

**SAN ANTONIO HOUSING AUTHORITY  
PROCUREMENT POLICY AND PROCEDURES**

**TABLE OF CONTENTS**

<b>I.</b>	<b>PROCUREMENT POLICY</b>	
	A. Purpose	3
	B. Application	4
	C. Delegated Authority	4
	D. Amendments to Policy or Procedures	5
	E. Emergency Procurements	5
	F. Ethics in public contracting	6
	G. Open Records	7
	H. Sanctions and Penalties	7
	I. Capital Fund Stimulus Grant	7
	J. Self-Certification	8
<b>II.</b>	<b>OPERATIONAL PROCUREMENT PROCEDURES</b>	<b>9</b>
	A. Purpose	10
	B. Definitions	10
	C. Procurement Authority and Responsibility	13
	1. Responsibilities of Department Directors	14
	2. Responsibilities of Chief Financial Officer	15
	3. Responsibilities of the Director of Procurement	15
	4. Responsibilities of Director of Finance and Accounting	16
<b>III.</b>	<b>PROCUREMENT METHODS</b>	<b>17</b>
	A. Selection of Method	17
	B. Micro Purchases	17
	C. Small Purchases	18
	D. Purchasing exceeding \$50,000	18
	1. Sealed Bids	18
	a. Conditions for Use	18
	b. Solicitation and Receipt of Bids	19
	c. Bid Opening and Award	19
	d. Mistakes in Bids	19
	e. Bonds	20
	2. Competitive Proposals	20
	a. Conditions for Use	20
	b. Solicitation	20
	c. Evaluation	21
	d. Negotiations and Best and Final Offers	21
	e. Award	21
	f. Architect/Engineer Services (Request for Qualification)	21

E.	Noncompetitive Proposals	22
1.	Conditions for Use	22
2.	Justification	22
3.	Price Reasonableness/Cost Analysis	23
F.	Cost and Price Analysis	23
1.	General	23
2.	Submission of Cost or Pricing Information	23
3.	Cost Analysis	23
G.	Cancellation of Solicitation	23
H.	Cooperative Purchasing	24
I.	Contracting with Resident Organizations	24
J.	Contracting for Legal Services	24
<b>IV.</b>	<b>CONTRACTOR QUALIFICATIONS AND DUTIES</b>	<b>24</b>
A.	Contractor Responsibility	24
B.	Suspension and Debarment	24
C.	Organizational Conflicts of Interest	25
<b>V.</b>	<b>CONTRACTS</b>	<b>25</b>
A.	Contract Types	25
B.	Options	26
C.	Contract Clauses	26
D.	Contract Administration	26
E.	Change Orders	26
<b>VI.</b>	<b>APPEALS AND REMEDIES</b>	<b>27</b>
A.	General	27
B.	Bid Protests	27
C.	Contract Claims	28
<b>VII.</b>	<b>ASSISTANCE TO SMALL AND OTHER BUSINESSES</b>	<b>28</b>
A.	Required Efforts	28
B.	Goals and Targets	28
<b>VIII.</b>	<b>DISPOSITION OF SURPLUS PROPERTY</b>	<b>29</b>

# PROCUREMENT POLICY

## **INTRODUCTION:**

This Procurement Policy (Policy) is established for the Housing Authority of the City of San Antonio, Texas, hereafter referred to as SAHA, for the acquisition of goods, supplies, commodities, materials, professional services, management and maintenance and repair services, construction services, equipment, and insurance in accordance with and subject to all federal, state and local laws, rules, codes and regulations including but not limited to the Annual Contributions Contract (ACC) with the U.S. Department of Housing and Urban Development (HUD), HUD Handbook 7460.8, Rev. 2, "Procurement Handbook for Public Housing Agencies", HUD Handbook 7401.5 "Public and Indian Housing Property/Casualty Insurance Requirements," HUD Handbook 1530.1, "Litigation Handbook", HUD Guidebook 7485. 3G, "Comprehensive Grant Program Guidebooks," the procurement standards of Title 24 Code of Federal Regulations Part 85.36, American Recovery and Reinvestment Act, HUD Notice PIH 2009-12, SAHA's Fraud Prevention Policy, Code of Ethics, Conflict of Interest Policies as well as various HUD Notifications of Funding Availability (NOFA), and State of Texas Government and Local Government Codes.

## **I. GENERAL PROVISIONS**

### **A. PURPOSE**

The purpose of this Policy is to:

1. Provide for the fair and equitable treatment of all persons or firms involved in purchasing by SAHA;
2. Assure that all goods, supplies, commodities, services, equipment, and insurance are procured legally, efficiently, effectively, and at the most favorable terms available to SAHA and consistent with good business practices;
3. Promote competition in contracting;
4. Provide safeguards and internal controls for maintaining a procurement system of the highest quality and integrity;
5. Provide consistency and transparency in all procurement activities;
6. Foster growth of small, minority and woman-owned businesses;
7. Provide economic opportunities for extremely low, very-low and low income persons especially those residing in public housing, and
8. Ensure comprehensive planning for all procurements to include the drafting of scopes of work and specifications that are comprehensive in nature and address all foreseeable issues.

## **B. APPLICATION**

This Policy applies to all activities to the extent required by law for the procurement of goods, supplies, commodities, services, construction, insurance, and equipment by SAHA, its instrumentalities and affiliates. It shall apply to all expenditures of funds by SAHA for public purchasing regardless of the source of funds, including contracts which do not involve an obligation of funds, such as concession contracts; however, nothing in this policy shall prevent SAHA from complying with the terms and conditions of any grant, contract, gift, required reimbursement or bequest that is otherwise consistent with law. The term "procurement," as used in this Policy, includes contracts, modifications, amendments and change orders, as well as the purchase, lease or rental of supplies, goods, commodities, materials, equipment, construction, maintenance, and other services. This Policy shall also govern procurements made by P-card or other purchasing cards.

This Policy shall not govern the following items: purchases or sale of real property, loan transactions and documents, employment contracts, limited partnership agreements, award of housing or other vouchers to non-profit agencies, and housing assistance payment contracts.

## **C. DELEGATED AUTHORITY**

In adopting this Policy, the Board of Commissioners authorizes the President and CEO, who shall be referred to as the Contracting Officer for SAHA, to approve and implement appropriate procurement procedures that are consistent with this Policy. The President and CEO will ensure that procedures are implemented consistent with this Policy and all federal, state and local laws and ensure employees are held accountable for all violations of this Policy, laws, rules, regulations and the implemented procedures.

While the Board of Commissioners retains the authority to approve all contracts and all expenditures in excess of the Contracting Officer's delegated authority, the Contracting Officer or his/her designee is hereby authorized to enter into contracts or commit funds up to \$50,000 per contract.

The Contracting Officer or his/her designee is hereby authorized to approve change orders to contracts and authorize the expenditure of additional funds up to \$25,000 per change order with a cap of \$50,000 per contract or 25% of the original contract value whichever is less. In no event shall changes to contracts exceed 25% as limited by state law. The Contracting Officer or his/her designee will maintain a log of all executed change orders by contract indicating the amount and purpose of the change and report the information to the Board of Commissioners on a quarterly basis.

In addition, the Contracting Officer or his/her designee shall have the authority to approve all contract modifications and contract amendments to include contract extensions and change orders not involving the expenditure of additional funds above and beyond approved contract amount. In addition, the Contracting Officer or his/her designee shall have the authority to exercise options to renew contracts that he/she deems to be in the best interest of SAHA.

During an emergency as defined below, the Contracting Officer or his/her designee may approve any procurement of goods, supplies, materials, services or equipment needed to mitigate the emergency regardless of the dollar amount provided that the nature and value of said purchases, if such purchases exceed delegated authority, shall be reported to the Board of Commissioners consistent with this Policy.

The Contracting Officer shall have the authority to enter into intergovernmental agreements not to exceed the delegated authority to purchase supplies and services deemed beneficial to SAHA as allowed by law.

The Contracting Officer may delegate in writing any and all authority granted by the Board of Commissioners for procurement as he/she determines such delegation to be in SAHA's best interest. Such delegated authority shall not be reassigned without the written approval of the President/CEO.

#### **D. AMENDMENTS TO POLICY AND PROCEDURES**

While the Procurement Policy will be only amended through resolution and approval of the Board of Commissioners, the operational procurement procedures to execute the Procurement Policy shall be established by the President/CEO and do not require approval by the Board of Commissioners to establish and/or amend. In addition, a system of sanctions for violations of ethical standards and operational procurement procedures and all applicable laws, rules and regulations governing procurement shall be established and enforced.

In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with this Policy, automatically supersede this Policy. Such changes shall be communicated to the Board of Commissioners and the SAHA staff in a timely manner to ensure compliance.

#### **E. EMERGENCY PROCUREMENTS**

An emergency for the purposes of this Policy is defined as an event which requires immediate action in order to prevent a hazard to life, health, safety, welfare or property or to avoid undue additional cost to SAHA.

In case of an “emergency”, as defined above, the Contracting Officer or his/her designee shall have the ability to conditionally override this Policy only to the extent necessary to ensure the continued operation of SAHA and mitigate the emergency. If expenditures to mitigate the emergency exceed the delegated authority of the Contracting Officer, the Contracting Officer shall seek ratification of such expenditures at the next regularly scheduled meeting of the Board of Commissioners. All such emergency procurements to the extent practical under the then existing circumstances shall be conducted in accordance with all laws, rules, regulations and codes.

## **F. ETHICS IN PUBLIC CONTRACTING**

1. This Policy shall incorporate SAHA’s adopted Fraud Prevention Policy, Code of Ethics and Conflict of Interest Policy with the following exception: in order to eliminate the potential appearance of impropriety in procurement activities, all employees assigned to the procurement department shall not receive anything of value from a Contractor or potential Contractor. The term value for purposes of this exception shall be liberally construed against the acceptance of any good or service.
2. Prohibition against Contingent Fees: Contractors shall not retain a person to solicit or secure a SAHA contract for a commission, percentage, brokerage or contingent fee, except for bona fide employees or bona fide established commercial selling agencies.
3. Former employees:
  - a. A former SAHA employee, officer, commissioner or agent shall not knowingly act as a principal or agent for anyone other than SAHA in connection with any contract or claim in which said person participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while a SAHA employee, officer or agent, where SAHA is a party or has a direct and substantial interest for a period of one year after employment ceases.
  - b. A former SAHA employee, commissioner or officer shall not engage in selling or attempting to sell goods, supplies, materials, services or equipment to SAHA for a period of one year after such employment ceases. The term “sell” means signing a bid or proposal; negotiating a contract; contacting any SAHA 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, even if the actual contract is negotiated by another person.

## **G. OPEN RECORDS/RIGHT TO INSPECTION**

All information collected, acquired, submitted or prepared relating to a procurement after contract award shall be a matter of public record and open for inspection unless such information is deemed proprietary, a trade secret, confidential by law, or exempted from disclosure by law.

## **H. SANCTIONS AND PENALTIES**

This Policy and all procedures for its implementation establish standards of conduct for employees, Commissioners and Contractors that will assure the highest level of public service and promote transparency, accountability and fairness in the procurement process. Any violation of this Policy or procedure implementing this Policy will be subject to disciplinary actions up to and including the termination of employment consistent with SAHA's Personnel Policy and Procedures and termination of any contracts held by the Contractor.

When negotiating and drafting contracts, SAHA shall take all reasonable precautions to mitigate loss to the agency and ensure a contractor's accountability. Such actions, as deemed appropriate under the circumstances then existing at the time of contract execution, may include but are not limited to the inclusion of liquidated damage clauses, and default provisions; however, at a minimum such actions must include clear performance standards for contractors.

SAHA shall pursue all legal remedies to include but not limited to bond forfeiture, withholding of funds, termination for cause, liquidated damages, arbitration, debarment, suspension and litigation to ensure Contractors remain accountable to the public trust.

## **I. CAPITAL FUND STIMULUS GRANT POLICY**

In order to expedite and facilitate the use of capital funds under the American Recovery and Reinvestment Act, the following policy for the use only of those funds is established and is hereby labeled as the Capital Fund Stimulus Grant Procurement Policy.

- All procurements executed by SAHA using these funds shall follow all laws, rules and regulations referenced within this Policy with the following exceptions:
- Any requirements relating to the procurement of goods and services arising under state and local laws and regulations shall not apply to Capital Fund Stimulus Grants;

- The procurement policy and procedures relating to change orders and use of contingency funds shall apply to the expenditure of these funds, and
- The small purchase limit above which SAHA shall formally solicit competitive bids or proposals shall be \$100,000. (Formal bid/proposal).

The “Buy American requirements of Section 1605 of the Recovery Act” of 2009 shall be included as a part of any solicitation and award pertaining to procurements using Capital Fund Stimulus Grants.

## **J. SELF-CERTIFICATION**

SAHA self-certifies that this Policy and its procurement system comply with all applicable Federal regulations; therefore, SAHA is exempt from prior HUD review and approval of individual procurement actions.

# PROCUREMENT PROCEDURES

## PROCUREMENT PROCEDURES

### II. OPERATIONAL PROCUREMENT PROCEDURES

- A. PURPOSE:** In an effort to guide all procurement activity of SAHA and insure that such activity follows the Procurement Policy and all laws, rules and regulations, the President and CEO establishes these operational procurement procedures and shall from time to time amend such procedures.
- B. DEFINITIONS:** The following definitions shall be used as guidance when procuring goods and services for SAHA:
1. “Aggregate”- whole expenditure for goods and services purchased within a certain timeframe out of a particular National Institute of Government Purchasers (NIGP) category.
  2. “Change Order”- A modification made to the contract by the Contracting Officer under the authority of the contract’s Changes or modification clause. Only the specific changes permitted by the particular Changes or modification clause may be made under a change order (e.g. modify the drawings, design, specifications, method of shipping or packaging, place of inspection, delivery, acceptance, or other such contractual requirement; see form HUD-5370). All change orders must be within the scope of the contract. Change Orders shall be issued for only unforeseeable events not anticipated by the original contract but arise as a result of work preformed under the contract.
  3. “Component purchases”- (bid splitting) purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.
  4. “Contingency”- monetary reserve created in anticipation of foreseeable work within the scope of a project based upon experience and current conditions of the project but due to uncertainty, the total value of the work can not be accurately predicted at the time of drafting project specifications but unit prices for such work are included in contractor’s response to a solicitation.
  5. “Contract” – a mutually binding legal relationship obligating the seller to furnish the goods or services (including construction) and SAHA to pay for them. It includes all types of commitments that obligate an agency to an expenditure of funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include: contract awards and notice of awards, job orders or task letters issued under basic ordering agreements, requirement contracts, or definite or indefinite-quantity contracts, letter contracts, orders such as purchase orders, under which the contract becomes effective by written acceptance or performance, bilateral (two-party) contract modifications

and various cooperative and interagency agreements. Grants and cooperative agreements covered by 31 U.S.C. 6301, et seq are not contracts.

6. "Contract Modification" or "Amendment"- Any written alteration to a contract executed by the Contracting Officer.
7. "Contracting Officer"- The President/CEO or the person designated in writing by the President/CEO with the authority to enter into and/or administer contracts and make related determinations and findings.
8. "Contractor"- As used herein means the person or entity entering into a contract with SAHA to perform all of the work required under the contract documents.
9. "Competitive Proposal" (RFP/RFQ) – A procurement method using the solicitation, evaluation, and negotiation of proposals instead of sealed bids. It is used for requirements exceeding SAHA's small purchase threshold when conditions are not appropriate for sealed bidding.
10. "Cost Analysis" - cost breakdown where the individual cost elements and profit for a procurement including the complexity and risk of the work, the contractor's investment and productivity, the amount of subcontracting, the quality of past performance and industry profit rates in the area of similar work are analyzed for reasonableness.
11. "Emergency" - an event which requires immediate action in order to prevent a hazard to life, health, safety, welfare or property or to avoid undue additional cost to SAHA.
12. "Formal Bid" – A bid which must be advertised and forwarded in a sealed envelope and be in conformance with a prescribed format to be opened at a specified time.
13. "Independent Cost Estimate"- An estimate prepared by SAHA prior to obtaining offers. The degree of analysis will depend on the size and complexity of the purchase. This serves as SAHA's yardstick as to the reasonableness of Contractor's price and costs.
14. "Instrumentality" – A subsidiary branch of SAHA through which functions or policies are implemented.
15. "Intergovernmental" or "Interagency Agreement"- An agreement between SAHA and a Federal, State or local government agency (including other PHAs) for the provision of goods, supplies or services. The terms Cooperative Agreement, Intergovernmental Agreement, Consortium

Agreement, or Memorandum of Agreement are synonymous terms and may be used interchangeably.

16. "Labor surplus area business" – A business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the DOL in 20 CFR Part 654, Subpart A, and in the list of labor surplus areas published by the Employment and Training Administration.
17. "Minority Business Enterprise" - 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, African/Black Americans, Hispanic/Latino Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans and Hasidic Jewish Americans.
18. "Noncompetitive Proposals" – Procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined to be inadequate.
19. "Price Analysis" – An evaluation of price based on comparison to market prices, catalog prices, historical data, or other services.
20. "Procurement" – The acquiring by contract of goods, supplies and services, including construction through purchase, lease or other means. It begins at the point when SAHA establishes a need and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.
21. "Separate purchases"- (bid splitting) purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.
22. "Sequential purchases"- (bid splitting)purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase.
23. "Small Purchase Procedures" – A simplified method for acquiring goods, supplies, materials and services that do not exceed SAHA's small purchase threshold established by law. This is currently restricted to \$50,000 by state law except for projects funded by the American Recovery and Reinvestment Act.

24. "Small business" – A business, which is independently owned, not dominant in its field of operation and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards set by applicable law shall be used unless SAHA determines that their use is inappropriate.
25. "Services" – Include labor, professional services, management consulting services, or a combination of services and supplies which shall include but are not limited to construction projects.
26. "Section 3 business concern" – (1) a business concern that is 51% or more owned by the residents of a housing development for which Section 3 funds are being expended, or whose full-time permanent work force includes these persons as employees in a proportion of not less than 30%; (2) a business that is 51% or more owned by Section 3 residents of other housing developments managed by SAHA, or whose full-time permanent work force includes these persons as employees in a proportion not less than 30%; (3) HUD youth build programs being carried out in the metropolitan area in which Section 3 covered assistance is expended; (4) business concern that is 51% or more owned by Section 3 residents (defined in part as any low or very low income person of the metropolitan area) or whose full-time permanent work force includes no less than 30% Section 3 residents or that subcontract in excess of 25% of the total amount of subcontracts to business concerns.
27. "Women-owned business" – a business that is at least 51% owned by a woman or women who are U.S. citizens and who also control or operate the business.

### **C. PROCUREMENT AUTHORITY AND RESPONSIBILITY**

While the President and CEO serves as the contracting officer, management and all employees are ultimately responsible and accountable for complying with this Policy and related procurement procedures that are adopted administratively by the President and CEO or his/her designee. Management and all employees shall ensure that all procurement activity of SAHA is conducted consistent with the best interest of SAHA and applicable laws, rules and regulations.

Because planning is essential to managing the procurement function properly, all employees are responsible for periodically reviewing records of prior purchases, as well as future needs, to:

1. Identify patterns of procurement actions that could be performed more efficiently or economically;
2. Maximize competition and competitive pricing among contracts and decrease SAHA's procurement costs;

3. Reduce SAHA's administrative costs;
4. Ensure that supplies and services are obtained without any need for re-procurement or the resolution of bid protests, and
5. Minimize errors that occur when there is inadequate lead time.

In addition, all employees shall also consider storage, security and handling requirements when planning the most appropriate purchasing actions.

#### 1. RESPONSIBILITIES OF DEPARTMENT DIRECTORS

All Department Directors are responsible for managing the procurement-related activities of their departments, for ensuring staff's compliance with the Policy and all implemented procedures, laws, rules and regulations, and for the following:

- a. Identifying a procurement need, communicating such need to SAHA's Procurement Department for solicitations, contracts, contract amendments, contract extensions, contract modifications and change orders, developing appropriate scopes of work and project specifications that are clear, objective, not restrictive of competition and comply with all adopted procedures and all laws, rules and regulations and reviewing proposed solicitations and contracting actions to ensure that they meet all identified needs;
- b. Developing an Independent Cost Estimate prior to solicitation, evaluating the most economical, equitable, and efficient approach to a procurement based upon this estimate and communicating such estimate to SAHA's Procurement Department;
- c. Establishing a contract administration system within his/her department to identify and document contractors' performance/conformance with the terms, conditions, and specifications of contracts and purchase orders and subsequently communicating with SAHA's Procurement Department about such performance;
- d. Assigning a responsible party to each procurement and ensuring that he/she understands his/her responsibilities and roles in procurement including those related to budget management and regulatory compliance, and are provided with sufficient training and ongoing supervision;
- e. Providing clear policy direction to subordinates responsible for managing projects;

- f. Coordinating with SAHA's Finance and Accounting Department to ensure that sufficient funding is available to accomplish work desired;
- g. Inspecting goods and services provided to ensure compliance with contract terms and specifications;
- h. Ensuring the receipt of all requisitions in the JD Edwards computer system within 3 business days of satisfactory performance of a service or physical receipt of goods or that procurement is notified within 3 business days of disputes;
- i. Conducting a Cost Analysis or Price Analysis in accordance with the selected procurement method;
- j. Inputting requisitions and receiving purchase orders prior to the commencement of work or ordering goods unless such procurement is in response to an emergency. If the procurement is in response to an emergency, the requisition must be inputted into JD Edwards no later than the next business day;
- k. Informing the Director of Procurement or his/her designee about the existence of an emergency;
- l. Establishing quality control mechanisms for all procurement activities within his/her department to include auditing 4% of all requisitions monthly by the department director and ensuring that property managers and the district managers audit 10% of the requisitions monthly, and
- m. Ensuring accountability in performance evaluations for employees engaged or overseeing procurement activities.

## 2. RESPONSIBILITIES OF CHIEF FINANCIAL OFFICER

The Chief Financial Officer is responsible for the oversight of all procurement activity and enforcement of policies and procedures within SAHA and to ensure that all anticipated procurements are subject to an annual planning process to assure efficient and economical purchasing and establish expenditure patterns.

## 3. RESPONSIBILITIES OF THE DIRECTOR OF PROCUREMENT

In cooperation with the various Executive employees, Department Directors and staff, the Director of Procurement or his/her designee shall be responsible for ensuring the following:

- a. Compliance with the Policy, implemented procedures, laws, rules and regulations by reviewing and approving solicitations and contracts for SAHA;
- b. All expenditures are within the approval authority level within SAHA;
- c. Independent Cost Estimates are prepared prior to the solicitation;
- d. A Cost or Price Analysis is performed consistent with the selected procurement method prior to contract award or change order;
- e. Solicitations, contracts and change orders are in writing and clearly specify the desired goods and services;
- f. Development of contracts, contract modifications, contract extensions, and change orders in cooperation with Project Managers, legal counsel and Department Directors,
- g. Contracts are supported by sufficient documentation regarding the procurement process, including, at a minimum, the method of procurement chosen, the solicitation documents, bids or proposals received, the rationale for selecting or rejecting bids or proposals and the basis for contract price;
- h. The dollar amount of a contract is not exceeded without authority;
- i. Coordinating, hearing and recommending decisions to the Contracting Officer on all bidding and selection-related protests and appeals relating to procurement;
- j. Maintaining the official and original contract file for SAHA;
- k. Establishment of an agency-wide vendor performance system, and
- l. Auditing 10% of all purchase orders on a monthly basis to ensure compliance with all laws, rules and regulations including the procurement policy and implemented procedures and directives.

#### 4. RESPONSIBILITIES OF DIRECTOR OF FINANCE AND ACCOUNTING

The Director of Finance and Accounting or his/her designee in coordination with the various Department Directors is responsible for ensuring the following:

- a. Sufficient funding exists to accomplish the desired work,
- b. Expenditures are within Board-approved budgets and variances are reported to the Board of Commissioners, and

- c. Payment of all approved invoices according to the contract terms.

### **III. PROCUREMENT METHODS**

#### **A. Selection Method**

1. In order to directly purchase the required goods or services including construction and insurance, employees shall choose from the following procurement methods based upon the nature and anticipated dollar value of the total requirement. Purchases shall not be artificially divided so as to constitute component, sequential or separate purchases to avoid procurement requirements or requisition authority. The rationale for selection of the procurement unless obvious shall be stated in the procurement file.
2. During the procurement planning process if it is determined that the expenditure of any good, commodity, supply or service in the aggregate will exceed \$50,000 per calendar year, a formal procurement shall be conducted.
3. It shall be understood that credit cards or purchasing cards (P-cards) are not procurement methods but rather payment methods. All authorized users shall follow the procurement requirements stated within this procedure when making purchases with a credit card or purchasing card.
4. Ties in submitted proposals, bids or quotes shall be broken by casting lots as required by state law.

#### **B. Micro Purchases (not exceeding \$2000 in the aggregate)**

1. Employees are required to obtain at a minimum one quote provided the quote is considered reasonable.
2. To the greatest extent feasible and to promote competition and support small, minority and women-owned businesses as well as Section 3 business concerns, purchases should be distributed among qualified sources. However, component, separate or sequential purchases shall not be allowed to circumvent the procurement policy or procedures.
3. Award shall be made to the qualified vendor that provides the best value to SAHA considering price and other rationally related factors deemed important such as vendor's past performance.
4. The employee with assistance from SAHA's Procurement Department shall make a determination based upon recent research, experience or recent purchases that the price is reasonable and fair prior to award.

5. Quotes may be obtained orally in person or by phone, by fax, in writing or email but must be documented and presented to the Procurement Department with purchase requisition or forwarded to the Procurement Department if purchased by credit card.

**C. Small Purchases (over \$2000 but not exceeding \$50,000 in the aggregate)**

1. Employees shall obtain a reasonable number of quotes preferably three. Employees shall attempt to solicit at least two quotes from historically underutilized businesses as listed by the Comptroller of the State of Texas.
2. To encourage competition and foster the growth of small and minority-owned businesses and Section 3 business concerns such purchases shall be distributed among qualified sources when feasible. However, component, separate or sequential purchases shall not be allowed to circumvent procurement policy or procedures.
3. Quotes may be obtained orally by telephone, fax, in writing or by email as allowed by law and regulations.
4. Award shall be made to the offeror providing the lowest acceptable quotation unless justified in writing based on price and other specified factors clearly identified in the solicitation.
5. The names, addresses and/or telephone numbers of the offerors and persons contacted, the date and amount of each quotations shall be documented and maintained as a public record unless otherwise provided in law or regulation. Such quotes shall be forwarded to Procurement Department with the purchase requisition.
6. Employees shall ensure that the price is reasonable and fair through a comparison of offers or by other means such as but not limited to prior purchases of the same nature, catalog prices, or personal knowledge.

**D. Purchases exceeding \$50,000 in the aggregate (small purchase threshold)**

1. Sealed Bids: The preferred method for procuring goods, construction, supplies and non-complex service contracts. This method shall not be used when procuring Architectural and Engineering Services (A/E). Where deemed appropriate, multi-step bids may be utilized.
  - a. Conditions for use: Contracts shall be awarded based on competitive sealed bidding if the following conditions are present:

- (1) a complete, adequate and realistic specification or purchase description is available;
  - (2) two or more responsible bidders are willing and able to compete effectively for the work;
  - (3) the procurement lends itself to a firm fixed price contract; and
  - (4) the selection of the successful bidder can be made principally on the basis of price; however, the successful bidder must be deemed responsible.
- b. Solicitation and Receipt of Bids: An invitation for bids (IFB) shall be issued to include specifications and all contractual terms and conditions applicable to the procurement and a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the IFB. The IFB shall state the time and place for both the receipt of bids and the public bid opening. All bids received shall be time-stamped, secured in a safe place and not opened until the bid opening date and time. A bidder may withdraw his/her bid anytime prior to the bid opening.
- c. Bid Opening and Award: Bids shall be opened publicly and in the presence of at least one witness. An abstract of bids shall be recorded and the bids shall be available for public inspection. Award shall be made as provided in the IFB. If equal low bids are received from responsible bidders, award shall be made by drawing lots or similar random method stated in the IFB. If only one responsive bid is received from a responsible bidder, award shall not be made unless a cost or price analysis verifies the reasonableness of the price.
- d. Mistakes in Bids:
1. Correction or withdrawal of inadvertently erroneous bids may be permitted where appropriate anytime prior to the date and time of bid opening by written, faxed, or e-mail notice received in the office designated in the IFB.
  2. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of SAHA or fair competition shall be permitted.
  3. A low bidder alleging a nonjudgmental mistake may be permitted to withdraw his/her bid if the mistake is clearly evident on the face of the bid or the bidder submits convincing evidence that a mistake was made. All decisions to allow withdrawal of bids after opening shall be supported by a written determination signed by the Contracting Officer or his/her designee.

4. If a mistake is made in an extended cost in a bid, the unit price in the bid shall prevail.

e. Bonds:

1. For construction contracts exceeding \$100,000, the contractor must submit the following unless otherwise exempted by law or regulations:
    - (a) a bid guarantee at the time of bid submittal for 5% of the bid price, and
    - (b) an assurance of completion as evidenced by a performance and payment bond in a penal sum of 100% of the contract price, separate performance and payment bonds, each for 50% or more of the contract price, 20% cash escrow, or a 25% irrevocable letter of credit.
    - (c) All bonds must be obtained from guarantee or surety companies acceptable to the U.S. Treasury (listed in U.S. Treasury Circular 570, commonly referred to as the T-list) and authorized to do business in the State of Texas. Individual sureties shall not be considered.
  2. For all public work projects as defined by state law over \$25,000, Contractors shall execute a payment bond in the full amount of the contract price. Such bonds must be in compliance with (1)(c) above.
  3. The Contracting Officer may establish bonding requirement for other procurement activity if deemed to be in the best interest of SAHA and not unduly burdensome upon competition.
2. Competitive Proposals (preferred method for procuring professional services which allows for consideration of technical factors other than price, negotiations and withdrawal of proposal anytime prior to contract award)
- a. Conditions for Use: Competitive Proposals including turnkey proposals for development may be used if there is an adequate method of evaluating technical proposals and if SAHA determines that conditions are not appropriate for the use of sealed bids. An adequate number of qualified sources shall be solicited.
  - b. Solicitation: Competitive proposals shall be solicited through a "Request for Proposals" (RFP) or Request for Qualifications (RFQ) issued by SAHA. The RFP shall clearly identify the relative importance of price and other evaluation factors and sub factors, including the weight given to each technical factor and sub factor. However, in RFQs price shall not be solicited in the proposal but shall be negotiated prior to award. 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 content of their proposals until contract award.

- c. Evaluation: Proposals shall be evaluated only on the criteria stated in the RFP. The price factor may be assigned a specific weight in the evaluation or may be considered in conjunction with technical factors. Proposals shall be evaluated by a panel with expertise on the subject matter. The Contracting Officer shall establish criteria for selecting panel members including standards for ensuring that panelists have no conflicts of interest with past or future work with SAHA or conflicts related to the RFP. The Procurement Department in cooperation with the department requesting the solicitation and Human Resources shall make recommendations for panel members to the Contracting Officer. A written justification must be prepared if a person is disqualified from seating on a panel. The Procurement Department shall ensure that panel members are insulated in their evaluation activities from interference or input from others.
- d. Negotiation: All competitive proposals shall be subject to negotiations 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 specified in RFP. Such offerors shall be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. The purpose of negotiations shall be to seek clarification with regard to, and advise offerors of, the deficiencies in both the technical and price aspects of their proposals so as to assure full understanding of and conformance to the solicitation requirements. No offeror shall be provided information about any other offeror's proposal, and no offeror shall be assisted in bringing a proposal up to the level of any other proposal. Offerors shall not be directed to reduce their proposed prices to a specific amount in order to be considered for award. A common deadline for receipt of best and final offers shall be established. "Auctioning" which is revealing one offeror's price in an attempt to get another offeror to lower their price) is prohibited.
- e. Award: After evaluation and negotiation, the contract shall be awarded to the responsive, responsible offeror whose qualifications, price and other factors are the most advantageous to SAHA.
- f. Architect/Engineer Services: These services are obtained by qualification based selection procedures (RFQ). Competitors' qualifications are evaluated based upon the criteria in the solicitation and the most qualified competitor is selected subject to the negotiation of fair and reasonable compensation. Price is not a factor in evaluation. Qualifications based selection procedures

shall not be used to purchase other types of service even though architect/engineer firms are potential sources.

### 3. NONCOMPETITIVE PROPOSALS

a. 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 or competitive proposals, and one of the following applies:

(1) The item is available only from a single source based on a good faith review of available sources;

(2) An emergency as defined in the Policy exists and competitive procurements can not address the need in the timeframe allowed;

(3) HUD authorizes the use of noncompetitive proposals; or

(4) After solicitation of a number of sources, competition is determined inadequate.

b. Justification: Each procurement based on noncompetitive proposals shall be supported by a written justification and approved in writing by the Contracting Officer or his/her designee. Such justification at a minimum shall include the following items:

(1) Description of the requirement;

(2) History of prior purchases and their nature (competitive vs. noncompetitive);

(3) The specific exemption identified above that applies to this procurement;

(4) Statement as to the unique circumstances that require award by noncompetitive proposals;

(5) Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of written solicitation, etc);

(6) Statement as to efforts that will be taken in the future to promote competition for the requirement; and

(7) Signature of the Contracting Officer or his/her designee authorizing the procurement.

c. Price Reasonableness: The reasonableness of the price shall be determined by performing a cost analysis.

## **F. COST AND PRICE ANALYSIS**

1. General: A cost or price analysis shall be performed for all procurement actions, including contract modifications or change orders. The degree of analysis shall depend on the complexity of the procurement. The strength of competition will typically be sufficient to determine price reasonableness in sealed bidding and small purchases.
2. Submission of Cost or Price Information: If the procurement is based on noncompetitive proposals or when only one offer is received in sealed bidding, or for other procurements as deemed necessary, each offeror shall submit a cost breakdown showing projected costs and profit; commercial pricing and sales information sufficient to enable SAHA to verify the reasonableness of the proposed price such as catalogs, or documentation that the price is set by law or regulation.
3. Cost Analysis: Cost analysis shall be performed if an offeror is required to submit a cost breakdown as part of its proposal. When a cost breakdown is submitted, a cost analysis shall be conducted on the individual cost elements and profit shall be analyzed separately by examining the complexity and risk of the work, the contractor's investment and productivity, the amount of subcontracting, the quality of past performance and industry profit rates in the area of similar work. Costs shall be allowable only to the extent that they are consistent with applicable Federal cost principles. SAHA shall have a right to audit the contractor's books and records pertinent to such costs.

## **G. CANCELLATION OF SOLICITATIONS**

1. Any solicitation may be cancelled before offers are due if SAHA no longer requires the goods, supplies, services, insurance or construction, SAHA can no longer reasonably expect funds to be available, proposed amendments to solicitation would be of such magnitude that a new solicitation would be desirable or other similar reasons.
2. A solicitation may be cancelled and all bids or proposals rejected if the need for the goods, supplies, services, insurance or construction no longer exists at SAHA, ambiguous or otherwise inadequate specifications were part of the solicitation, the evaluation criteria did not include consideration of all factors significant to SAHA, prices exceed budgetary allocations and quantity can not be

adjusted to come within available funds, bids or proposals were submitted in bad faith or were collusive in nature, or in the best interest of SAHA.

3. The reasons for cancellation shall be documented in the procurement file and all offerors shall be notified of such action and given an opportunity to compete on any resolicitation or future procurement of similar items.
4. If a solicitation is cancelled because all offers were unreasonable or after receipt of only one bid, SAHA may resolicit using other procurement methods.

## **H. COOPERATIVE PURCHASING**

SAHA may enter into Federal, State or local intergovernmental agreements to purchase or use common goods, insurance and services based upon economy and efficiency when contracts have been competitively awarded. All intergovernmental agreements 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. SAHA is encouraged to use Federal and State excess and surplus property instead of purchasing new equipment, goods, supplies and property whenever such use is feasible and reduces project costs. The supplies, goods, equipment and services obtained under a cooperative purchasing agreement must have been procured in accordance with all laws, rules and regulations.

## **I. CONTRACTING WITH RESIDENT ORGANIZATIONS**

Notwithstanding the provisions above pertaining to full and open competition in procurements, the Contracting Officer may authorize use of the "alternative procurement process" to limit competition to resident-owned businesses or contract on a non-competitive basis with a resident management corporation, to the extent such procurement is deemed reasonably priced and will assist SAHA in meeting its Section 3 goals.

## **J. CONTRACTING FOR LEGAL SERVICES**

Contracting for legal services shall be conducted in accordance to all applicable laws, rules, regulations and policy guidelines.

## **IV. CONTRACTOR QUALIFICATIONS AND DUTIES**

### **A. CONTRACTOR RESPONSIBILITY**

Procurement shall be conducted only with responsible contractors, for example, those who have the technical and financial competence to perform and who have a satisfactory record of integrity and safety on the job. Before awarding a contract,

SAHA shall review the proposed contractor's ability to perform the contract successfully by considering factors such as the contractor's integrity, compliance with public policy, record of past performance and financial and technical resources to perform the work in the timeframe required and according to the stated specifications and scope of work. If a contractor is found to be not responsible, a written justification for such finding must be placed in the procurement file.

## **B. SUSPENSION AND DEBARMENT**

Contracts shall not be awarded to debarred, suspended or ineligible contractors under HUD-imposed limited denial of participation in accordance with federal and state laws, rules and regulations. All contractors shall be checked prior to award for failure to pay franchise tax to the State of Texas, inclusion on the excluded parties list, limited denial list and state of Texas debarment lists.

## **C. ORGANIZATIONAL CONFLICTS OF INTEREST**

1. "Organizational conflict of interest" is a situation in which the nature of the work to be performed under a SAHA contract and a contractor's organizational, financial, contractual or other interest are such that the contractor possesses an unfair competitive advantage in competing for the contract, the award may result in an unfair competitive advantage for future work or the contractor's objectivity in performing the contract work may be impaired.
2. SAHA shall neutralize such conflicts by requiring contractors to disclose any such conflicts when they submit their offers and exclude contractors who provide services relating to studies or specification writing from competing for any subsequent contract which is based on such services.

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

### **A. CONTRACT TYPES**

Pursuant to law, any type of contract which is appropriate to the procurement and which will promote the best interests of SAHA may be used with the exceptions of cost plus a percentage of cost and percentage of construction cost methods. The following are some examples of permissible type of contracts: requirement contracts, indefinite quantity contracts, definite quantity contracts and cost reimbursement contracts if less costly and the contractor's accounting system can allocate costs based upon cost principals, and time and materials contracts that include a ceiling price.

## **B. OPTIONS**

Options for additional quantities or performance periods may be included in contracts, provided that the option is contained in the solicitation, is a unilateral right of SAHA, 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 option may be exercised only at the price specified in the contract or reasonably determinable from the contract and may only be exercised if determined to be more advantageous to SAHA than conducting a new procurement. The Contracting Officer shall have the authority to execute such options.

## **C. CONTRACT CLAUSES**

In addition to containing a clause identifying the contract type and pricing arrangements and pertinent terms and conditions, all contracts shall include any clauses either by attachment or incorporation required by federal statutes, executive orders, and their implementing regulations and state law.

## **D. CONTRACT ADMINISTRATION**

SAHA shall maintain a contract administration system designed to ensure that contractors perform in accordance with their contracts. Operational procedures shall contain guidelines for inspection of supplies, services or construction, adherence to insurance requirements, as well as monitoring contractor performance, status reporting on construction contracts and similar matters to include compliance with the good faith utilization plan submitted by the contractor outlining subcontracting opportunities for small, minority and woman-owned businesses and providing economic opportunities for Section 3 residents.

## **E. CHANGE ORDERS and USE OF CONTINGENCY FUNDS**

Change orders and the use of contingency funds shall be minimized in all projects through adequate planning to include the drafting of scopes of work and specifications that are comprehensive in nature and address all foreseeable issues. Past experience with similar projects shall be one guiding mechanism as to whether or not a condition is foreseeable.

All change orders and contract modifications shall comply with the Changes clause in HUD 5370, HUD 5370-C and HUD 5370-EZ if applicable to the procurement.

Change orders do not include foreseeable work within the scope of a project. Such foreseeable work shall be funded through contingency reserves.

All use of contingency funds must be preapproved by the Contracting officer prior to commencement of work by the contractor.

Change orders to contracts shall be administered in accordance with the following requirements:

1. All requests for change orders including orders for additional work and orders reducing work (credit change orders) submitted by Contractors or at the request of a Project Manager must be approved by Department Director or his/her designee, the Director of Procurement or his/her designee, the Chief Financial Officer, Chief Operation Officer and the Contracting Officer or his/her designee.
2. If the amount of the submitted change order is \$25,000 or less and does not exceed the \$50,000 cap per contract, the Contracting Officer shall be the final approval.
3. If the amount of a change order increases or decreases a contract by \$25,000 or more, the Board of Commissioners shall be the final approval.
4. This change order procedure shall be applicable to all SAHA contracts.
5. The original contract price may not be increased by more than 25%.
6. A cost analysis must be performed and submitted to the Procurement Department with the request for a change order.
7. Change orders shall not be divided or split to avoid the dollar threshold for Board approval.

## **VI. Appeal and Remedies**

### **A. GENERAL**

It is SAHA's policy to resolve all contractual issues informally at SAHA's level without litigation. Disputes shall not be referred to HUD until all administrative remedies have been exhausted at SAHA. When appropriate, SAHA may consider the use of informal discussions between the parties by individuals who did not participate substantially in the matter in dispute to help resolve the differences. HUD will only review protests in cases of violations of federal law or regulations or failure of SAHA to review a complaint or protest.

### **B. BID PROTESTS**

Any actual or prospective contractor may protest the solicitation or award of a contract for material violation of SAHA's procurement policy. Any protest against a

solicitation must be received before the due date for receipt of bids or proposals and any protest against the award of a contract must be received within ten calendar days after contract award or the protest will not be considered.

All protests must be in writing and submitted to the Director of Procurement for a written decision. The Director of Procurement shall make a recommendation to the Contracting Officer who shall issue a written decision and findings to the Contractor within 30 days from receipt of the written protest. This decision is then appealable to the Board of Commissioners within 30 days of receipt of the written decision. Appeals which are not timely filed will not be considered and the decision becomes final.

### **C. CONTRACT CLAIMS**

All claims by a contractor relating to performance of a contract shall be submitted in writing to the Director of Procurement. The contractor may request a conference on the claim. The Director of Procurement shall after investigation submit a recommendation to the Contracting Officer concerning the claim. The Contracting Officer shall inform the contractor in writing within 30 days of the conclusion of the investigation of his/her decision and inform the Contractor of his/her appeal right to the Board of Commissioners and to HUD. All appeals to the Board of Commissioners shall be received within 30 days of receipt of the written denial of the Contracting Officer or such claim will not be considered and the Contracting Officer's decision becomes final.

## **VII. ASSISTANCE TO SMALL AND OTHER BUSINESSES INCLUDING SECTION 3 BUSINESS CONCERNS**

### **A. REQUIRED EFFORTS**

1. In compliance with all laws, executive orders, rules and regulations, SAHA shall maximize all opportunities to ensure that small, minority-owned and woman-owned business enterprises, and individuals or firms located in or owned in substantial part by persons residing in the area of SAHA's housing developments to participate in SAHA contracting. SAHA's efforts to foster economic growth shall include but are not limited to the following:
  - a. Including such firms when qualified on solicitation mailing lists;
  - b. Encouraging the participation of such firms 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. Provide training opportunities and intensive outreach;
- e. Forming partnerships with community organizations with a commitment to assisting SAHA with this mission;
- f. Requiring all contractors to submit utilization plans in formal bids and competitive proposals detailing their good faith efforts in creating economic opportunities for these groups; and
- g. Requiring prime contractors, when subcontracting is anticipated, to also take the same steps outlined above to foster economic opportunities for these groups.

## **B: GOALS AND TARGETS**

All procurement activities shall be periodically reviewed for participation by small businesses, minority-owned businesses, women-owned business enterprises, labor surplus area businesses, and Section 3 business concerns in SAHA prime contracts and subcontracting opportunities. In conjunction with the Board of Commissioners, SAHA will annually review its efforts in contracting with small, minority and woman-owned businesses and providing economic opportunities for Section 3 residents. Annual targets and aspirational goals for these programs shall be set in cooperation with the Board of Commissioners.

A Contractor's performance to meet such established goals unless a written justification for such failure is acceptable by the Contracting Officer shall be considered poor performance and will be a factor that is considered for future awards.

## **VIII. DISPOSITION OF SURPLUS PROPERTY**

Personal and real property no longer necessary for SAHA's purposes shall be transferred, sold, or disposed of in accordance with applicable Federal, state and local laws and regulations. Contracting Officer shall be granted the authority to utilize online auctions for such services if deemed to be in the best interest of SAHA.