monitoring of payments, including payment of HUD-determined wage rates for maintenance contracts greater than \$2,000.

Management of change orders, contract modifications, contract claims, and contract terminations in accordance with the terms of the contract.

3. A contract administration system designed to ensure that contractors perform in accordance with their contracts shall be maintained.
4. The operational procedures required by this section shall contain guidelines for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on construction contracts, and similar matters. For cost reimbursement contracts with commercial organizations costs are allowable only to the extent that they are consistent with the cost principles in FAR Subpart 31.2 and HUD Directive 2210.18.

5. PAYMENT

PHA will exert reasonable efforts to make payments to suppliers within forty-five (45) days of the presentation of an acceptable invoice, acceptance of the goods or services by PHA, or as stated otherwise in contract or purchase order documents, unless there is a PHA or Government shutdown. No payment will be made without a signed contract or purchase order.

For construction contracts, PHA shall comply with the retainage requirements as required by Title 62, Subchapter C, Section 3921 (a).

6. CONTRACT CLOSEOUT

Upon receipt of the final invoice with respect to any given contract, Contracts Administration shall close out the contract and ensure that users will not be able to issue POs or Task Orders against it. PHA requires that the contractor complete a "Release of Claims" or a "Certificate and Release" form to document the end of all contract obligations. Warranty documentation and an internal certificate of completion signed by an authorized PHA employee must be included.

Additional information to be included in the closeout files include:

1. Final Invoices Received
2. Affirmative Action Compliance Report (100%)
3. Attestation of Work Completion by the PHA Project Manager
4. Certificate of Occupancy
5. Contractor Final Performance Evaluation
6. Wage Rate Payment
7. Return of All Property, Data, Equipment; Attestation by the PHA Project Manager
8. Patent Rights or Ownership Rights to Data Provided
9. Completed Certification and Release (A&E/Construction) or Release of Claims (Services)

Contract Administration shall retain all closed contract folders for a period of four (4) years.

## **X. CONTRACT MODIFICATIONS**

- A. The Contracting Officer is authorized to approve contract modifications or change orders as provided in Section (1)(C) and Section VII of this policy. Monthly reports listing task orders issued against master agreements will be provided to the Board as notification of contractual activities.
- B. Modifications for new work beyond the scope of the original contract are not allowed. A cost or price analysis shall be performed for each modification. All modifications shall be in writing.

A contract modification package shall be in writing and include:

1. A detailed description of the changed work;
  2. A reference to applicable working drawings and specifications and whether any item is being substituted;
  3. Justification for the change (e.g.; design error or omission, PHA requested change, unforeseen conditions, cost or time savings without sacrifice of quality) ;
  4. A fixed price (credit, debit or no change) for the change in contract work;
  5. An estimate of any additional time required to complete the work due to the contract change;
  6. PHA's itemized cost or price analysis, whichever is applicable and how costs or prices will affect future options;
  7. Record of negotiation between PHA and contractor showing how price and time were arrived at;
  8. The contractor's itemized breakdown of the costs underlying unit prices, materials, and labor as well as profit (and for any subcontractors, if applicable); and the change indicated on the architectural or engineering drawings, if applicable.
- C. Only the Contracting Officer acting within the scope of his/her (hereinafter his ) authority is empowered to execute contract modifications. Other PHA personnel shall not execute contract modifications, act in such a manner to cause the contractor to believe any such personnel has the authority to bind the Authority or direct or encourage the contractor to perform work that should be the subject of a contract modification.
  - D. A modification register shall be maintained in the contract file that will include all modifications of the contract to date.

## **XI. SPECIFICATIONS AND STATEMENTS OF WORK**

### **A. GENERAL**

All specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying PHA'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 XIII below). For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement (for equipment in excess of \$10,000.00). Standard Templates for drafting statements of work shall be used.

### **B. 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 (unless a written determination is made that only the identified item will satisfy PHA's 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 PHA's needs and then allowing that consultant to compete for the subsequent contract).

## **XII. APPEALS AND REMEDIES**

### **A. GENERAL**

It is PHA's policy to attempt to resolve all contractual issues informally within PHA without litigation. PHA may consider the use of Alternate Dispute Resolution ("ADR") to help resolve the disputes.

### **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 Statement. 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 within a reasonable time. The protestor shall be advised of his appeal rights including the right to appeal to a higher authority in PHA. The Contracting Officer may, at his or her sole discretion, suspend the procurement pending resolution of the protest. HUD review of protests shall be in accordance with the requirements of 24 CFR 85.36 (B)(12) (i) and (ii).

### **C. CONTRACT CLAIMS**

All claims by a contractor under or relating to performance of a contract shall be submitted in writing to the Contracting Officer 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 including the right to appeal to a higher authority in PHA.

### **XIII. ASSISTANCE TO SMALL AND OTHER BUSINESSES**

#### **A. REQUIRED EFFORTS**

1. Consistent with Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, as defined in PHA's affirmative action and Section 3 policies, PHA shall make efforts to ensure that small and minority-owned businesses, women's business enterprises, and individuals or firms located in or owned in substantial part by persons residing in the area of a PHA 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;
  - 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 encourage participation by such firms;
  - e) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the 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 project area (Section 3 residents) including participants in HUD Youthbuild Programs in the order of preference set forth in 24 CFR 135.34 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 (Section 3 businesses), as described in 24 CFR 135;
  - g) Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed in A.1.a. through A.1.f. above.
2. PHA's prime contract goals may be established by PHA periodically regarding participation by small businesses, Section 3 businesses, minority-owned businesses, and women-owned business enterprises. Particular efforts shall be made by PHA to make contracting opportunities known by and available to Section 3 residents and business concerns by, for example, advertising in newspapers in the minority community.

## **XIV. ETHICS IN PUBLIC CONTRACTING**

### **A. GENERAL**

PHA shall adhere to the following code of conduct, and otherwise consistent with applicable Federal, State or local law.

### **B. CONFLICT OF INTEREST**

1. No commissioner, employee, officer or agent of PHA shall participate directly or indirectly in the selection or in the award or administration of any contract if a conflict, real or apparent, would be involved. Such conflict would arise when a financial or other interest in a firm selected for award is held by:
  - a) A commissioner, employee, officer or agent involved in making the award or administering the contract;
  - b) His/her relatives including "half" or "step", father, mother, spouse, brother, sister, child or in-laws;
  - c) His/her partner; or,
  - d) An organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.
2. No commissioner, officer or agent of the Authority may have any financial or other interest, directly or indirectly through an immediate family member or a business with which the commissioner, employee or an immediate family member is associated, in the award or administration of any contract or proposed contract for construction, supplies, materials or services to be furnished or used in connection with any operations of the Authority.

Employees have an ongoing duty to disclose and avoid any interest in violation of these conflict of interest provisions. Any undisclosed profit, which results to any employee of the Authority, shall render such employee liable to surcharge in favor of the Authority to the full amount of such profit, and may subject the employee to other discipline and legal consequences.

### **C. GRATUITIES, KICKBACKS, AND USE OF CONFIDENTIAL INFORMATION**

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

PHA commissioners, officers, agents and employees of the Authority shall not solicit or accept, directly or indirectly, any gifts, from any of the following sources:

1. An individual, business, or an officer, director or employee of a business that is seeking to obtain business from or already has financial relations with the Authority
2. An individual, business, or an officer, director or employee of a business whose operations or activities are regulated or inspected by the Authority
3. A tenant in or resident of a PHA housing development project, a participant in the Housing Choice Voucher program, or any person on a PHA waiting list for such housing; or
4. An individual, business, or an officer, director or employee of a business attempting to influence the employee in the performance of his job duties for PHA for the pecuniary benefit of the person or business

No commissioner member, officer, agent or employee of the Authority may use PHA funds for gifts or social, non-PHA activities intended for the financial gain of such employee or other employees of the Authority.

Gifts include money, meals, services, loans, travel, lodging, entertainment, gratuities, favor, discounts, rewards, a promise of future employment, or other thing(s) that are individually or collectively of greater than nominal value. Ordinarily, items of less than \$10 in value will be considered of "nominal value" and will not be considered gifts; this exception includes, but is not limited to: (1) acceptance of food and refreshment of nominal value on infrequent occasions in the ordinary course of a meeting and (2) items of nominal value offered as a token of esteem or appreciation on the occasion of a public appearance, visit, speech, or the like.

If a Board member, officer, or agent or employee of the Authority receives a gift or an offer of a gift, the individual receiving it should report the gift or the offer of a gift to the Ethics Officer.

Disciplinary Actions: Breaches of the ethical standards of this section of the policy may result in a PHA employee being subject to disciplinary actions consistent with PHA's policies and procedures and other consequences pursuant to law.

#### D. CERTAIN PROHIBITED ACTIVITIES

Under Commonwealth of Pennsylvania law, certain employees of the Authority (identified in the paragraph below), upon leaving PHA, are prohibited from engaging in business activities with PHA personally or on behalf of another person, in exchange for promised or actual compensation, for a period of one (1) year.

Such covered employees are those who are responsible for taking or recommending official action of a non-ministerial nature with regard to (1) contracting or procurement, (2) administering or monitoring grants or subsidies, (3) planning or zoning, (4) inspecting, licensing, regulating or auditing any person, or (5) any other activity having a more than an insignificant economic impact are subject to the preceding prohibition.

A present or former PHA employee whose activities are described in the immediately preceding paragraph shall not engage in selling or attempting to sell supplies, services, or construction to PHA. Former PHA employees shall be subject to this ban only for one year following the date such employment ceased. The term "sell" means signing a bid or proposal, negotiating a contract. Contacting any PHA employee for the purpose of obtaining, negotiating, or discussing changes in specifications, price, cost allowances, or other terms of a contract; settling contract disputes; or any other liaison activity with a view toward the ultimate consummation of a sale, although the actual contract is negotiated by another person.

#### E. PROHIBITION AGAINST CONTINGENT FEES

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

#### F. PENALTIES

In the event any commissioner, employee, agent or contractor of PHA 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 not limited to, termination and/or removal, and otherwise in accordance with Federal, State or local law or regulations.

Further sanctions may include:

1. oral or written warnings or reprimands
2. suspension with or without pay for specified periods of time; or
3. 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 PHA. 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 based on the breach of the ethics requirements of this policy. Remedies against contractors may include notification to HUD, and/or to an applicable federal, state or local law enforcement agency.