



**LOWELL HOUSING
AUTHORITY**

LOWELL HOUSING AUTHORITY

PROCUREMENT POLICY

November 2016
Revision – July 2017

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SECTION I General Policy

1.01 POLICY

- A.) It is the policy of the Lowell Housing Authority (LHA) that all procurement for services and/or materials shall be in accordance with applicable federal and Commonwealth of Massachusetts ("state") laws, codes and regulations.

- B.) This policy establishes a broad framework of policies to ensure that LHA's purchasing and contracting functions promote administrative flexibility and efficiency, while at the same time maintaining prudent internal controls and compliance with applicable statutes and regulations. Specific purposes of this policy include, but are not limited to, the following:
 - 1.) Fairness and objectivity: providing a fair, objective, and equitable selection and contracting environment for all individuals and firms seeking to do business or contracting with LHA.
 - 2.) Ensuring reasonable cost: promoting competition, and negotiation (where applicable) to ensure that LHA receives the most favorable prices and terms in its contracts.
 - 3.) Efficiency: ensuring that supplies and services (consultant, construction, social services, etc.) are obtained efficiently and effectively.
 - 4.) Accountability: promoting accountability of contracting actions by LHA employees and encouraging employees to protect LHA's financial and other interests.
 - 5.) Value-added procurement: facilitating a procurement process that provides service and value to LHA in obtaining goods and services.
 - 6.) Ethical standards: ensuring that LHA's procurement activities are implemented with the highest regard for integrity, avoidance of conflicts of interest, and consistent with applicable ethical standards.
 - 7.) Legal considerations: complying with all applicable federal, state and local statutes and regulations.

1.02 SCOPE

- A.) Funding sources: LHA receives funds from federal, state, non-federal and private funding sources. As such, in its procurement activities, LHA shall develop procedures designed to ensure compliance with applicable laws and regulations without necessarily imposing a higher standard than is necessary to ensure compliance.

- B.) Where a requirement in these policies is based only on federal requirements, LHA's Finance and Administration Department may, on a case-by-case basis for non-federally funded contracts, apply a more or less stringent standard than that outlined in the federal requirements, provided however, that it is otherwise consistent with applicable policies and that all state or other legal requirements are met.

SECTION I
General Policy

- C.) Nothing in this policy will prevent LHA from complying with the terms and conditions of any grant, contract, gift, or bequest that is otherwise consistent with law.
- D.) Included in scope – the following shall be governed by the policy:
- 1.) Procuring, Purchasing, Leasing, or Renting:
 - i.) Goods, Supplies, Equipment, Materials, & Services.
 - ii.) Construction and Maintenance.
 - iii.) Consultant Services.
 - iv.) Architectural and Engineering (A&E) Design Services.
 - v.) Social Services.
 - vi.) Other Services.
 - 2.) Selling:
 - i.) Concessions.
 - ii.) Disposal of Surplus Material and Equipment.
- E.) Excluded from scope – the following shall not be governed by the policy:
- 1.) Real estate purchase and sale transactions. (Surveys, appraisals, environmental site assessments, and financing analysis are considered consultant services and are governed by this policy.)
 - 2.) Loan transactions and documents.
 - 3.) Sub-recipient or sub-grantee agreements and related change orders.
 - 4.) Employment contracts.
 - 5.) Limited partnership agreements.
 - 6.) Award of housing or other vouchers to non-profit agencies.
 - 7.) Housing Assistance Payment (HAP) Contracts.

SECTION I
General Policy

1.03 COMPLIANCE WITH LAWS AND REGULATIONS

A.) Applicable laws and regulations: in adopting this policy, the LHA Board of Commissioners and Executive Director or Designee, as the LHA's contracting officer, each affirm that the policies are in compliance with all applicable federal, state and local laws and regulations, which may include, but not be limited to, the following:¹

1.) Compliance with Federal Laws and Regulations:

- i.) 2 CFR 200.317-200.326 (HUD Procurement Regulations)
- ii.) 24 CFR 941 Subpart F (HUD Capital Fund Regulations)
- iii.) 29 CFR Part 1, Procedures for Predetermination of Wage Rates
- iv.) 29 CFR Part 3, Payment and Reporting of Wages Applicable to Federally Financed and Assisted Construction Contracts.
- v.) 29 CFR Part 5, Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction
- vi.) 29 CFR Part 7, Practice Before the Wage Appeals Board
- vii.) ACC (Consolidated Annual Contributions Contract Between LHA and HUD), Form HUD-53012A
- viii.) USC§ 666. Theft or Bribery Concerning Programs Receiving Federal Funds
- ix.) Reference to HUD Procurement Handbook No. 7860.8 Rev 2 (2/2007) – pending future HUD revision(s)

2.) Compliance with State Laws and Regulations:

- i.) Massachusetts General Laws ("MGL") Chapter 30B – Procurement of Supplies and Services
- ii.) MGL Chapter 30 §39M Public Works (Non-Building) Construction
- iii.) MGL Chapter 39M Construction Materials (without Labor)
- iv.) MGL Chapter 7, Public Building Project Design
- v.) MGL Chapter 149 Building Construction Contracts
- vi.) MGL Chapter 149, 44A1/2 Owner's Project Manager (OPM)

3.) Design Services: Housing Authorities must follow the procedures established by the Massachusetts Department of Housing and Community Development (DHCD) for Design of State-Funded Housing. For design of Federally Funded Housing, Housing Authorities are required by the U.S. Department of Housing and Urban Development (HUD) rules to select designers pursuant to 2 CFR 200.320 (d) (5)

B.) Conflicts between these policies and other laws or regulations: in the event of a conflict between this policy and any applicable law or regulation, the law or regulation shall prevail.

¹ 2 CFR 200.318(a) General Procurement Standards, "Grantees [LHA] ... will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section."

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General Policy

- C.) Changes in laws and regulations: 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, and the Executive Director or Designee or designee shall make appropriate modifications to the inconsistent policies and procedures.

1.04 DELEGATION OF PROCUREMENT AUTHORITY

- A.) The Executive Director or Designee is hereby delegated the following procurement authority, with the authority to re-delegate as the Executive Director or Designee sees fit, to implement and manage this policy:
- 1.) Authority to enter into contracts for goods and services of \$50,000 and above.
 - 2.) Authority to enter into contracts for construction of \$50,000 and above.
 - 3.) Authority to enter into leases of equipment for periods not to exceed three (3) consecutive years, irrespective of the total monetary amount of the procurement. Periods of three (3) years or more require LHA Board approval.
- B.) All contracts for goods and services in excess of \$50,000 require the approval of the Lowell Housing Authority Board of Commissioners.

1.05 IMPLEMENTATION OF THIS POLICY

- A.) The Executive Director or Designee shall develop and implement operating procedures after the approval by the Board for this Policy.

1.06 INTERNAL CONTROLS

- A.) The LHA shall maintain a system of internal controls which shall include:
- 1.) Delegation of procurement authority
 - 2.) Segregation of duties
 - 3.) Receipt of goods and services
 - 4.) Custody and safeguarding of the assets
 - 5.) Recording transactions
 - 6.) Recordkeeping

SECTION II
Record Maintenance and Public Access to Procurement Information

2.01 AUTHORITY AND RESPONSIBILITY

- A.) The Executive Director or Designee or his/her designee shall maintain records sufficient to detail the significant history of each procurement. These records will include, but are not necessarily limited to, the following: rationale for the method of procurement; selection of contract type; contractor selection or rejection; and the basis for the contract price.²
- B.) All procurement records shall be maintained and disposed of in accordance with the Massachusetts Public Records Law Title 10, Chapter 66 and related record retention schedule.
- C.) Procurement information shall be a matter of public record to the extent provided in applicable state law and shall be available to the public in accordance with such statutes.

2.02 PUBLIC RECORDS

- A.) Applicable law: LHA procurement information shall be a matter of public record to the extent provided for in MGL chapter 66 et seq. Title X. Public Records and will be made available upon request as provided by such statute & related records retention schedule(s).
- B.) Photocopying and other charges: pursuant to such statute, the LHA may assess and collect such charges per page for each photocopy of public records requested, under guidelines set forth under MGL c. 66 Title X § 3206 of January 2013, or most recent record. Additional fees may be assessed for the production of records from electronic media and for shipping/postage.
- C.) Disclosing and obtaining contractor bid or proposal information source selection information: a present or former board member, employee of, or person acting on behalf of or advising the LHA on a procurement, who has or had access to such information, shall not disclose same before the award of the contract to which the information relates.

² 2 CFR 200.318 (h)(i)

SECTION III
Ethical Standards

3.01 AUTHORITY AND RESPONSIBILITY

- A.) In the conduct of LHA's procurement system, the LHA Board and LHA employees shall be aware of, and comply with, the following non-exclusive list of laws, regulations, and advice, which are hereby incorporated by reference as part of these policies:
- 1.) MGL 268A, Conflict of Interest Law
 - 2.) MGL C. 121B - Massachusetts Public Housing Authorities Law
 - 3.) LHA Code of Ethics
 - 4.) 2 CFR 200.318 (c) (1)-HUD Procurement Regulations
 - 5.) Terms and Conditions, Constituting Part A of the Consolidated Annual Contributions Contract Between Housing Authority and the United States of America, Section 19 – Conflict of Interest.
 - 6.) USC §666. Theft or Bribery Concerning Programs Receiving Federal Funds
- B.) Contracts not funded with federal funds shall be bound by any of the federal requirements noted above in 4 and 5.

3.02 BOARD OF COMMISSIONERS AND EMPLOYEE DEFINED

- A.) As used in this chapter, the terms "Board," "Commissioner," and "employee" shall include: a member of the LHA Board of Commissioners; an LHA employee; an agent of LHA; any member of the respective immediate family of an LHA Commissioner, employee or agent; a partner of LHA; an organization which employs, or is about to employ, any of the above³; and an appointee to any decision-making body for LHA.

3.03 DISCIPLINARY ACTIONS

- A.) Breaches of the ethical standards of this chapter of the procurement policies may result in a LHA employee being subject to disciplinary actions up to and including termination, consistent with LHA policies and procedures.

3.04 CONFLICT OF INTEREST

- A.) No LHA employee shall:
- 1.) Contract selection, award, administration: participate in the selection, award, or administration of a contract if a conflict of interest (direct or indirect financial interest, personal involvement, or other interest), real or apparent, would be involved.⁴

Participation shall include, but not be limited to: serving on an evaluation panel to select a firm; reviewing, endorsing, or recommending an award or selection; approving or rejecting an award of a contract or purchase order.

³ 2 CFR 200.318(c)(1)

⁴ 2 CFR 200.318(c)(1)

SECTION III
Ethical Standards

- 2.) Ownership and business interests: own or hold an interest in any contract or property or engage in any business, transaction, or professional or personal activity that would:
 - i.) Be, or appear to be, in conflict with the employee's official duties, or
 - ii.) Secure, or appear to secure, an unwarranted privilege or advantage for the employee, or
 - iii.) Prejudice, or appear to prejudice, the employee's independence of judgment in the exercise of his or her official duties relating to LHA.

- 3.) Confidential information: knowingly use confidential information for the employee's or another's actual or anticipated personal gain.

3.05 GIFTS AND GRATUITIES

- A.) Prohibition: an employee may not solicit or accept gifts, entertainment, gratuities, favors, or anything of monetary value from contractors or subcontractors, or potential contractors or subcontractors that could influence, or be perceived to influence, contracting or purchasing decisions.⁵

- B.) Exception: in general, a nominal gift of less than \$50.00 in value that was not solicited by an employee, and which can be and is shared with all employees and/or the public, may be considered acceptable. Employees are expected to exercise good judgment before accepting any gift, and to check with the Executive Director or Designee if in doubt.

3.06 CONTRACTING WITH FORMER LHA EMPLOYEES

- A.) The following shall apply to contracts financed in whole or in part with federal funds:
 - 1.) One year prohibition: in accordance with HUD regulation, and subject to the Waiver provisions of Paragraph 2 as follows herein, within one year after an employee leaves LHA, LHA shall not contract with such employee (inclusive of Board of Commissioners) if the employee was responsible for formulating policy or influencing decisions with respect to the project(s) being contracted for.⁶

 - 2.) Waiver: for good cause, and upon written request by the LHA, HUD may waive the one year prohibition requirement.

⁵ 2 CFR 200.318 (c)(1)

⁶ Section 19 (A)(1)(ii) – Conflict of Interest. Terms and Conditions, Constituting Part of a Consolidated Annual Contributions Contract Between Housing Authority and the United States of America.

SECTION IV
Procurement Authority and Administration

4.01 AUTHORITY AND RESPONSIBILITY

- A.) All procurement transactions shall be administered by the contracting officer, who shall be the Executive Director or Designee, or by another LHA employee whom the Executive Director or Designee has designated, delegated, or authorized in writing.
- B.) The duties of the contracting officer shall be to ensure the following:
- 1.) That each proposed procurement is reviewed by the LHA employee responsible for originating the procurement with the goal of avoiding purchase of unnecessary or duplicative items; that consideration be given to the consolidation or separation of procurement in order to obtain a more economical purchase; and that an analysis of lease options versus purchase alternatives be considered in order to ensure the most economical approach.
 - 2.) That 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 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.) That solicitation procedures are conducted in compliance with 2 CFR 200.317-200.326 or in compliance with state and local laws which are more stringent than, yet consistent with 2 CFR 200.317-200.326.
 - 4.) That an independent cost estimate is prepared in advance of each solicitation and/or contract modification and is appropriately secured for each procurement above the small purchase limitation; such information may not be disclosed outside of the authority; cost or price analysis is conducted for large purchases involving a bid process. Price evaluation is likewise conducted whenever the LHA receives a single bid or a sole source solicitation.
 - 5.) That the contract award is made to the responsive and responsible bidder offering the lowest price (in the context of competitive sealed bidding) or to whose proposal offers the greatest value to the authority, considering price, technical, and other factors as specified in the request for proposal (in the context of competitive negotiation).
 - 6.) That contracts are only awarded to responsible bidders who possess the ability to perform successfully under the terms and conditions of the proposed contract; that factors to be considered in making such a determination include contractor integrity, compliance with public policy, record of past performance, and financial and technical resources; that any determination of non-responsibility is fully documented and copies of such documents are placed in the contract file; that bidders and offerors who are found to be non-responsible are informed of the reasons for such a finding.
 - 7.) That each contract indicates the schedule of payments to be made to the contractor, and that payment is promptly made for the contract work performed and accepted.

SECTION V
Eligibility to Contract with LHA

5.01 AUTHORITY AND RESPONSIBILITY

- A.) The Executive Director or Designee or his/her designee shall take all actions necessary to assure that the LHA award contracts only to eligible, responsible prospective contractors who have the ability to perform successfully under the terms and conditions of the proposed contract.

5.02 DETERMINATION OF RESPONSIBILITY OF PROSPECTIVE CONTRACTOR

- A.) In determining the responsibility of a bidder, the LHA shall consider such matters as the bidder's:
- 1.) Integrity;
 - 2.) Compliance with public policy;
 - 3.) Record of past performance; and
 - 4.) Financial and technical resources (including construction and technical equipment).
- B.) Before a bid is considered for award, the bidder may be requested by the LHA to submit a statement or other documentation regarding any of the items in paragraph (A) above. Failure by the bidder to provide such additional information shall render the bidder nonresponsive, non-responsible and ineligible for award.

5.03 DEBARMENT STATUS REVIEW

- A.) The Executive Director or Designee shall ensure, prior to award of a contract that the proposed business has not been debarred or otherwise declared ineligible for award by an applicable regulatory agency. The following non-exclusive list of sources shall be reviewed when required:
- 1.) U.S. General Services Administration's "List of Parties Excluded From Federal Procurement and Non-Procurement Programs"
 - 2.) U.S. Department of Housing and Urban Development's "Limited Denial of Participation" List
 - 3.) Lists of Suspended or Debarred Contractors Maintained by the Commonwealth of Massachusetts office of the Attorney General and the Division of Capital Asset Management.

5.04 BIDDERS AND SUB-BIDDERS QUALIFICATIONS

- A.) If required by the applicable procurement, each bidder and sub-bidder must provide, at the time of bid submission, an updated certification issued by the Division of Capital Asset Management and Maintenance ("DCAMM"), pursuant to MGL Chapter 149, Section 44D Submission of Bid or offer; Application for Certification.

SECTION V
Eligibility to Contract with LHA

- B.) The Executive Director or Designee or his/her designee may develop, as part of bidding documents, specific and objective qualification requirements for the bidder or sub-bidder beyond the DCAMM Certification Requirements that may be used in evaluating whether a bidder or sub-bidder is responsible and capable of performing the proposed work.

5.05 COMPLIANCE WITH IRS REGULATIONS

- A.) Prior to making payment to a business, the Executive Director or Designee or his/her designee shall ensure that LHA receives from the business (if not already on file), a W-9 or W-9 substitute form.

SECTION VI
Method of Procurement

6.01 AUTHORITY AND RESPONSIBILITY

- A.) This Policy grants the Executive Director or Designee and/or his/her designee the authority and responsibility for the use of the methods of procurement and selection of contract types as defined in this Selection.

6.02 PETTY CASH FUND

- A.) The LHA's contracting officer(s), and/or one or more LHA employee designated by the Executive Director or Designee in writing, is authorized to make purchases and contracts utilizing the petty cash fund for expenditures of less than \$100.00 per purchase. The list of all LHA staff so designated shall be updated annually, or as needed, and maintained by the Chief Procurement Officer (CPO).
- B.) The Executive Director or Designee will ensure that the following policy objectives are met:
- 1.) Account establishment: a petty cash account should be established in an amount sufficient to cover small purchases made during a reasonable period (e.g., one month).
 - 2.) Non-repetitive purchases: petty cash purchases should be kept to a minimum and should not be used for repetitive purchases.
 - 3.) Security: the security of the petty cash account shall be maintained, and access to the account shall be limited to, authorized individuals as delineated on the list maintained by the CPO.
 - 4.) Reconciliation: the petty cash account shall be periodically reconciled and replenished. All purchases shall be supported with a petty cash receipt and reviewed with invoice for the goods or services provided.
 - 5.) Audit: the petty cash account is subject to audit by the Executive Director or Designee.

6.03 PURCHASES AND CONTRACTS

- A.) The Executive Director or Designee, or a representative designated by the Executive Director or Designee in writing shall develop and implement procedures that assure compliance with recent changes in Massachusetts Procurement Law. However, the LHA abides by the most stringent of requirements when protracting purchases involving good & services, and design & construction. To access current procurement guidelines please visit, Mass.gov, Procurement Charts.

SECTION VI
Method of Procurement

6.04 COMPETITIVE EXCEPTIONS – DIRECT PAYMENTS LIST

A.) Definition: the direct payments list (also known as competitive exceptions) is a list of transactions which, by the nature of the transaction, are impractical or impossible to competitively bid because of market or other conditions, and are thus exempt from competitive bidding requirements. These transactions do not have to be justified as a non-competitive procurement but may be obtained directly by an employee with adequate *expenditure authority*. Depending on the item, there may or may not be a contract or purchase order outlining the terms and conditions.

B.) Modifications to the direct payments list:

- 1.) The Executive Director or Designee administratively may make modifications to the direct payments list without seeking approval of the Board of Commissioners, provided that the changes are consistent with applicable statutory and regulatory requirements and that the current list is made readily available to the Board and LHA employees.

C.) Interpretation of direct payments list:

- 1.) In the event of ambiguity or uncertainty as to whether an item is or is not subject to competition and whether it should be included on the direct payments list, the Executive Director or Designee shall review the matter and make the final decision.
- 2.) The following items are on the direct payments lists:
 - i.) Utility expenditures (water, sewer, electricity, natural gas, and other regulated utility expenses)
 - ii.) Postage and other purchases from the U.S. Postal Service
 - iii.) Licenses, permits, and fees from governmental or regulatory entities at the federal, state, or local level.
 - iv.) Purchases from other governmental entities (federal, state, city, local, port districts, public development authorities [PDAS], housing authorities, state colleges and universities, state hospitals, etc.), where the governmental entity provides goods or services not available from the private sector.
 - v.) Emergency housing for LHA residents at motels/hotels with which LHA has executed an emergency housing agreement, or as otherwise authorized by the Executive Director or Designee.
 - vi.) Service or use fees paid to governmental cooperative purchasing organizations.
 - vii.) Legal services such as arbitration fees, litigation fees, witness fees, court costs, and related expenses (but not the cost of outside counsel, investigations, or related matters), when approved by the Board of Commissioners.
 - viii.) Legal settlements of disputed matters, and judgment claims against LHA (for use only with approval by the Board of Commissioners).

SECTION VI
Method of Procurement

- ix.) Payments for existing software license agreements require the approval of the Executive Director or Designee.
- x.) Traffic control (flagging) by off-duty police officers (only when required).
- xi.) Travel expenses for LHA employees, residents, program participants, volunteers, or members of the Board of Commissioners necessary to conduct LHA business.
- xii.) Training registration fees and tuition for pre-established, non-LHA specific, off-site classes, seminars, trainings, workshops, etc. for LHA employees, residents, program participants, volunteers, and members of the Board of Commissioners.
- xiii.) Testing and travel expenses of employment applicants (including moving expenses for eligible personnel). This includes travel expenses of certain out-of-state job applicants. Travel expenses of job applicants must be approved by the Board of Commissioners.
- xiv.) Conference and convention expenses and fees for LHA employees, residents, program participants, volunteers, or members of the Board of Commissioners conducting LHA business.
- xv.) Advertisements for employment opportunities, purchasing and contracting solicitations, sale of surplus items, public announcements and outreach, etc. (all media). This exception does not include printing, design, or graphics services.
- xvi.) Freight bills, express shipping, common carriers, and delivery services.
- xvii.) Honoraria and stipends.
- xviii.) Entertainment such as speakers, lecturers, musicians, performing artists, but only when such expenses are permitted by the grant funding the activity.
- xix.) Insurance deductible and/or retained losses (required approval of the LHA risk control administrator).
- xx.) Taxi, public transportation, and toll fares; mileage and incidental parking expenses.
- xxi.) Publications and subscriptions (newspapers, magazines, books, pre-printed materials, reprints, publishers page charges, electronic publications, online subscription services, pre-recorded audio or video cassettes, slide presentations, tapes, cds, diskettes when purchased from the publisher or producer; etc.).
- xxii.) Mailing lists (print or electronic).
- xxiii.) Professional association membership dues, fees, licenses, accreditation, and certifications.
- xxiv.) Petty cash purchases and reimbursements less than \$50.
- xxv.) Special items, eligible and allowable with pre-approval by the Board of Commissioners, the Executive Director or his/her designee.
- xxvi.) Payments to local Retirement Board & MA Group Insurance Commission (GIC).

SECTION VI
Method of Procurement

6.05 COMPETITIVE EXCEPTIONS - COOPERATIVE INTERGOVERNMENTAL AGREEMENTS

- A.) Consistent with the requirements of 2 CFR 200.318 (e) and in order to promote efficiency and competition in the procurement of goods and services, LHA may enter into agreements with other governmental agencies and state, regional or national intergovernmental purchasing networks or associations. The purpose of a cooperative intergovernmental agreement is to take advantage of a competitive selection process already conducted by another agency and thus save LHA the time and expense of conducting its own selection process. In evaluating the use of a cooperative intergovernmental agreement, the Executive Director or Designee shall review for reasonableness the standards in the competitive selection process conducted by the other agency.

6.06 CONCESSIONS

- A.) Competitive selection process: in selecting concessionaires for various LHA revenue-producing activities, including, but not limited to, vending and laundry machines operation, parking lot management, cellular and other communication antenna space leases, etc., LHA shall generally conduct a competitive selection process similar to those outlined for RFP and or IFB process.
- B.) Objectives of competition: while LHA is committed to a competitive selection process to help ensure openness in notifying concessionaires about business opportunities, LHA's primary objective in conducting a competitive selection process shall be to ensure that LHA's objectives of revenue generation and service delivery are met.

6.07 PURCHASING AND GAS CARDS

- A.) LHA has authorized that certain employees be issued bank-sponsored credit cards (purchasing cards) and gas cards in LHA's name, in order to expedite the purchasing and payment process and reduce the administrative costs of small purchase transactions.
- B.) Purchase orders involving the use of the LHA's credit card(s) must be issued by and receipt of such supply and/or service verified by the Executive Director or Designee and in no instance shall be issued by or receipt verified by the individual placing the order. Reconciliation of purchases shall be performed by a 3rd party LHA staff member with review of supporting documentation inclusive of order receipt(s) and invoice(s).

SECTION VII

Contract Types

7.01 AUTHORITY AND RESPONSIBILITY

- A.) The Executive Director or Designee is authorized by this policy to select and use the following contract types in accordance with 2 CFR 200.317-200.326 and the laws of the Commonwealth of Massachusetts.

7.02 CONTRACT TYPES

- A.) The following is a summary of the major contract types (pricing arrangements) authorized for use under this Policy:
- 1.) Firm Fixed Price. This contract type requires the delivery of a product or services at a specified price, fixed at the time of contract award and not subject to any adjustment.
 - 2.) Fixed Price with Economic Price Adjustment. In cases where the market for a particular supply or service is especially volatile, and the LHA needs a contract for a term greater than just an initial quantity, it is possible to use a contract type that allows for adjustment in prices based on changes in market conditions. Although the contract contains initial firm fixed prices, the prices are adjusted upward or downward during the performance period based on changes in an independent index of prices, such as the consumer price index or other commodity price indices that are not controlled by the contractor.
 - 3.) Firm Fixed Price, Level of Effort. This type of contract is useful in some cases when buying professional services. It provides a specific number of hours for a stated period of time at a fixed price. It describes the scope of work in general terms (usually study or investigation), the contractor is normally required to submit reports showing the results achieved with the level of effort, and payment is based on effort expended, not on results.
 - 4.) Const Reimbursement (no fee). In this type of contract, an estimated cost ceiling is negotiated at time of award, which limits the costs that may be reimbursed. There is no fee or profit, only reimbursement of incurred costs.
 - 5.) Cost plus Fixed Fee. This is among the least preferred type of contract, because it places total responsibility for contract performance on the LHA, however, in some cases its use is necessary, because to use any other contract type would cause the contractor to charge excessively high prices/costs due to its need to cover the uncertainties involved.
 - 6.) Time and Materials and Labor-Hour. A time and materials contract provides for payment of direct labor hours at fixed hourly rates, and materials at cost (no fee or profit) the hourly rates are "burdened" or "loaded" rates, meaning that they include all indirect costs and profit. The contract contains a price ceiling that the contractor may only exceed at its own risk. HUD regulations 2 CFR 200.318(j)(i) requires the following for any time and materials contract:
 - i.) A determination that no other contract is suitable

SECTION VII

Contract Types

- ii.) A ceiling in the contract that the contractor exceeds at its own risk.
- 7.) Requirements. A requirements contract provides for the purchase of all actual needs of the HA from one contractor for specific supplies or services at fixed prices during a stated period of time. There is a realistic estimated total quantity, but no guaranteed minimum, and delivery orders are issued to obtain the needed items.
- 8.) Indefinite Quantity. This contract type works in the same way as the requirements type contract, except that there is a guaranteed minimum that the LHA must order (either in dollar terms or number of units). The contract also contains a ceiling on the total amount that may be ordered. The initial contract obligates funds for the minimum quantity, but thereafter funds are obligated by delivery order.
- 9.) Definite Quantity. This contract is similar to the requirements and indefinite quantity types, but is used when the LHA knows the precise quantity of items needed, but there is uncertainty as to when delivery is required. Consequently, this contract provides for a specific quantity of supplies or services to be purchased, but delivery orders specify the quantities and times of delivery within the specified total. Funds are obligated for the total amount at time of award.
- 10.) Basic Ordering Agreement (BOA). A BOA is not a contract. It is an agreement that provides terms and conditions that will apply to future contracts or orders during a specified period of time, a description of the supplies or services needed (as specific as practicable), methods of pricing and issuing delivery orders, delivery terms, and a statement as to when any subsequent order becomes a contract.
- 11.) Letter Contract. A letter contract is a legal preliminary, negotiated contract that authorizes the contractor to start work pending negotiation of a complete contract. It states the maximum liability of the LHA (an amount necessary to cover performance until the complete contract is finished), the contract type, and the contractor's obligation to provide a cost breakdown. It may be used only in emergencies, if an immediate binding agreement is needed so contractor performance can begin. Each letter contract must have a schedule for negotiating the complete contract. This period shall not exceed 90 days. A letter contract obligates no more than 50% of the total estimated contract price.
- 12.) Design/Build. The design/build selection methodology may be used when the criteria in 2 CFR 200.320(c)(1) are not applicable. MGL Chapter 149A, Public construction alternative delivery methods shall apply. In such a situation, proposals may be received from contractors to both design and build the work. The evaluation criteria shall include price along with other factors relating to the contractor's experiences and ability to perform the project.

SECTION VIII
Construction Change Orders and Contract Modifications

8.01 AUTHORITY AND RESPONSIBILITY

- A.) The Executive Director is authorized as the contract officer for all construction related projects. In the absence of the Executive Director, the Chief Operating Officer shall serve in this capacity.

8.02 PERIODIC PAYMENTS

- A.) The contract officer shall sign all periodic payments to the contract on behalf of the LHA.

8.03 MINOR CHANGES IN WORK

- A.) The contract officer shall sign all authorizations for minor changes in work.⁷

8.04 CHANGE ORDERS, CONSTRUCTION CHANGE DIRECTIVES AND REPORTS

- A.) All modifications, change orders⁸ and construction change directives (CCD)⁹ are prepared with documentation required by Federal and State regulations, including as applicable:
- 1.) A detailed description of the proposed change in work
 - 2.) A reference to working drawings and specifications
 - 3.) A price credit, debit or no price change for the change in contract work
 - 4.) Estimate of additional time required to complete the work
 - 5.) The contractor's itemized breakdown of the cost of materials and labor
 - 6.) An itemized breakdown for any subcontractors
 - 7.) The change indicated on the architectural or engineering drawings
- B.) Subject matter of each change order shall be within the general scope of the contract or within the authority of the changes clause contained in the General Contract Conditions or applicable HUD-5370 form, with regard to Federal subsidy programs.
- C.) A cost analysis must be performed by the Designer or other individual for all contract modifications for projects that were procured through Quotations, Sealed Bids, Competitive Proposals, or Non-Competitive Proposals.
- D.) Proposed change orders and CCDs must be submitted to the CPO for review prior to the following approvals:

⁷ **Minor Change in Work:** Only used when the change is minor, a substitution or it does not require a change order.

⁸ **Change Order:** A unilateral modification made to the contract under the authority of the contract's Changes clause. Only the specific changes permitted by the particular Changes clause may be made under a change order. All change orders must be within the scope of the contract.

⁹ **Construction Change Directive (CCD):** If work needs to be done but the contractor and designer cannot agree on whether the work is beyond the scope of the contract or the dollar value of additional work or amount of time required to perform the work, the designer should prepare and sign a CCD. A CCD should also be used when the full scope of the work cannot be ascertained and the extra work must proceed.

Section VIII
Construction Change Orders and Contract Modifications

- 1.) HUD funded Projects
 - i.) Change orders and CCD less than \$10,000, or the maximum amount permitted by Massachusetts law and applicable sound business practices, can be signed by the contract officer.
 - ii.) Change orders and CCD \$10,000 or more must be voted on by the LHA Board before the contract officer can sign off on the change. No change may increase the value of a contract by more than the Federal small purchase threshold, unless otherwise exempt.
 - 2.) State-Funded Projects
 - i.) Pursuant to Massachusetts Department of Housing and Community Development (DHCD) requirements, the LHA must vote to approve each change order under a project subject to state funding. The designer should submit any proposed change orders in time to be included on the agenda of the next scheduled LHA board meeting. To meet construction deadlines, the LHA may schedule a special meeting to approve proposed change orders.
 - ii.) Change orders less than or equal to 5% of the original construction contract or is less than \$5,000, whichever is less, and the cumulative total of the change orders is less than 5% of the original construction contract require only the DHCD construction advisor's approval and signature. Change orders that do not meet these criteria require the approval of the DHCD Construction Management Director.
- E.) The contract officer must execute, within 30 days after issuing a change order, a certificate, signed under the pains and penalties of perjury an explanation of why the change is needed, that any substitute work is of the same cost and quality, or that the contract price has been equitably adjusted, and that the change will not significantly hurt the project and that it is in the best interest of the LHA.¹⁰
- F.) The contract officer shall report on the construction status, change orders, payments and problems at regular LHA meetings and according to statutory requirements.
- G.) A modification register shall be maintained by the CPO, with all applicable supporting documentation.

¹⁰ M.G.L c.30, §39I

SECTION IX

Ensuring Reasonable Costs

9.01 AUTHORITY AND RESPONSIBILITY

- A.) As a public agency accountable to both public and governmental funding agencies, LHA is committed to ensuring that costs paid for obtaining necessary goods and services are reasonable and that LHA's interests are adequately protected. In doing so, the Executive Director or Designee or his/her designee will evaluate the reasonableness of costs proposed by a contractor, consultant, or vendor.

9.02 DEFINITIONS

- A.) Independent cost estimate: an estimate of the anticipated costs of a contract or change order prepared by LHA staff or other authorized party to assist LHA in evaluating the reasonableness of costs proposed by a contractor, consultant, or vendor.
- B.) Price analysis: a written review and evaluation of competitive prices received by LHA to determine whether the proposed price of a contractor is reasonable when compared with prices provided by others in the market.
- C.) Cost analysis: a written review and evaluation of whether the proposed cost of a contract, purchase order, or change order, not based on competitive prices received, is reasonable.

9.03 PROCUREMENT METHODS

- A.) **Micro Purchases.** For purchases below the current U.S. Department of Housing and Urban Development "micro purchase" dollar threshold (not including construction procurements), only one quote is required provided the quote is considered reasonable. To the greatest extent feasible, and to promote competition, small purchases should be distributed among qualified sources.
- B.) **Small Purchase Procedures.** For any amounts above the "micro purchase" ceiling, but not exceeding M.G.L. c.30B, c.149, c.30§39M sealed bid or proposal thresholds applicable to the procurement, the Authority may use small purchase procedures. Under small purchase procedures, the Authority shall obtain a reasonable number of quotes (preferably three). Quotations for Small Purchases (QSP), or quotes, may be obtained in writing or through e-procurement. Award shall be made to the responsive and responsible vendor that submits the lowest cost to the Authority. If award is to be made for reasons other than lowest price, documentation shall be provided in the contract file. The Authority shall not break down requirements aggregating more than the small purchase threshold (or the Micro Purchase threshold) into several purchases that are less than the applicable threshold merely to: (1) permit use of the small purchase procedures or (2) avoid any requirements that applies to purchases that exceed the Micro Purchase threshold.

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Ensuring Reasonable Costs

C.) **Sealed Bids.** Sealed bidding, also known as Invitation for Bids (IFB), shall be used for all contracts that exceed the small purchase threshold(s) and that are not competitive proposals or non-competitive proposals, as these terms are defined in this Policy. Under sealed bids, the Authority publicly solicits bids and awards a firm fixed-price contract (lump sum or unit price) to the responsive and responsible bidder whose bid, conforming with all the material terms and conditions of the IFB, is the lowest in price. Sealed bidding is the preferred method for procuring construction, supply, and non-complex service contracts that are expected to exceed dollar thresholds identified in section 9.03(B).

- 1.) **Conditions for Using Sealed Bids.** The Authority shall use the sealed bid method if the following conditions are present: a complete, adequate, and realistic statement of work, specification, or purchase description is available; three or more responsible bidders are willing and able to compete effectively for the work; the contract can be awarded based on a firm fixed price; and the selection of the successful bidder can be made principally on the lowest price.

- 2.) **Solicitation and Receipt of Bids.** An IFB is issued which includes the 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 solicitation. The IFB must state the time and place for both receiving the bids and the public bid opening. All bids received will be date and time-stamped and stored unopened in a secure place until the public bid opening. A bidder may withdraw the bid at any time prior to the bid opening.

- 3.) **Bid Opening and Award.** Bids shall be opened publicly. All bids received shall be recorded on an abstract (tabulation) of bids, which shall then be made available for public inspection. If equal low bids are received from responsible bidders, selection shall be made by following LHA's tie breaking procedures. If only one responsive bid is received from a responsible bidder, award shall not be made unless the price can be determined to be reasonable, based on a cost or price analysis.
 - i.) **Award Decision for equal low bids.** The CPO or designee officiates and executes a coin toss in order to determine the winner in the event of a tie low bid (a.k.a. equal low bid), when both bidders appear to be responsible and responsive/eligible. The official will:
 - a.) Show that it is a fair coin (Heads/Tails)
 - b.) Designate "Heads" for the Contractor with a legal company name that is earliest in the alphabet.
 - c.) The coin will be tossed in the air and flipped, allowed to hit the carpet and lie flat to determine the winner.
 - d.) If the coin fails to lay flat, lands against an object, rolls, or is otherwise in the CPO's opinion disputable, the coin will be tossed again.

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- e.) Two witnesses and the CPO will sign a coin toss decision form under the pains and penalties of perjury.
- f.) There will be a coin toss attendance form for any contractor who attends and witnesses the coin toss.

4.) **Mistakes in Bids.** Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the IFB prior to the time set for bid opening. After bid opening, corrections in bids may be permitted only if the bidder can show by clear and convincing evidence that a mistake of a 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. All decisions to allow correction or withdrawal of a bid shall be supported by a written determination signed by the Contracting Officer. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the Authority or fair competition shall not be permitted.

D.) **Competitive Proposals.** Unlike sealed bidding, the competitive proposal method, also known as Request for Proposals (RFP), permits: consideration of technical factors other than price; discussion with offerors concerning offers submitted; negotiation of contract price or estimated cost and other contract terms and conditions (when allowable); revision of proposals before the final contractor selection; and the withdrawal of an offer at any time up until the point of award. Award is normally made on the basis of the proposal that represents the best overall value to the Authority, considering price and other factors, e.g., technical expertise, past experience, quality of proposed staffing, etc., set forth in the solicitation and not solely the lowest price.

1.) **Conditions for Use.** Where conditions are not appropriate for the use of sealed bidding, competitive proposals may be used. Competitive proposals are the preferred method for procuring professional services that will exceed the small purchase or "micro purchase" threshold. Only under limited circumstances would construction services be procured by competitive proposals; accordingly, construction services will most typically be procured utilizing the sealed bid (IFB) or small purchase procedures (QSP).

2.) **Form of Solicitation.** Other than A/E services, developer-related services and energy performance contracting, competitive proposals shall be solicited through the issuance of an RFP. The RFP shall clearly identify the importance and relative value of each of the evaluation factors as well as any sub factors and price. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals until after award. The method for evaluating price shall be established in the RFP.

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- 3.) **Evaluation.** The proposals shall be evaluated only on the factors stated in the RFP. Where not apparent from the evaluation factors, the Authority shall establish an Evaluation Plan for each RFP. Generally, all RFPs shall be evaluated by an appropriately appointed Evaluation Committee. The Evaluation Committee shall be required to disclose any potential conflicts of interest and to sign a Non-Disclosure statement. An Evaluation Report, summarizing the results of the evaluation, shall be prepared prior to award of a contract.

- 4.) **Negotiations.** Negotiations shall be conducted with all offerors who submit a proposal determined to have a reasonable chance of being selected for award, unless it is determined that negotiations are not needed, or not allowable under state or local regulations, with any of the offerors. This determination is based on the relative score of the proposals as they are evaluated and rated in accordance with the technical and price factors specified in the RFP. These offerors shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their proposals. No offeror shall be given any 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. A common deadline shall be established for receipt of proposal revisions based on negotiations.

Negotiations are exchanges (in either competitive or sole source environment) between the Authority and offerors that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining may apply to price (if allowable under state and local regulation), schedule, technical requirements, type of contract or other terms of a proposed contract. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions. Discussions are tailored to each offeror's proposal, and shall be conducted by the contracting officer with each offeror within the competitive range. The primary object of discussions is to maximize the Authority's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. The contracting officer shall indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as technical approach, past performance, and terms and conditions) that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposer's potential for award. The scope and extent of discussions are a matter of the contracting officer's judgment. The contracting officer may inform an offeror that its price is considered by the Authority to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible to indicate to all offerors the cost or price that the Authority's price analysis, market research, and other reviews have identified as reasonable. "Auctioning" (revealing one offeror's price in an attempt to get another offeror to lower their price) is prohibited.

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- 5.) **Award.** After evaluation of the revised proposals, if any, the contract shall be awarded to the responsible firm whose technical approach to the project, qualifications, price and/or any other factors considered, are most advantageous to the Authority provided that the price is within the maximum total project budgeted amount established for the specific property or activity.
- E.) **A/E Services.** The Authority shall contract for A/E services using Qualifications-based Selection (QBS) procedures, utilizing a Request for Qualifications (RFQ). Sealed bidding shall not be used for A/E solicitations. Under QBS procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. QBS procedures shall not be used to purchase other types of services, other than Energy Performance Contracting and Developer services, though architectural/engineering firms are potential sources.
- F.) **Noncompetitive Proposals.**
- 1.) **Conditions for Use.** Procurement by noncompetitive proposals (sole- or single-source) may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids, cooperative purchasing, or competitive proposals, and if one of the following applies:
 - i.) The item is available only from a single source, based on a good faith review of available sources;
 - ii.) An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the Authority, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any of the other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary simply to meet the emergency;
 - iii.) HUD and applicable M.G.L. authorizes the use of noncompetitive proposals; or
 - iv.) After solicitation of a number of sources, competition is determined inadequate.
 - 2.) **Justification.** A procurement based on noncompetitive proposals shall be supported by a written justification for the selection of this method. The justification shall be approved in writing by the Executive Director or his/her designee. Poor planning or lack of planning is not justification for emergency or sole-source procurements. The justification, to be included in the procurement file, should include the following information:
 - i.) Description of the requirement;
 - ii.) History of prior purchases and their nature (competitive vs. noncompetitive);

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- iii.) The specific exception in 2 CFR §200.320(f)(1)-(4) which applies;
- iv.) Statement as to the unique circumstances that require award by noncompetitive proposals;
- v.) Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);
- vi.) Statement as to efforts that will be taken in the future to promote competition for the requirement;
- vii.) Signature by the Chief Procurement Officer's supervisor (or someone above the level); and
- viii.) Price Reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing an analysis, as described in this Policy.

G.) **Cooperative Purchasing/Intergovernmental Agreements.** The Authority may enter into State and/or local cooperative or intergovernmental agreements to purchase or use common supplies, equipment, or services. The decision to use an inter-authority agreement instead of conducting a direct procurement shall be based on economy and efficiency. If used, the inter-authority agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. The Authority may use Federal or State excess and surplus property instead of purchasing new equipment and property if feasible and if it will result in a reduction of project costs. The goods and services obtained under a cooperative purchasing agreement must have been procured in accordance with 2 CFR §200.317 through §200.326 and applicable Massachusetts General Law.

9.04 INDEPENDENT COST ESTIMATES

- A.) Purpose: the purpose of developing an independent cost estimate is to assist LHA in evaluating:
 - 1.) The reasonableness of prices obtained through competition where price was used as a selection criterion, or
 - 2.) The reasonableness of prices proposed through a selection process where price was not used as a selection criterion.

- B.) When required: before soliciting bids or proposals¹¹, or prior to starting contract negotiations after making a selection based on a request for qualifications process, LHA staff must develop an independent estimate of costs.

¹¹ 2 CFR 200.323 (a) only requires that the Independent Cost Estimate be done "before receiving bids or proposals." LHA's preferred practice is to perform the Independent Cost Estimate prior to soliciting bids or proposals, but it is acceptable if the estimate is not completed before soliciting as long as it is done "before receiving bids or proposals."

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- C.) Independence of estimate: the independent cost estimate may be prepared by qualified LHA staff or by an independent consultant engaged for the purpose of preparing such an estimate.

9.05 PRICE ANALYSIS

- A.) Purpose: the purpose of a price analysis is to ensure that the price that LHA will be paying is reasonable based on competition in the market.
- B.) When required: a price analysis is performed when LHA staff compares prices submitted as part of a competitive selection process. When price is used as the only selection criterion and competition exists, LHA must, prior to award of a contract, evaluate the price proposed for acquiring goods and services against responses received from competing firms.¹² One of the most common uses of price analysis occurs when comparing bids received for a construction project.

9.06 COST ANALYSIS

- A.) Purpose: the purpose of the cost analysis is to ensure that the proposed price is reasonable, and shall include an analysis of individual components of the cost.
- B.) When required: when price is not used as the only selection criterion, LHA must, prior to award of a contract or execution of a change order, conduct a cost analysis.¹³
- 1.) The following situations require that a cost analysis be performed:
 - i.) Sole source selections.
 - ii.) Emergency selections (the Executive Director or Designee may waive preparation of a cost analysis for an emergency).
 - iii.) Single response to a solicitation.
 - iv.) Contracts based on a request for qualifications (A & E contracts and development partners).
 - v.) Change orders or other modifications that change the contract amount.
 - vi.) Contracts based on requests for proposals or informal solicitations where price is one of the evaluation criteria.
 - 2.) Exceptions: a cost analysis does not need to be conducted if the reasonableness of the price can be established based on a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation.¹⁴
- C.) Cost practices prohibited: the cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

¹² 2 CFR 200.323 (a)

¹³ 2 CFR 200.323 (a)

¹⁴ 2 CFR 200.319(a)

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Ensuring Reasonable Costs

9.07 NON-COMPETITIVE PROCUREMENTS

A.) Restricting competition prohibited

- 1.) Procurement practices that restrict competition are prohibited. Examples of such practices, cited in 2 CFR 200.317-200.326(C)(1), include the following:
 - i.) Unreasonable requirements: "placing unreasonable requirements on firms in order for them to qualify to do business."¹⁵
 - ii.) Experience and bonding: "requiring unnecessary experience and excessive bonding."¹⁶
 - iii.) Non-competitive pricing practices: "noncompetitive pricing practices between firms or between affiliated companies."¹⁷
 - iv.) Certain retainer contracts: "noncompetitive awards to consultants that are on retainer contracts."¹⁸
 - v.) Conflict of interest: "organizational conflicts of interest."¹⁹
 - vi.) Brand name specificity: "specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement."²⁰
 - vii.) Arbitrary actions: "any arbitrary action in the procurement process."²¹

9.08 PERMISSABLE NON-COMPETITIVE PROCUREMENTS

A.) In certain instances and situations, the procurement of goods and services without adequate competition is permissible:

- 1.) Sole source: the service or item "is available only from a single source,"²² based on a documented good faith review of available sources
- 2.) Emergency: an emergency exists that seriously threatens the public health, welfare or safety, endangers property, or would otherwise cause serious injury to LHA, as may arise by reason of a flood, earthquake, epidemic, fire, riot, equipment Failure, or similar event, and the needs "will not permit a delay resulting from competitive solicitation."²³
- 3.) Inadequate competition: after solicitation from a number of sources, only a single response is received, or competition is determined to be inadequate.²⁴
- 4.) HUD Authorization: where HUD has authorized a non-competitive process.²⁵

¹⁵ 2 CFR 200.319(a)(1)

¹⁶ 2 CFR 200.319(a)(2)

¹⁷ 2 CFR 200.319(a)(3)

¹⁸ 2 CFR 200.319(a)(4)

¹⁹ 2 CFR 200.319(a)(5)

²⁰ 2 CFR 200.319(a)(6)

²¹ 2 CFR 200.319(a)(7)

²² 2 CFR 200.320(f)

²³ 2 CFR 200.320(f)(1)

²⁴ 2 CFR 200.320(f)(2)

²⁵ 2 CFR 200.320(f)(4)

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9.09 JUSTIFICATIONS

- A.) Selection: project managers shall submit in writing to the Executive Director or Designee a recommendation justifying the reasons why competitive selection requirements should be waived.

- B.) Price reasonableness: consistent with the requirements of chapter IX of these procurement policies, project managers are responsible for ensuring that a cost analysis is prepared for all non-competitive procurements in order to ensure that the proposed price is reasonable.²⁶

²⁶ 2 CFR 200.320(f)(3)

SECTION X
Diversity in Contracting

10.01 AUTHORITY AND RESPONSIBILITY

A.) The Executive Director or Designee will take affirmative steps to encourage the use of women and minority-owned businesses (W/MBEs), businesses owned by economically disadvantaged persons, and small businesses as contractors, subcontractor's consultants, and service providers. LHA will comply with Section 3 of the Housing Act of 1968, as amended by Section 915 of the Housing and Community Development Act of 1992, regarding use of Section 3 certified businesses and Section 3 eligible individuals.²⁷ LHA will provide a preference to Section 3 businesses in the award of contracts, regardless of funding source.

²⁷ 24 CFR 135 contains more specific requirements regarding Section 3 requirements.

SECTION XI
Disputes, Protest, and Appeals

11.01 AUTHORITY AND RESPONSIBILITY

- A.) The Executive Director or Designee shall attempt to resolve all procurement-related (solicitation, award, and contractual) disputes, protests, and appeals internally without outside review by either the Massachusetts Office of the Inspector General (OIG), HUD or the court system.

11.02 PROTESTS

- A.) The following shall apply to protests (unless otherwise specified, this section will use the term "protest" to also include disputes and appeals):
- 1.) Solicitations: any protest against a solicitation issued by LHA must be received by the Executive Director or CPO before the bid or proposal submittal deadline, or it will not be considered
 - 2.) Awards: any protest against the award of a contract based on an IFB, RFP, RFQ must be received by the Executive Director at least ten (10) calendar days after notification of award or the protest will not be considered
- B.) Any appeal of a decision by LHA to reject a bid submitted in response to an IFB must be received by the Executive Director within two business days after being notified in writing of LHA's decision, or the appeal will not be considered.
- C.) Any protest against the award of a contract based on an informal solicitation must be received by the Executive Director prior to award, or the protest will not be considered. Consistent with the nature of the informal process contemplated by 2 CFR 200.320 (b), it shall be the responsibility of contractors, consultants, and vendors to call LHA regarding the status of a contract award.

11.03 MASSACHUSETTS OFFICE OF THE INSPECTOR GENERAL

- A.) There are no statutory provisions or regulations establishing an administrative procedure for bid protests under M.G.L. c. 30b. However, in keeping with the Office's prevention agenda, the OIG has developed an informal process to help resolve disputes efficiently and ensure compliance with the law. A protest can be initiated by a phone call or letter from any individual alleging a violation of M.G.L. c. 30b. Upon receiving a bid protest or other complaint, the OIG will contact the public officials responsible for the procurement to request documents or information. M.G.L. c. 12a, §9 authorizes the OIG to request the assistance of any public official in obtaining documents and information relating to a procurement, and requires every public official to cooperate with such a request.

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11.04 WAIVER OF INFORMALITIES

- A.) M.G.L. C. 30B, §5(F) provides that the procurement officer shall waive minor informalities or allow the bidder to correct them." Minor informalities are defined within M.G.L. C. 30B as "minor deviations, insignificant mistakes, and matters of form rather than substance of the bid, proposal, or contract document which can be waived or corrected without prejudice to other offerors, potential offerors, or the governmental body."

11.05 CANCELLATION OR REJECTION OF INVITATION FOR BIDS, REQUEST FOR PROPOSALS, OR OTHER SOLICITATIONS

- A.) Section 9 of M.G.L. C. 30B provides that "the procurement officer may cancel an invitation for bids, a request for proposals, or other solicitation, or may reject in whole or in part any and all bids or proposals when the procurement officer determines that cancellation or rejection serves the best interests of the governmental body. The procurement officer is required to state, in writing, the reason for a cancellation or rejection.

11.06 LEGAL ACTION

- A.) A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, or who is denied withdrawal of a bid, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was arbitrary and capricious, or, in the case of denial of prequalification, that the decision to deny prequalification was not based on the criteria for denial of prequalification set forth in Chapter III.
- B.) A bidder, offeror or contractor, or potential bidder or offeror on a contract negotiated on a sole source or emergency basis whose protest of an award or decision to award is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not an honest exercise of discretion, but rather, is arbitrary or capricious or not in accordance with the Massachusetts statutes, regulations, or terms and conditions of the invitation to bid or request for proposal.
- C.) A contractor may bring an action involving a contract dispute with the LHA in the appropriate circuit court.
- D.) A bidder, offeror, or contractor need not utilize administrative procedures, but if those procedures are invoked by the bidder, offeror, or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the LHA agrees otherwise.

SECTION XI
Disputes, Protest, and Appeals

E.) Nothing in this section shall be construed to prevent the LHA from instituting legal action against a contractor.

11.07 ALTERNATIVE DISPUTE RESOLUTION

A.) The Executive Director is authorized to enter into agreements to submit disputes arising from contracts entered into pursuant to this policy to arbitration, mediation, and other alternative dispute resolution procedures for the Commonwealth of Massachusetts.