



Stanislaus Regional Housing Authority

ALPINE | AMADOR | CALAVERAS | INYO | MARIPOSA
MONO | STANISLAUS | TUOLUMNE COUNTIES

DATE: February 13, 2025

TO: Board of Commissioners

FROM: Jim Kruse, Executive Director

SUBJECT: **Action Item #1:** Resolution Approving the Proposed Amendments to the Housing Authority's Procurement Policy

PREPARED BY: Dawn Bonsu, J.D., Director of Business Services

RESOLUTION #: 24-25-03

RECOMMENDATION

Staff recommends the approval of the adoption of the revisions and amendments to the Housing Authority Procurement Policy.

SUMMARY

The Housing Authority is proposing to revise and amend the Housing Authority Procurement Policy to optimize clarity for increased efficiency, as well as remain compliant with state and federal laws that have changed. The amendments to the Housing Authority policies have been drafted and reviewed by General Counsel.

Significant changes include:

Increase of Micro Purchase threshold from \$10,000 to \$50,000
Competitive Procurement reviews may be conducted by committee

FISCAL IMPACT

There is no fiscal impact associated with the amendments to the Housing Authority's Procurement Policy

ATTACHMENT

Resolution No. 24-25-03
Proposed Procurement Policy





Stanislaus Regional Housing Authority

ALPINE | AMADOR | CALAVERAS | INYO | MARIPOSA
MONO | STANISLAUS | TUOLUMNE COUNTIES

RESOLUTION NO. 24-25-03

**RESOLUTION APPROVING THE PROPOSED REVISIONS AND AMENDMENTS
TO THE HOUSING AUTHORITY'S PROCUREMENT POLICY**

WHEREAS, the Board of Commission desires to approve the revisions and amendments to the Housing Authority's Procurement Policy, and

WHEREAS, the amendments to the Housing Authority Procurement Policy have been drafted and reviewed by General Counsel for legal review, and

NOW THEREFORE BE IT RESOLVED by the Board of Commissioners of the Stanislaus Regional Housing Authority, that:

1. The Revisions and Amendments to the Housing Authority Procurement Policy are approved as the new Housing Authority Procurement Policy.

DULY AND REGULARLY ADOPTED by the Board of Commissioners of the Stanislaus Regional Housing Authority this 13th day of February 2025.

1. The Proposed Stanislaus Regional Housing Authority Procurement Policy is approved.
2. The Executive Director is authorized to execute the aforementioned Policy and to act on behalf of the Authority during the administration of the policy.
3. This Resolution shall take effect immediately.

On a motion of Commissioner _____, seconded by Commissioner _____, and of the following roll call vote:

AYES:

NAYS:

ABSENT:

Approved: _____
Chairman

Attest: _____
Secretary



Agency Procurement Policy

Article 1 General Provisions

The purpose of this Procurement Policy is to establish a broad framework of policies and guidelines to ensure that Stanislaus Regional Housing Authority’s (the “Agency”) purchasing and contracting functions promote administrative flexibility and efficiency, while at the same time maintaining prudent internal controls and compliance with applicable statutes and regulations. The Agency shall maintain a procurement system of quality and integrity that (i) provides for the fair and equitable treatment of all persons or firms involved in purchasing with the Agency, (ii) ensures that supplies and services are procured efficiently, effectively, and at the most favorable prices available, (iii) promotes competition in contracting, and (iv) assures that the Agency’s purchasing actions are in full compliance with applicable federal standards, HUD regulations, State, and local laws.

Section 1.2 Compliance with Laws and Regulations

This Policy is intended to comply with the Annual Contributions Contract (“ACC”) between the Agency and the U.S. Department of Housing and Urban Development (“HUD”), applicable Federal Regulations, the procurement standards of the HUD Procurement Handbook for Public Housing Agencies, HUD Handbook 7460.8 Rev 2, 2 CFR part 200, and applicable State and local laws including California Labor Code section 1720-1861 *(Public Works), California Public Contracts Code, California Government Code, Title 2 of the California Code of Regulations section 18700 et seq, (Conflicts of Interest), Title 8 of the California Code of Regulation section 16000-16403 (Payment of Prevailing Wages upon Public Works).

Section 1.3 Change in Law

In the event a law or regulation applicable to this Policy is modified or eliminated, or a new such law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with this Policy, automatically supersede the inconsistent provision(s) of this Policy.



Section 1.4 Definitions

The term “procurement,” as used in this Policy, includes the procuring, purchasing, leasing, or renting of:

- Goods, supplies, equipment, and materials;
- Construction and maintenance services;
- Consultant services;
- Architectural and Engineering (“A/E”) services;
- Social Services; and
- Other services.

Section 1.5 Applications

This policy applies to all procurement actions of the Agency, regardless of the source of funds, except those procurement actions identified in “Exclusions” as identified in Article 15.

Section 1.5.1 Applicability of Funding Sources

The Agency is eligible to receive funds from federal, non-federal, and private funding sources. As such, the Agency shall comply with any funding source requirements and all applicable laws and regulations without imposing a higher standard than is necessary to ensure compliance. Nothing in this Policy shall prevent the Agency from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with applicable law.

When both HUD and non-Federal funds are used for a project, the work to be accomplished should be separately identified prior to procurement so that appropriate requirements can be applied, if necessary. If it is not possible to separate the funds, HUD procurement regulations shall be applied to the total project. If funds and work can be separated and work can be completed by a new contract, then regulations applicable to the source of funding shall then be followed.

Section 1.6 Public Access to Procurement Information

Procurement information is a matter of public record and shall be available unless exempt from disclosure under the California Public Records Act (California Government Code §6250 et seq.) or other applicable requirements.

Article 2 Ethics in Public Contracting

Section 2.1 General

The Agency hereby establishes this code of conduct regarding procurement issues and actions and shall implement a system of sanctions for violations. To the best of the Agency’s knowledge, this code of conduct is consistent with applicable Federal, State, and local law.



Section 2.2 Conflicts of Interest

No officer, employee or agent shall participate in any decision related to the selection, award or administration of contracts if that individual has a prohibited conflict of interest arising from California's conflict of interest laws, including those set forth in the Political Reform Act (Government Code sections 81000 – 91014) and its implementing regulations. (2 Cal. Code of Regs. §§ 18110 – 18997)

No officer, employee or agent shall participate in any decision related to the selection, award, or administration of a contract supported by a Federal award if he or she has a conflict of interest, real or apparent. Such a conflict of interest would arise when the employee, officer, or agent, any members of his or her immediate family (including step-parent, or step-child), his or her partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. (2 CFR 200.318(c)(1)).

This section is further supplemented by the Agency's Conflict of Interest Code and Policy.

Section 2.3 Gratuities, Kickbacks, and Use of Confidential Information

No officer, employee, Board member, or agent of the Agency shall ask for or accept gratuities, favors, or anything of monetary value from any contractor, potential contractor, or party to any subcontract, and shall not knowingly use confidential information for actual or anticipated personal gain or actual or anticipated personal gain of any other person. Individuals shall refer to the Agency's Conflict of Interest Policy for specific guidance regarding the acceptance of gratuities, favors, gifts and other similar items.

Section 2.4 Prohibition Against Contingent Fees

Contractors wanting to do business with the Agency must not hire a person to solicit or secure a contract for a commission, percentage, brokerage, or contingent fee, except for bona fide established commercial selling agencies or where permissible by law.

Section 2.5 Prohibition Against Bid Splitting, Contract Splitting and Piecemealing

The Agency shall not split or piecemeal one purchase into multiple purchases that are less than the applicable threshold merely to avoid any requirements that apply to purchases that exceed those thresholds. However, larger requirements may be broken into smaller ones to afford small and minority businesses the opportunity to participate in the Agency's procurements, or to comply with applicable funding source requirements.

Article 3 Procurement Administration

Section 3.1 General

All procurement actions shall be administered by the Contracting Officer, who shall be the Executive Director "ED", President, CEO or other individual he or she has authorized in writing. The Contracting

Officer shall issue procurement procedures to implement this Policy, which shall be based on the sources identified in Section 1.2 of this Policy.

The Contracting Officer shall ensure that:

1. Procurement requirements are subject to regular planning processes to assure efficient and economical purchasing;
2. Contracts and modifications are in writing, clearly specifying the desired supplies, services and 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. Solicitation and notice requirements are conducted in full compliance with all applicable laws and regulations, including requirements set forth by individual funding sources;
4. 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 proposer whose proposal offers the Best Value to the Agency, considering price (except for those Competitive Proposals made by RFQ, as defined below), technical, and other factors as specified in the solicitation (for contracts awarded based on competitive proposals); unsuccessful firms are notified within the time period required by the applicable law after contract award;
5. 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
6. The Agency complies with applicable requirements as provided in the procurement procedures supplementing this Policy.

Section 3.2 Ensuring Reasonable Costs

Before initiating any contract, the Agency shall ensure that there are sufficient funds available to cover the anticipated cost of the contract or modification.

The Agency shall require assurance, before entering into a contract, that the price is reasonable based on competition in the market. In evaluating responses to solicitations, the Agency shall ensure price reasonableness with every procurement action, including contract modifications. The method and degree of analysis depends on the facts surrounding the particular procurement situation, and the level of detail shall be commensurate with the cost and complexity of the item to be purchased. Cost reasonableness may be established by:

- an independent cost estimate, which is prepared before solicitation issuance and is appropriately safeguarded for each procurement;



- a cost or price analysis, which is conducted when the responses are received for all procurements; or
- other reasonable and prudent means of ensuring price reasonableness, including, without limitation, securing multiple bids, comparing costs or prices with those paid by other public agencies for similar services or supplies, or comparing costs or prices with previous contracting costs for similar services or supplies.

Section 3.3 Procurement Methods

Section 3.3.1 Petty Cash Purchases

Purchases under \$50 may be handled through the use of a Petty Cash Account. Petty Cash Accounts may be established in an amount sufficient to cover small purchases made during a reasonable period, e.g., one month. For all Petty Cash Accounts, the Agency shall ensure that security is maintained and only authorized individuals have access to the account. These accounts should be reconciled and replenished periodically.

Section 3.3.2 Single Quote: Micro Purchases

Purchases that do not exceed the Micro Purchase Threshold of \$50,000 (2 CFR 200.320) may be made after obtaining three (3) price quotation, if the price is considered reasonable. Vendor catalogs, as well as previous purchases, where applicable, of the same or similar item may be considered in determining price reasonableness. To the extent practicable, Micro Purchases must be distributed equitably among qualified sources.

Section 3.3.3 Multiple Quotes: Small Purchases & Simplified Acquisition Threshold (SAT)

For purchases that exceed the Micro Purchase Threshold, the Agency must obtain multiple quotes. The Agency should solicit and attempt to receive a minimum of three quotes from qualified sources. Quotes may be obtained orally (either in person or by phone), by fax, email, in writing, via the web, or through e-procurement or similar software. An award shall be made to the qualified vendor that provides the best value to the Agency. If an award is to be made for reasons other than lowest price or three quotes cannot be obtained, documentation of those reasons shall be provided in the contract file.

Section 3.3.4 Sealed Bids/Invitations for Bids

Sealed Bidding is a formally advertised and competitive selection process used to obtain contracts for goods and services awarded on the basis of lowest bid. Under sealed bids, the Agency publicly solicits bids and awards a firm fixed-price contract (lump sum or unit price) to the responsible bidder whose bid, conforming with all the materials terms and conditions, is the lowest in price. Sealed Bidding shall be used

for all contracts that exceed the Small Purchase threshold and that are not Competitive Proposals or Non-competitive Proposals.

Section 3.3.4.1 Conditions for Using Sealed Bids

The Agency may use Sealed Bidding if the following conditions are present:

- A complete, adequate, and realistic statement of work, specification, or purchase description is available;
- Two or more responsible bidders are willing and able to compete effectively for the work;
- The contract can be awarded in writing based on a firm fixed price; and,
- The contract will be awarded to the lowest priced responsive and responsible bidder.

If all four of the above criteria are not met, the Agency should consider using Competitive Proposals using a Request For Proposal (RFP).

Section 3.3.4.2 Solicitation and Receipt of Bids

Under the Sealed Invitation for Bids ("IFB") process, the Agency shall include the specifications and all contractual terms and conditions applicable to the procurement. The Agency must use one or more following solicitation methods, provided that the method employed provides for meaningful competition.

- Advertising in newspapers or other print media of local or general circulation;
- Advertising in various trade journals or publications (for construction); or
- E- Procurement. The Agency may conduct its public procurements through the Internet using e-procurement systems.

The IFB shall state the time and place for both the receiving of bids and the public opening of those bids. The bids submitted must be sealed. Bids submitted that are not sealed will either not be accepted or determined to be non-responsive. All bids received will be date and time-stamped and stored unopened in a secure place until the public bid opening. A bidder may withdraw the bid at any time prior to the bid opening.

Section 3.3.4.3 Bid Opening and Award

Bids shall be opened publicly and in the presence of at least one witness. All bids received shall be recorded on an abstract (tabulation) of bids, and then made available for public inspection. If equally low bids are received from responsible bidders, selection shall be made by drawing lots or other similar random method. The method for choosing between similar bids shall be stated in the invitation for bids. If only one responsive bid is received from a responsible bidder, the award shall not be made unless the agency determines the price to be reasonable.

Section 3.3.4.4 Mistakes in Bids

Correction or withdrawal of bids may be permitted, where appropriate, prior to the time set for bid opening by written or telephonic notice received in the office designated in the IFB. After bid opening, corrections in bids may be permitted only if the bidder can show by clear and convincing evidence that a mistake that is non-prejudicial to the agency was made, objective evidence of the nature of the mistake made, and the bid price actually intended. A non-prejudicial mistake is one that will not have a material impact on the budget, service or risk allocation of the project or service. A low bidder alleging a nonprejudicial mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made. All decisions to allow correction or withdrawal of a bid shall be supported by a written determination signed by the Contracting Officer. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the Agency or fair competition shall not be permitted.

Section 3.3.5 Competitive Proposals

Formal competitive proposals are the preferred method for procuring professional services that will exceed the Small Purchase and SAT threshold, and where conditions are not appropriate for the use of sealed bidding for awards based on lowest cost. Awards for competitive proposals are normally made on the basis of the proposal that represents the best overall value to the Agency, considering price and other factors set forth in the solicitation.

Section 3.3.5.1 Conditions for Use

When the Contracting Officer determines in his or her reasonable judgment that conditions are not appropriate for the use of Sealed Bidding, Competitive Proposals may be used. The Competitive Proposal method permits:

- Consideration of technical factors other than price (although price is one of the factors considered in the evaluation of an RFP);
- Discussion with proposers concerning offers submitted;
- Negotiation of contract price or estimated cost and other contract terms and conditions;
- Revision of proposals before the final contractor selection; and,
- The withdrawal of an offer at any time up until the point of award.

Section 3.3.5.2 Solicitation and Receipt of Proposals

Competitive proposals shall be solicited through a "request for proposals" (RFP) or a "request for qualifications" (RFQ). Solicitation must be done publicly. The Agency must use one or more following solicitation methods, provided that the method employed provides for meaningful competition.

- Advertising in newspapers or other print media of local or general circulation;
- Advertising in various trade journals or publications (for construction); or
- E- Procurement. The Agency may conduct its public procurements through the Internet using e-procurement systems.

The competitive proposal shall clearly identify the relative importance of price (except an RFQ which shall not consider price) and other evaluation factors and sub factors, including the weight given to each. 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 proposers, the identity of the proposers, and the contents of their proposals.

Section 3.3.5.3 Evaluation

The proposals shall be evaluated using the criteria stated in the RFP or RFQ by an appointed Evaluation Committee, which may include staff with knowledge and experience of the goods or services being procured, as well as outside stakeholders when appropriate. The Evaluation Committee shall be required to disclose any potential conflicts of interest and may be asked to sign a Non-Disclosure statement. During the evaluation, the Agency may establish a competitive range by identifying proposals that have a reasonable chance of being awarded a contract.

Section 3.3.5.4 Negotiations with Request for Proposals (RFP)

The proposals shall be evaluated, rated and ranked in accordance with the technical and price factors specified in the RFP. If based on the initial evaluation, the Evaluation Committee determines there is a clear winning proposal (or multiple winning proposals), the Agency may award the contract accordingly.

If, after the initial evaluation of proposals, the Agency determines there is no clear winning proposal, negotiations shall be commenced as set forth in this section. The Agency reserves the right to determine the scope and extent of the negotiations, and may include the following steps:

1. Initial Discussions: The Contracting Officer, or their designee, may conduct discussions with responsible proposers whose proposals have a reasonable chance of being selected for award. These discussions are intended to maximize the Agency's ability to obtain Best Value and will be tailored to each proposer's proposal. The scope of discussions may include a proposal's weaknesses and deficiencies that could, in the opinion of the Contracting Officer, be altered or better explained to materially enhance the proposer's potential for award. The scope of discussions may also include the proposal's price, schedule, technical approach, and contract terms, as well as a proposer's prior contract performance. "Auctioning" (revealing one proposer's price in an attempt to get another proposer to lower their price) is prohibited.



2. Determination of Competitive Range: After initial evaluations and negotiations are complete, the evaluation panel may re-evaluate proposals based on the initial discussions and solicitation criteria, and re-determine the range of competitive scores.
3. Best and Final Offers (BAFOs): All proposers with scores within the competitive range following discussions shall be provided an opportunity to revise and/or clarify their proposals, including price, by submitting a BAFO. A common deadline for receipt of BAFOs shall be established. BAFOs shall be evaluated by an evaluation panel in essentially the same manner as the initial evaluation of the proposals. The Contracting Officer shall ensure that a full evaluation of BAFOs is conducted sufficient to support an award decision based on best value to the agency. While BAFOs are usually requested once during the procurement process, in exceptional circumstances, the Contracting Officer may determine that it is in the best interest of the Agency to request a second round of BAFOs. In such cases, invitations for the second BAFO need only be sent to those proposers whose proposals are within the range of competitive scores following receipt of the first set of BAFOs.
4. Treatment of Proposers: Proposers shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their proposals. No proposer shall be given any information about any other proposer's proposal, and no proposer shall be assisted by the Agency to bring its proposal up to the level of any other proposal. The Contracting Officer or designee may inform a proposer that its price is considered by the Agency to be too high, or too low, and reveal the results of the analysis supporting that conclusion. The Contracting Officer or designee may also indicate to all proposers the cost or price that the Agency's price analysis, market research, and other reviews have identified as reasonable.

Section 3.3.5.5 Award

Contracts shall be awarded in accordance with the terms of the solicitation. After evaluation of the bid or proposal the contract shall be awarded to the responsive and responsible bidder or proposal that is most advantageous to the Agency.

Section 3.3.6 Request for Qualifications/Qualification Based Selections

The Agency must contract for architect and/or engineering services using Qualification Based Selection ("QBS") procedures, utilizing a Request for Qualifications ("RFQ"). Under RFQ procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. The RFQ method may also be used to procure development partners for mixed-finance projects pursuant to 24 CFR Part 905.

Section 3.3.7 Non-competitive Proposals

Section 3.3.7.1 Conditions for Use

Procurement by Non-competitive Proposals (sole-source) may be used only when the award of a contract is not feasible using other procurement methods and if one of the following applies:

1. The item is available only from a single source, based on a good faith review of available sources;
2. There is an emergency situation defined as a sudden, unexpected occurrence that requires immediate action to prevent or mitigate the loss or impairment of life, health, property or public service;
3. HUD expressly authorizes the use of non-competitive proposals;
4. After solicitation of a number of sources, competition is determined inadequate; or
5. The agency chooses to abandon the procurement due to the agency receiving only one qualified bid or proposal.

Section 3.3.7.2 Justification

Each procurement based on Non-competitive Proposals shall be supported by a written justification for the selection of this method, including the reasonableness of the price as described in Section 3.2 et seq. of this Policy. The justification shall be approved in writing by the responsible Contracting Officer. If required, the Contracting Officer will obtain HUD approval before approving a Non-competitive Proposal.

Section 3.4 Cooperative Purchasing/Intergovernmental/Piggyback Agreements

The Agency may enter into State and/or local cooperative or intergovernmental agreements (a so-called "piggyback contract") to purchase or use common supplies, equipment, goods or services. The decision to use an interagency agreement instead of conducting a direct procurement shall be based on economy and efficiency. If used, the inter-governmental 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 Agency may use Federal or State excess and surplus property instead of purchasing new equipment and property if feasible and if it will result in a reduction of project costs.

Section 3.5 Contract Modifications

Price reasonableness shall be determined for all contract modifications. A cost analysis should be completed if the amount of the contract modification will result in a total contract price in excess of the SAT.



Article 4 Solicitation and Advertising

Section 4.1 Solicitation Time Period

Formal Invitation for Bids and Request for Proposal or Qualification must be solicited for a period sufficient to achieve effective competition, which, in the case of paid advertisements, should generally be run not less than once each week for two consecutive weeks. The Executive Director or Contracting Officer may allow for a shorter period under appropriate circumstances.

Section 4.2 Form of Solicitation

Notices and advertisements should state, at a minimum, the place, date, and time that the bids or proposals are due, the solicitation number, a contact person who can provide a copy of, and information about, the solicitation, and a brief description of the needed items(s).

Section 4.3 Cancellation of Solicitations

An IFB, RFP, or other solicitation may be cancelled if:

1. The supplies, services or construction is no longer required;
2. The funds needed to pay for the supplies or services solicited are no longer available;
3. Ambiguous or otherwise inadequate specifications were part of the solicitation;
4. All factors of significance to the Agency were not considered;
5. Prices exceed available funds and it would not be appropriate to adjust quantities;
6. There is reason to believe that bids or proposals may not have been independently determined in open competition, may have been collusive, or may have been submitted in bad faith;
7. Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best;
8. The Agency determines it is not in the best interest of the Agency to continue with the procurement; or
9. Other similar reasons.

The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request.

A notice of cancellation shall be sent to all bidders/proposers solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any re-solicitation or future procurement of similar items.



Article 5 Bonding Requirements

There are no bonding requirements for micro purchases or for competitive proposals. The Agency may require bonds for small purchases or competitive proposals when deemed appropriate; however, non-construction contracts should generally not require bid bonds.

For construction contracts exceeding \$25,000, bidders may be required to submit a bid guarantee equivalent to 5% of the bid price or when required by the applicable federal standards, HUD regulations, state, and local laws.

Section 5.1 Assurances of Completion

For construction contracts exceeding \$150,000, the successful bidder shall furnish an assurance of completion. This assurance may be any one of the following four:

1. A performance and payment bond in a penal sum of 100% of the contract price; or
2. Separate performance and payment bonds, each for 50% or more of the contract price; or
3. A 20% cash escrow; or other amount as determined by the Executive Director that is appropriate for the project.
4. A 25% irrevocable letter of credit.

Section 5.2 Bond Obtainment

Bonds must be obtained from guarantee or surety companies acceptable to the U. S. Government and authorized to do business in the State where the work is to be performed. Individual sureties shall not be considered. U. S. Treasury Circular Number 570 lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the states in which the company is licensed to do business. Use of companies on this circular, or successors thereto, is mandatory.

Article 6 Bidder Qualifications and Duties

Section 6.1 Bidder Responsibility

The Agency shall not award any contract until the prospective bidder, (i.e., low responsive bidder, or successful proposer), has been determined to be responsible. A responsible bidder/proposer must:

- Have adequate financial resources to perform the contract, or the ability to obtain them;
- Provide adequate assurances that it can comply with the required or proposed delivery or performance schedule, taking into consideration all the bidder's/proposer's existing business commitments;

- Have a satisfactory performance record;
- Have no record of unethical business practices;
- Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
- Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,
- Have all licenses required to perform the contract directly and/or with the assistant of a subcontractor as permitted under law and the procurement documents
- Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including applicable licensing and State or local boards or agencies. The bidder/proposer and all subcontractors must not be suspended, debarred by HUD or any other Federal or State agencies, or subject to a HUD limited denial of participation applicable to the work the Agency seeks to procure

If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the official contract file, and the prospective contractor shall be advised of the reasons for the determination.

Section 6.2 Vendor Lists

All interested businesses shall be given the opportunity to be included on vendor mailing or email lists. Any lists of persons, firms, or products which are used in the purchase of supplies and services (including construction) shall be kept current and include enough sources to ensure competition.

Article 7 Contracting

Section 7.1 Contract Types

Any type of contract that is appropriate for the procurement and will promote the best interests of the Agency may be used. In selecting a contract type, the Contracting Officer should consider the fairness of competition, type and complexity of the contract, urgency and need of the Agency, period of performance, the contractor's technical capability, financial responsibility and accounting systems, any subcontracting and the procurement history. The contract must include a ceiling price that the contractor exceeds at its own risk.

Section 7.2 Options

Options for additional quantities or performance periods may be included in contracts, provided that:

- The option is contained in the solicitation;



- The option is a unilateral right of the Agency;
- The contract states a limit on the additional quantities and the overall term of the contract;
- The options are evaluated as part of the initial competition;
- The contract states the period within which the options may be exercised;
- The options may be exercised only at the price specified in or reasonably determinable from the contract; and
- The options may be exercised only if determined to be more advantageous to the Agency than conducting a new procurement.

Article 8 Contract Clauses

All contracts should identify the contract pricing arrangement as well as other pertinent terms and conditions, as determined by the Agency.

Additionally, all federally funded contracts shall include contract language required by the HUD Procurement Regulations including, but not limited to, applicable contract provisions in 2 CFR Part 200, Appendix II, Forms HUD-5369, 5369-A, 5369-B, 5369, 5370, 5370-C, and 51915-A, as well as any forms/clauses as required by HUD for Small Purchases. The Agency shall select the applicable versions of one or more of the corresponding forms for such solicitations and contracts.

If the agreement template is included in the procurement document or the procurement document contains the terms that shall be included in the agreement between the agency and contractor, the bidder/proposer shall be presumed to have accepted the material terms of such agreement or agreement terms unless the bidder/proposer indicates to the contrary in its bid/proposal. The agency shall not make material revisions to this agreement or agreement term that would alter the contract price, services, or risk provisions, including indemnity and insurance requirements.

Article 9 Contract Administration

The Agency shall maintain a system of contract administration designed to ensure that contractors perform in accordance with their contracts. These systems shall provide for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on major projects including construction contracts, and similar matters. For cost-reimbursement contracts that are funded by federal sources, costs are allowable only to the extent that they are consistent with the applicable cost principles referenced in 2 CFR Part 200.

In the event of a dispute over costs, the Agency may request the right to audit the contractor's books and records pertinent to such costs. Profits shall be analyzed separately based on 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.

Article 10 Specifications

Section 10.1 General

All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying the Agency's needs. Specifications shall be reviewed prior to issuing any solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. Function or performance specifications are preferred. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase.

Section 10.2 Contents

The statement of work will vary with the nature, purpose, size and complexity of the work procured. However, each statement of work should generally include: (i) detailed work and task requirements, (ii) end results and deliverables, including the criteria which a deliverable must meet to be considered acceptable, (iii) delivery schedules or period of performance, (iv) any reporting or compliance requirements, (v) a precise statement of the objectives, and (vi) other special considerations, including warranties, necessary classifications or licenses, procedural safeguards, testing procedures, etc.

Section 10.3 Limitations

The following types of specifications shall be avoided:

- Detailed product specifications;
- Geographic restrictions not mandated or encouraged by applicable Federal law (except for A/E contracts, which may include geographic location as a selection factor if adequate competition is available);
- Brand name specifications (unless the specifications list the minimum essential characteristics and standards or an "or equal" designation 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 reviewed to ensure that organizational conflicts of interest do not occur. Contractors retained by the Agency to develop or draft specifications or statements of work, shall be excluded from competing in the procurement.



Article 11 Appeals and Remedies

Section 11.1 General

It is Agency policy to resolve all contractual issues informally and without litigation. Disputes will not be referred to HUD unless all administrative remedies have been exhausted. When appropriate, a mediator may be used to help resolve differences.

Section 11.2 Bid Protest/Appeals

Any actual or prospective contractor may protest or appeal the solicitation or award of a contract for material violations of the procedures contained in this Policy. Mere disagreement with an award recommendation does not constitute proper grounds to protest/appeal. Any protest/appeal against a solicitation must be received before the due date for the receipt of bids or proposals, and any protest/appeal against the award of a contract must be received within ten (10) calendar days after the contract receives notice of the contract award, or the protest/appeal will not be considered. All bid protests/appeals 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/her discretion, suspend the procurement pending resolution of the protest if the facts presented so warrant.

Section 11.3 Contractor Claims

All claims by a contractor relating to performance of a contract shall be submitted in writing within 14 days 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 his/her rights to appeal to the next highest level of authority within the Agency. For procurements utilizing federal funds, contractor claims shall be governed by the Changes clause in the form HUD-5370.

Section 11.4 Notification and Review by HUD

The Agency will notify HUD of disputes arising out of procurement implicating federal funds, but only when required by the HUD Regulations. Consistent with the HUD Regulations, HUD will not review any disputes unless they arise out of violations of federal law or regulations, or violations of this protest and dispute procedure.

Article 12 Assistance to Small and Other Businesses

Section 12.1 Required Efforts

Consistent with Presidential Executive Orders 11625, 12138 and 12432, Title VI of the Civil Rights Act of 1968, and Section 3 of the Housing and Urban Development Act of 1968, as amended, the Agency shall make efforts to ensure that small, minority-owned and woman- owned business enterprises, labor surplus area businesses, and individuals or firms located in, or owned in substantial part by persons residing in, the area of a **Stanislaus Regional Housing Authority** public housing development are used when possible. Such efforts may include:

1. Including such firms, when qualified, on solicitation mailing lists;
2. Encouraging the participation of such firms through direct solicitation of bids or proposals whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
5. Using the services and assistance of the Small Business Administration, local Community Development Financial Institutions (CDFIs), Economic Development Corporation, Chamber of Commerce, or other similar organizations
6. Including in all contracts funded from sources covered by Section 3, the Section 3 clause prescribed at 24 CFR 135.38, which sets forth Section 3 preference requirements and compliance goals for employment and training of public housing residents and for contracting and subcontracting with businesses owned by public housing residents or which otherwise meet the criteria of a Section 3 business concern. Pursuant to 24 CFR 135.36, efforts shall be directed to award Section 3 covered contracts, to the greatest extent feasible, to Section 3 business concerns.
7. Requiring general contractors, when subcontracting is anticipated, to take the positive steps listed in 1 through 6 above.

Section 12.2 Definitions of Small and Other Businesses

- A small business is defined as a business that 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 Part 121 should be used to determine business size.
- A minority-owned business is defined as a business which is at least 51% owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and



daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.

- A women’s business enterprise is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.
- “Section 3 business concern” is as defined under 24 CFR Part 135.5.
- A labor surplus area business is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the Department of Labor in 20 CFR Part 654, Subpart A, and in the list of labor surplus areas published by the Employment and Training Administration.

Article 13 Board Approval of Procurement Actions

This Procurement Policy as stated within this document will only be amended through resolution and approval by the Board of Commissioners. The Board of Commissioners shall approve through resolution all contracts that exceed the Board-approved Delegation of Purchasing Authority Policy. The **CEO**/Executive Director may impose any requirements not inconsistent with this Procurement Policy.

Article 14 Disposition of Surplus Property

Property, other than real property, that is no longer necessary for the Agency’s purposes shall be transferred, sold, or disposed of in accordance with applicable Federal, State, and local laws and regulations.

Article 15 Exclusions

This Policy does not apply to procurement activities funded using non-program income or the following activities: direct payments for postage, licenses, permits, purchases from other government agencies or non-profits where the agency provides goods or services not available in the private sector, travel expenses, food costs, conferences, professional association fees, stipends, public transportation, parking fees, publications, advertisements for employment, or solicitation notices. Furthermore, this Policy does not govern purchases, sales, or transactions of real property, loan transactions and related documents, employment contracts, limited partnership agreements, administrative fees earned under the Section 8 voucher program, the award of vouchers under the Section 8 voucher program, the execution of landlord Housing Assistance Payment (HAP) contracts under that program, or contracts signed on behalf of an affiliate entity, instrumentality, or as a fiscal or management agent acting on behalf of another entity.