

PROCUREMENT POLICY

I. GENERAL PROVISIONS

A. PURPOSE

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

B. APPLICATION

This Statement of Procurement Policy applies to all contracts for the procurement of supplies, services, and construction entered into by the PHA after the effective date of this statement. It shall apply to every expenditure of funds by the PHA for public purchasing, irrespective of the source of funds, including contracts which do not involve an obligation of funds (such as concession contracts); however, nothing in this Statement shall prevent the PHA from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with law. The term "procurement: as used in this statement, includes both contracts and modifications (including change orders) for construction or services, as well as purchase, lease , or rental of supplies and equipment.

C. PUBLIC ACCESS OF PROCUREMENT INFORMATION

Procurement information shall be a matter of public record to the extent provided in (the Arkansas Freedom of Information Act or Act 93 of 1967) and shall be available to the public as provided in that statute.

II. PROCUREMENT AUTHORITY AND ADMINISTRATION

A. All procurement transaction shall be administered by the Contracting Officer who shall be the Executive Director or other individual he or she has authorized in writing. The Executive Director shall issue operation procedures to implement this statement, which shall be based on HUD Handbook 7460.8. The Executive Director shall also establish a system of sanction for violations of the ethical standards described in Section IX below, consistent with State Law.

B. The Executive Director or his/her designee shall ensure that:

1. Procurement requirements are subject to an annual planning process to assure efficient and economical purchasing;
2. Contracts and modifications are in writing, clearly specifying the desired supplies, services, or construction, and are supported by sufficient documentation regarding the

history of the procurement, including as a minimum the method of procurement chosen, the selection of the contract type, the rationale for selecting or rejecting offers and the basis for the contract price;

3. for procurements other than small purchases, public notice is give of each upcoming procurement at least 10 days (or other time period if required by State or local law) before a solicitation is issued; responses to such notice are honored to the maximum extent practical; a minimum of 15 days (or other time period if required by State or local law) is provided for preparation and submission of bids or proposals; and notice of contract awards is made available to the public;
 4. solicitation procedures are conducted in full compliance with Federal standards stated in 24 CFR 85.36, or State and local laws that are more stringent, provided they are consistent with 24 CFR 85.36;
 5. an independent cost estimate is prepared before solicitation issuance and is appropriately safeguarded for each procurement above the small purchase limitation, and a cost or price analysis is conducted of the responses received for all procurements;
 6. contract award is made to the responsive and responsible bidder offering the lowest price (for sealed bid contracts) or contract award is made to the bidder whose proposal offers the greatest value to the PHA, considering price, technical, and other factors as specified in the solicitation (for contracts awarded based on competitive proposals); unsuccessful firms are notified within 10 days (or time period required by State or local law) after contract award;
 7. there are sufficient unencumbered funds available to cover the anticipated cost of each procurement before contract award or modification (including change orders), work is inspected before payment, and payment is made promptly for contract work performed and accepted; and
 8. the PHA complies with applicable HUD review requirements, as provided in the operational procedures supplementing this Statement.
- C. This statement and any later changes shall be submitted to the Board of Commissioners for approval. The Board appoints and delegates procurement authority to the Executive Director and is responsible for ensuring that any procurement policies adopted are appropriate for the PHA.

III. PROCUREMENT METHODS

A. SELECTION OF METHOD

If it has been decided that the PHA will directly purchase the required items, one of the following procurement methods shall be chosen, based on the nature and anticipated dollar value of the total requirement.

B. SMALL PURCHASE PROCEDURES

1. General: Any contract not exceeding \$25,000.00 may be made in accordance with the small purchase procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section (except as may be reasonably necessary to comply with Section VIII of this statement).
2. Petty Cash Purchases: Small purchases under \$10.00 which can be satisfied by local sources may be processed through the use of a petty cash account. The Contracting Officer shall ensure that: the account is established in an amount sufficient to cover small purchases made during a reasonable period; security is maintained and only authorized individuals have access to the account; the account is periodically reconciled and replenished by submission of a voucher to the PHA finance officer; and, the account is periodically audited by the finance officer or designee to validate proper use and to verify that the account total equals cash on hand plus the total of accumulated vouchers.
3. Small purchases of \$500.00 or less: For small purchases below \$500.00, only one quotation need to be solicited if the price received is considered reasonable. Such purchases may be distributed equitably among qualified sources. If practicable, a quotation shall be solicited from other than the previous source before placing a repeat order.
4. Small Purchases Over \$500.00: For small purchases in excess of \$500.00 but not exceeding \$25,000.00, no less than three offerors shall be solicited to submit price quotations, which may be obtained orally, by telephone, or in writing, as allowed by State or local laws. Award shall be made to the offeror providing the lowest acceptable quotation, unless justified in writing based on price and other specified factors, such as for architect-engineer contracts. If non-price factors are used, they shall be disclosed to all those solicited. The names, address, and/or telephone numbers of the offerors and the persons contacted, and the date and amount of each quotation shall be recorded and maintained as a public record (unless otherwise provided in State or local law).

C. SEALED BIDS

1. Conditions for use: Contracts shall be awarded based on competitive sealed bidding if the following conditions present: a complete, adequate, and realistic specification or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; the procurement lends itself to a firm fixed price contract; and the selection of the successful bidder can be principally on the basis of price. Sealed bidding is the preferred method for construction procurement. For procurements under the Comprehensive Improvement Assessment Program (CIAP), sealed bidding shall be used for all construction and equipment contracts exceeding the small purchase limitation. For professional service contracts, sealed bidding should not be used.
2. Solicitation and Receipt of Bids: An invitation for bids shall be issued including specifications and all contractual terms and conditions applicable to the procurement, including a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirement of the invitation for bids. The

invitations for bids shall state the time and place for both the receipt of bids and the public bid opening. All bids received shall be time-stamped but not opened and shall be stored in a secure place until bid opening. A bidder may withdraw its bid at any time prior to bid opening

3. Bid Opening and Award: Bids shall be opened publicly and in the presence of at least one witness. An abstract of bids shall be recorded and the bids shall be available for public inspection. Award shall be made as provided in the invitation for bids by written notice to the successful bidder. If equal low bids are received from responsible bidders, award shall be made by drawing lots or similar random method, unless otherwise provided in State or local law and stated in the invitation for bids. If only one responsive bid is received from a responsible bidder, award shall not be made unless a cost or price analysis verifies the reasonableness of the price.

4. Mistakes in Bids.

- a. Correction of withdrawal of inadvertently erroneous bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only if the bidder can show by clear and convincing evidence that a mistake of nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made.
- b. All decisions to allow correction or withdrawal of bid mistakes shall be supported by a written determination signed by the Contracting Officer. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the PHA or fair competition shall be permitted.

5. Bonds: In additions to the other requirements of this Statement, the following requirements apply:

- a. For construction contracts exceeding \$100,000, other than those specified in 5b and 5c below, contractors shall be required to submit the following:
 - (1) a bid guarantees from each bidder equivalent to 5% of the bid price; and
 - (2) a performance bond of 100% of contract price; and
 - (3) a payment bond of 100% of the contract price.
- b. In the case of construction of conventional development projects funded pursuant to the U.S. Housing Act of 1937, the contractor shall be required to submit the following:
 - (1) a bid guarantee from each bidder equivalent to 5% of the bid price; and
 - (2) a performance and payment bond for 100% of the contract price.

- c. In the case of construction under the Comprehensive Improvement Assessment Program (CIAP) funded pursuant to the U.S. Housing Act of 1937, for any contract over \$25,000, the contractor shall be required to submit the following.

- (1) a bid guarantee from each bidder equivalent to 5% of the bid price; and
- (2) a performance and payment bond of 100% of the contract price.

D. COMPETITIVE PROPOSALS

1. Conditions for Use: Competitive proposals (including turnkey proposals for development) may be used if there is an adequate method of evaluating technical proposals and where the PHA determines that conditions are not appropriate for the use of sealed bids. An adequate number of qualified sources shall be solicited.
2. Solicitation: The request for proposals (RFP) shall clearly identify the relative importance of price and other evaluation factors and subfactors, including the weight given to each technical factor and subfactor. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of offerors, and the contents of their proposals. The proposals shall be evaluated only on the criteria stated in the request for proposals.
3. Negotiations: Unless there is no need for negotiations with any of the offerors, negotiations shall be conducted with offerors who submit proposals determined to have a reasonable chance of being selected for award, based on evaluation against the technical and price factors as specified in the RFP. Such offerors shall be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. The purpose of negotiations shall be to seek clarification with regard 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 its proposal up to the level of any other proposal. Offerors shall not be directed to reduce their proposed prices to a specific amount in order to be considered for award. A common deadline shall be established for receipt of proposal revisions based on negotiations.
4. Award: After evaluation of proposal revisions, if any, the contract shall be awarded to the responsible firm whose qualifications, price and other factors considered, are most advantageous to the PHA.
5. Architect/Engineer Services. Architect/engineer services in the excess of the small purchases limitation will be obtained by qualifications-based selection procedures. Sealed bidding, however, shall not be used to obtain architect/engineer services. Under qualifications-based selection procedures, competitor's qualifications are evaluated and the most qualified competitor is selected, subject to the negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. Qualifications-based selection procedures shall not be used to purchase other types of services even though architect-engineer firms are potential sources.

E. NONCOMPETITIVE PROPOSALS

1. Conditions for use: Procurement 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.
 - a. The item is available only from a single source, based on a good faith review of available sources;
 - b. An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the PHA, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that need cannot be met through any other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency.
 - c. HUD authorizes the use of noncompetitive proposals; or
 - d. After solicitation of a number of sources, competition is determined inadequate.
2. Justification: Each procurement based on noncompetitive proposals shall be supported by a written justification for using such procedures. The justification shall be approved in writing by the Contracting Officer.
3. Price Reasonableness: The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing a cost analysis, as described in paragraph IIIF below.

F. COST AND PRICE ANALYSIS

1. General: A cost price analysis shall be performed for all procurement actions, including contract modifications. The method of analysis shall be determined as follows. The degree of analysis shall depend on the facts surrounding each procurement.
2. Submission of Cost or Pricing Information: If the procurement is based on noncompetitive proposals, or when only one offer is received, or for other procurements as deemed necessary by the PHA (e.g., when contracting for professional, consulting, or architect/engineer services) the offeror shall be required to submit:
 - a. a cost breakdown showing projected costs and profits;
 - b. commercial pricing and sales information, sufficient to enable the PHA to verify the reasonableness of the proposed price as a catalog or market price of a commercial product sold in substantial quantities to the general public; or
 - c. documentation showing that the offered price is set by law or regulation.

3. Cost analysis: Cost analysis shall be performed if an offeror/contractor is required to submit a cost breakdown as part of its proposal. When a cost breakdown is submitted: a cost analysis shall be performed of the individual cost elements; the PHA shall have a right to audit the contractor's books and records pertinent to such costs; and profit shall be analyzed separately. Costs shall be allowable only to the extent that they are consistent with applicable Federal cost principles (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation, 48 CFR Chapter 1.) In establishing profit, the PHA shall consider factors such as the complexity and risk of the work involved, the contractor's investment and productivity, the amount of subcontracting, the quality of past performance, and industry profit rates in the area for similar work.
4. Price analysis: A comparison of prices shall be used in all cases other than those described in IIIF3 above.

G. CANCELLATION OF SOLICITATIONS

1. An invitation for bids, request for proposals, or other solicitation may be canceled before offers are due if: the PHA no longer requires the supplies, services or construction; the PHA can no longer reasonably expect to fund the procurement; proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable; or similar reasons.
2. A solicitation may be canceled and all bids or proposals that have already been received may be rejected if: the supplies, services, or construction are no longer required; ambiguous or otherwise inadequate specifications were part of the solicitation; the solicitation did not provide for consideration of all factors of significance to the PHA; prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds; there is reason to believe that bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or for good cause of a similar nature when it is in the best interest of the PHA.
3. The reason for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request of any offeror solicited.
4. A notice of cancellation shall be sent to all offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any re-solicitation or future procurement of similar items.
5. If all otherwise acceptable bids received in response to an invitation for bids are at unreasonable prices, or only one bid is received and the price unreasonable, the PHA shall cancel the solicitation and either:
 - a. re-solicit using a request for proposals; or
 - b. complete the procurement by using the competitive proposals method, following paragraphs IIID3 and IIID4 above (when more than one otherwise acceptable bid has been received), or by using the noncompetitive proposals method and following paragraph IIIE2 above (when more than one otherwise acceptable bid

has been received), or by using the noncompetitive proposal method and following paragraph III E2 above (when only one bid is received at an unreasonable price); provided, that the Contracting Officer determines in writing that such action is appropriate, all bidders are informed of the PHA's intent to negotiate, and each responsible bidder is given a reasonable opportunity to negotiate.

H. COOPERATIVE PURCHASING

The PHA may enter into State and local intergovernmental arrangements to purchase or use common goods and services. The decision to use an intergovernmental agreement or conduct a direct procurement shall be based on economy and efficiency. If used, the intergovernmental agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. PHAs are encouraged to use Federal or State excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs

IV. CONTRACTOR QUALIFICATIONS AND DUTIES

A. CONTRACTOR RESPONSIBILITY

Procurements shall be conducted only with responsible contractors, i.e., those who have the technical and financial competence to perform and who have a satisfactory record of integrity. Before awarding a contract, the PHA shall review the proposed contractor's ability to perform the contract successfully, considering factors such as the contractor's integrity (including a review of the list of Parties Excluded from Federal Procurement and Nonprocurement Programs published by the U.S. General Services Administration), compliance with public policy, record of past performance (including contacting previous clients of the contractor, such as other PHA's), and financials and technical resources. If a prospective contractor is found to be nonresponsible, a written determination of nonresponsibility shall be prepared and included in the contract file, and the prospective contractor shall be advised of the reason for the determination.

B. SUSPENSION AND DEBARMENT

Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined ineligible by HUD in accordance with HUD regulations (24 CFR Part 24) when necessary to protect the PHA in its business dealings.

C. QUALIFIED BIDDER'S LIST

Interested business shall be given an opportunity to be included on qualified bidder's lists. Any prequalified lists of persons, firms, or products which are used in the procurement of supplies and services shall be kept current and shall include enough qualified resources to ensure competition. Firms shall not be precluded from qualifying during the solicitation period. Solicitation mailing lists of potential contractors shall include, but not be limited to, such prequalified suppliers.

V. TYPES OF CONTRACTS, CLAUSES, AND CONTRACT ADMINISTRATION

A. CONTRACT TYPES

Any type of contract which is appropriate to the procurement and which will promote the best interests of the PHA may be used, provided that the cost-plus-a-percentage-of-cost and percentage of construction cost methods are prohibited. All procurements shall include the clauses and provisions necessary to define the rights and responsibilities of the parties. A cost reimbursement contract shall not be used unless it is likely to be less costly or it is impracticable to satisfy the PHA's need otherwise, and the proposed contractor's accounting system is adequate to allocate costs in accordance with applicable cost principles (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation (FAR), found in 48 CFR Chapter 1). A time and material contracts may be used only if a written determination is made that no other contract type is suitable, and the contract includes a ceiling price that the contractor exceeds at its own risk.

B. OPTIONS

Options for additional quantities or performance periods may be included in contracts, provided that: (i) the option is contained in the solicitation; (ii) the option is unilateral right of the PHA; (iii) the contract states a limit on the additional quantities and overall term of the contract; (iv) the options are evaluated as part of the initial competition; (v) the contract states the period within which the options may be exercised; (vi) the options may be exercised only at the price specified in or reasonably determinable from the contract; and (vii) the options may be exercised only if determined to be more advantageous to the PHA than conducting a new procurement.

C. CONTRACT CLAUSES

In addition to containing a clause identifying the contract type, all contracts shall include any clauses required by Federal statutes, executive orders, and their implementing regulations, as provided in 24 CFR 35.36(i), such as the following:

1. Termination for convenience,
2. Termination for default,
3. Equal Employment Opportunity,
4. Anti-Kickback Act,
5. Davis-Bacon Act,
6. Contract Work Hours and Safety Standards Act, reporting requirements,
7. Patent rights,
8. Rights in data,
9. Examination of records of Comptroller General, retention of records for three years after closeout,
10. Clean air and water,
11. Energy efficiency standards,
12. Bid protests and contracts claims,
13. Value engineering, and
14. Payment of funds to influence certain Federal transactions.

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

D. CONTRACT ADMINISTRATION

A contract administration system designed to ensure that the contractors perform in accordance with their contracts shall be maintained.

The operational procedures required by Section IIA above shall contain guidelines for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on construction contracts, and similar matters. For cost reimbursement contracts with commercial firms, costs are allowable only to the extent that they are consistent with the cost principles in FAR Subpart 31.2.

VI. SPECIFICATIONS

A. GENERAL

All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying the PHA's needs. Specifications shall be reviewed prior to solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicate items. Functional or performance specifications preferred. Detailed product specifications shall be avoided whenever possible. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase (but see VIII below). For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

B. LIMITATIONS

The following specifications limitations shall be avoided: geographic restrictions not mandated or encouraged by applicable Federal law (except for architect-engineer contracts, which may include geographic location as a selection factor if adequate competition is available); unnecessary bonding or experience requirements; brand name specifications (unless a written determination is made that only the identified item will satisfy the PHA's needs); brand name or equal specifications (unless they list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use). Nothing in this procurement policy shall preempt any State licensing laws. Specifications shall be scrutinized to ensure that organizational conflicts of interest do not occur (for example, having a consultant perform a study of the PHA's computer needs and then allowing that consultants to compete for the subsequent contract for the computers).

VII. APPEALS AND REMEDIES

A. GENERAL

It is the PHA's policy to resolve all contractual issues informally at the PHA level, without litigation. Disputes shall not be referred to HUD until all administrative remedies have been exhausted at the PHA level. When appropriate, the PHA may consider the use of informal discussion between the parties by individuals who did not participate substantially in the matter in dispute, to help resolve the difference. HUD

will only review protests in cases of violations of Federal law or regulations and failure of the PHA to review a complaint or protest.

B. BID PROTEST

Any actual or prospective contractor may protest this solicitation or award of a contract for serious violations of the principles of this Statement. Any protest against a solicitation must be received before the due date for receipt of bids or proposals, and any protest against the award of a contract must be received within ten calendar days after contract award, or the protest will not be considered. All bid protests shall be in writing, submitted to the Contracting Officer or designee, who shall issue a written decision on the matter. The Contracting Officer may, at his or her discretion, suspend the procurement pending resolution of the protest, if warranted by the facts presented.

C. CONTRACT CLAIMS

All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer or designee for a written decision. The contractor may request a conference on the claim. The Contracting Officer's decision shall inform the contractor of its appeal rights to (a higher level in the PHA, such as the Executive Director or a designated Board member, or a Procurement Appeals Board).

VIII. ASSISTANCE TO SMALL AND OTHER BUSINESSES

A. REQUIRED EFFORTS

1. Consistent with Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, the PHA shall make efforts to ensure that small and minority-owned businesses, women's business enterprises, labor surplus area businesses, and individuals or firms located in or owned in substantial parts by persons residing in the area of the PHA project are used when possible. Such efforts shall include, but shall not be limited to:
 - a. Including such firms, when qualified, on solicitation mailing lists;
 - b. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
 - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
 - d. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
 - e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
 - f. Including in contracts a clause requiring contractors, to the greatest extent feasible, to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with the project to business concerns which are located in, or owned in substantial part by persons residing in the area of the project, as described in 24CFR 135;
 - g. Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed in Ala through Alf above.

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

B. DEFINITIONS

1. A small business is defined as a business which is: independently owned; not dominant in its field of operation; and not an affiliate of subsidiary of a business dominant in its field of operation. The size standards in 13 CFR 121 shall be used, unless the PHA determines that their use is inappropriate.
2. A minority-owned business is defined as a business which is at least 51% owned by one or more minority group member; or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans and Asian Indian Americans, and Hasidic Jewish Americans.
3. A women's business enterprise is defined as a business that is at least 51% owned by Women or Women who are U.S. citizens and who also control or operate the business.
4. 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 under-employment, as defined by the U.S. Department of Labor in 20 CFR 654, Subpart A, and in list of labor surplus areas published by the Employment and Training Administration.
5. A business concern located in the area of the project, is defined as an individual or firm located within the relevant Section 3 covered project area, as determined pursuant to 24 CFR 135.15 listed on HUD's registry of eligible business concerns, and meeting the definition of small business above. A business concern owned in substantial part by persons residing in the area the project is defined as a business concern which is 51% or more owned by persons residing within the Section 3 covered project, owned by person considered by the U.S. Small Business Administration to be socially or economically disadvantaged, listed on HUD's registry of eligible business concerns, and meeting the definition of small business above.

IX. ETHICS IN PUBLIC CONTRACTING.

A. GENERAL

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

B. CONFLICT OF INTEREST

No employee, officer or agent of this PHA shall participate directly or indirectly in the selection or in the award or administration of any contract if a conflict, real or apparent, would be involved. Such conflict would arise when a financial or other interest in a firm selected for award is held by:

1. An employee, officer or agent involved in making the award;
2. His/her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister);
3. His/her partner; or,
4. An organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

C. GRATUITIES, KICKBACKS, AND USE OF CONFIDENTIAL INFORMATION

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

D. PROHIBITION AGAINST CONTINGENT FEES

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