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2-D JUNE 9, 2010

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EXECUTIVE OFFICER

June 09, 2010

The Honorable Board of Commissioners
Community Development Commission of the
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Commissioners:

APPROVE THE PROCUREMENT AND CONTRACTING POLICIES AND PROCEDURES MANUAL FOR THE COMMUNITY DEVELOPMENT COMMISSION AND HOUSING AUTHORITY OF THE COUNTY OF LOS ANGELES
(ALL DISTRICTS) (3 VOTES)

SUBJECT

This letter recommends approval of the updated Procurement and Contracting Policies and Procedures Manual for the Community Development Commission and Housing Authority. This letter relates to another item on the agenda for the Board of Commissioners of the Housing Authority.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve the Procurement and Contracting Policies and Procedures Manual for the Community Development Commission and Housing Authority.

2. Find that approval of the Procurement and Contracting Policies and Procedures Manual is not subject to the provisions of the California Environmental Quality Act (CEQA) because the action will not have the potential for causing a significant effect on the environment.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The Community Development Commission (Commission) and the Housing Authority share the same administration and use the same Procurement and Contracting Policies and Procedures Manual (Manual). The policies and procedures contained in the Manual must comply with 24 Code of Federal Regulations (CFR) 85.36, referred to as the “Common Rule”, because the majority of Commission and Housing Authority activities are funded by the U.S. Department of Housing and

Urban Development (HUD). The Manual also incorporates County procurement and contracting policies to the greatest extent possible, except when in conflict with HUD policy.

An update of the Manual is necessary due to new guidelines issued by HUD. The attached updated Manual incorporates the new provisions contained in HUD Handbook 7460.8 REV 2, Procurement Handbook for Public Housing Agencies. The updated Manual was submitted to HUD and County Counsel for review on April 1, 2010. On April 29, 2010, the Commission and Housing Authority received written confirmation from HUD that the portions of the Manual that are applicable to federal regulations are in compliance with 24 CFR 85.36.

FISCAL IMPACT/FINANCING

This action will have no impact on the County general fund.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

As HUD grantees, the Commission and Housing Authority must comply with procurement and contracting regulations and guidelines as set forth in 24 CFR 85.36 and HUD Handbook 7460.8 REV 2. The attached Manual is in compliance with federal requirements.

The attached updated Manual has been approved as to form by County Counsel. The Manual will be effective July 1, 2010, pending Board approval.

ENVIRONMENTAL DOCUMENTATION

This action is not subject to the provisions of CEQA pursuant to State CEQA Guidelines 15060(c)(3) and 15378 because it is not defined as a project under CEQA and does not have the potential for causing a significant effect on the environment.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The Procurement and Contracting Policies and Procedures Manual provides staff with a concise and practical tool for conducting procurement and contracting activities in compliance with federal and County policies.

Respectfully submitted,

SEAN ROGAN
Executive Director

SR:bj

Enclosures

COMMUNITY DEVELOPMENT COMMISSION OF THE COUNTY OF LOS ANGELES

PROCUREMENT & CONTRACTING

POLICIES AND PROCEDURES MANUAL

BY
ADMINISTRATIVE SERVICES DIVISION
CENTRAL SERVICES UNIT

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1.0 INTRODUCTION

1.1 PURPOSE OF MANUAL

Procurement within the Community Development Commission/Housing Authority (collectively the Commission) is a **process** that is required when using public funds to acquire supplies, materials, equipment, construction and professional services. The Procurement and Contracting Policies and Procedures Manual (Manual) is designed to explain and provide guidance for meeting all the procurement process requirements set forth in the Code of Federal Regulations (24 CFR 85.36), as well as policies for the Community Development Commission, the Housing Authority and County of Los Angeles. The policies and procedures contained herein are consistent with the regulations and directives set by the Department of Housing and Urban Development (HUD), the Board of Commissioners for the Commission and Housing Authority, and the Commission.

With exceptions noted within this Manual, these policies shall apply to all expenditure of funds by the Commission, including contracts that do not involve an obligation of funds (concession contracts). However, nothing in these policies and procedures shall prevent the Commission from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with law. Furthermore, the Executive Director may authorize the use of alternative methods or processes of procurement not addressed in this Manual when using non-HUD funds, including but not limited to federal, county or state-funded projects.

1.2 AMENDMENTS TO MANUAL

The Procurement Officer has sole responsibility for maintaining the current status and accuracy of the Manual. The Manual shall be revised as deemed necessary to incorporate policy and procedural changes. All major changes reflecting legal or regulatory policies must be submitted to HUD for review, and the Housing Commission and the Board of Commissioners for approval. Incremental changes to policy or procedures in the Manual will be communicated to Commission staff via a Central Services Bulletin, and a record of all significant updates (including the section of the Manual being changed and the effective date) will be incorporated into the Manual.

AMENDMENTS TO MANUAL

Date	Section Amended	Comments
9/30/05	All Sections	Complete revision of the Purchasing Policies and Procedures Manual dated on September 19, 1998.
11/16/05	5.3 Insurance/Bonding	New procedure for insurance requirements
7/1/10	All Sections	Complete update of manual

2.0 ORGANIZATION

2.1 PROCUREMENT DUTIES

Executive Director: The Executive Director is the chief administrative contracting officer of the Commission and is responsible for overseeing all procurement functions, including the duties and responsibilities of the Procurement Officer. Only the Executive Director, or his designee, can sign Commission contracts.

Procurement Officer: The Procurement Officer is the Manager of the Central Services Unit and supervises the Procurement Department. The Procurement Officer's duties include:

- Ensuring that all Commission staff have adequate knowledge of the procurement process requirements;
- Serving as Hearing Officer for appeals of protest determinations;
- Ensuring a cooperative working relationship with the Financial Management Division and the Information Technology Unit concerning issues related to procurement, accounting, budgeting, auditing, and PeopleSoft systems;
- Ensuring full and open competition;
- Maintaining the Business Contracting Opportunities (BCO) Program that promotes opportunities for and increases participation of minority and women-owned businesses in the procurement process; and
- Authorizing exceptions to standard procurement procedures, if necessary, when deemed to be in the best interests of the Commission.

Procurement Supervisor: The Procurement Supervisor reports to the Procurement Officer and supervises the procurement staff. Specific duties include:

- Receiving and determining responses to protests of contract awards;
- Reviewing non-competitive procurement memos;
- Approving the procurement process for prospective Board Letter contracts;
- Serving as an information resource to division staff on procurement process requirements.

Procurement Department: Under the supervision of the Procurement Officer, the Procurement Department duties include:

- Reviewing all purchase order requisitions and contracts submitted by the divisions ensuring that--
  - o requisitions and contracts have complete information and documentation in compliance with procurement process requirements;
  - o requisitions and contracts have appropriate signature authority;
  - o the appropriate method of procurement is utilized;
  - o the appropriate contract type (C.O., B.O., or P.O.) is utilized;
- Ensuring, when applicable, that Cooperative Agreements are utilized;
- Maintaining the Commission's Vendor List;

- Conducting solicitations for agency-wide contracts.

Division Management: The management staff must ensure that procurement activities conducted in their divisions meet all the procurement process requirements.

Division Budget Analyst: The Budget Analyst must verify that funds are available for all purchase orders and that the expenditures are assigned to the appropriate account and project numbers.

Procurement Coordinator: Each division/unit assigns persons to conduct procurement (Procurement Coordinator). The Procurement Coordinators must accurately adhere to procurement process requirements outlined in the Procurement Policy and Procedure Manual. The Procurement Coordinator duties include:

- Development of the solicitation package; working with experts on specifications in the Statement of Work (SOW);
- Posting solicitation package and addendums on County WebVen and Commission website;
- Serving as the single point of contact for vendors responding to solicitations;
- Facilitating pre-bid/proposal meetings or job walks;
- Conducting bid openings (IFBs);
- Coordinating proposal evaluation activities (RFPs);
- Assisting with writing of Board Letters;
- Processing all Notices to selected and non-selected bidders/proposers and the Executive Director; and
- Completing all documentation, including final evaluation reports, contract signatures, and purchase order requisitions.

2.2 DELEGATION OF SIGNATURE AUTHORITY

The Executive Director establishes guidelines for delegation of signature approvals for purchase order requisitions and contracts as follows:

- The Board of Commissioners must authorize purchase orders and contracts for more than $100,000 within a contract year. Multi-year service contracts with up to $100,000 in each contract year may not require Board approval.
- The Executive Director may approve purchase order requisitions and contracts up to $100,000.
- The Assistant Executive Director may approve purchase order requisitions up to $30,000.
- The Procurement Officer may approve purchase order requisitions up to $15,000.
- Division Directors may approve purchase order requisitions up to $10,000.
- Managers may approve purchase order requisitions up to $2,500.
- Individuals designated by the Executive Director or the Assistant Executive Director may approve purchase order requisitions up to $5,000.

2.3 CODE OF CONDUCT

The Commission expects all employees involved in the procurement process to follow high standards of conduct. Employees are expected to discharge their duties impartially so as to assure fair, competitive access to procurement opportunities by responsible contractors and to foster public confidence in the integrity of the Commission's procurement practices. The code of conduct requires adherence to the following ethical standards:

2.3.1 Gifts

Commission employees shall not solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts, except for meals and items of nominal value that do not obligate the recipient or present a conflict of interest.

2.3.2 Participation Conflict of Interest

No Commission employee shall participate directly or indirectly in the drafting of a solicitation, selecting a recommended vendor for award, or administering any contract if a conflict, real or apparent, would be involved. Such conflict would arise when a financial or other interest in a firm selected for award is held by:

- An employee participating in any stage of the procurement process;
- Any member of his/her immediate family;
- His/her business partner; or
- An organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

2.3.3 Improper Consideration

It is improper for any Commission employee to solicit consideration, in any form, from a bidder/proposer with the implication, suggestion or statement that the bidder/proposer's provision of the consideration may secure more favorable treatment for the bidder/proposer in the award of the contract or that the bidder/proposer's failure to provide such consideration may negatively affect the Commission consideration of the bidder/proposer's submission.

A proposer shall not offer or give, either directly or through an intermediary, consideration, in any form, to a Commission employee for the purpose of securing favorable treatment with respect to the award of a contract.

A proposer shall immediately report any attempt by an employee to solicit such improper consideration. Failure to report such a solicitation may result in the proposer's submission being eliminated from consideration.

2.3.4 Disclosure of Confidential Information

Disclosure of any bids before bid opening or information contained in proposals before award to any person not authorized by the Procurement Officer to receive such information is a breach of ethical standards. Commission employees may not disclose confidential information knowingly for actual or anticipated gain, or for the actual or anticipated gain of any other person.

2.3.5 Employees Selling Goods or Services to the Commission

No present or former Commission officer or employee shall engage in selling or attempting to sell supplies, services, or construction to the Commission for one year following the date such employment ceased. The term "sell" means signing a bid or proposal, negotiating a contract, contacting any Commission employee for the purpose of discussing the terms of a contract, or any other liaison activity with a view toward the ultimate consummation of a sale, although the actual contract is negotiated by another person.

2.3.6 Violation of the Code of Conduct

Commission officers and employees may be subject to disciplinary action, up to and including termination of employment, for failure to comply with the Code of Conduct.

3.0 PREPARATION FOR PROCUREMENT

3.1 BACKGROUND

The procurement process must be approached with a reasonable understanding of what is needed, what is available, and what it might cost. Procurement of some goods and services may be repetitive or uncomplicated and thus already involve a high level of familiarity. However, procurement of goods and services that are either uncommon or complex demands preparation to ensure that adequate funds are available and the appropriate method of procurement is used.

3.2 INDEPENDENT COST ESTIMATE (ICE)

An Independent Cost Estimate (ICE) is an in-house method of analyzing needs and costs and anticipating all factors that can impact the procurement process. The purpose of an ICE is to:

- Gather information when there is no history of procuring for specific goods or services;
- Update information when the knowledge base with procuring for specific goods or services is not current;
- Determine in advance if competitive procurement is not feasible;
- Document the research that will determine the rationale for: 1) establishing a budget, and, 2) choosing a method of procurement or justifying non-competitive procurement.

An ICE can be simple or detailed. A simple ICE involves examining recent comparable contracts for goods or services and factoring in inflation or changes in market conditions. A detailed ICE may involve:

- For Commercial Items - published catalogs or price lists from local or national vendors
- For Construction or Other Services –
  - Anticipated labor costs; Davis-Bacon and/or state prevailing wage rates
  - Commercial construction cost estimate publications
  - Sub-contracted items
  - Material expenses
  - Insurance estimates
  - Overhead and Profit
  - Pricing history from prior contracts
  - Living Wage Program considerations

The ICE is considered confidential information and may not be disclosed to prospective contractors.

3.3 REQUEST FOR INFORMATION (RFI)

A Request for Information (RFI) is a tool that can be used to solicit information for the ICE. An RFI notice can be emailed to contractors on the Commission's Vendor List or posted on the Commission website and County WebVen (see 5.2 Advertising). The RFI should explain that the Commission is seeking information about a product or service, not soliciting bids or proposals. The RFI can request written information or demonstrations from vendors.

3.4 ICE PROCEDURE

It is recommended that all procurement for goods and services (except for emergencies) should have a written ICE.

Steps for developing an ICE:

- Identify the Commodity or Service Requirements.
  - Write a detailed description and quantity of the commodity
  - Prepare a Statement of Work (SOW) – a written description of the service to be performed, including standards and specifications
- Conduct a RFI Market Survey to expand the understanding of available goods and services, if necessary.
- Establish a budget and identify the funding source.
- Verify insurance requirements with Risk Management. If Risk Management approves coverage that is lower than standard requirements, it must be documented in the procurement file.
- Determine the appropriate Method of Procurement.

4.0 METHODS OF PROCUREMENT

4.1 BACKGROUND

There are various factors that determine an appropriate method of procurement, including the cost, the nature of the commodity or service, and the potential for competition among vendors. The criteria for determining a method of procurement most often coincides with the amount of money being spent, but also may be influenced by the nature or complexity of the commodity or service.

The various methods of procurement include:

- Small purchase: Micro purchase and Request for Quotes (RFQ)
- Sealed bids / Invitation for Bids (IFB)
- Competitive proposals / Request for Proposals (RFP) or Request for Statement of Qualifications (RFSQ)
- Non-competitive procurement

4.2 SMALL PURCHASES: MICRO PURCHASE AND REQUEST FOR QUOTES (RFQ)

Small purchase procedures are a simplified, informal method for acquiring supplies, materials, and services and are used for the vast majority of Commission purchases.

4.2.1 Micro Purchases

Single purchases of $1,500 or less do not require solicitation of competitive quotes, provided that:

- The price is reasonable, based on recent research, experience or past purchases, and,
- Whenever practical, purchases are distributed equitably among qualified vendors.

The Micro Purchase method cannot be used to sub-divide larger purchases in order to circumvent the requirements of the Request for Quotes (RFQ) method. The Micro purchase method is not acceptable for recurring purchases of goods or services from the same vendor during a 30-day period.

4.2.2 Request for Quotes (RFQ)

The RFQ method may be used when spending between $1,501 and $100,000. The specific procurement requirements depend on the amount of money being spent and/or the nature of the goods or services.

For purchases less than $10,000***:**

- A minimum of five (5) vendors must be solicited, and at least two (2) of the five must be minority or women-owned businesses;
- The quotes must be received in writing on the vendor's letterhead, or in an email, provided that the email address contains the name of the vendor's company;
- If all of the above requirements have been met, a response of a single quote is acceptable.
- An RFQ Notice, a Statement of Work (SOW) and a RFQ solicitation package are not required for purchases under $10,000, but may be advisable when soliciting for a services contract. (see 6.0 Contracts and Purchase Orders for details);
- For purchases of non-construction related services under $10,000, use of a purchase order (P.O.) or a blanket order (B.O.) is acceptable.
- Risk Management must review all solicitations for purchases of services provided on Commission property, or commodities delivered to Commission properties,

****If a procurement estimate is close to $10,000, it is recommended that the procedures for $10,000 or more be followed to avoid having the procurement invalidated. If, due to unforeseen circumstances, the purchase ultimately will exceed $10,000, and the advertising requirements for purchases of $10,000 or more have not been met, written approval from the Executive Director must be obtained before a purchase order can be issued.*

For purchases of $10,000 to $100,000:

- The RFQ must be posted on the Commission website and the County WebVen (see 5.2 Advertising for details) at least five (5) calendar days before the deadline for submission of quotes. The complete RFQ solicitation package must be uploaded to the Commission website only.
- The vendor's quotes, including all required forms and documentation, must be received in writing with a cover letter on the vendor's letterhead. Alternately, the cover letter on the vendor's letterhead and all the required forms and documentation may be attached to an email, provided that the email address contains the name of the vendor's company.
- If all of the above requirements have been met, a response of a single quote is acceptable.

- Purchase of services, or commodities that involve service (e.g. installation, maintenance, delivery or warranty), between $10,000-$100,000, must result in the execution of a contract unless specifically exempted in writing by the Procurement Officer and County Counsel.
- Purchases of commodities only (no service involved) can be completed with a purchase order,
- The Insurance Requirements form must be submitted to Risk Management for all solicitations over $10,000.

The RFQ method cannot be used to sub-divide elements of a larger procurement in order to circumvent the requirements of an IFB or RFP solicitation process. Quotes received are not sealed or opened publicly. The lowest, most responsive and responsible bidder will receive the purchase order or contract award. If Section 3 applies to the RFQ, then Section 3 preferences must be applied to determine the lowest bidder.

Procurement for services rendered on Commission/Housing Authority property, or for commodities delivered by the vendor to Commission/Housing Authority property may require certain insurance coverage by the vendor. Risk Management must determine and document the kind and amount of insurance required for small purchase procurements (See 5.3 Insurance/Bonding for details).

4.2.3 RFQ Procedure

4.2.3.1 Using information from the ICE (see 3.0 Preparation for Procurement), determine whether the procurement will be under or over $10,000, and whether Section 3 or the Living Wage Program (LWP) is applicable.

4.2.3.2 Develop a Statement of Work (SOW). For purchases under $10,000, describe what is needed in sufficient detail. For purchases of $10,000 or more, use the Model SOW (see Model SOW in Appendix D).

4.2.3.3 If applicable, submit an Insurance Requirements form (see Appendix C) to Risk Management.

4.2.3.4 If the procurement is for less than $10,000:

- Develop a description of the goods or services needed. If the goods or services needed are complex, use the Model SOW.
- Develop an RFQ Letter (see Model RFQ Letter in Appendix D).
- Develop a Quote Sheet.

- Identify five (5) prospective bidders from the Commission's Vendor List and send them the RFQ Letter and attachments in accordance with the procurement outreach requirements (See 5.1.3 Outreach Procedure).

4.2.3.5 If the procurement is between $10,000 and $100,000:

- Develop the RFQ Notice (see Model RFQ Notice in Appendix D) and the RFQ solicitation package (see Model RFQ Solicitation Package in Appendix D). A Pre-Quote Meeting or Job Walk is not mandatory unless LWP is applicable.
- Post the RFQ Notice and the solicitation package on the Commission website (see 5.2 Advertising).
- Post the RFQ Notice on the County WebVen and include the direction to vendors to access the solicitation package from the Commission website.
- The RFQ must be posted on both websites for a minimum of 5 calendar days.
- If any changes must be made to the solicitation (deadlines, errors/omissions, questions received from vendors and the answers, which are not already addressed in the RFQ solicitation, etc.), an addendum must be issued and posted on the Commission website and the County WebVen (see Model RFQ Addendum in Appendix D).

4.2.3.6 After the submission deadline, determine the lowest quote. For Section 3 contracts, determine the lowest quote by completing the Section 3 Bid Evaluation form (See Appendix C).

4.2.3.7 For quotes over $10,000, verify that the contractor with the lowest quote is responsive:

- Minimum Requirements (pass/fail) are met;
- All required forms and documents are included.

4.2.3.8 Verify that the contractor with the lowest quote is responsible using the criteria set forth in Section 5.14 (Determination of Responsibility and Non-Responsibility).

- Verify that the contractor with the lowest quote is not on the County debarment list and not on the Federal List of Parties Excluded from Procurement and Non-procurement Programs (see 5.5 Debarment). Print out the verification from Excluded Parties List System website (www.epls.gov).
- Verify that the contractor with the lowest quote is not on HUD's Limited Denial of Participation list. Print out the

verification from the HUD website (www5.hud.gov/ecpcis/main/ECPCIS_List.jsp).

- For LWP contracts, the LWP Coordinator determines whether the contractor with the lowest quote is considered responsible under the LWP criteria (See LWP Manual in Appendix G).
- Contact the references for the contractor with the lowest quote. If a majority of the references result in unfavorable responses, the contractor with the lowest quote may be disqualified at the discretion of the division management.

4.2.3.9 Determine if any protests were submitted and whether the award of contract should be delayed until resolution.

4.2.3.10 If the procurement involves a Commission contract (see section 6.1 Contracts and Purchase Orders), prepare the contract and secure County Counsel signature approval before submitting it to the contractor, Division Director, and Executive Director for signature.

4.2.3.11 Complete and submit the appropriate purchase requisition (see 6.4 Purchase Requisitions) with a copy of all applicable documentation attached, including the following:

- Contract (with all attachments and/or amendments), if applicable
- Insurance certificates/endorsements (for specified services/commodities)
- W-9 form/ Payee Registration Form/ Organization Information Form
- Non-competitive procurement memo (if applicable)
- For $10,000 or more:
  - EEO Certification form
  - Charitable Contributions Certification form
  - Jury Service Exemption/Certification form
  - Defaulted Property Tax Reduction Program form
  - Proof of WebVen and Commission website posting
  - Proof of responsibility (copies from www.epls.gov and www5.hud.gov/ecpcis/main/ECPCIS_List.jsp)

4.2.3.12 For purchase orders, the requestor must attach Terms and Conditions (see Purchase Order Terms and Conditions in Appendix A) to the purchase order and send both documents to the vendor via mail, email or fax. Staff may not authorize the rendering of services or the purchase of goods until the purchase order with terms and conditions has been issued to

the vendor. Proof of issuance should be maintained in the procurement file.

4.3 SEALED BIDS: INVITATION FOR BIDS (IFB)

The IFB procurement method is used to acquire supplies, equipment, construction and consultant services when price is the predominate factor for awarding a contract. The IFB method results in a firm-fixed-price contract (lump sum or unit price) being awarded to the bidder whose bid conforms to all the terms and conditions of the solicitation and is the lowest, most responsive and responsible bidder.

The IFB method must be used for procurements of more than $100,000, but may also be used for less than $100,000.

A characteristic unique to the IFB method is the soliciting and receiving of sealed bids, which are due and opened in a public forum at a place, date and time advertised in the solicitation. If an IFB produces only one bid, and that bid is determined to be responsive and responsible, a Non-Competitive Procurement Memo (for Inadequate Competition) (see Section 4.5 Non-Competitive Procurement) must be submitted and approved by the Executive Director and the Procurement Officer.

Before the deadline for submission of bids, a Pre-Bid Meeting or Job Walk may be held to ensure that bidders fully understand essential information or other requirements of the solicitation. If the contract involves the LWP requirements, a Pre-Bid Meeting must be held and attendance by bidders is mandatory. If the contract does not involve LWP requirements, the division has the discretion to conduct a Pre-Bid Meeting or Job Walk, however, the meeting cannot be mandatory.

4.3.1 IFB Procedure

4.3.1.1 Using information from the ICE (see 3.0 Preparation for Procurement), develop a comprehensive Statement of Work (SOW) (See Model SOW in Appendix B) for the commodity or service needed, and obtain budget approval.

4.3.1.2 Submit the Insurance Requirements form (see Appendix C) to Risk Management.

4.3.1.3 Determine if a Pre-Bid Meeting/Job Walk is necessary, and whether it will be mandatory (for LWP contracts only).

4.3.1.4 Establish a timeline for the development, implementation, and resolution of the IFB solicitation (See sample Procurement Timeline form in Appendix C). Take the following into consideration:

- Advertising timing requirements (see 5.2 Advertising);
- Pre-Bid Meeting date that allows 1) sufficient time for bidders to meet the schedule, and 2) adequate time for answering questions through an addendum that still allows enough time for the bidders to complete their bid by the submission deadline;
- Response time for LWP inquiries if applicable; and
- Protest procedures (See 5.4 Protest Policy and Procedures for details).

4.3.1.5 Develop the IFB Notice (see Model IFB Notice in Appendix D) that will be posted on the County WebVen and the Commission's website, and will serve as the introduction to the solicitation package. Secure a solicitation number from the Commission on-line solicitation system

4.3.1.6 Develop the complete IFB solicitation package (see Model IFB Solicitation Package in Appendix B). Ensure that:

- Minimum Requirements are clear, complete and appropriate for the solicitation;
- License requirements are clearly stated (copy of license submitted with bid);
- The SOW clearly and completely identifies the service or commodity;
- The Instruction to Bidders includes everything that will be needed to effectively evaluate the merits of the bid; and
- Copies of all required forms, notices and sample contract are included.

Print a maximum of six (6) copies of the complete solicitation package. Make a copy available for viewing by vendors, but do not distribute copies (except for construction solicitations).

4.3.1.7 Post the IFB Notice on the Commission website and the County WebVen. Convert the solicitation package to PDF format and upload the entire package on the Commission website. Complete solicitation packages must be posted for a minimum of 15 calendar days (see 5.2 Advertising).

4.3.1.8 If applicable, hold the Pre-Bid Meeting/Job Walk at the date and time stated in the IFB Notice. Minutes of the meeting must be taken and made available to all bidders upon request (see Model Pre-Bid/Proposal Meeting Minutes in Appendix C).

4.3.1.9 If any changes must be made to the solicitation (deadlines, errors/omissions, questions received from vendors and the answers, which are not already addressed in the IFB solicitation, etc.), an Addendum must be issued and posted on the Commission website and the County WebVen (see Model IFB Addendum in Appendix D).

4.3.1.10 Print a log of all vendors that download the package/addendums from the Commission website.

4.3.1.11 All bids must be received by the deadline stated in the solicitation and time/date stamped by the Coral office receptionists (when hand delivered) or the mailroom staff (when received by mail). Return all unopened bids that are received after the deadline.

4.3.1.12 Open each sealed bid and announce their contents on the date and time stated in the IFB notice, and with at least three (3) Commission employees present as witnesses. Minutes of the meeting must be taken and made available to bidders upon request. (See Bid Opening Minutes in Appendix C)

4.3.1.13 For LWP contracts, send a Labor Violations Information letter to the State Labor Commissioner requesting information regarding labor law / payroll violation findings for each bidder (See LWP Manual in Appendix G).

4.3.1.14 After the bid opening meeting, determine the lowest bidder. For Section 3 contracts, determine the lowest bid by completing the Section 3 Bid Preference Evaluation form (See Appendix C).

4.3.1.15 Verify that the lowest bidder is responsive:

- Minimum Requirements (pass/fail) are met;
- All required forms and documents are included.

4.3.1.16 Verify that the lowest bidder is responsible using the criteria set forth in Section 5.14 (Determination of Responsibility and Non-Responsibility).

- Verify that lowest bidder is not on the County debarment list or the Federal List of Parties Excluded from Procurement and Non-procurement Programs (see 5.5 Debarment). Print out the verification from Excluded Parties List System website (www.epls.gov).

- Verify that the lowest bidder is not on HUD's Limited Denial of Participation list. Print out the verification from the HUD website (www5.hud.gov/ecpcis/main/ECPCIS_List.jsp).
- For LWP contracts, the LWP Coordinator determines whether the lowest bidder is considered responsible under the LWP criteria (See LWP Manual in Appendix G).
- Contact the lowest bidder's references. If a majority of the references result in unfavorable responses, the lowest bidder may be disqualified at the discretion of the division management.

4.3.1.17 If applicable, send a Notice of Non-Responsiveness or Non-Responsibility letter (see Appendix F) to bidders and allow 7 calendar days for any bidder to request a Disqualification Review (for findings of non-responsiveness). A response to the Disqualification Review request must be resolved before proceeding with Notices to selected and non-selected bidders.

4.3.1.18 Send concurrent Notices to selected and non-selected bidders:

1) Notice of Contract Review with an attached sample Letter of Intent to the selected bidder, and
2) Notice of Non-Selection for Contract Award to non-selected bidders (See Appendix F).

4.3.1.19 After receiving the selected bidder's Letter of Intent, prepare a memo of Recommendation to Award a Contract (see Appendix E) for the Executive Director's approval, followed by a Notice of Recommendation for Contract Award (see Appendix F) to all bidders. Allow 10 calendar days for bidders to submit a Protest of Contract Award.

4.3.1.20 Determine the status of any protest or appeal (if applicable) with the Central Services Procurement Supervisor.

4.3.1.21 For contracts up to $100,000, secure signature approval from County Counsel, then submit the contract to the contractor, the Division Director and the Executive Director for signature.

4.3.1.22 For contracts over $100,000, prepare and submit the Board Letter (with the Contract) for approval. Following Board approval, secure signatures from County Counsel, the contractor, the Division Director and the Executive Director.

4.3.1.23 Ensure that all required insurance documentation (see 5.3 Insurance) and other required forms have been received from the contractor.

4.3.1.24 Immediately after the contract is signed, submit the appropriate requisition(s) to the Procurement Department with a copy of all documentation attached, including the:

- Contract (with all attachments and/or amendments, if applicable)
- Insurance certificates (see 5.3 Insurance)
- W-9 form/ Payee Registration Form/Organization Information Form
- Copy of license (construction only)
- Notice of Recommendation to Award a Contract memo
- Proof of WebVen and Commission website posting
- Board Letter (if over $100,000)
- Non-competitive procurement memo (if applicable)
- EEO Certification form
- Charitable Contributions Certification form
- Jury Service Exemption/Certification form
- Defaulted Property Tax Reduction Program form
- Proof of responsibility (copies from www.epls.gov and www5.hud.gov/ecpcis/main/ECPCIS_List.jsp)
- Proof of WebVen and Commission website posting

4.3.1.25 Complete the procurement documentation file (see Section 4.6).

4.4 COMPETITIVE PROPOSALS: REQUEST FOR PROPOSALS (RFP)/ REQUEST FOR STATEMENT OF QUALIFICATIONS (RFSQ)

The competitive proposal method is used when cost is not the only factor that should be considered in awarding a contract. The complexity or specialized nature of the service or commodity may dictate that other factors such as experience, references, technical skill, financial stability, or quality of work plan are just as important as the cost of the proposal, if not more so.

The competitive proposal method must be used for formal procurement of more than $100,000, but may also be used, if appropriate, for procurement less than $100,000. Because competitive proposals are publicly advertised, there is no minimum requirement for the quantity of proposals received.

Unlike sealed bids, competitive proposals are not opened publicly. The information contained in competitive proposals must not be shared with contractors or anyone other than Commission staff directly involved in

coordinating the procurement or evaluating the proposals until the Notice of Recommendation for Contract Award is released.

Before the deadline for submission of proposals, a Pre-Proposal Meeting or Job Walk may be held to ensure that proposers fully understand essential information or other requirements of the solicitation. If the contract involves the LWP requirements, a Pre-Proposal Meeting must be held and attendance by proposers is mandatory. If the contract does not involve LWP requirements, the division has the discretion to conduct a Pre-Proposal Meeting or Job Walk, however, the meeting cannot be mandatory.

4.4.1 RFP vs. RFSQ

The RFSQ method of procurement can be used only for Architectural or Engineering (A/E) services when using HUD funds. The RFSQ method may be used for other non-HUD funded services at the discretion of the Executive Director.

In an RFP solicitation, cost and all other factors identified are evaluated. In a RFSQ, cost is not submitted as part of the proposal and is not evaluated in the scoring of the proposals. After proposals are evaluated on the factors identified in the solicitation and ranked based on the evaluation scores, the Commission enters into negotiations with the highest-ranking proposer to arrive at an acceptable cost for the contract. If cost negotiations with the top ranked proposer fail, the Commission will enter into negotiations with the next highest ranked proposer until an agreement can be reached, or it is determined that the procurement should be cancelled.

Alternatively, the RFSQ method can be used to develop a short list of qualified A/E consultants for various categories of services (e.g. electrical, structural, landscape, etc.) over a specified period of time, but no longer than five (5) years. After the short list has been created, qualification-based evaluation criteria must be developed to determine which A/E consultant on the short list will be selected for a specific project.

The procedure for conducting a RFSQ procurement mirrors the RFP procedure in most ways. Process requirements that are different are noted in the applicable procedure step.

4.4.2 Proposal Evaluations

Before a formal evaluation of a proposal can be conducted, it must be determined that the proposal/proposer meets the Minimum Requirements (pass/fail) stated in the solicitation.

The evaluation must be based only on information requested in the solicitation and should be developed concurrently with the Statement of

Work (SOW). The evaluation must measure how the proposer will meet the specific functions or expectations listed in the SOW. The solicitation package must identify which measurement standards will be evaluated and how they will be weighted in the overall scoring of the evaluation. However, specific information about how each standard will be evaluated and scored may not be disclosed to anyone other than Commission staff directly involved in the specified procurement until the Notice of Recommendation for Contract Award is released.

4.4.2.1 **Measurement Standards**

A proposal is evaluated on specific measurement standards. All evaluations must include the following standards:

- Qualifications
  - Work Experience
  - Background (education or training)
  - Work History Performance (references, litigation/judgments, contract history)
- Work Plan / Strategy / Approach
- Cost (not applicable to RFSQ)
- Section 3 (if applicable)
- Living Wage Program (if applicable)

The following evaluation measurement standards are optional:

- Financial Status or Capability (if included, this would be a subset of the Qualifications measurement standard)
- Quality Control (the proposer's internal mechanisms for ensuring that services/products continually meet expectations)
- Work Samples (writings, demonstrations, drawings, or photos)

Each measurement standard is weighted or assigned a specific percentage (in increments of five) of the 1,000 points allotted for the entire evaluation. (Only if the proposal is complex may the overall points be increased to 10,000 to avoid component scores with fractions.) The weighting of each standard is discretionary within the following guidelines:

- The Qualifications subsets of Work Experience and Background must be combined into a single percent. References are assigned a separate percent.
  - If the LWP applies to the proposal, the proposer's references must account for a minimum of 10 percent of the overall evaluation points.

- The weight assigned to the Cost standard must be no less than 20% and no more than 60% of the overall points.
  - If the LWP applies to the proposal, the percentage for Cost must be equal to or greater than the largest of the other measurement standards.
- The weight assigned to Section 3 criteria, if applicable, must be at least 15%.

4.4.2.2 **Scoring**

Qualifications and Work Plan / Approach / Strategy

The elements evaluated for Qualifications or the Work Plan are determined to have met, exceeded, not have met or been weak in meeting expectations. The Evaluation Committee members must thoroughly review each proposal to determine how or if each expectation identified in the evaluation packet has been met. Committee members must not evaluate proposals based on personal knowledge of, or experience with, proposers.

The number of points assigned to each level of expectations met must be as follows:

Points Assigned			
Not Met	Weak	Met	Exceed
No points	50% of pts	90% of pts	100% of pts

References

Each reference gets an equal point share of the weighted percentage allotted to references. The Procurement Coordinator contacts each reference and submits written or verbal questions (an odd number, at least 5). The questions must prompt a "yes" or "no" answer. Each answer is determined to be "favorable" or "unfavorable." If a majority of the responses from a single reference are favorable, that reference scores 100% of the points available. If a majority of the responses are unfavorable, that reference scores zero points.

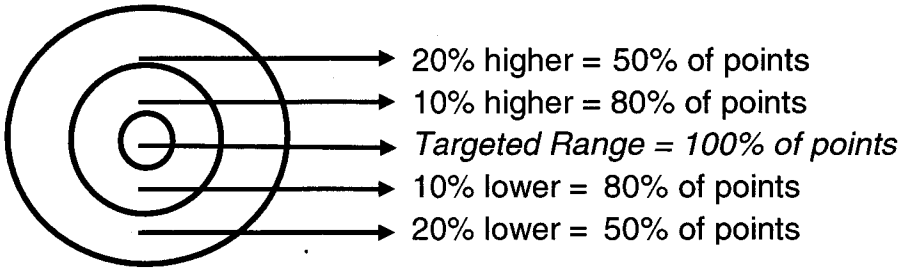
Cost

The formula for scoring the Cost proposal must be calculated using one of two methods: the Targeted Range method (recommended if information is available from past experience or other sources to develop an acceptable range of expected cost), or the Proportional method (used only when the Targeted Range method is not feasible).

Targeted Range Cost Scoring:

- Develop an average range that the services/products should cost;
- Assign 100% of the Cost points to the targeted range;
- Determine a cost range that is higher than the targeted range and another that is lower than the targeted range; assign a higher and lower specific percentage of points to costs in those ranges.

The following formula is provided as a sample only:



Total Points Available = 200

Targeted Range	*$12.00 - $13.00*	*100% of pts -200 pts*
Up to10% higher	$13.01 - $14.30	80% of pts - 160 pts
Up to10% lower	$10.80 - $11.99	80% of pts - 160 pts
Up to 20% higher	$14.31 - $15.60	50% of pts - 100 pts
Up to 20% lower	$ 9.60 - $10.79	50% of pts - 100 pts

Proportional Cost Scoring:

- The lowest cost proposal gets 100% of the available points;
- Other proposals get fewer points that are directly proportionate to the lowest cost proposal.

  Sample Only—
  Total points available = 200;
  The costs for each proposal are $90, $100, $125, and $150
  - *$90 proposal receives 100% of points available (200)*
  - $90 divided by $100 = 90% of points or 180 points
  - $90 divided by $125 = 72% of points or 144 points
  - $90 divided by $150 = 60% of points or 120 points

Section 3

If Section 3 applies to the proposal, at least 15% of the total evaluation points must be assigned to that measurement standard. The points are given based on two factors:

- 100% of the points are given if the proposer is already a Section 3 business. A Section 3 business is defined as any of the following:
  - 51% of the company is owned by Section 3 residents, or
  - 30% of the company's permanent employees are Section 3 residents, or
  - The company is currently committed to providing 25% of all contract dollars to Section 3 subcontractors.
- 50% of the points are given if the proposer demonstrates a commitment to Section 3 goals.

Scoring Living Wage Program (LWP)
If LWP applies to the proposal, at least 20% of the total evaluation points must be assigned to that measurement standard. The points are given based on an evaluation of the following:

- Financial Capability
- Proposer's Staffing Plan
- Demonstrated Controls over Labor/Payroll Record Keeping

After the LWP points are combined with points from all other measurement standards, the overall score of the proposal may be decreased by as much as 20% depending on the labor law/payroll violation findings. (For details, see the LWP Manual in Appendix G)

4.4.2.3 **Interviews**

An interview may be used as an evaluation tool if the solicitation package specifically states how it will affect the evaluation of a proposal. An interview may be used in one of two ways:

- The interview is included as an additional measurement standard with a weighted percent of the total 1,000 points; or
- The solicitation states that an interview may be conducted if deemed necessary. In this situation, the interview is used to gain either:
  - New Information (not requested in the RFP) – separate points (in addition to the 1,000 points for the written evaluation) are established and all proposers that meet Minimum Requirements must be given an opportunity to interview; or
  - Clarifying Information (regarding information requested in the RFP) – the points awarded in the written evaluation may be adjusted up or down, and all proposers that meet Minimum Requirements must be given an opportunity to

interview unless a justification for limiting the interview to only top-ranked proposers is approved by the Procurement Officer.

4.4.2.4 **Evaluators**

The evaluation is conducted jointly by the Procurement Coordinator and the Evaluation Committee. (For LWP contracts, the LWP Coordinator evaluates only the LWP components of the proposal.) Evaluation Committee members may be composed of program staff and/or outside specialists. However, members or representatives of elected governing bodies may not participate in proposal evaluations. All participants in the evaluation process, including the Procurement Coordinator, must submit Conflict of Interest / Non-Disclosure statements (see Appendix C) before reviewing any proposals.

The Procurement Coordinator determines if the Minimum Requirements (pass/fail) are met and also conducts the evaluation of the References, the Cost, and Section 3, if applicable. A 3-member Evaluation Committee evaluates the Qualifications, Work Plan, and any other optional measurement standards. Evaluation Committee members must provide comprehensive written comments on the evaluation scoring sheets to justify each evaluation component score.

The Procurement Coordinator distributes the proposals with the evaluation scoring sheets and instructions to the Evaluation Committee and then facilitates a meeting of the Committee to discuss the proposals, their individual scores and written comments. The Procurement Coordinator may not participate as an evaluator.

After the meeting, an evaluator has the option of changing his or her scores. Original scores and comments must be lined out and initialed by the evaluator and new written comments added to justify the change. All written notes and comments must be retained for the procurement file and will be released if requested in accordance with the Public Records Act.

The Procurement Coordinator prepares a Final Evaluation Summary Worksheet (see Appendix C) for each proposal that includes:

- each Evaluation Committee members' final scores;
- the combined average score from all committee members;

- the Procurement Coordinator's scores; and
- any deduction of points made by the LWP Coordinator for labor/payroll violations, if applicable.

4.4.3 RFP / RFSQ Procedures

4.4.3.1 Using information from the ICE (see 3.0 Preparation for Procurement), develop a comprehensive Statement of Work (SOW) for the commodity or service needed, and obtain budget approval.

4.4.3.2 Submit the Insurance Requirements form (see Appendix C) to Risk Management.

4.4.3.3 Drawing from the specific functions listed in the SOW, develop an evaluation tool for proposals.

4.4.3.4 Determine if a Pre-Proposal Meeting/Job Walk is necessary, and whether it will be mandatory (for LWP contracts only).

4.4.3.5 Establish a timeline for the development, implementation, and resolution of the solicitation. (See sample Procurement Timeline form in Appendix C). Take into consideration the following factors:

- Advertising timing requirements (see 5.2 Advertising);
- Pre-Proposal Meeting date that allows 1) sufficient time for proposers to meet the schedule, and 2) adequate time for answering questions through an addendum that still allows enough time for the proposers to complete their proposal by the submission deadline;
- Response time for LWP inquiries if applicable.
- Protest procedures (see 5.4 Protest Policy and Procedures for details).

4.4.3.6 Develop the RFP / RFSQ Notice (see Appendix D) that will be posted on the County WebVen and the Commission website, and will serve as the introduction to the solicitation package. Secure a solicitation number from the on-line solicitation system.

4.4.3.7 Develop the complete RFP / RFSQ solicitation package (see Model RFP Solicitation Package in Appendix B). Ensure that:

- Minimum Requirements are clear, complete and appropriate for the solicitation;
- License requirements are clearly stated (copy of license submitted with proposal);

- The SOW clearly and completely identifies the service or commodity;
- The Proposal Submission Requirements include everything that will be needed to effectively evaluate the merits of the proposal;
- Copies of all required forms, notices and sample contract are included.

Print a maximum of six (6) copies of the complete solicitation package. Make a copy available for viewing by vendors, but do not distribute copies.

4.4.3.8 Post the RFP/RFSQ Notice on the Commission website and the County WebVen. Convert the solicitation package to PDF format and upload the entire package on the Commission website. Complete solicitation packages must be posted a minimum of 15 calendar days (see 5.2 Advertising).

4.4.3.9 If applicable, hold the Pre-Proposal Meeting/Job Walk at the date and time stated in the RFP / RFSQ Notice. Minutes of the meeting must be taken and made available to all proposers upon request (see Model Pre-Bid/Proposal Meeting Minutes form in Appendix C).

4.4.3.10 If any changes must be made to the solicitation (deadlines, errors/omissions, questions received from vendors and the answers, which are not already addressed in the RFP/RFSQ solicitation, etc.), an Addendum must be issued and posted on the Commission website and the County WebVen (see Model RFP/RFSQ Addendum in Appendix D).

4.4.3.11 Print a log of all vendors that download the package/addendums from the Commission website.

4.4.3.12 All proposals must be received by the deadline stated in the solicitation and time/date stamped by the Coral office receptionists (when hand delivered) or the mailroom staff (when received by mail). Return all unopened proposals that are received after the deadline.

4.4.3.13 For LWP contracts, send a Labor Violations Information letter to the State Labor Commissioner requesting information regarding labor law / payroll violation findings for each proposer (See LWP Manual in Appendix G).

4.4.3.14 Review each proposal to determine if all Minimum Requirements (pass/fail) have been met. (See sample Evaluation and Scoring Sheets in Appendix C)

4.4.3.15 Verify that proposers that meet Minimum Requirements are responsible using the criteria set forth in Section 5.14 (Determination of Responsibility and Non-Responsibility).

- Verify that proposers are not on the County debarment list or the Federal List of Parties Excluded from Procurement and Non-procurement Programs (see 5.5 Debarment). Print out the verification from Excluded Parties List System website (www.epls.gov).
- Verify that proposers are not on HUD's Limited Denial of Participation list. Print out the verification from the HUD website (www5.hud.gov/ecpcis/main/ECPCIS_List.jsp).

4.4.3.16 For all proposals that meet Minimum Requirements and are determined responsible, forward the LWP proposal documents to the Living Wage Coordinator for evaluation and scoring, if applicable.

4.4.3.17 If applicable, send a Notice of Non-Responsiveness or Non-Responsibility letter (see Appendix F) to proposers. If a proposer requests a Disqualification Review (for findings of non-responsiveness), a response to the request must be resolved before concluding the evaluation of proposals by the Evaluation Committee.

4.4.3.18 Create evaluation packets with copies of all eligible proposals for distribution to the Evaluation Committee. (See Proposal Evaluation Instructions and Worksheets in Appendix C.) Set a meeting date that is agreeable to all Committee members to explain the evaluation process and fill out Conflict of Interest/Non-Disclosure forms.

4.4.3.19 Conduct the evaluation and scoring for references, cost and Section 3 (if applicable) for each proposal. Information related to references, cost and Section 3 is handled by the Procurement Coordinator only and cannot be disclosed to the members of the Evaluation Committee until the committee's scores have been finalized.

4.4.3.20 If necessary, arrange for interviews with the proposers (see 4.4.2.3 Interviews).

4.4.3.21 After the Evaluation Committee has completed the evaluations, the Procurement Coordinator facilitates a final Evaluation Committee meeting, at which time the members discuss the proposals, their scores and written comments. After the meeting, evaluators may change any of their scores and comments (see 4.4.2.4 Evaluators).

4.4.3.22 Collect all individual score sheets and notes from each evaluator and complete the Final Evaluation Summary Worksheet with the average of all evaluation committee's scores as well as the scores for other factors. The proposal with the highest score that has been determined to be responsive and responsible is recommended for award of the contract.

4.4.3.23 Send concurrent Notices to selected and non-selected proposers: 1) Notice of Contract Review with an attached sample Letter of Intent to the selected proposer, and 2) Notice of Non-Selection for Contract Award to non-selected proposers (see Appendix F).

4.4.3.24 If requested by a non-selected proposer, provide a Debriefing (see 5.4.2.3.2.1 Debriefing).

4.4.3.25 After receiving the selected proposer's Letter of Intent, prepare the Recommendation to Award a Contract memo for the Executive Director's approval (Appendix E). After approval, issue a Notice of Recommendation for Contract Award letter to all proposers (Appendix F). Allow 10 calendar days for proposers to submit a Protest of Contract Award.

4.4.3.26 Determine the status of any protest or appeal (if applicable) with the Central Services Procurement Supervisor.

4.4.3.27 For contracts up to $100,000, secure signature approval from County Counsel, then submit the contract to the contractor, the Division Director and the Executive Director for signature.

4.4.3.28 For contracts over $100,000, prepare and submit the Board Letter (with the Contract) for approval. Following Board approval, secure signatures from County Counsel, the contractor, the Division Director and the Executive Director.

4.4.3.29 Ensure that all required insurance documentation (see 5.3 Insurance) and other required forms have been received from the contractor.

4.4.3.30 Immediately after the contract is signed, submit the appropriate requisition(s) to the Procurement Department with a copy of all documentation attached, including the:

- Contract (with all attachments and/or amendments, if applicable)
- Insurance certificates (see 5.3 Insurance)
- W-9 form/ Payee Registration Form/Organization Information Form
- Notice of Recommendation to Award a Contract memo
- Proof of WebVen and Commission website posting
- Board Letter (if over $100,000)
- Non-competitive procurement memo (if applicable)
- EEO Certification form
- Charitable Contributions Certification form
- Jury Service Exemption/Certification form
- Defaulted Property Tax Reduction Program form
- Proof of responsibility (copies from www.epls.gov and www5.hud.gov/ecpcis/main/ECPCIS_List.jsp)

4.4.3.31 Complete the procurement documentation file (see Section 4.6).

4.5 NON-COMPETITIVE PROCUREMENT

The Non-Competitive Procurement method may be used if the small purchase, sealed bid, or competitive proposal methods are not feasible, and only under the following circumstances:

Sole Source – There is no other alternative product or service available in the market (example: proprietary software or systems), or the product can easily be established as one-of-a-kind. A Request for Information (RFI) may assist in documenting the necessary justification for Sole Source procurement.

Emergency – An emergency is any situation which, if not corrected immediately, could result in a hazard to persons or property; could result in damage to buildings or facilities; could result in a violation of law, statute or ordinance established by governmental or regulatory authority; or in any other fashion, if not acted upon, would be seriously detrimental to the interest of the Commission. There must be an immediate and serious need for supplies, services, construction or contractual services that cannot be met through any other procurement method. Emergency non-competitive memos must be submitted within 3 business days of the occurrence.

Inadequate Competition – After unsuccessfully conducting a sealed bid (IFB) solicitation, it is determined that competition is inadequate (only one bid received).

HUD Authorization – HUD may specifically authorize the non-competitive procurement of products or services.

A cost analysis must be conducted for all non-competitive procurement, except in emergencies, and must be documented in the procurement file.

The County refers to all non-competitive procurement as "Sole Source," and requires that a County Sole Source Checklist (see Appendix C) be attached to all Board Letters for non-competitive contracts ≥$100,000 in one year. However, some of the County's criteria for non-competitive procurement are **not acceptable** under HUD regulations, such as:

- Additional services needed to complete an ongoing task that would be prohibitively costly in time and money to seek a new service provider;
- Maintenance service agreements existing on equipment that must be serviced by the authorized manufacturer's service representatives;
- It is more cost-effective to obtain services by exercising an option under an existing contract;
- It is in the best interest of the County, e.g., administrative cost savings, excessive learning curve for a new service provider, etc.

When the Commission incurs an unavoidable obligation to pay for goods or services, and the required competitive or non-competitive method of procurement was not conducted, an Approval of Purchase Order Without Procurement memo (See Appendix E) detailing the circumstances must be approved by the Executive Director before the release of funds. The memo must clearly state what method of procurement should have been used and why it was not used, or why procurement was not feasible.

4.5.1 Non-Competitive Procedure

4.5.1.1 All non-competitive procurement must be authorized by a memo from the Division Director to the Procurement Officer and the Executive Director. (When using CDBG funds, CDBG division management must authorize the memo also.) Except in emergency circumstances, the memo must be approved in advance of committing funds. The memo must identify the contractor and the Contract dollar amount and include the applicable justification:

- Statement regarding the unique circumstances that require non-competitive procurement;
- Description of efforts made to find competitive sources;
- Description of the cost analysis and justification for cost.

4.5.1.2 Sole source procurement of $250,000 or more requires notification to Board district offices 2 weeks in advance of the Board letter submission.

4.5.1.3 Submit the Insurance Requirements form (see Appendix C) to Risk Management, if applicable.

4.5.1.4 Prepare the Contract (see Sample Contract in Appendix A) and secure approval from County Counsel.

4.5.1.5 If $100,000 or more, prepare and submit the Board Letter with an attached County Sole Source Checklist (Appendix C) for approval.

4.5.1.6 Secure Contract signatures from the County Counsel, contractor, Division Director and the Executive Director.

4.5.1.7 Ensure that all required insurance documentation (see 5.3 Insurance) and other required forms have been received from the contractor.

4.5.1.8 Immediately after the contract is signed, submit the appropriate requisition(s) to the Procurement Department with a copy of all documentation attached, including the:

- Contract (with all attachments and/or amendments) if applicable;
- Insurance certificates (see 5.3 Insurance) if applicable;
- W-9 form/Payee Registration Form /Organization Information form;
- Proof of WebVen/Commission website posting (for Inadequate Competition only);
- Board Letter (if ≥$100,000);
- Non-competitive procurement memo;
- For procurement of $10,000 or more:
  - EEO Certification form
  - Charitable Contributions Certification form
  - Jury Service Exemption/Certification form
  - Defaulted Property Tax Reduction Program form

4.5.1.9 For purchase orders, the requestor must attach Terms and Conditions (see Purchase Order Terms and Conditions in Appendix A) to the purchase order and send both documents to the vendor via mail, email or fax. Staff may not authorize the rendering of services or the purchase of goods until the purchase order with terms and conditions has been issued to the vendor (except for Emergency Procurement). Proof of issuance should be maintained in the procurement file.

4.6 PROCUREMENT FILE DOCUMENTATION

The Procurement Coordinator is responsible for establishing a procurement file that contains the following documents for each method of procurement:

DESCRIPTION	RFQ	IFB	RFP
Independent Cost Estimate (ICE) / Budget Approval	X	X	X
Insurance Requirements form	X	X	X
Proof of posting (advertising)	X**	X	X
Solicitation Notice	X	X	X
Solicitation Package	X**	X	X
Solicitation Addendums	X**	X	X
Pre-Bid/Proposal Meeting Notes		X	X
Correspondence with bidders/proposers		X	X
List of vendors requesting solicitation packages	X**	X	X
Quotes, Bid, Proposals received	X	X	X
Non-Competitive Memo (if applicable)	X	X	X
Bid Opening Minutes		X	
Section 3 Bid Preference Evaluation form	X	X	
* Evaluation Committee Disclosure Forms			X
* Proposal Evaluation Worksheets			X
* Notices to Bidders/Proposers		X	X
* Protest / Appeal Documentation		X	X
* LWP Labor/Payroll Violation documents	X	X	X

**For solicitations >$10,000

5.0 PROCUREMENT PROGRAM REQUIREMENTS

5.1 OUTREACH

The Commission seeks to provide Minority, Women, Disabled Veteran, Small and Disadvantaged Business Enterprises the greatest opportunity to participate in the procurement process. It is the Commission's goal to award 46% of the total dollar amount of all procurement to minority and women business enterprises.

The Commission defines a Minority and/or a Women Business Enterprise as one whose ownership is comprised of citizens or lawful permanent residents of the United States and who are Black/African American, Hispanic/Latino, Asian/Pacific Islander, Filipino, American Indian, and/or Women, and:

- At least 51% ownership is by one or more minorities or women; and
- The business is managed by, and the daily business operations are controlled by one or more minorities or women.

The Commission defines a Small Business Enterprise as one that is:

- Independently owned and operated;
- Not dominant in its field; and
- Under the Small Business Administration (SBA) size standard for its particular business/industry.

Certifications from other agencies based on the SBA definition are accepted by the Commission as documentation for recognition as a small business in the procurement process. The Commission does not certify small businesses.

5.1.1 Business Contracting Opportunities (BCO) Program

The Commission aggressively outreaches to Minority, Women, Disabled Veteran, Small and Disadvantaged Business Enterprises through:

- Participation in trade fairs and expos
- Networking with agencies and advertising in conference programs or brochures
- Informing businesses about contracting opportunities via the Commission's website and the County of Los Angeles' website (www.lacounty.info under Business / Doing Business With Us)
- Maintaining the Commission's Vendor List database

5.1.2 Vendor List

The Commission's Vendor Registration database allows vendors to self-register via the Commission's website (www.lacdc.org under "Doing Business With Us" and "Become a CDC Vendor"). Vendors are required to indicate whether their business is 51% minority or women-owned, or not. Each vendor can be identified by the products/services they provide and by their business ownership status. Vendors that submit a bid or proposal are also required to include an "Organization Information Form" (Appendix C) that certifies their business ownership status and details the quantity, ethnicity and gender of all their company employees.

All Commission staff involved in procurement can access the Vendor List via the Intranet. When posting solicitations on the Commission and County websites, staff chooses the appropriate commodity description (products or services) for the solicitation. Vendors that have chosen that commodity description when they complete the Vendor Registration form are issued an automatic email notification of the contracting opportunity. Vendors must log-on to the website to download the complete solicitation package. Procurement Coordinators must print out the download history to document which vendors have received the solicitation package and any addendums.

5.1.3 Outreach Procedure

5.1.3.1 When using the Small Purchase / Request for Quotes (RFQ) method of procurement under $10,000, at least five (5) quotes must be solicited directly and two of them must be to minority, women, and/or small business enterprises (as identified on the Vendor List by the BCO codes). The quote(s) received do not have to be from a minority, women, and/or small business enterprise.

5.1.3.2 When using the Request for Quotes (RFQ) for $10,000 or more, the Invitation for Bids (IFB) or the Request for Proposals/Statement of Qualifications (RFP/RFSQ) methods of procurement, the solicitation Notice must be posted on both the Commission and County websites. The on-line system will send an automatic email notification to all vendors that have registered under the commodity description chosen for that solicitation.

5.2 ADVERTISING

All procurement of $10,000 or more must be advertised on the Commission's website and the County's website, referred to as WebVen. A solicitation Notice must be posted in both locations, but the complete package is only posted on the

Commission's website. Vendors must download the package from the Commission's website. Solicitation packages may only be posted by authorized staff that have been issued a user ID and password for the online solicitation system.

Although the minimum requirement for posting is $10,000, it is recommended to post procurements that are estimated to be $8,000 or more. This will ensure that the advertising requirement is met in case the ultimate amount of the award of contract or issuance of a Purchase Order is more than $10,000.

Solicitation packages for formal procurement (IFB/RFP/RFSQ) must be posted for a minimum of 15 calendar days. Informal procurement (RFQ) must be posted for a minimum of 5 calendar days.

Newspaper advertising of solicitations is not required unless the Commission is soliciting for a construction contract on behalf of the County, using County funds.

5.2.1 Commission Website

Procedure for Authorized Users:

5.2.1.1 Go to www.lacdc.org/CDCWebsite/CS/Admin/login.aspx "Create a New Solicitation."

5.2.1.2 Fill in the required data; copy and paste the text of the solicitation Notice into the description field.

5.2.1.3 The complete solicitation package must be converted to PDF format and uploaded.

5.2.1.4 The solicitation package must be available on the Commission website on the opening date of the solicitation.

5.2.1.5 Addendums to the solicitation package must be converted to PDF format and uploaded.

5.2.1.6 On the solicitation opening date, an automatic email is issued to all vendors who are registered for the products or services associated with the solicitation.

5.2.2 County WebVen

Procedure for Authorized Users:

5.2.2.1 Go to WebVen (http://camisvr.co.la.ca.us/lacobids).

5.2.2.2 Fill in the required data; copy and paste the text of the solicitation Notice into the description field. The following statement must be added at the top of the Notice before posting: "To download Commission/Housing Authority solicitation packages go to: www.lacdc.org and click on "Doing Business With Us."

5.2.2.3 Addendums to the solicitation package must be posted on the WebVen.

5.2.2.4 On the solicitation opening date, an automatic email is issued to all vendors who are registered for the products or services associated with the solicitation.

5.3 INSURANCE/BONDING

5.3.1 Insurance and Indemnity Requirements

The Risk Management department determines the kind and the amount of insurance required for all solicitations over $10,000 (RFQ, IFB, RFP, and RFSQ). Solicitations under $10,000 for services rendered on Commission/Housing Authority property, or for commodities delivered to Commission/Housing Authority property by the vendor, require Risk Management review.

For all service contracts, the contractor must comply with minimum insurance and indemnity requirements. The Sample Contract (Appendix A) is available on the Commission's common directory; the insurance language in the Sample Contract is updated periodically and contains the current minimum insurance and indemnity language. Each procurement coordinator must use the most current insurance and indemnity language in their solicitations and must submit an Insurance Requirements form (see Appendix C) to Risk Management to determine if additional requirements are necessary.

5.3.2 Surety Bonds

Definitions:

- Bid Bond — a guarantee by the insurance company that the bidder for a construction contract will undertake the job at the quoted price. Construction bid bonds must be included in the bid submission.
- Performance Bond — a guarantee that if the contractor fails to complete the bonded job as quoted, the insurance company will assume the contractor's financial responsibility to have the work completed. Performance bonds must be submitted with the signed contract.
- Payment Bond (also known as a Labor or Materials Bond) — a guarantee that the contractor will pay all the bills incurred on the job (by sub-contractors, suppliers, laborers, and anyone else providing services to the contract for the contract), as provided in the lien laws. Payment bonds must be submitted with the signed contract.

Bond Requirements

Contractors, for construction contracts exceeding $100,000, (unless funded by specific sources noted below, or unless otherwise required by State or local laws/regulations) must submit each of the following three items:

- Bid guarantee from each bidder equivalent to 5% of the bid price;
- Performance bond for 110% of the contract price;
- Payment bond for 110% of the contract price.

Contractors, for construction of conventional development projects funded pursuant to the U.S. Housing Act of 1937, as amended by the Housing and Community Development Act (HCDA) of 1974, as amended by the Cranston-Gonzales National Affordable Housing Act of 1990, must submit the following:

- Bid guarantee from each bidder equivalent to 5% of the bid price, and one of the following:
  - Performance and payment bond for 110% of the contract price, or
  - 20% cash escrow of the contract price, or
  - 25% irrevocable letter of credit of the contract price.

Contractors, for construction contracts over $25,000 under the Comprehensive Improvement and Assistance Program (CIAP), funded pursuant to the U.S. Housing Act of 1937, must submit the following:

- Bid guarantee from each bidder equivalent to 5% of the bid price, and one of the following:
  - Performance and payment bond for 110% of the contract price, or
  - Separate performance and payment bonds, each for 50% or more of the contract price, or
  - 20% cash escrow of the contract price, or
  - 25% irrevocable letter of credit of the contract price.

5.3.3 Insurance/Bonding Procedure

5.3.3.1 Submit the Insurance Requirements form (see Appendix C) to Risk Management with a copy of the Statement of Work.

5.3.3.2 Ensure that all applicable insurance and/or bonding requirements are in the solicitation package and sample contract (see Sample Contract in Appendix A and Sample Solicitation Package in Appendix B).

5.3.3.3 Ensure the validity of the insurance certificates/endorsements and submit copies to the Procurement Department with all applicable contract or purchase order requisitions.

5.3.3.4 The division's contract administrator is responsible for maintaining current insurance or bond certificates throughout the term of a contract.

5.4 PROTEST POLICY AND PROCEDURE

It is the Commission's policy to resolve all contractual issues informally at the division or Executive Office level without litigation. Disputes shall not be referred to HUD until all administrative remedies have been exhausted. HUD will only review protests in cases of violations of Federal law or regulations, or failure of the Commission to review a protest. Bidders or proposers may protest solicitation requirements, findings of non-responsiveness, or the award of a contract. However, the Commission has no obligation to delay or otherwise postpone an award of contract based on a protest.

If a protest is decided in favor of a bidder/proposer, the remedies, at the discretion of the Procurement Officer, may include any of the following:

- An addendum issued to revise a solicitation (before the closing date)
- A solicitation cancelled and then re-solicited;
- An erroneously disqualified bid or proposal re-established for consideration or evaluation;
- A Notice of Recommendation for Award of Contract revoked and re-issued for the protestor;
- A contract award terminated for convenience and then awarded to the protestor.

The Commission has separate protest policies and procedures for informal and formal solicitations.

5.4.1 Protest of Informal Procurement (RFQ)

A vendor must put the protest in writing and must itemize in full and complete detail each matter presented, as well as the factual and/or legal reason(s) for the protest. The request shall be submitted to the Commission's Procurement Officer. Any request that complies with the foregoing will be considered and a final written response will be provided to the vendor. In all cases, the Commission shall have the right to make an award when it is determined to be in the best interest of the Commission to do so.

5.4.2 Protest of Formal Procurement (IFB/RFP/RFSQ)

5.4.2.1 Solicitation Requirements Review

Bidders or Proposers may request a review of solicitation requirements if they make a written assertion that they are being unfairly disadvantaged due to any of the following:

- Application of Minimum Requirements;

- Application of Evaluation Criteria (for RFP/RFSQ solicitations only);
- Application of Business Criteria;
- Unclear instruction in the solicitation document, which may result in the Commission not receiving the best possible responses.

Bidders/proposers must itemize in appropriate detail each matter contested and factual reasons for the review. The written request, on company letterhead, must be submitted to the Central Services Procurement Supervisor and received within 10 calendar days of the issuance of the solicitation. The Supervisor shall provide a written response before the solicitation closing date.

5.4.2.2 Disqualification Review

When a bid or proposal is determined to be non-responsive, the Procurement Coordinator will send a Notice of Non-Responsiveness (see Appendix F) to the bidder/proposer that will include:

- The specific solicitation criteria that the bid/proposal failed to meet;
- The grounds on which a Disqualification Review can be requested:
    - An assertion that the disqualification of the bid/proposal was erroneous (based factual errors);
- Direction to include factual support for each assertion made, as well as copies of any documents that support the assertions;
- The deadline for submitting a written request, on company letterhead, to the Central Services Procurement Supervisor (7 calendar days from the date of the Notice).

If the request is received by the date indicated and meets the criteria stated in the Notice, a Disqualification Review will be conducted. The Central Services Procurement Supervisor will provide the bidder/proposer with a written determination within 7 calendar days of receiving the request for review. For RFP/RFSQ solicitations, the proposal evaluation process may not be finalized until a Disqualification Review has been completed.

5.4.2.3 Protest of Contract Award

When the lowest, responsive and responsible bid or highest ranked proposal has been determined, the Procurement

Coordinator issues Notices concurrently to the selected bidder/proposer and to the non-selected bidders/proposers.

5.4.2.3.1 Notice to Selected Bidder/Proposer

The selected bidder/proposer is issued a Notice of Contract Review (Appendix F) that states the Commission's intent to proceed with finalizing a contract. Attached to the Notice is a sample Letter of Intent (Appendix F) that the selected bidder/proposer will be expected to provide to the Commission. The Letter of Intent is a firm offer that shall not be revoked pending completion of any Protest process and/or Board approval of the contract. Following the receipt of the Letter of Intent, a Recommendation to Award a Contract memo (Appendix E) is submitted to the Executive Director for approval, followed by a Notice of Recommendation for Contract Award (Appendix F) being sent to all bidders/proposers.

5.4.2.3.2 Notice to Non-Selected Bidders/Proposers

The non-selected bidders/proposers are issued a Notice of Non-Selection for Contract Award (Appendix F). The Notice informs the bidder/proposer that they were not selected and outlines the criteria for submitting a Protest of Contract Award. The Notice also indicates that copies of the selected bidder/proposers bid or proposal will not be released under a Public Records Act request until a Notice of Recommendation for Contract Award is issued. For RFP/RFSQ solicitations, the proposers are also offered the opportunity for a Debriefing.

5.4.2.3.2.1 Debriefing

A Debriefing is an opportunity for a non-selected proposer to meet with the Procurement Coordinator to discuss and examine the results of his or her proposal's evaluation. The Procurement Coordinator may also share information regarding the relative ranking (scores) of all proposals, but without identifying the other proposers. The other selected and non-selected proposals may not be discussed during the debriefing.

The Notice of Non-Selection for Contract Award indicates that a proposer must submit a written request for a Debriefing to the Procurement Coordinator within 5 calendar days of receiving the Notice. If the written request is received before the deadline, the Procurement Coordinator can arrange for the Debriefing meeting at a time that is convenient for both parties.

5.4.2.3.3 Procedure for Protest of Contract Award

A Notice of Recommendation for Contract Award is sent to all bidders/proposers identifying the recommended bidder/proposer and outlining the procedure for submitting a Protest of Contract Award.

The Protest of Contract Award, written on company letterhead, must be submitted by a bidder/proposer and received by the Central Services Procurement Supervisor within 10 calendar days of the date of the Notice of Recommendation for Contract Award. The protestor must demonstrate in sufficient detail that, but for the Commission's alleged failure, the protestor would have been the lowest cost, responsive and responsible bidder or the highest-scored proposer. The protestor must assert in appropriate detail *any* of the following:

1. The Commission materially failed to follow procedures specified in the solicitation document, including:
   a. Failure to correctly apply the standards for reviewing the bid or proposal format requirements;
   b. Failure to correctly apply the standards, and/or follow the prescribed methods for evaluating proposals as specified in the solicitation document (for RFP/RFSQs only);
   c. Use of evaluation criteria that were different from the evaluation criteria disclosed in the solicitation document.
2. The Commission made identifiable mathematical or other errors in evaluating proposals, resulting in the proposer receiving an incorrect score and not being selected as the recommended contractor (for RFP/RFSQs only).

3. A member of the evaluation committee demonstrated bias in the conduct of the evaluation (for RFP/RFSQs only).
4. Another basis for review as provided by state or federal law.

The assertions included in the Protest of Contract Award may be with respect to the protestor's bid or proposal, or with respect to the recommended contractor's bid or proposal, provided that the assertions satisfy all the required criteria.

The Central Services Procurement Supervisor (or a designee) will issue a written Notice of Protest Determination (Appendix F) to the protestor within 7 calendar days of receiving the protest.

5.4.2.4 Appeal of Protest Determination

In the written response to a Protest of Contract Award, the Central Services Procurement Supervisor will state that if the protestor is not satisfied with the results, he or she may submit an Appeal of Protest Determination. The protestor will be given a Transmittal for Appeal of Protest Determination (Appendix C) and instructions to:

- Submit the Transmittal by the deadline stated in the Notice of Protest Determination;
- Attach a copy of the Protest of Contract Award;
- Include appropriate factual support on each ground asserted;
- Include all documents and other material that support the assertions;
- Include all items in the request because only items referenced will be considered during an Appeal hearing;
- Limit the items included in the request to items raised in the Protest of Contract Award and/or *new items* that:
    1. Arise from the Commission's written response to the Protest of Contract Award; *and*
    2. Meet the same criteria for grounds to assert failure by the Commission as those required for the original Protest of Contract Award; and
- Inform the Commission if legal counsel will be accompanying them to the Appeal hearing.

The assertions included in the Appeal of Protest Determination may be with respect to the protestor's bid or proposal, or with

respect to the recommended contractor's bid or proposal, provided that the assertions satisfy all the required criteria.

The Transmittal for Appeal of Protest Determination must be sent to and received by the Commission's Procurement Officer within 5 calendar days from the date of the Notice of Protest Determination. If the Transmittal is received by the deadline and it itemizes in appropriate detail each matter contested, as well as factual reasons to support the Appeal, the Procurement Officer (or a designee) will set an Appeal hearing date and time and notify the protestor.

The Procurement Coordinator will provide the Procurement Officer with the following, in advance of the hearing:

- A copy of the solicitation;
- A copy of the bid/proposal being reviewed;
- If applicable, a copy of the selected bid/proposal;
- If applicable, a copy of the evaluation documents for the bid/proposal being reviewed, and a copy of the evaluation documents for the selected bid/proposal;
- Copies of all correspondence to and from the protestor;
- A summary of the Debriefing, if applicable;
- A copy of the Notice of Protest Determination

The participants at the Appeal hearing will be limited to: 1) the Appeal Officer and assistant(s), 2) the protestor's representative(s), 3) the division's representative(s), and, 4) County Counsel, if the protestor has given notice that his/her attorney will be present. Comments during the hearing will be addressed only to the hearing officer. There is no direct dialogue between the parties. The hearing may only address the issues outlined in the Transmittal. A written response to the Appeal of Protest Determination will be issued to the protestor within 7 calendar days of the hearing.

5.5 DEBARMENT

Debarment is an action taken by HUD or the County, which results in a contractor being prohibited from bidding, proposing, or being awarded and/or performing work on a contract with the Commission. A contractor may be debarred for non-responsibility for any of the following reasons:

- Violating a term of a contract;
- Committing an act or omission which negatively reflects on the contractor's quality, fitness, or capacity to perform under a contract;

- Committing an act or omission which indicates a lack of business integrity or business honesty; or
- Making or submitting a false claim against the Commission, the County or any other public entity.

The County and the federal government maintain a database of currently debarred contractors. The List of Parties Excluded for Federal Procurement or Non-Procurement Programs may be accessed on the Internet at www.epls.gov. The County list of debarred contractors is included in the sample solicitation package, which is updated periodically (see sample solicitation package in Appendix B). Procurement Coordinators must ensure that bids and proposals are not accepted from contractors on either debarment list.

5.6 CHILD SUPPORT COMPLIANCE PROGRAM (CSCP)

Contractors doing business with the Commission must be in compliance with their court-ordered child and spousal support obligations in order to mitigate the economic burden otherwise imposed upon the taxpayers of Los Angeles County. All solicitations and contracts must include language that explains the program and obligates the contractors to comply. (See sample contract in Appendix A and sample solicitation package in Appendix B)

5.7 GREATER AVENUES FOR INDEPENDENCE (GAIN) PROGRAM / GENERAL RELIEF OPPORTUNITY FOR WORK (GROW) PROGRAM

The Commission seeks to assist recipients of CalWorks benefits to make the transition from welfare to employment. The County Department of Public Social Services has developed the Greater Avenues for Independence (GAIN) program and the General Relief Opportunity for Work (GROW) program that provides job skills workshops and employment counselors to support and monitor GAIN/GROW participants' progress. The Commission encourages the use of GAIN/GROW participants in its service contracts.

Bidders and proposers must demonstrate a proven record of hiring GAIN/GROW participants or attest to a willingness to consider GAIN/GROW participants for any future employment opening if they meet the minimum qualifications for that opening. Solicitations and contracts must include language that explains this requirement. (See sample contract in Appendix A and sample solicitation package in Appendix B.) However, GAIN/GROW requirements only apply to solicitations and contracts that do not already require Section 3 program compliance.

5.8 JURY SERVICE PROGRAM

The Commission provides regular, full-time employees with paid time for jury service. Other businesses that do not offer such benefits create a potential

financial hardship for employees who do not receive pay when called to jury service. Those employees often seek to be excused from service, thus reducing the number of potential jurors. For this reason, it is a requirement that contractors doing business with the Commission possess a reasonable jury service policy for their employees. All solicitation packages and contracts must contain language that explains the applicability and the exceptions of the Jury Service program and the required reporting forms. (See sample contract in Appendix A and sample solicitation package in Appendix B)

5.9 SAFELY SURRENDERED BABY LAW

In California, the Safely Surrendered Baby Law allows an individual to safely give up an unwanted infant with no fear of arrest or prosecution for abandonment as long as the baby has not been abused. Contractors doing business with the Commission must agree to notify and provide their employees a fact sheet regarding the law, its implementation in Los Angeles County, and where and how to safely surrender a baby. All solicitation packages and contracts must include language regarding this requirement. (See sample contract in Appendix A and sample solicitation package in Appendix B)

5.10 NONPROFIT INTEGRITY ACT

The Commission supports the efforts of the state Nonprofit Integrity Act of 2004, which is designed to prevent misuse of charitable contributions. It is the responsibility of contractors doing business with the Commission to determine if their activities in raising or receiving charitable assets are regulated by law. A contractor who receives or raises charitable contributions without complying with its obligations under California law commits a material breach subjecting it to either contract termination, debarment or both. The Commission seeks to assist its nonprofit contractors in complying with their obligations.

All solicitation packages must identify the certification of charitable contribution status as a Minimum Requirement and include language addressing the Nonprofit Integrity Act of 2004. (See model solicitation package in Appendix B). Contractors for all new, renewed, or amended contracts must certify their status by submitting a Charitable Contributions Certification form with their bids, proposals, or contract renewals/amendments (see Forms in Appendix C).

5.11 SECTION 3 PROVISIONS

Section 3 requirements are designed to ensure that contracting and economic opportunities are provided to low-income persons and business interests by contractors doing business with the Commission. Section 3 procurement requirements apply to:

- All public housing contracts that involve labor, and

- Certain Commission contracts for housing construction or rehabilitation in excess of $100,000. (See Appendix H for details)

When applicable, all Section 3 solicitations must include language explaining the program and all Section 3 forms that must be submitted by bidders/proposers (see Model Solicitation in Appendix B). For details on Section 3 contracting requirements and procedures, refer to the Section 3 Compliance Plan in Appendix H.

Section 3 Responsiveness

In all solicitations, documentation of Section 3 responsiveness is necessary to meet Minimum Requirements and be determined responsive.

A Section 3 Responsive bidder is a bidder that submits a *Section 3 Business Certification* form with the bid, and

1. Qualifies as a Section 3 Business concern because the business
   - Is 51% owned by low-income residents, or
   - 30% or more of its permanent full-time employees are low-income residents, and
   - Provides the *Section 3 Resident Certification form*(s) for each qualified employee.

   - OR –

2. Makes a written commitment by submitting a Section 3 Economic Opportunity Plan with their bid indicating that the bidder will:
   - Hire at least 30% aggregate new-hires that are qualified low-income residents, and provide the *Section 3 Resident Certification* form(s) for each Section 3 new-hire, - OR -
   - Subcontract 25% or more of the bid amount to qualified Section 3 Business Concern(s), and ensure that the Business Concern(s) provide *Section 3 Resident Certification* form(s) for each qualified employee.

   NOTE: Contractors must demonstrate on-going Section 3 responsiveness throughout the term of the contract by submitting a Section 3 Contractor's Compliance Report (Appendix C) by July 1st of each year.

Section 3 Preferences

An RFP or RFSQ solicitation for services covered by Section 3 has specific guidelines for evaluating and scoring proposals (see 4.4.2 Proposal Evaluations). In an RFQ or IFB solicitation, a bid from a qualified Section 3 business concern may receive a preference if that bid is reasonable.

Preference for contract award will be given to bidders that are Section 3 business concerns, provided that the bid is reasonable. A reasonable bid is a bid received

from a Section 3 business concern that is within a Zone of Consideration compared to the lowest bid from any responsive and responsible bidder. The Zone is determined by combining the actual lowest bid amount with the "X" factor. The "X" factor is the lesser of:

- The percentage (expressed in dollars) listed in the chart below, OR,
- The actual dollar amount listed on the chart below.

Zone of Consideration

If the Lowest Bid is		The "X" FACTOR is the Lesser than	
At Least	But Less Than		
$100,000	N/A	10%	$9,000
$100,000	$200,000	9%	$16,000
$200,000	$300,000	8%	$21,000
$300,000	$400,000	7%	$24,000
$400,000	$500,000	6%	$25,000
$500,000	$1,000,000	5%	$40,000
$1,000,000	$2,000,000	4%	$60,000
$2,000,000	$4,000,000	3%	$80,000
$4,000,000	$7,000,000	2%	$105,000
$7,000,000		1.5%	

5.12 LIVING WAGE PROGRAM

The purpose of the Living Wage Program (LWP) is to ensure that contractors doing business with the Commission, and who meet the standards of applicability, provide their employees performing the contracted services with sufficient wages and health care benefits to avoid poverty and dependency on public assistance.

The LWP requirements only apply to the following contract service categories:

- Janitorial / Custodial
- Clerical
- Landscaping (including exterior pest control, mowing, maintenance, and gardening
- Messenger / Courier delivery services
- Security guards (armed and unarmed)
- Automobile mechanic or fleet management

The principal requirement of contractors under the LWP relates to the rate of pay given to their employees working under a Commission contract (minimum of $11.84 per hour with no health care benefits, or $9.64 per hour with health care benefits) and the use of full time employees. The complete and detailed requirements for solicitation packages, contract language, forms and program

compliance are available in the Living Wage Program Manual (see manual in Appendix G).

5.13 REQUESTS FOR INSPECTION OR COPIES OF PROCUREMENT DOCUMENTS

Requests from the public to inspect or copy solicitation packages, bid or proposal documents, or contracts are filled in accordance with the California Public Records Act and must be coordinated through the IGR unit. Procurement documents can be released as follows:

1. Bid or proposal documents, including evaluation reports, can be inspected or copied *after* the Notice of Recommendation for Award is issued.
2. Bid Opening Meeting Minutes forms may be inspected or copied immediately after the public bid opening.
3. Information contained in bid or proposal documents that have been identified as "trademark protected" or "proprietary" or "confidential" may not be inspected or copied. Copies of records that have restricted information removed must indicate the amount (number of pages) of information removed.

5.14 DETERMINATION OF RESPONSIBILITY AND NON-RESPONSIBILITY

5.14.1 Determination of Responsibility

A responsible bidder/proposer must:

- Have adequate financial resources to perform the contract, or the ability to obtain them;
- Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
- Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them;
- Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all the bidder's/proposer's existing commercial and governmental business commitments;
- Have a satisfactory performance record;
- Have a satisfactory record of integrity and business ethics; and
- Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended, debarred, or under a HUD-imposed Limited Denials of Participation (LDP).

The Procurement Coordinator must ensure that the solicitation package includes directives to include all necessary documents or information that would be required to determine the responsibility or non-responsibility of

the bidder/proposer. The following could be used for determining responsibility:

- Financial Capability - Obtain financial information reports; require the bidder/proposer to provide information on their lines of credit and account balances with their financial institution;
- Compliance with Delivery and Performance Schedules - Request information on all other active contracts the bidder/proposer is performing and verify their status with those buyers;
- Performance Record - Require bidders/proposers to submit contact information for recent contracts they have performed for other customers and contact them to ascertain the bidder/proposer's quality of performance, including timeliness of delivery/completion, quality of work, compliance with terms and conditions of the contract, and cost control, if applicable. Inquire of past customers whether or not they would contract with the bidder/proposer again and why. Research the bidder/proposer's performance history with the Commission;
- Integrity and Business Ethics - Contact the bidder/proposer's previous and current customers to verify their dealings with the bidder/proposer. Check with the local Better Business Bureau, local offices of Code Compliance and Business Licenses, or other regulatory agencies for business ethics record and compliance with public policy. Verify the bidder/proposer's compliance with payments, wage rates, and affirmative action requirements with other customers and with applicable State and Federal Government offices, e.g., DOL Wage and Hour Division;
- Necessary Organization, Experience, Accounting and Operational Controls, and Technical Skills - Verify experience with other customers. Verify that necessary personnel will be available to work on the Commission's contract;
- Necessary Production, Construction, and Technical Equipment and Facilities - Request evidence that the bidder/proposer has all the equipment and facilities he/she will need or the capability to obtain them. Visit the bidder/proposer's place of business or other job sites to verify equipment and facilities. Contact equipment dealers and/or facility owners from whom the bidder/proposer indicates that he/she will rent or lease equipment or space.

5.14.2 Determination of Non-Responsibility

The Commission may determine whether a bidder or proposer is responsible based on a review of their performance on any Commission or County contracts. Labor law violations related to employee compensation or evidence of false claims made against public entities can also contribute to a finding of non-responsibility.

The Commission may declare a finding of non-responsibility if the Commission, in its own discretion, finds that the bidder/proposer has done any of the following:

- Violated a term of a contract with the Commission, the County, or a nonprofit corporation created by the County;
- Committed an act or omission which negatively reflects on the bidder/ proposer's quality, fitness or capacity to perform a contract;
- Committed an act or omission which indicates a lack of business integrity or honesty; or
- Made or submitted a false claim against the Commission or any other public entity.

The Commission shall not make an award to any contractor that has been suspended or debarred by the County or whose name appears on the General Services Administration's (GSA) list of Parties Excluded from Procurement and Non-procurement Programs.

If there is evidence that a bidder or proposer may not be responsible, the Commission shall notify the bidder/proposer in writing of the evidence, and its intention to declare non-responsibility. The Commission shall provide the bidder or proposer with an opportunity to rebut the evidence and show why he or she should be found to be responsible. The Procurement Officer or designee shall make the final decision for the determination of non-responsibility.

5.15 PREVAILING WAGE REQUIREMENTS

For construction contracts in excess of $1,000, contractors must pay wages in accordance with Federal labor standards and/or State prevailing wages and must submit payroll reports regularly during construction. The Commission project manager must ensure that all prevailing wage requirements are included in the solicitation.

5.16 DEFAULTED PROPERTY TAX REDUCTION PROGRAM

The Defaulted Property Tax Reduction Program (Program) is designed to ensure that individuals and businesses that benefit financially from Commission contracts for goods or services are current in paying their property tax obligations. Under the Program, both current contractors and bidders/proposers must self-certify that they are not, to the best of their knowledge, in default on any County property tax. Any applicable contractor who is found to be delinquent in their County property tax obligation must cure the default or may be denied a new/renewed contract, or may have a current contract terminated. All solicitation packages and new/renewed contracts must contain specific language outlining the Program, as well as a Certification of Compliance form.

6.0 CONTRACTS AND PURCHASE ORDERS

6.1 BACKGROUND

A Commission contract and/or a purchase order is a binding agreement used to purchase supplies, materials, equipment, construction, and other contractual services. The distinction between the uses of a purchase order versus a contract depends on various factors. The following table outlines the criteria for determining which is appropriate.

PURCHASE ORDER vs. CONTRACT		
General Use:	Purchase Orders are designed for one-time purchases.	Contracts are used for repetitive or on-going payments of goods or services.
Dollar Thresholds:	Payments of $300 or more require a purchase order, except when paying with a Cal-Card or other specific exceptions listed in the Section 6.5 of the Procurement Manual	There are no minimum dollar thresholds for contracts.
Procurement Methods:	**Micro Purchase:** • All purchases of $300 or more require a purchase order (except for Cal-Card transactions). **Request for Quotes (RFQ):** • P.O. is acceptable for purchase of *commodities only* (with no service involved e.g. installation, delivery, maintenance or warranty) for purchases $1,500 - $100,000. • P.O. is acceptable for a one-time purchase of non-construction services under $10,000. • B.O. is acceptable for multiple purchases of service, or commodities that involve service, under $10,000.	**Request for Quotes (RFQ):** • Procurement of $10,000 - $100,000 for non-construction services, or for commodities that involve service (e.g. installation, delivery, maintenance or warranty) requires a contract. • Procurement of $1,000-$100,000 for construction services requires a contract. **IFB/RFP/RFSQ:** • All formal procurement requires a contract.

All contracts, including those that must be approved by the Board, become effective on the date of execution by all parties, unless the parties expressly agree to a later start date. On rare occasion, the Board may authorize a start date that precedes full and final execution by all parties (e.g. "to be effective upon Board approval"). In no event shall staff authorize the rendering of services or the purchase of goods in advance of a contract's effective date.

6.2 CONTRACT TYPES

The Commission engages in various types of contracts; the most commonly used are listed below. Any type of contract that will promote the best interests of the Commission may be used, and all solicitations and contracts shall include the clauses and provisions necessary to define the rights and responsibilities of both the Commission and the contractor. Any deviation to contract clauses in Commission contracts requires County Counsel and/or Board of Commissioners' approval.

6.2.1 Standard Contracts

Most contracts for commodities or services will utilize the Commission's standard contract and one of the payment types listed below. The standard contract contains clauses and requirements that conform with the HUD "Common Rule" and other County directives.

6.2.2 Construction Contracts

In addition to standard contract clauses, construction contracts include bonding requirements, prevailing wages, federal labor standards, liquidated damages, and other applicable clauses to conform to the HUD "Common Rule" (24 CFR 85.36) and other County directives.

6.2.3 Intergovernmental Agreements

When the Commission needs to utilize a service provided by a city, county, or a state agency, the two parties will enter into an Intergovernmental Agreement. The regular procurement process is not required, but the contract between the two parties is processed through the Procurement Department in the same manner as a standard Commission contract (with a Contract Order and Encumbrance Release Order). On the C.O. requisition, the description of services must indicate that it is an Intergovernmental Agreement.

6.2.4 Cooperative Agreements

The Commission can use the procurement conducted by Federal, State or local agencies to enter into a contract for specified goods or services with vendors who have a current contract with Federal, State or local agencies, provided that the procurement was in compliance with 24 CFR 85.36, known as the "Common Rule." The Commission purchase order or contract with the vendor must incorporate the product or service

specifications of the Federal, State or local agency contract, and must include the Commission's standard terms and conditions. The Procurement Department must verify the status and applicability of the Federal, State, or local agency contract before entering into a purchase order or contract with the vendor. The Purchase Order (P.O.) or Contract Order (C.O.) requisition submitted by the division must indicate the Federal, State or local agency contract number.

6.2.5 Energy Performance Contracts

A reduction in energy costs can be realized through energy performance contracts. Initially, the Commission must procure (through standard procurement methods) for a qualified vendor to develop a Comprehensive Energy Analysis (CEA). The Commission can then procure for a third-party energy performance contractor, or seek to self-manage an energy performance contract (EPC). For third-party EPCs, the Commission must get HUD approval of the CEA, the RFP (before release), and the final performance contract. If the Commission chooses to self-manage, the Commission first must be designated Standard Performers or High Performers under the Public Housing Assessment System (PHAS). The energy improvements are procured using standard methods. For self-managed EPCs, the Commission must develop a detailed energy project plan and submit it to HUD for approval in advance.

6.2.6 Miscellaneous Non-Standard Contracts

The Commission enters into a variety of non-standard contracts or agreements. These contracts must contain the standard required clauses in addition to other special clauses that address a specific practice. All non-standard clauses and contracts must be approved in advance by County Counsel. The miscellaneous non-standard contracts include, but are not limited to, the following:

- Disposition and Development Agreements (DDA) and Development Agreements (DA)
- Owner Participation Agreements (OPA)
- Loan Agreements for acquisition, construction, or permanent financing
- Grant Agreements and Forgivable Loan Agreements
- Lease Agreements
- License Agreements
- Right-of-Entry Agreements
- Space Use Agreements
- Third Party Agreements (Community Business Revitalization (CBR), Single Family Grant (SFG), Residential Sound Insulation Program (RSIP))
- IT Contracts

6.3 CONTRACT PRICING TYPES

6.3.1 Time/Materials

A time-and-materials contract provides for acquiring supplies or services on the basis of:

- Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and,
- Materials at cost, including, if appropriate, material handling costs as part of material costs.

6.3.2 Fixed Price

6.3.2.1 Firm fixed-price

This contract type requires the delivery of products or services at a specified price, fixed at the time of contract award and not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. It is appropriate for use when fair and reasonable prices can be established at time of award, definite design or performance specifications are available, products are off-the-shelf or modified commercial products or services for which realistic prices can be offered, and any performance uncertainties can be identified and reasonable cost estimated in advance.

6.3.2.2 Fixed-price with economic price adjustment

In cases where the market for a particular supply or service is especially volatile, and the Commission needs a contract for a term greater than just an initial quantity, this contract type allows for adjustment in the contract price based upon the occurrence of specified contingencies stated in the contract (e.g., changes in market conditions, the Consumer Price Index, or other commodity price indices that are not controlled by the contractor). The contract contains initial firm fixed prices that may be adjusted upward or downward during the performance period. The contract must contain a clause explaining how the price adjustment will be made, identifying the price index to be used, the frequency of adjustment, and any overall ceiling price. A fixed-price contract with economic price adjustment may be used when:

- There is serious doubt concerning the stability of market or labor conditions that will exist during an extended period of contract performance; and,
- Contingencies that would otherwise be included in the contract price can be identified and covered separately in

the contract. Price adjustments based on established prices should normally be restricted to industry-wide contingencies. Price adjustments based on labor and material costs should be limited to contingencies beyond the contractor's control.

6.3.3 Cost Reimbursement

Cost-reimbursement types of contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the Executive Director. Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract. A cost-reimbursement contract may be used only when: the contractor's accounting system is adequate for determining costs applicable to the contract; and, appropriate surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used.

6.3.4 Prohibited Pricing Types

Commission contracts may not utilize the cost-plus-a-percentage-of-cost or the percentage-of-construction-cost methods for pricing.

6.4 PURCHASE REQUISITIONS

In most cases, the mechanism for authorizing and releasing funds for procurement is through some kind of purchase order. In general, procurement for $300 or more requires a purchase order for release of funds. Funds encumbered by purchase orders may only be used for goods or services that were procured in a solicitation.

The Commission's procurement records are maintained in the PeopleSoft database. The information is entered into the PeopleSoft system from the various requisitions submitted to the Procurement Department. Although some of the information required on the different requisitions is similar, each requisition has its own specific function and must be used appropriately. The four procurement requisitions are:

- Purchase Order (P.O.) requisition
- Blanket Order (B.O.) requisition
- Contract Order (C.O.) requisition
- Encumbrance Release Order (E.R.O.) requisition

Each of the fields on a requisition must be filled in unless it is specifically exempted. The Procurement Department may return incomplete requisitions to the requestor. Samples of each requisition are available in Appendix C or may be accessed through the Commission's Intranet under Forms and Publications.

6.4.1 Purchase Order (P.O.) requisition

A P.O. requisition may be used for procurement up to $100,000, and is required for amounts of $300 or more, except for Cal-Card transactions. P.O.s may only be used for Small Purchase methods of procurement (Micro Purchase and Request for Quotes). The requisition must clearly specify the item(s), service(s), cost (including tax and delivery), documentation of procurement, and the signatures of the requestor, budget analyst and management. (See P.O. Requisition in Appendix C)

The P.O. requisition is processed in Central Services, and the green purchase order is returned to the requestor. The requestor is required to attach the Purchase Order Terms and Conditions (Appendix A) to the purchase order and forward it to the contractor via email or fax. Proof of delivery must be maintained in the division's procurement file. In no event shall staff authorize the rendering of services or the purchase of goods until the purchase order with terms and conditions has been provided to the contractor.

6.4.2 Blanket Order (B.O.) requisition

A Blanket Order (B.O.) requisition is used for procurement of:

- a specific collection of goods from one vendor for a maximum dollar amount not to exceed $100,000 within one fiscal year, or
- non-construction related services from one vendor for a maximum dollar amount not to exceed $10,000 within one fiscal year.

Blanket Orders may not be used for construction-related services, including repair and rehabilitation services (e.g. painting, plumbing, electrical, HVAC, carpentry, masonry, iron work, etc.),

Incremental purchases of the specified goods or services, as needed during that fiscal year, and payment of invoices, is accomplished by using the B.O. instead of requisitioning individual purchase orders. Designated persons are able to make incremental purchases from the B.O. (See B.O. Requisition in Appendix C)

6.4.3 Contract Order (C.O.) / Encumbrance Release Order (E.R.O.) requisitions

A C.O. requisition, which is submitted along with an executed contract, is used to establish the terms and conditions of a Commission contract in the PeopleSoft database. Entry of a C.O. into the PeopleSoft database will

activate a contract and assign it a contract number. This contract number will serve as a tool for tracking and monitoring of funds released throughout the term of the contract.

The E.R.O. requisition is used after a contract is in place to release funds from a specific contract for the payment of invoices. As funds are released, the dollar amount in the PeopleSoft database for each specific contract specified on the E.R.O. will be reduced accordingly. The term of a Contract Order usually spans more than one fiscal year, however an E.R.O., like the P.O. or B.O., is only effective during a single fiscal year. (See C.O. and E.R.O. Requisitions in Appendix C)

6.4.4 Amendments

Contract and purchase orders may be amended to increase the original dollar value the term of the contract, or the Statement of Work by up to 25% per contract year. Signature authority for amendments must correspond to the new total amount, not merely the amount of the dollar increase (see 2.2 Delegation of Signature Authority).

The Executive Director, or his designee and the Procurement Officer may approve amendments in excess of 25% for scope of work and dollar amount with proper justification for contracts not exceeding $100,000 in one contract year. Amended purchase orders or contracts may never exceed $100,000 per contract year without Board approval. Contracts may not exceed a total of five years without written permission from HUD. Requests for amendments in excess of 25% must be addressed to the Procurement Officer and the Executive Director, in advance for approval, prior to the execution of the amendment. No requests for approvals on a retroactive basis will be authorized. Any approval may not exceed the cumulative signature authority of the Executive Director or his designee.

When submitting a requisition to add up to 25% to an existing P.O., include the following:

- the revision number and the original P.O. number;
- under "Description" state "Original P.O. amount:" and place dollar value in "Amount column";
- the description, account/project and cost for all additional goods/services
- the additional delivery, shipping/handling and tax costs for the additional goods, if applicable;
- the new amount for the total combined cost.

Submit only the 1st page of the requisition and attach a copy of the original purchase order. The goods and services added to a purchase order must have been included in the original procurement.

Any change to a contract requires a contract amendment and a C.O. requisition indicating the contract number being amended and the amount and/or services added. On the bottom of the C.O. requisition, the field for "term of the contract" must reflect the original contract date through the amended expiration date, and the "total amount" must reflect the combined original and added amount. Contracts may not be amended (post dated) after the original expiration date has passed.

6.5 EXCEPTIONS

The following circumstances outline the exceptions to standard purchase order requirements:

- Paying off Invoice – Purchase orders are not required for invoices less than $300 for one-time purchases (non-recurring within a fiscal year) from a vendor that does not have a Commission contract. NOTE: A Payee Registration Form and a W-9 form must be completed by first-time vendors and submitted to Central Services before submitting invoices to Accounts Payable.
- CAL-Card – Purchases for any approved amount made with a CAL-Card are paid with a check request (payable to US Bank) rather than a purchase order. However, the Small Purchase method of procurement (RFQ) must be conducted and documented for all individual CAL-Card purchases of ≥$1,500.
- Petty Cash - Purchases of $100 or less using a division/unit petty cash fund do not require a purchase order or a method of procurement.
- Check Requests – A check request may be used in conjunction with a purchase order (referencing a purchase order number) or, in specific instances, in lieu of a purchase order. However, unless specifically exempted, a method of procurement must be conducted before releasing funds via a check request.

The following are specific expenditures that do not require a purchase order for process of payment(s) or a method of procurement:

- Public utilities - payment of installation construction costs, installation fees, or service charges. A public utility is a supplier of water, electricity, natural gas, telephone or television service to a residence or business, whether the utility is privately or publicly owned.
- Governmental entities - real property taxes, personal property taxes (when applicable); plan checking fees, inspection fees, entitlement fees, sewer installation fees, service charges or other administrative fees imposed by a jurisdiction.
- Payees specified by a Disposition and Development Agreement (DDA);
- Development Agreement (DA); Acquisition Loan Agreement (ALA) or other similar Agreement approved by the Board of Commissioners or Supervisors.

- Payments to individuals, households or businesses receiving relocation payments or assistance.
- Warranty Funds associated with Rehabilitation Loans.
- CDBG and ESG Requisitions from Cities, CBO's and County Departments.
- Title insurance policy charges -these charges are made by title companies when the Commission is financially responsible for title insurance or other charges made by a title company selected by an outside party.
- Remittance of employee payroll deposit trust to third party agencies.
- Employee Reimbursements for mileage, tuition, travel, etc.
- Employee Benefits to third party agencies
- Outside Seminars and Training not sponsored by the Commission (in-house training/workshops require a purchase order.)
- Subscriptions to publications
- Payments for loan related activities
- Legal services provided by County Counsel
- Banking Services Fees when competitive pricing is not an option.
- Advertising
- Admission tickets or registration fees for entertainment venues, or other activities, when competitive pricing is not an option.
- Risk Management Payments for claims and settlements including Worker's Compensation, First Aid, Third Party Liability, and Lawsuits

7.0 CONTRACT ADMINISTRATION

The administration of a contract determines the success of the contract. A contract might be well written, with all of the necessary legal clauses and a detailed Statement of Work; however, without someone directly administering or monitoring the contract, it will be unsuccessful. Contract administration is a regular process of evaluating contractor performance and verifying the compliance with the terms and conditions of the contract.

Each contract must have a designated Contract Administrator (CA) who is responsible for performing the following duties, or ensuring that they are accomplished through delegation of duties to other Commission staff.

7.1 Contractor Contact

The CA serves as the point of contact for communication between the Commission and the contractor. The CA may designate alternate Commission contact personnel as appropriate for a specific contract.

7.2 Initial Contract Meeting

Before the contract start date, the CA organizes a meeting for the contractor, sub-contractor, and any key staff to meet with all Commission staff involved with monitoring the contract. The following issues are addressed:

- Distribution of a contact list (contractor and Commission staff)
- Review of the SOW
- Review of the Quality Assurance Plan steps
- Review of the invoice/payment process
- Training for Commission staff on ordering process (if applicable)

7.3 Quality Assurance Plan

The CA develops a regular monitoring mechanism for ensuring that the contractor fulfills all expectations specified in the SOW. The Performance Requirement Summary Chart (see Appendix C) should be used to document the actual performance of the contractor by outlining each work expectation and assigning a corresponding penalty for failure to perform.

The CA ensures that all contract disputes between Commission and contractor staff are documented and resolved. The CA must ensure that the contractor is provided with specific information outlining any deficiencies and the required corrective action. It is crucial that documentation of all contract performance deficiencies is maintained in the event that early termination of the contract or debarment proceedings against the contractor are ever pursued (see Section 5.5 Debarment).

7.4 Contract Amendments

The CA must ensure that contract amendments are executed properly and timely (see Section 6.4.4 Amendments). Contract amendments cannot be post-dated or

retroactive. If an amendment is not executed before the contract expires, and the Executive Director has authority to execute a new contract, the CA must prepare a new contract. A purchase order must be requisitioned to pay for goods or services provided during the time period between the expiration of the original contract and the start date of the new contract.

CA is also responsible for ensuring that a new solicitation for goods or services is initiated at least six months before a contract's end date.

7.5 Purchase Orders/Payments

The CA must ensure that:

- appropriate requisitions are submitted to encumber funds from the contract to pay invoices (E.R.O.)
- packing slips accompany goods received;
- goods or services are charged according to the contract fee schedule;
- invoices are paid promptly.

7.6 Certificates and Licenses

The CA must ensure that current insurance certificates from the contractor are maintained in the contract file. Also, if a specific license is required for a services contract, the CA must verify that the license remains valid throughout the term of the contract.

7.7 Section 3 Compliance

During the term of the contract, the CA should maintain communication with the contractor regarding Section 3 compliance. The CA must ensure that the contractor submits the Section 3 Contractor's Compliance Report by July 1st of every contract year. This information from all Section 3 contracts is compiled and submitted to HUD. The CA must also provide the contractor with an updated Section 3 Resident Certification Form each year, which indicates HUD's current income criteria for certification. The CA shall retain any pending payments to the contractor until all required documentation is submitted and approved by the Commission.

7.8 Living Wage Program (LWP) Compliance

The LWP Coordinator is responsible for ensuring that contractors are in compliance by reviewing monthly payroll records and interviewing the contractor's employees. The CA, or a designee who is responsible for processing invoices, must first get authorization from the LWP Coordinator before invoices can be paid. LWP contracts stipulate that payment can be withheld if the contractor fails to comply with LWP provisions.

7.9 Quarterly Contract Monitoring Report

For contracts of $10,000 or more per contract year, the CA, or a designee, must submit current contract data to the Central Services Unit by the 7th day of the month following each quarter.

7.10 Maintaining Contract Files

The CA is responsible for maintaining a current contract file that includes:

- The contract and all amendments
- The Board Letter (if applicable)
- Insurance certificates and bonding documentation
- Records of meetings with contractor
- Correspondence with contractor
- Documentation of contractor disputes/resolutions
- All required reports
- Copies of requisitions, purchase orders and invoice payments
- Quality assurance documentation (must be conducted annually before contract is amended)

7.11 Early Termination for Cause or Convenience

The CA must send a written notification of a contract's early termination for cause or convenience. The notification must be approved by County Counsel, signed by the Executive Director, and delivered via certified mail with return receipt requested. The notice must include:

- The cited contract clause authorizing the termination for either cause or convenience;
- Whether the contract is terminated in whole or in part (if in part, include contractor's right to proceed with the non-terminated portion of the contract);
- If terminating for cause, the acts or omissions constituting the cause;
- The effective date of the termination.

7.12 Contract Close Out

The CA must create a final summary of contract performance to add to and verify the completed contract file. The contract file must be retained for the number of years indicated in the Commission's Record Retention Schedule.

7.13 Construction Contract Administration

The following guidance and instructions are provided for administration of construction contracts only.

A. Pre-construction Conference and the Notice to Proceed

Following the award of a construction contract, a pre-construction conference should be held to thoroughly discuss key construction and contract administration-related issues. Then the Commission should issue a Notice to Proceed to the contractor stating the starting and completion dates and typical contract-related information. The notice should be prepared in an

original with at least two copies signed by the Contracting Officer. The contractor should retain the original and sign, date, and return the copies. This Notice may be hand-delivered to the contractor at the conference and signed immediately.

B. Progress Meetings
The Commission should meet with its architect or other consultant(s) as applicable, and the contractor on a regular basis (usually weekly for large or complex projects) to discuss work progress, payments, any problems or deficiencies noted during inspection visits, overdue reports, and the construction schedule. The Commission should prepare, or cause to be prepared, a written record of the items discussed at each meeting and place a copy in the construction contract file or in the Commission's electronic project management software system.

C. Inspections
If a consultant firm has been retained to conduct the contract administration function, the Commission must hold the consultant accountable for carrying out the necessary inspections. The quality of the inspection is critical, and the Commission should ensure that either the consultant or the Commission personnel responsible for inspection is fully qualified and performs the inspections adequately.

1. Inspection Reports
All progress inspections should be documented using an appropriate Commission approved inspection report form. The inspection report should include a description of the work completed and a determination as to whether or not the work is acceptable. To the extent possible, if anticipated payment is to be made on a unit price basis, quantities must be verified. If payment is to be made on a time and materials basis, the report should show that the time charged was spent on Commission work and that materials were charged at cost. A copy of the inspection report should be included in the contract file or in the Commission's electronic project management software system. Based on the inspection report, the project manager should initiate any needed follow-up actions to ensure that the terms of the contract are being fulfilled.

2. Deficiencies
Upon identifying, or being notified by its consultant of construction deficiencies, the Commission shall promptly notify the contractor, in writing, of the deficiencies observed. This notification should also advise the contractor that failure to make timely corrections will be an infraction of the contract and that the contractor will be held liable for any resulting losses or delays.

D. Labor Standards
For federally funded projects and if prevailing wages are applicable, the Commission is responsible for the administration and enforcement of labor standards requirements as provided in HUD Handbook 1344.1, REV 1, Change 1 as required by the U.S. Department of Labor (DOL) regulations applicable to Davis-Bacon covered work (29 CFR 5). When state or other public funds are used and if prevailing wages are applicable, the Commission is responsible for the administration and enforcement of all State of California

prevailing wage laws, regulations, codes including, but not limited to, the California Labor Code Section 1770 et seq.

E. Progress Payments

All payment schedules to contractors (otherwise known as "Schedule of Values") should be prepared and agreed to for each project after the issuance of the Notice to Proceed and before the first payment to the contract. Payments shall be made as follows:

1. If progress payments are necessary (there may be a one-time payment, with or without retention withheld, in small construction contracts), the Commission, its consultant, if applicable, and the contractor will reach agreement on the work complete percentage and corresponding dollar amount of each line item on the Schedule of Values and a total invoice amount.

2. The contractor will submit an invoice and Commission staff will then prepare progress payment documentation for management review and sign-off. After Commission approval, the contractor will be paid and the progress payment documentation will be filed in the Commission's construction contract file or the Commission electronic project management software system.

3. The Commission is responsible for making progress payments to the contractor based on the Commission-approved Schedule of Values. Generally, progress payments for acceptable work and materials delivered and stored in a Commission approved, secure location on the site are made at 30-day intervals.

4. When a contractor holds more than one Commission contract at the same time, the contractor should submit a separate request for payment for each project. The request shall be accompanied by the contractor's written designation of a certifying officer and appropriate lien releases.

5. The Commission should review each payment request and approve it if the following conditions have been met:

   a. The contractor's request is consistent with the Commission-approved Schedule of Values for contract payments;
   b. The request does not include the amount to be retained by the Commission under the contract;
   c. The work covered by the payment has been performed and accepted in accordance with the construction documents; and
   d. The contractor has submitted all required documents, such as payroll reports, and other labor compliance related documents. The Commission shall retain any applicable supporting documentation for its file.

6. If the contractor requests payment for items that have not been acceptably completed, the Commission should deny or reduce the percentage completed of those items and adjust the payment accordingly.

F. Delays and Time Extensions

The contractor is responsible for completing the work within the time established in the contract. The Commission is responsible for monitoring the contractor to ensure that work will be completed as scheduled as much as possible. The Commission may authorize justifiable time extensions. The contract shall describe the conditions under which a time extension may be granted. (For example, delays arising from unforeseeable causes beyond the control and without the fault or negligence of the contractor may be grounds for allowing a time extension.) Such time extensions should be formalized in a written amendment or change order to the contract.

1. Inspection Reports

The Commission should maintain in the inspection reports comments regarding potential causes for delays that may be used as the basis for validating time extension requests or for denying a time extension request. To the extent possible and when appropriate, the inspection reports should contain at least the following: the temperature, the amount of precipitation, the work being performed, observations of work previously performed, delays in obtaining labor and materials, including the duration and the applicable construction trade, delays experienced by others in completing non-contract public improvements (whether on-site or off-site), and other causes for delays, such as fires, floods, vandalism, or court orders. To the extent possible, inspections should take place during critical construction phases. For example, an inspection should take place prior to closing up interior walls with dry wall.

2. Time Extension Criteria

In order to be considered for approval by the Commission, requests for time extensions should meet the following criteria:

a. The contractor should submit a written notice to the Commission within the time frame required under the contract;
b. The severity and extent of adverse weather that could not have been reasonably foreseen by the contractor (normal seasonal levels of rain, snow, cold or heat should have been considered by the contractor); and
c. The cause of the delay was beyond the contractor's control and why the work schedule could not be adjusted to compensate for the delay.

3. Documentation

Upon receipt of the contractor's notification of delay or request for time extension, the Commission should send a letter of acknowledgment within 5 working days or within the timeframe allowed under the contract to the contractor. The letter should indicate that either: (1) immediate consideration will be given to the contractor's request or (2) the actual delay in work is difficult to determine and consideration will be given to the contractor's request upon completion of work. Commission staff should review records to ensure that the information provided by the contractor is accurate and complete.

G. Completion of Work

The completion of a construction contract requires some formal procedures, including the following:

1. Notification
The contractor should provide prompt written notification to the Commission when all work is completed. A final inspection of completed work shall then be conducted. Until the final inspection has been carried out and corrections made, the Commission should not advance any of the retention or make the final payment to the contractor.

2. Final Inspection
Upon receipt of the contractor's notification of the date when the work has been completed, the Commission should conduct a final inspection within 10 calendar days or as allowed under the contract.

4. Post-Inspection Meeting
The inspection team should meet after completing the final inspection to determine whether the work has been completed in accordance with the construction documents and to identify any minor items of incomplete or unsatisfactory work (or seasonal work such as planting of shrubs and lawns). The team should also reach agreement on the items to be included on the Commission's or its architect's final punch list and on any major deficiencies that must be corrected by the contractor. Follow up inspection(s) may be required to ensure all final punch list items are completed.

5. Documentation
Following final inspection, the Commission should notify the contractor to submit the following documentation:

   a. A Certificate of Occupancy (or a Temporary Certificate of Occupancy), if applicable, issued by the responsible local agency for each building (where appropriate);
   b. Three copies of the contractor and subcontractor lien releases, including certification that indicates:
      i. The work was completed in accordance with the construction documents, including contract modifications;
      ii. The total amount due the contractor and a separately stated amount for each unsettled claim against the Commission;
      iii. Documentation noting that the Commission is released of all claims, other than those stated in the contractor's release; and
      iv. Wages paid to laborers or mechanics were consistent with the wage rate requirements of the contract and there are no outstanding claims for unpaid wages.
   c. Assignment of all guarantees and warranties to the Commission; and
   d. Final partial payment. The Commission may accept part of a project for occupancy before contract settlement if the following conditions are met:
      i. The dwelling units or structure to be accepted (except items approved for delayed completion) have been completed and are ready for occupancy;
      ii. The general contractor agrees to early occupancy and completion of items approved for delayed completion;

iii. Early occupancy will not unduly inconvenience or represent a safety risk to tenants or occupants while the unfinished work is being completed; and
iv. The Commission has obtained a signoff from the responsible local agencies for each unit or structure(s) to be accepted.

H. Final Payment

The Commission should ensure that acceptable lien release(s) are received from the general construction contractor to assure that the work was in full compliance with the construction contract documentation and that all materials, supplies, equipment, and labor-related expenses have been paid in full by the contractor. Prior to making final payment, the Commission should ensure that all required certified payroll reports have been received and that any discrepancies and/or wage underpayments have been corrected. Upon receipt of acceptable lien release(s), the Commission is authorized to make payment to the contractor. The Commission's payment to the contractor should be the amount specified in the request for final payment, but it should not include any amount to be retained for disputed items and/or incomplete work, such as the punch list or seasonal items.

I. Construction Warranties

The warranty period for all construction work should be at least 365 calendar days from the date of final acceptance of the work in question or such longer period as otherwise specified in the contract or warranty. For complex equipment or systems (such as, but not limited to, boilers, air conditioning units, thermal paned windows or storefronts, or membrane roofs), the Commission will require manufacturers warranties and may consider using a full two-year construction warranty. The extra year will ensure that the Commission can discover and report any hidden or latent deficiencies while the warranty is still in force. The contractor is fully responsible to correct any and all legitimate deficiencies reported within the warranty period.

1. Warranty Inspections

The Commission, at its option, may perform periodic warranty inspections, on Commission owned projects, during the warranty period and promptly notify the contractor in writing to remedy any defects relating to manufacturer or contractor warranties on equipment and systems and contractor warranties on materials and workmanship.

2. Corrective Action

Upon receipt of any Commission's written notice, the contractor will promptly remedy any defects due to the use of faulty equipment or materials or poor workmanship. The contractor is also responsible for paying for any damage to other work resulting from such defects. If the contractor fails to resolve such warranty issues, the bonding company or the state license bureau should be contacted by the Commission for final resolution.

GLOSSARY

BCO: Business Contracting Opportunities program; Commission's effort to provide Minority, Small and Women business enterprises with contracting opportunities (See 5.1 Outreach).

CFR: Code of Federal Regulations.

HUD: US Department of Housing and Urban Development.

ICE: Independent Cost Estimate (See 3.2).

IFB: Invitation for Bids; a formal sealed bid method of procurement.

LWP: Living Wage Program (See LWP Manual in Appendix G).

Procurement Coordinator: Division staff person assigned to facilitate a specific procurement. (See 2.1)

Responsive: A bid or proposal that conforms exactly to the requirements set forth in a solicitation package.

Responsible: A bidder or proposer who has the technical and financial capacity to secure the necessary resources to deliver goods and/or services and has demonstrated integrity in business practices. (See 5.14)

RFI: Request for Information; a tool for developing a knowledge base sufficient to competently write a Statement of Work, or to justify a non-competitive method of procurement. (See 3.3)

RFP: Request for Proposals; a formal competitive method of procurement.

RFQ: Request for Quotes; an informal, small purchase method of procurement.

RFSQ: Request for Statement of Qualifications; a formal competitive method of procurement for architectural or engineering services only.

Section 3: A HUD program designed to give contracting opportunities to low-income residents and business interests (See Section 3 Compliance Plan in Appendix H).

Scope of Work: First section of the Statement of Work that provides a description of the context in which the work will be performed.

SOW: Statement of Work; a written description of the work to be performed and the expectations to be met.

WebVen: Los Angeles County's website for posting bids and proposals.

Vendor List: Database of vendors who want to do business with the Commission, organized by designated commodity codes.

APPENDIX A

SAMPLE CONTRACT

APPENDIX A

SAMPLE CONTRACTS

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1.0 Sample Contract CDC
2.0 Sample Contract HA
3.0 Purchase Order Terms and Conditions

NOTE

The sample contracts and Purchase Order Terms and Conditions are available on the CDC common directory (K:) drive in the Procurement folder / Procurement Documents / Contracts.

[The language from HUD form 5370-C, General Conditions for Non-Construction Contracts, is included in the required contract clauses for the sample contracts listed above.]

APPENDIX B

MODEL SOLICITATION PACKAGES

APPENDIX B

SAMPLE SOLICITATION PACKAGES

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2.0 Model Invitation for Bids (IFB) Package
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4.0 Model Statement of Work (SOW)

NOTE

The model solicitation packages are available on the CDC common directory (K:) drive in the Procurement folder / Procurement Documents / Solicitation Packages.

[The language from HUD form 5369-B Instructions to Offerors (non-construction), is included in the required model solicitation packages listed above.]

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APPENDIX C

SAMPLE FORMS

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- 1.14 Section 3 Bid Preference Evaluation

NOTE

The sample forms are available on the CDC common directory (K:) drive in the Procurement folder / Procurement Documents / Forms.

[The language from HUD form 5369-C, Certifications and Representations of Offerors, is included in the forms listed above.]

APPENDIX D

SOLICITATION AND CONTRACT NOTICES

APPENDIX D

SOLICITATION AND CONTRACT NOTICES

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NOTE

The sample Notices are available on the CDC common directory (K:) drive in the Procurement folder / Procurement Documents / Notices.

APPENDIX E

SAMPLE MEMORANDUMS

APPENDIX E

SAMPLE MEMORANDUMS

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NOTE

The sample Memos are available on the CDC common directory (K:) drive in the Procurement folder / Procurement Documents / Memos.

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SAMPLE LETTERS

APPENDIX F

SAMPLE LETTERS

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NOTE

The sample Letters are available on the CDC common directory (K:) drive in the Procurement folder / Procurement Documents / Letters.

APPENDIX G

LIVING WAGE PROGRAM MANUAL

NOTE

The Living Wage Program Manual is available in pdf format on the CDC common directory (K:) drive in the Procurement folder / Living Wage Program.

APPENDIX H

SECTION 3 COMPLIANCE PLAN

NOTE

The Section 3 Compliance Plan is available on the CDC common directory (K:) drive in the Procurement folder / Section 3.

APPENDIX I

24 CFR 85.36
"COMMON RULE"

TITLE 24--HOUSING AND URBAN DEVELOPMENT

PART 85--ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE, LOCAL AND FEDERALLY RECOGNIZED INDIAN TRIBAL GOVERNMENTS--Table of Contents

Subpart C--Post-Award Requirements

Sec. 85.36 Procurement.

(a) States.

When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) Procurement standards.

(1) Grantees and subgrantees 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.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an

unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value-engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a 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.

(10) Grantees and subgrantees will use time and material type contracts only--

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the

grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) Competition.

(1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of Sec. 85.**36**. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) 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, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equal description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) Methods of procurement to be followed.

(1) Procurement by small purchase procedures.

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by sealed bids (formal advertising).

Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in Sec. 85.**36**(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

(C) 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.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by competitive proposals.

The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services

though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

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

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms.

(1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) Contract cost and price.

(1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of 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. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see Sec. 85.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) Awarding agency review.

(1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a ``brand name'' product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will **cite** specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The ``bid guarantee'' shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A ``performance bond'' is one executed in connection with

a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A ``payment bond'' is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) Contract provisions.

A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled ``Equal Employment Opportunity,'' as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland ``Anti-Kickback'' Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of $2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2000, and in excess of $2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized

representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000).

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

[53 FR 8068, 8087, Mar. 11, 1988, as amended at 60 FR 19639, 19642, Apr. 19, 1995]