

KANSAS CITY, KANSAS HOUSING AUTHORITY

PROCUREMENT POLICY

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KANSAS CITY KANSAS HOUSING AUTHORITY PROCUREMENT POLICY

Established for the Kansas City, Kansas Housing Authority (PHA) by Board Resolution No. 1789 on September 19, 1991. This Statement of Procurement Policy complies with and is subject to HUD's Annual Contributions Contract (ACC), HUD Handbook 7460.8 REV 2, "Procurement Handbook for Public Housing Agencies," and the procurement standards of 2 C.F.R. 200.317 through 327.

I. GENERAL STATEMENT OF POLICY

A. PURPOSE

KCKHA is committed to the acquisition of goods and services in an efficient cost effective and consistent manner. The procurement process will be open, fair and competitive, provide safeguards for maintaining a procurement system of quality and integrity; and assure that our 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 TO PROCUREMENT INFORMATION

Procurement information shall be a matter of public record to the extent provided in Kansas Open Records Act, K.S.A. 45-215 and shall be available to the public as provided in that statute.

II. PROCUREMENT AUTHORITY AND ADMINISTRATION

All procurement transactions 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 operational procedures to implement this Statement, which shall be based on HUD Handbook 7460.8 REV 2 and the procurement standards of 2 C.F.R. 200.317 through 327.

A. . The Executive Director shall also establish a system of sanctions 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 solicitation is issued; a minimum of 15 calendar days is provided for preparation and submission of bids or proposals; and notice of contract award is made at meetings of the Kansas City, Kansas Housing Authority Board of Commissioners, which are open-to the public.
4. Solicitation procedures are conducted in full compliance with Federal standards stated in 2 C.F.R. 200.317 through 327, or State and local laws that are more stringent, provided they are consistent with 2 C.F.R. 200.317 through 327.
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 on 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 offeror 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 ten days after contract award;
7. There are sufficient unencumbered funds available to cover the anticipate 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 the Executive Director 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, using one of the following procurement methods, based on the nature and anticipated dollar value of the total requirement.

B. SMALL PURCHASE PROCEDURES

1. General. Any contract not exceeding \$75,000 may be made in accordance with the small purchase procedures authorized in this section. Contract requirements shall not be artificially divided 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 \$100, 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 \$10,000 or Less. For small purchases below \$10,000.00, only one quotation need be solicited if the price received is considered reasonable. Such purchases must be distributed equitably among qualified sources. If practicable, a quotation shall be solicited from other than the previous source placing a repeat order to assure the price is reasonable.

4. Small Purchases Between \$10,000.00 and \$75,000.00. For small purchases in excess of \$10,000.00, but not exceeding \$75,000.00, 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. Documentation of offers received shall be kept in the purchase file. Award shall be made to the offeror providing the lowest acceptable quotation, unless justified in writing based on the price and other specified factors, such as for architect/engineer contracts. If non-price factors are used, they shall be disclosed to all those solicited. The names, addresses, and/or telephone numbers of the offerors and persons contacted, and the date and amount of each quotation shall be recorded and maintained as a public record.
5. Purchases Greater than \$75,000. Contracts greater than \$75,000.00 shall be awarded based on competitive sealed bidding process, if the following conditions are present: a complete, adequate, and realistic specifications or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; the procurement lends itself to a firm fixed price contract; and the selection of the successful bidder can be made principally on the basis of price. Contracts and purchases shall be awarded only after approval by the Board of Commissioners, at the next scheduled Board Meeting after the bid opening.

C. SEALED BIDS

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

The invitation for bids shall state the time and place for both 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 after Housing Authority Board of Commissioners review and decision. 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, drawing lots or similar random method shall be used to make the award, unless otherwise provided in State or local law and stated 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 or withdrawal of inadvertently erroneous bids may be permitted, where appropriate, before bid opening by written or fax 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 an alleging non-judgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a non-judgmental 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 addition to the other requirements of this Statement, the following requirements apply:

 - a. For construction contracts exceeding \$100,000, other than those specified 5b and 5c below, contractors shall be required to submit the following, unless otherwise required by State or local laws or regulations:
 1. a bid guarantee from each bidder equivalent to 5% of the bid price; and
 2. a performance bond for 100% of the contract price; and
 3. a payment bond for 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 unless otherwise required by State or local laws or regulations:
 1. a bid guarantee from each bidder equivalent to 5% of the bid price; and
 2. one of the following:
 - i a performance and payment bond for 100% of the contract price; or
 - ii a 20% cash escrow; or
 - iii a 25% irrevocable letter of credit
- c. In the case of construction under the Capital Fund Program (CFP) funded pursuant to the U.S. Housing Act of 1937, for any contract over \$15,000, the contractor shall be required to submit the following, unless otherwise required by State or local laws or regulations.
 1. a bid guarantee from each bidder equivalent to 5% of the bid price; and
 2. one of the following:
 - i a performance and payment bond for 100% of the contract price; or
 - ii separate performance and payment bonds, each for 50% or more of the contract price; or
 - iii a 20% cash escrow; or
 - iv a 25% irrevocable letter of credit.

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 sub factors, including the weight given to each technical factor and sub factor. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals. The proposals shall be evaluated only on the criteria stated in the 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 is to 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 the most advantageous to the PHA.
5. Architect/Engineer Services. Architect/engineer services in the excess of the small purchase limitation may be obtained by either the competitive proposals method or qualifications-based selection procedures, unless State law mandates the specific method. Sealed bidding, however, shall not be used to obtain architect/engineer services. Under qualifications-based selection procedures, competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to the negotiation of fair and reasonable compensation. Price is not used as 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. INTERGOVERNMENTAL AGREEMENTS FOR PROCUREMENT ACTIVITY AND PIGGYBACK PROCUREMENTS

A. Requirements. The PHA may enter into intergovernmental, interagency purchasing agreements, or piggyback agreements without competitive procurement provided the following conditions are met:

1. The agreement provides for greater economy and efficiency and results in cost savings to the PHA.
2. The agreement is used for common supplies and services that are of a routine nature only.
3. The PHA must take steps to ensure that any supplies or services obtained using another agency's contract are purchased in compliance with 2 C.F.R. 200.317 through 327.

4. The PHA procurement files should contain a copy of the Intergovernmental Agreement and documentation showing that cost and availability were evaluated before the agreement was executed, and these factors are reviewed and compared at least annually with those contained in the agreement.
5. The agreement must be between the PHA and a state or local governmental agency, which may be another PHA; and
6. The PHA will review any standard agreements to make sure that all applicable procurement regulations are met and that the PHA's interests are protected.

F. NONCOMPETITIVE PROPOSALS

1. Conditions for use. Procurements shall be conducted competitively to the maximum extent possible. Procurement by noncompetitive proposals may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids, 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 the 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 proposal shall be determined by performing a cost analysis, as described in paragraph III F below.

G. COST AND PRICE ANALYSIS

1. General. A cost or 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 the 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, overhead, and profit.
 - 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 law or regulation sets the offered price.
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, overhead, 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.

H. CANCELLATION OF SOLICITATIONS

1. An invitation for bids, request for proposals, or other solicitation may be cancelled 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 cancelled and all bids or proposals that have 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 reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request to 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. Resolicit, after modifications to quantities and/or specifications, in an attempt to award within available budget
 - b. Re-solicit using a request for proposals; or complete the procurement by using the competitive proposals method, following paragraphs IIID3 "Negotiations" and IIID4 "Awards" above (when more than one otherwise acceptable bid has been received), or by using the noncompetitive proposals method and following paragraph IIIE2 "Justification" and IIIE3 "Price Analysis" 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.

I. COOPERATIVE PURCHASING

The PHA may enter into State and local intergovernmental agreements 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 Non-procurement 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 financial and technical resources. If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the contract file, and the prospective contractor shall be advised of the reasons for the determination.

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. BIDDER'S LISTS

Interested businesses shall be given an opportunity to be included on qualified bidders' lists. Any lists of persons, firms, or products, which are used in the procurement of supplies and services, shall be kept current and shall include enough sources to ensure competition.

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 cost plus a 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 needs 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 a unilateral right of the PHA; (iii) the options are evaluated as part of the initial competition; (iv) the contract states the period within which the options may be exercised; (v) the options may be exercised only at the price specified in or reasonably determinable from the contract; and (vi) 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:

And as provided below:

1. Small purchases, including purchase orders, are subject only to the mandatory clauses contained in Mandatory Contract Clauses for Small Purchases Other Than Construction.
2. Mandatory Requirements for Construction Contract greater than \$2000 but not more than \$100,000 are subject to the clauses in form HUD-5370EZ, General Conditions for Small Construction/Development Contracts, and the applicable Davis-Bacon wage decision, or form HUD 5370 if this form is more appropriate given the nature of the work.
3. Mandatory Requirements for Maintenance Contracts (including nonroutine maintenance work) greater than \$2,000 but not more than \$100,000 are subject to the Mandatory Contract Clauses for Small Purchases Other Than Construction; Section II of form HUD-5370-C, General Conditions for Non-Construction Contracts and the applicable Davis-Bacon wage decision.

4. Mandatory Requirements for Construction/Development Contracts greater than \$100,000 are subject to the clauses in form HUD-5370, General Conditions of the Contract for Construction, and the applicable Davis-Bacon wage decision.
5. Mandatory Requirements for Non-Construction Contracts (without maintenance work) greater than \$100,000 are subject to clauses contained in Section 1 of form HUD-5370C, General Conditions for Non-Construction Contracts.
6. Mandatory Requirements for Maintenance Contracts (including non-routine maintenance work) greater than \$100,000 are subject to clauses contained in Sections I and II of form HUD-5370-C, General Conditions for Non-construction Contracts.

The operational procedures required by section II 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 contractors perform in accordance with their contracts shall be maintained.

The operational procedures required by Section II above shall contain guidelines for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on construction and non-construction contracts. Information regarding Contract Administration and Guidance is included in HUD Handbook 7460.8 REV 2, Chapter 11.

IV. SPECIFICATIONS

A. GENERAL

All specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage full and open competition in satisfying the PHA's needs. Specifications shall be reviewed prior to solicitation to ensure that they are not restrictive or represent unnecessary or duplicative items, and do not restrict competition. Three general types of specifications are used in preparing contracts for equipment, supplies, or construction – functional or performance specifications, design specifications, and brand name or equal specifications. Specifications may contain a combination of design and performance requirements and may, include brand name or equal descriptions of components.

B. LIMITATIONS

The following specification limitations shall be avoided: geographical 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 consultant 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 discussions between the parties by individuals who did not participate substantially in the matter in dispute, to help resolve the differences. HUD will only review protests in cases of violations of Federal law or regulations and failure of the PHA to review a complaint or protest.

B. BID PROTESTS

Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Statement. Any protest against a solicitation must be received before the due date for receipt of bids and proposals, and any protest against the award of a contract must be received within ten calendar days after contract award (i.e. acceptance of bid or proposal and approval by Kansas City, Kansas Housing Authority Board of Commissioners), or the protest will not be considered. All bid protests shall be in writing and clearly state the basis of the protest. The protest shall be submitted to the Contracting Officer or designee, who shall issue a written decision on the matter within 30 calendar days of receipt of the protest. The Contracting Officer may, at his or her discretion, suspend the procurement pending resolution of the protest, if warranted by the facts presented.

C. BID APPEALS TO CHAIRMAN

Following receipt of the Contracting Officer's written decision on a protest, the contractor may appeal the decision to the Chairman of the Board of Commissioners. The Contractor must submit the appeal in writing no later than 30 (unless otherwise indicated) ~~days~~ following the date of the Contracting Officer's decision. The Chairman of the Board of Commissioners ("Chairman") shall not entertain an appeal unless it follows the Contracting Officer's written decision. The written request for appeal must contain a statement that the contractor has received a formal decision from the Contracting Officer and that the contractor, in good faith, believes the decision is unwarranted or unfair, the rationale for the disagreement, and the desired outcome. The written appeal must also include a copy of the Contracting Officer's decision.

The Chairman shall acknowledge in writing the receipt of the appeal. The acknowledgement shall include notice of a conference that will allow the contractor to present his/her position and the Contracting Officer to state the rationale for his or her decision. The Chairman's acknowledgement may also state that the appeal will not be heard and the reason for the denial. In addition, the Chairman shall notify the Commissioners of the appeal which shall include a description of the Contracting Officer's decision and the reason(s) for the appeal, or the intent to deny the appeal and the reason(s) for the denial. When an appeal will be heard, and at the Chairman's discretion, the Chairman may select up to three (3) Commissioners to sit with the Chairman as an Appeal Committee, with the Chairman as committee chair, in hearing the appeal.

When there is a conference for an appeal, the Chairman shall transmit the decision in writing within 10 (unless otherwise indicated) days following the conference. The decision shall be clearly stated, the reason for the decision, and also include a statement that the decision is the final step in the HA's administrative review process-

D. CONTRACT CLAIMS

The procedures for handling claims shall be as follows:

1. Claim as used in this statement, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under the contract, unlike a claim relating to the contract is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by complying with the requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

2. Except for disputes arising under the clauses entitled Labor Standards – Davis Bacon and Related Acts, herein, all disputes arising under or relating to this contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.
3. All claims by the contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Housing Authority against the Contractor shall be subject to a written decision by the Contracting Officer.
4. The Contracting Officer shall, within 60 (unless otherwise indicated) days after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made.
5. The Contracting Officer's decision shall be final unless the Contractor (1) appeals in writing to the Chairman of the Board of Commissioners of the Housing Authority in accordance with the Housing Authority's policy and procedures. The Chairman of the Board of Commissioners decision shall be final unless the Contractor (2) refers the appeal to an independent mediator or arbitrator, or (3) files suit in a court of competent jurisdiction. Such appeal must be made within 30 (unless otherwise indicated) days after receipt of the Contracting Officer's decision.
6. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

VIII. ASSISTANCE TO SMALL AND OTHER BUSINESSES
EMPLOYMENT, TRAINING, AND CONTRACTING OPPORTUNITIES
WITH RESIDENTS, RESIDENTS-OWNED, SMALL, MINORITY, AND
OTHER DISADVANTAGED BUSINESSES.

HUD and the Kansas City Kansas Housing Authority strongly support a policy of providing training and employment opportunities to residents and contracting with residents and resident-owned businesses, including Resident Management Corporations (RMC) and Certified Section 3 Businesses, whenever possible. In addition, the Housing Authority is encouraged to establish goals for contract awards to small and minority owned businesses and minority business enterprises (MBEs), women's business enterprises (WBEs), business in labor surplus areas, and Certified Section 3 Businesses..

The Housing Authority will accomplish this by:

A. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 (24 CFR 75).

1. The purpose of Section 3 is to ensure that, to the greatest extent feasible, employment, training and business opportunities created by HUD financial assistance be directed to low and very-low income persons.
2. The Housing Authority will to the greatest extent possible employ and train Section 3 residents, and contract with Section 3 businesses whenever possible.
3. The Kansas City Kansas Housing Authority has adopted a preference for Section 3 certified business in its sealed bidding of construction contracts. To be eligible for the preference business concerns must meet the following requirements.

B. ELIGIBILITY REQUIREMENTS FOR SECTION 3 "X-FACTOR PREFERENCE

1. To receive preference under Section 3, all business concern must present Section 3 certification or documentation verifying such status in their sealed bid packet. KCKHA will honor documented certification provided by any metropolitan area municipality or contracting association.
2. The Section 3 Business Concerns bid, includes all required information and document submissions required to determine it a responsible and responsive bid.
3. The X-Factor applies to procurement by sealed bids. Award can be made to certified Section 3 business concerns, IF their bid is:
 - a. Within the project budget AND
 - b. Not more than "X" percent higher than the total bid price of the lowest responsive bid from any responsible bidder.

X-Factor Schedule

X-lesser of:

When the lowest responsive bid is:

<\$100K	10% of that bid
>\$100K, but <\$200K	9% of that bid or \$16K
>\$200K, but <\$300K	8% of that bid or \$21K
>\$300K, but <\$400K	7% of that bid or \$24K
>\$400K, but <\$500K	6% of that bid or \$25K
>\$500K, but <\$1M	5% of that bid or \$40K
>\$1M, but <\$2M	4% of that bid or \$60K

>\$2M, but <\$4M	3% of that bid or \$80K
>\$4M, but <\$7M	2% of that bid or \$105K
>\$7M, or more	1 ½% of the lowest bid

C. ATTEMPT TO CONTRACT WITH RESIDENT-OWNED BUSINESSES WHENEVER POSSIBLE.

D. CONTRACTING WITH RESIDENT MANAGEMENT CORPORATION (RMC) WHENEVER POSSIBLE.

E. ASSISTANCE TO SMALL AND OTHER DISADVANTAGED BUSINESSES

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 part by persons residing in the area of a PHA project are used when possible. Such efforts shall include, but shall not be limited to:

1. Including such firms, when qualified, on solicitation mailing lists.
2. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources.
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms.
4. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms.
5. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
6. 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 24 CFR 75;
7. Requiring prime contractors, when subcontracting is anticipated to take the positive steps listed in A1a through A1f above.
8. Goals may be established by the PHA periodically for participation by small businesses, minority-owned businesses, women’s business enterprises, labor surplus area businesses, certified Section 3 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.

9. Whenever feasible, KCKHA should bid projects for small repetitive and routine maintenance and service projects with small businesses, minority-owned businesses, women's business enterprises, labor surplus area businesses, and certified Section 3 businesses, in an effort to meet goals and promote these business concerns

F. DEFINITIONS

1. A Section 3 Resident is:
A Public Housing Resident OR a low-income or very low-income resident of the metropolitan area or non-metropolitan county in which the Section 3 covered assistance is expended.
2. A Section 3 Business Concern is:
 - a. a business that is 51% or more owned by Section 3 residents:
OR
 - b. a business that has 30% or more of its permanent, full-time employees are Section 3 residents: OR
 - c. A business that employs 25% or more of the contract amount to subcontractors that are certified Section 3 businesses (as defined above.)
3. A Small Business is defined as a business, which is: independently owned; not dominant in its field of operation; and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in 13 CFR 121 shall be used unless the PHA determines that their use is inappropriate.
4. A Minority-Owned Business is defined as a business which is at least 51% owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans and Asian Indian Americans, and Hasidic Jewish Americans.
5. A Women's Business Enterprise is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who also control or operate the business.
6. A Labor Surplus Area Business is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the U.S. Department of Labor in 20 CFR 654, Subpart A, and in

lists of labor surplus areas published by the Employment and Training Administration.

7. A Business Concern Located in the Area of the Project, is defined as an individual or firm located within the relevant Section covered project area, as determined pursuant to 24 CFR 75, 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 of the project is defined as a business concern which is 51% or more owned by persons residing, owned by persons 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. CONFLICT OF INTEREST

The description and explanation of conflict of interest for this policy shall be the same as Section 19 of the Terms and Conditions of the Consolidated Annual Contributions Contract Form HUD-53012A.

B. GRATUITIES, KICKBACKS, AND USE OF CONFIDENTIAL INFORMATION

1. PHA officers, employees or agents shall not:
 - a. Solicit gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts; nor
 - b. Accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts, with the exception of unsolicited items of nominal value; nor
 - c. knowingly uses confidential information for actual or anticipated personal gain.

2. PROHIBITION AGAINST CONTINGENT FEES

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

C. SANCTIONS

Violation of any provision of this Ethics in Public Contracting policy should raise conscientious questions for the employee, officer or agent concerned as to whether voluntary resignation or other action

is indicated to promote the best interest of the Housing Authority. Violation may constitute a cause for suspension, removal from office or employment, or other disciplinary action, as provided in the Personnel Policy. Violations of this policy and all allegations of such violations shall be an administrative matter. All allegations of such violations shall be made to the immediate supervisor of such officer or employee unless there is reasonable cause to believe that such supervisor is unresponsive to such allegation. Should this be the case, the allegation shall be made to the next higher person in the Housing Authority structure's chain of command who is reasonably expected to be responsive.