

HOUSING AUTHORITY OF THE COUNTY OF COOK STATEMENT OF PROCUREMENT POLICY

Executive Summary

The Housing Authority of the County of Cook's ("HACC's") Procurement Policy sets forth the policies to be followed by HACC in the procurement of goods, services and construction. A separate set of internal Procurement and Contract Administration Procedures sets forth the specific procedures to be followed in the procurement of goods, services, and construction, and the management and administration of contracts.

This document is the HACC's formal Procurement Policy, setting forth policies and rules governing the procurement of goods, services and construction.

The HACC Procurement Policy assures that goods, services and construction are procured efficiently, effectively, and at the most favorable prices available to HACC. This Procurement Policy also promotes competition in contracting; provides safeguards for maintaining a procurement system of quality and integrity; and assures that all procurement actions are in full compliance with applicable Federal standards, HUD regulations, and State and local laws. The HACC Procurement Policy is designed to address the wide range of possibilities from small purchases to complex multi-million dollar contracts.

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Housing Authority of the County of Cook
Procurement Policy

This Procurement Policy (“Policy”) is hereby established by the Housing Authority of the County of Cook (“HACC”) on this 13th day of November 2009 (Revised April 9, 2010) pursuant to the United States Department of Housing and Urban Development (HUD) regulations including, but not limited to the following: 24 CFR 85.36 – Common Rule on Grantee Procurement; 24 CFR 968 – Public Housing Modernization; 24 CFR 941 – Public Housing Development for PHA’s; 24 CFR 964 – Requirements for Management Contracts Between a Public Housing Agency and an RMC; 24 CFR 963 – Contracting with Resident Owned Businesses, 24 CFR 135 Contracting Opportunities for Project Area Business; any current HACC/HUD Annual Contributions Contract (“ACC”); HUD Procurement Handbook 7460.8 Rev 2 and all applicable laws of the State of Illinois, including but not limited to the Illinois Housing Authorities Act 310 ILCS 10/1 et. seq.

I. DEFINITIONS

The following terms are used throughout this Procurement Policy:

Acceptance - The act of an authorized representative of HACC acknowledging that the goods, services or construction are in conformity with contract requirements.

Addendum/Amendment - Written revision made to a solicitation.

Bid - In the sealed bidding method of procurement, the offer submitted by a bidder.

Bidder’s List - List of prospective contractors. (Also called Source List or Mailing List)

Cardinal Changes - Modifications to an existing contract which are beyond the general scope of that contract and are so extensive that a new procurement should be performed.

Changed Conditions - Construction site conditions that differ significantly from conditions indicated in the contract or conditions ordinarily encountered in the performance of the type of work in the contract.

Change Order - Action taken by the Contracting Officer within the scope of the contract in order to modify the drawings, designs, specifications, method of shipping or packing, place of inspection, delivery or acceptance of an existing contract. A change order can be unilateral or bilateral.

Competitive Proposals - The method of procurement used when small purchases and sealed bidding are not appropriate. Under this method, HACC issues a request for proposals (“RFP”) soliciting price and technical proposals from potential sources, evaluates the proposals and establishes a competitive range, negotiates with those in the competitive range; receives and evaluates best and final offers (BAFO) from those in the

competitive range and makes award to the contractor offering the most advantageous proposal, considering price and the technical factors stated in the RFP.

Competitive Range - In a competitive proposal procurement (RFP), those proposals which, after evaluation by the Housing Authority, have a reasonable chance of receiving the award, both from a technical and cost standpoint.

Contract – A promise or set of promises for breach of which the law gives a remedy or performance of which the law recognizes as a duty; a legal instrument providing for the purchase, lease or barter of property or services for the direct benefit of HACC.

Contracting Officer – An official authorized by the Executive Director and/or the Board of Commissioners to enter into or administer contracts and make related determinations and findings.

Contract Administration – The monitoring of the contractor’s performance in order to assure compliance with performance requirements and contract terms.

Contract Administrator – An HACC employee or representative who conducts procurement and/or monitors the contractor’s performance in order to assure compliance with performance requirements and contract terms

Contract Modification – Any written alteration in the specifications, delivery point, date of delivery, schedule, and contract period, price, quantity, or other provision of an existing contract.

Cost-Reimbursement Contract – Contract in which the buyer and seller agree on an estimate of contract costs. The buyer agrees to reimburse the seller for reasonable, allowable, and allocable costs necessary to complete the work.

Cure Notice – A document the Contracting Officer sends to a contractor to notify the contractor that the contract may be terminated by reason of default if the condition endangering performance of the contract is not corrected in a specified number of days.

Excusable Time Delay – Failure to perform that is beyond the control and without fault or negligence of the contractor.

Firm Fixed-Price Contract – Contract that provides for a price which is not subject to any adjustment by reason of cost experience of the contractor in the performance of the contract; the preferred type of contract.

Indefinite-Quantity Contract – Contract in which the exact number of deliverable items is not known at the time of contracting. The contract provides for a minimum and maximum amount of goods/services that may be ordered under the contract.

Independent (in-house) Cost Estimate – A written calculation of all items included in the scope of the work, tabulated under appropriate cost headings (direct costs, labor, overhead and profit).

Inspection – The examination and testing of goods, services and construction to determine whether they conform to contract requirements.

Internal Controls – Safeguards that ensure that contracting will be carried out in conformity with applicable Federal regulations and HACC policy.

Invitation for Bids (IFB) - Under the sealed bidding method of procurement, the written solicitation document that explains what the Authority is buying and requests bids from potential contractors.

Labor-Hour Contract – Contract that provides for the procurement of property or services on the basis of direct labor-hours at specified, fixed hourly rates (which include direct and indirect labor, overhead and profit).

Letter Contract – A written authorization to begin work issued prior to the negotiation of a formal contract; only allowed in emergency situations.

Level-of-Effort Contract – Contract (usually cost-reimbursement type) that specifies the number and type of person-hours which the contractor will apply in pursuing the project.

Modification – A written revision or change to the contract approved by the Contracting Officer.

Negotiation – Discussion regarding technical and price proposals with offerors whose offers are in the competitive range for a contract being awarded using the competitive proposal(s) or non-competitive proposal method of procurement.

Non-competitive Proposals – The method of procurement in which the HACC solicits proposal (s) from only one source or a limited number of sources, if justified in writing, for one of the following reasons: the item is available only from a single source; public emergency will not allow enough time for a competitive procurement; inadequate response is received to a competitive solicitation; or HUD approves the use of non-competitive proposals.

Proposal – In the competitive proposals or non-competitive proposal(s) method of procurement, the offer that is submitted by a potential contractor.

Purchase Order – A contract form used by HACC for small purchases of \$100,000 or less.

Qualifications-Based Selection (QBS) – A form of procurement of architect-engineering services by competitive proposals in which price is neither requested in the RFP nor used

as an evaluation factor; instead, only technical qualifications are reviewed and a fair and reasonable price is negotiated with the best qualified firm.

Quotation – In the small purchase method of procurement, the price or offer submitted by an offeror.

Request for Proposals (RFP) – Under the competitive proposals method of procurement, the HACC's written solicitation to prospective offerors to submit a proposal based on the terms and conditions set forth therein. Proposal evaluation and contractor selections are based on the factors for award as stated in every competitive RFP.

Request for Quotations (RFQ) – Under the small purchase method of procurement, a brief, written request for a price quotation from potential contractors.

Responsible Bidder – a bidder that, after evaluating the integrity, compliance with public policy, past performance and the technical and financial capacity to secure the necessary resources to perform the work or deliver the goods or services, is determined to be responsible.

Responsive Bid – One that conforms exactly to the requirements in the Invitation for Bids (IFB).

Sanctions – Measures that may be invoked by HUD to exclude or disqualify contractors from participation in HUD programs (e.g., debarment and suspension).

Sealed Bidding – The procurement method in which HACC requests competitive sealed bids. This method of procurement requires that specifications be written describing the requirements of HACC clearly, accurately, and completely; a public bid opening is held; and evaluation of bids and award of the contract is based on the lowest bid submitted by a responsive and responsible contractor.

Show Cause Letter – A document that the Contracting Officer sends to a defaulting contractor to notify the contractor that the contract may be terminated by reason of default unless the contractor can prove in ten (10) days that the condition was not his or her fault.

Small Purchases – Purchases of construction, goods and services that do not exceed the HACC's dollar limitation of \$100,000.

Specifications – Clear and accurate description of the technical requirements of a construction, service or supply contract.

Statement of Work – Written definition of work to be performed, which establishes standards sought for the goods or services to be supplied; typically used for service contracts.

Termination for Convenience – Termination of a contract by the HACC on a unilateral basis when it no longer needs or requires the products or services or when it is in the best interests of the HACC.

Termination for Default – Termination of a contract when the contractor fails to perform or fails to make progress so as to endanger performance.

Time-and-Materials Contract – Contract which provides for payment of supplies and services on the basis of incurred direct labor costs (at fixed rates, which include direct costs, indirect costs, and profit) and materials (at cost).

Time Delay – An interruption during which service, supplies or work are not delivered in accordance with the performance time schedule stated in the contract.

II. GENERAL PROVISIONS

A. PURPOSE

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

B. APPLICATION

This Procurement Policy applies to all procurement actions of the Authority, regardless of the source of funds, except as noted under “exclusions,” below. However, nothing in this Policy shall prevent the HACC from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with the law. When both HUD and non-federal grant funds are used for a project, the work to be accomplished with the funds should be separately identified prior to procurement so that the appropriate requirements can be applied, if necessary. If it is not possible to separate the funds, HUD procurement regulations shall be applied to the total project. If funds and work can be separated and work can be completed by a new contract, then regulations applicable to the source of funding may be followed.

The term “procurement,” as used in this Policy, includes the procuring, purchasing, leasing, or renting of: (1) goods, supplies, equipment, and materials, (2) construction and maintenance; consultant services, (3) Architectural and Engineering (A/E) services, (4) Social Services, and (5) other services.

C. EXCLUSIONS

This policy does not govern landlord Housing Assistance payments (HAP) contracts under the Section 8 voucher program; contracts funded by fee for service revenue earned by the HACC Central Office Cost Center under 24 CFR Part 990; and contracts funded by other non-federal income/revenue. These excluded areas are subject to applicable State and local requirements.

D. PUBLIC ACCESS TO PROCUREMENT INFORMATION

Procurement information shall be a matter of public record only to the extent provided in the Illinois Right to Know Act (430 ILCS 100/1 et. seq.) and Federal regulations and shall be available to the public as provided in the statutes.

III. PROCUREMENT AUTHORITY AND ADMINISTRATION

- A. The Executive Director shall be the Contracting Officer for HACC and shall administer all procurement transactions, and the Executive Director may delegate his/her authority to another individual he or she has authorized in writing as the Contracting Officer. The Executive Director shall issue operational procedures to implement this Policy. These procedures can be found in a separate Procurement Procedures. The Executive Director shall also establish a system of sanctions for violations of the ethical standards described in Section IV below, consistent with State and Federal laws. These sanctions are included as part of the HACC’s Personnel Policy.

The Executive Director is authorized to enter into contracts for any amount up to and including \$500,000. The Executive Director or designee is also authorized to approve change orders or amendments up \$500,000.00.

The Executive Director shall submit to the Board of Commissioners a written monthly summary of all procurement/contracts and change orders between \$10,000 and \$500,000. The Board of Commissioners shall review and grant prior approval for all contracts and agreements in excess of \$500,000. The Board will also approve all changes orders and amendments exceeding 25% of the original contract amount value when the original contract exceeds \$500,000.00.

- B. The Executive Director or his or her designee shall ensure that:
1. Procurement requirements are subject to an annual planning process to assure efficient and economical purchasing;
 2. Planning is essential to managing the procurement function properly. Hence, the HACC will periodically review its record of prior purchases, as well as future needs, to: find patterns of procurement actions that could be performed more efficiently or economically; maximize competition and competitive pricing among contracts and decrease the HACC's procurement costs; reduce HACC administrative costs; ensure that supplies and services are obtained without any need for re-procurement, e.g., resolving bid protests; and minimize errors that occur when there is inadequate lead time. Consideration should be given to storage, security, and handling requirements when planning the most appropriate purchasing actions.
 3. A minimum of 30 days shall generally be provided for preparation and submission of sealed bids and 15 days for competitive proposals. However, the Executive Director may allow for a shorter period under extraordinary circumstances. Notice of contract awards is made available to the public pursuant to the Right to Know Act after a contract has been finalized;
 4. Solicitation procedures are conducted in full compliance with applicable Federal standards stated at 24 CFR §85.36, and with State and local laws where they are more stringent, provided they are consistent with the applicable Federal standards;
 5. An independent cost estimate is prepared before solicitation issuance and is appropriately safeguarded for each procurement, and a cost or price analysis is conducted of the responses received for all procurements;
 6. Contract award is made to the responsive and responsible bidder offering the lowest price (for sealed bid contracts) or to the offeror whose proposal offers the greatest value to the HACC, considering price, technical, and other factors as specified in the solicitation (for contracts awarded based on competitive proposals); unsuccessful firms are notified in writing within ten (10) days after contract execution;
 7. The USER Department Director assures that there are sufficient unencumbered funds available to cover the anticipated cost of each procurement before contract award or modification (including change orders), work is inspected before payment, and payment is made promptly for contract work performed and accepted. In addition, the Department

Director shall affirmatively declare the eligibility of the expenditure when grant funds are being used; and

8. The HACC self-certifies that this Procurement Policy, and the HACC's procurement system, complies with all applicable Federal regulations and, as such, the HACC is exempt from prior HUD review and approval of individual procurement action.
- C. This Policy and any later changes to this Policy shall be submitted to the Board of Commissioners for approval. The Board appoints and delegates procurement authority and establishment of Procurement Procedures to the Executive Director, who is responsible for ensuring that any Procurement Policies adopted by the Board are appropriate for the HACC.

IV. ETHICS IN PUBLIC CONTRACTING

A. GENERAL

The HACC hereby establishes this code of conduct regarding procurement issues and actions and shall implement a system of sanctions for violations. This code of conduct, etc., is consistent with applicable Federal, State, or local law.

B. CONFLICT OF INTEREST

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

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

C. GRATUITIES, KICKBACKS, AND USE OF CONFIDENTIAL INFORMATION

No officer, employee, Board member, or agent shall ask for or accept gratuities, favors, or items of more than \$25 in value from any contractor, potential contractor, or party to any subcontract, and shall not knowingly use confidential information for actual or anticipated personal gain.

D. PROHIBITION AGAINST CONTINGENT FEES

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

E. CERTIFICATION REGARDING CONTRACT MODIFICATIONS

The HACC employee responsible for preparing the contract modification should certify that the contract modification has been prepared in accordance with the terms of the contract, HUD and HACC Procurement requirements, HUD's ethics requirements pursuant to 24 C.F.R. §85.36(b)(3) and to the best of his/her knowledge it does not violate any of the provisions of 18 U.S.C. § 666(a)(1) and applicable Commonwealth of Illinois law.

V. PROCUREMENT METHODS

A. SELECTION OF METHOD

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

B. PETTY CASH PURCHASES

Purchases under \$100 may be handled through the use of a petty cash account. Petty Cash Accounts may be established in an amount sufficient to cover small purchases made during a reasonable period, e.g., one month.

The Executive Director designates the Chief Financial Officer with the authority to establish petty cash accounts within the organization as the Chief Financial Officer deems appropriate.

The Chief Financial Officer shall:

- Assign petty cash accounts as appropriate.
- Determine the appropriate level of funding of each petty cash account based upon the volume of transactions and the needs of the organization or department. (In no event will the amount of any individual petty cash fund exceed \$100.)
- Establish procedures and monitoring controls over the petty cash accounts to ensure proper use and security of the funds.

C. CREDIT (or Purchasing) CARDS

Credit card usage should follow the rules for all other micro purchase. For example, the Contracting Officer may use a credit card for a micro purchase without obtaining additional quotes provided the price is considered reasonable.

When using credit cards, the HACC should adopt reasonable safeguards to assure that they are used only for intended purposes (for instance, limiting the types of purchases or the amount of purchases that are permitted with credit cards).

D. POLICY ON SMALL PURCHASES

1. General: Pursuant to 310 ILCS 10/1 et seq., any contract for goods, services and construction up to \$100,000 may be made in accordance with the small purchase procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section (except as may be reasonably necessary to comply with Section VIII of this Policy).

2. Small Purchase Procedures - Goods, Services and Construction

For any amounts above the Micro Purchase ceiling of \$2,000, but not exceeding \$100,000, the HACC may use small purchase procedures. Under ***Small Purchase*** procedures, the HACC shall obtain a reasonable number of quotes (preferably three); however, for purchases less than \$2,000 only one quote is required provided the quote is considered reasonable. To the greatest extent feasible, and to promote competition, small purchases should be distributed among qualified sources. Quotes may be obtained orally (either in person or by phone), by fax, in writing, or through e-procurement. Award shall be made to the qualified vendor that provides the best value to HACC. If award is to be made for reasons other than lowest price, documentation shall be provided in the contract file.

The HACC shall not break down requirements aggregating more than the small purchase threshold (or the Micro Purchase threshold) into several purchases that are less than the applicable threshold merely to: (1) permit use of the small purchase procedures or (2) avoid any requirements that apply to purchases that exceed the Micro Purchase threshold.

3. ***Small Purchases for Professional Services:*** For Professional Services up to \$100,000, at least three quotes should be solicited. The quotations may be obtained orally, by telephone or in writing if the selection will be based on price alone. If price and other factors are considered for award, proposals must be received in writing and award will be made to the vendor whose offer is most advantageous to the HACC considering price and other factors.

E. SEALED BIDS

1. **Conditions of Use:** Contracts shall be awarded based on competitive sealed bidding if the following conditions are present: Clear, accurate and complete specification or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; the procurement lends itself to a firm fixed price contract; and the selection of the successful bidder can be made principally on the basis of price. Sealed bidding is the preferred method for construction procurement. For professional services contracts, sealed bidding should not be used.
2. **Purchases in excess of \$100,000:** For procurement of goods and construction in excess of \$100,000, the Executive Director or his/her designee shall invite bids by advertisement in at least one local newspaper of general circulation, and in addition, mail invitations to bid to available bidders. The Executive Director or his designee is authorized to enter into written agreements on behalf of the HACC for construction, goods and services in any amount up to and including \$500,000 without prior approval of the HACC's Board of Commissioners. Agreements of more than \$500,000 must receive prior approval of the Authority Board of Commissioners.
3. **Solicitation and Receipt of Bids:** An invitation for bids shall be issued, including specifications and all contractual terms and conditions applicable to the procurement, including a statement that the award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the invitation for bids. The invitation for bids shall state the time and place for both the receipt of bids and the public bid opening. All bids received shall be time-stamped but not opened and shall be stored

in a secure place until bid opening. A bidder may withdraw its bid at any time prior to bid opening.

4. Bid Opening and Award: Bids shall be opened publicly and in the presence of at least one witness. An abstract of bids shall be recorded and shall be available for public inspection. Award shall be made as provided in the invitation for bids by written notice to the successful bidder. The successful bid shall be available for public inspection. If equal low bids are received from responsible bidders, award shall be made by drawing lots or similar random method, unless otherwise provided in State or local law and stated in the invitation for bids. If only one responsive bid is received from a responsible bidder, award shall not be made unless a cost or price analysis verifies the reasonableness of the price.
5. Mistakes in Bids:
 - a. Correction or withdrawal of inadvertently erroneous bids may be permitted, where appropriate, before bid openings by written or telegraphic notice received in the office designated in the invitation for bids prior to the time set for bid openings. After bid opening, corrections in bids shall be permitted only if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made (i.e., clerical error), the nature of the mistake, and the bid price actually intended. A low bidder alleging a non-judgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document or if the intended bid is unclear and/or the bidder submits convincing evidence that a mistake was made.
 - b. All decisions to allow correction or withdrawal of bid mistakes shall be supported by a written determination signed by the Contracting Officer. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the HACC or fair competition shall be permitted.
 - c. A firm whose bid was permitted to be withdrawn shall not be allowed to participate in any subsequent re-solicitation of the same contract.
6. Bonds: In addition to the other requirements of this Policy, the following requirements apply:
 - a. For construction contracts exceeding \$100,000, contractors shall be required to submit the following, unless otherwise required by State or local laws or regulations:

- (1) a bid guarantee from each bidder equivalent to 5% of the bid price;
and
 - (2) a performance bond for 100% of the contract price; and
 - (3) a payment bond for 100% of the contract price.
- b. In the case of construction of conventional development projects funded pursuant to the U.S. Housing Act of 1937, exceeding \$100,000, the contractor shall be required to submit the following:
- (1) A bid guarantee from each bidder equivalent to 5% of the bid price; and
 - (2) One of the following:
 - i. A performance and payment bond for 100% of the contract price; or
 - ii. A 20% cash escrow; or
 - iii. A 25% irrevocable letter of credit

F. COMPETITIVE PROPOSALS

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

1. **Conditions for Use:** Where conditions are not appropriate for the use of sealed bidding, competitive proposals may be used. Competitive proposals are the preferred method for procuring professional services that will exceed the small purchase threshold.
2. **Form of Solicitation:** Other than A/E services, competitive proposals shall be solicited through the issuance of a Request for Proposals (RFP). The RFP shall clearly identify the importance and relative value of each of the evaluation factors as well as any subfactors and price. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established **before** the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors,

and the contents of their proposals until after award. The HACC may assign price a specific weight in the evaluation criteria or the HACC may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.

3. Evaluation: The proposals shall be evaluated only on the criteria stated in the RFP. Where not apparent from the evaluation criteria, the HACC shall establish an Evaluation Plan for each RFP. Generally, all RFPs shall be evaluated by an appropriately appointed Evaluation Committee. The Evaluation Committee shall be required to disclose any potential conflicts of interest and to sign a Non-Disclosure statement. An Evaluation Report, summarizing the results of the evaluation, shall be prepared prior to award of a contract.
4. Negotiations: Negotiations shall be conducted with all offerors who submitted a proposal determined to have a reasonable chance of being selected for award, unless it is determined that negotiations are not needed with any of the offerors. This determination is based on the relative score of the proposals as they are evaluated and rated in accordance with the technical and price factors specified in the RFP. These offerors shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their proposals. No offeror shall be given any information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal. A common deadline shall be established for receipt of proposal revisions based on negotiations. Negotiations are exchanges (in either competitive or sole source environment) between the PHA and offerors that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule and technical requirements, type of contract or other terms of the proposed contract.

When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions. Discussions are tailored to each offeror's proposal, and shall be conducted by the contracting officer with each offeror in the competitive range. The primary object of discussions is to maximize the HACC's ability to obtain the best value, based on the requirements and the evaluation factors set forth in the solicitation. The contracting officer shall indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as cost, price, technical approach, past performance, and terms and conditions) that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposer's potential for award. The

scope and extent of discussions are a matter of the contracting officer's judgement. The contracting officer may inform an offeror that its price is considered by the PHA to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible to indicate to all offerors the cost and price that the government's price analysis, market research, and other reviews have identified as reasonable. "Auctioning" (revealing one offeror's price in an attempt to get another offeror to lower their price) is prohibited.

5. Award: After evaluation of the revised proposals, if any, the contract shall be awarded to the responsible firm whose technical approach to the project, qualifications, price, and/or any other factors considered, are most advantageous to HACC provided that the price is within the maximum total project budgeted amount established for the specific property or activity.
6. Architect/Engineer Services: The HACC must contract for A/E services using Qualification Based Selection (QBS) procedures, utilizing a Request for Qualifications (RFQ). Sealed bidding or Request for Proposal shall not be used for A/E solicitations. Under QBS procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. QBS procedures **shall not** be used to purchase other types of services, though architectural/engineering firms are potential sources.

G. NONCOMPETITIVE PROPOSALS

1. Conditions for Use: Procurement by noncompetitive proposals (sole source) may be used **only** when the award of a contract is not feasible using small purchase procedures, sealed bids, cooperative purchasing, or competitive proposals, **and** if one of the following applies:
 - a. The item is available only from a single source, based on a good faith review of available sources.
 - b. An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the HACC, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary simply to meet the emergency.

- c. HUD authorizes the use of non-competitive proposals; or
 - d. After solicitation of a number of sources, competition is determined inadequate.
2. Justification: Each procurement based on noncompetitive proposals shall be supported by a written justification for the selection of this method. The justification shall be approved in writing by the responsible Contracting Officer. Poor planning or lack of planning is not justification for emergency or sole-source procurements. The justification, to be included in the procurement file, should include the following information:
- a. Description of the requirement;
 - b. History of prior purchases and their nature (competitive vs. noncompetitive);
 - c. The specific exception in 24 CFR 85.36(d)(4)(i)(A) through (D) which applies;
 - d. Statement as to the unique circumstances that require award by noncompetitive proposals;
 - e. Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);
 - f. Statement as to efforts that will be taken in the future to promote competition for the requirement;
 - g. Signature by the Contracting Officer's supervisor (or someone above the level of the Contracting Officer); and
 - h. Price reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing an analysis, as described in this Policy.

H. COST AND PRICE ANALYSIS

1. General: A cost or price analysis shall be performed for all procurement actions and contract modifications excluding Petty Cash and Micro Purchases. For Petty Cash and Micro Purchases, the execution of a contract by the Contracting Officer (through a Purchase Order or other means) shall

serve as the Contracting Officer's determination that the price obtained is reasonable, which may be based on the Contracting Officer's prior experience or other factors.

The degree of analysis shall depend on the facts surrounding each procurement. The method of analysis shall be determined as follows.

2. **Cost Analysis:** Cost analysis shall be performed if an offeror/contractor is required to submit a cost breakdown as part of its proposal. If the procurement is based on non-competitive proposals, or when only one offer is received, or for other procurements as deemed necessary by the HACC (e.g., when contracting for professional, consulting, or architect/engineer services) the offeror shall be required to submit:
 - a. A cost breakdown showing projected costs and profits;
 - b. Commercial pricing and sales information, sufficient to enable the HACC to verify the reasonableness of the proposed price as a catalog or market price of a commercial product sold in substantial quantities to the general public; or
 - c. Documentation showing that the offered price is set by law or regulations.

When a cost breakdown is submitted, a cost analysis shall be performed of the individual cost elements; the HACC shall have a right to audit the contractor's books and records pertinent to such costs; and profit shall be analyzed separately.

Costs shall be allowable only to the extent that they are consistent with applicable Federal costs principles (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation, 48 C.F.R. Chapter 1). In establishing profit, the HACC shall consider factors such as the complexity and risk of the work involved, the contractor's investment and productivity, the amount of subcontracting, the quality of past performance, and industry profit rates in the area for similar work.

3. **Contract Modifications:** A cost analysis, consistent with federal guidelines, shall be conducted for all contract modifications for projects that were procured through sealed bids, competitive proposals, or non-competitive proposals, or for projects originally procured through Small Purchase procedures and the amount of the contract modification will result in a total contract price in excess of \$100,000.
4. **Price Analysis:** A comparison of prices shall be used in all cases other than those described in Section V.H.2 above.

I. CANCELLATION OF SOLICITATIONS

1. An invitation for bids, request for proposals, or other solicitation may be canceled before offers are due if: the HACC no longer requires the goods, services or construction; the HACC can no longer reasonably expect to fund the procurement; proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable; or it is determined to be in the best interest of the HACC.
2. A solicitation may be canceled and all bids or proposals that have already been received may be rejected if: the goods, services or construction are no longer required; ambiguous or otherwise inadequate specifications were part of the solicitation; the solicitation did not provide for consideration of all factors of significance to the HACC; prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds; there is reason to believe that bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or for good cause when it is in the best interest of the HACC.
3. The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request to any offeror solicited.
4. A notice of cancellation shall be sent to all offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete in any re-solicitation or future procurement of similar items.
5. If all otherwise acceptable bids received in response to an invitation for bids are at unreasonable prices, or only one bid is received and the price is unreasonable, the HACC shall cancel the solicitation and either:
 - a. Re-solicit using a request for proposals; or
 - b. Complete the procurement by using the competitive proposals method, described in Section V(E) above (when more than one otherwise acceptable bid has been received), or by using the non-competitive proposals method described in Section V(F) above (when only one bid is received at an unreasonable price); provided that the Contracting Officer determines in writing that such action is appropriate, all bidders are informed of the HACC's intent to negotiate, and each responsible bidder is given a reasonable opportunity to negotiate.

J. COOPERATIVE PURCHASING/INTERGOVERNMENTAL AGREEMENTS

The HACC may enter into state and local cooperative/ inter-governmental agreements to purchase or use common goods and services. The decision to use an inter-governmental agreement or conduct a direct procurement shall be based on economy and efficiency. If used, the inter-governmental agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. The HACC will attempt to use Federal or State excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs. The goods and services obtained under a cooperative purchasing agreement must have been procured in accordance with 24 CFR 85.36.

VI. CONTRACTOR QUALIFICATIONS AND DUTIES

A. CONTRACTOR RESPONSIBILITY

HACC shall not award any contract until the prospective contractor, i.e., low responsive bidder, or successful offeror, has been determined to be responsible. A responsible bidder/offeror must:

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

If a prospective contractor is found to be non-responsible, a written documentation of non-responsibility shall be prepared and included in the

official contract file, and the prospective contractor shall be advised of the reasons for the determination.

B. SUSPENSION AND DEBARMENT

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

C. QUALIFIED BIDDER'S LISTS

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

VII. TYPES OF CONTRACTS, CLAUSES, AND CONTRACT ADMINISTRATION

A. CONTRACT TYPES

Any type of contract which is appropriate to the procurement and which will promote the best interests of the HACC may be used, provided that the cost-plus-a-percentage-of-cost and percentage of construction cost methods are prohibited. All procurements shall include the clauses and provisions necessary to define the rights and responsibilities of the parties.

For all cost reimbursement contracts, HACC must include a written determination as to why no other contract type is suitable. Further, the contract must include a ceiling price that the contractor exceeds at its own risk.

A time and materials contract may be used only if a written determination is made that no other contract type is suitable, and the contract includes a ceiling price that the contractor exceeds at its own risk.

B. OPTIONS

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

C. CONTRACT CLAUSES

In addition to containing a clause identifying the contract type, all contracts shall include any clauses required by Federal statutes, executive orders, and their implementing regulations, as provided in 24 C.F.R. § 85.36(i), such as the following:

1. Termination for convenience
2. Termination for default
3. Equal Employment Opportunity
4. Anti-Kickback Act
5. Davis-Bacon Act
6. Contract Work Hours and Safety Standards Act, Reporting Requirements
7. Patent rights
8. Rights in data
9. Examination of records by Comptroller General, retention of records for three years after closeout
10. Clean air and water
11. Energy efficiency standards
12. Bid protests and contract claims
13. Value engineering, and
14. No payment of funds to influence certain Federal transactions

D. CONTRACT ADMINISTRATION

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

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

E. CONTRACT MODIFICATION

All contract modifications shall be in writing prior to permitting the contractor to proceed. The Executive Director or designee is authorized to approve contract modifications, change orders, and/or amendments in accordance with the thresholds identified in Section III.A of this Policy. The Executive Director shall submit to the Board a monthly summary of change orders between \$10,000 and \$100,000.

VIII. SPECIFICATIONS

A. GENERAL

All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying the HACC's needs. Specifications shall be reviewed prior to solicitation to ensure that they are neither unduly restrictive nor represent unnecessary or duplicative items. Functional or performance specifications are preferred. Detailed product specifications shall be avoided whenever possible. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase but procurements may not be artificially divided so as to constitute a small purchase. For equipment purchases, a lease versus purchase analysis in writing should be performed to determine the most economical form of procurement.

B. LIMITATIONS

The following specifications limitations shall be avoided: geographic restrictions not mandated or encouraged by applicable Federal law (except for architect-engineer contracts, which may include geographic location as a selection factor if adequate competition is available); unnecessary bonding or experience requirements; brand name or equal specifications (unless a written determination is made that only the identified item will satisfy the HACC's needs). Nothing in this Procurement Policy shall preempt any State licensing laws. Specifications shall be scrutinized to ensure that organizational conflicts of interest do not occur (for example, having a consultant perform a study of the HACC's computer needs and

then allowing that consultant to compete for the subsequent contracts for the computers).

IX. APPEALS AND REMEDIES

A. GENERAL

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

B. BID PROTESTS

Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy. Any protest against a solicitation must be received before the due date for receipt of bids or proposals, and any protest against the award of a contract must be received within ten (10) calendar days after contract award, or the protest will not be considered. All bid protests shall be in writing, submitted to the Contracting Officer or designee, who shall issue a written decision on the matter. The Contracting Officer may, at his or her discretion, suspend the procurement pending resolution of the protest, if warranted by the facts presented. An appeal of the Contracting Officer's decision may be made to the Executive Director within 30 days of the date of the decision. An appeal to the Executive Director's decision shall be made in accordance with State Law.

C. CONTRACT CLAIMS

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

X. ASSISTANCE TO SMALL AND OTHER BUSINESSES

A. DEFINITIONS

1. A “**small business**” is defined as a business that is: independently owned; not dominant in its field of operation; and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in 13 C.F.R. § 121 shall be used, unless the HACC determines that their use is inappropriate.
2. A “**minority-owned business**” is defined as a business which is at least 51% owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans and Asian Indian Americans, and Hasidic Jewish Americans.
3. A “**women’s business enterprise**” is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who also control or operate the business.
4. A “**labor surplus area business**” is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the U.S. Department of Labor in 20 CFR 654, Subpart A, and is in the lists of labor surplus areas published by the Employment and Training Administration.
5. A “**business concern located in the area of the project**”, is defined as an individual or firm located within the relevant Section 3 covered project area, as determined pursuant to 24 C.F.R. §135.15, listed on HUD’s registry of eligible business concerns, and meeting the definition of “small business” above.
6. A “**business concern owned in substantial part by persons residing in the area of the project**” is defined as a business concern which is 51% or more owned by persons residing within the Section 3 covered project, owned by persons considered by the U.S. Small Business Administration to be socially or economically disadvantaged, listed on HUD’s registry of eligible business concerns, and meeting the definition of “small business” above.

B. REQUIRED EFFORTS

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

XI. DISPOSITION OF EQUIPMENT AND SUPPLIES

A. DISPOSITION OF EQUIPMENT

1. Management requirements. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

- a. Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition date including the date of disposal and sale price of the property.
- b. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
- c. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.
- d. Adequate maintenance procedures must be developed to keep the property in good condition.
- e. If the Authority is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

3. Disposition: When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or other activities currently or previously supported by a Federal agency, disposition of the requirement will be made as follows:

- a. Items of equipment with a current per-unit fair market value less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.
- b. Items of equipment with a current per unit fair market value in excess of \$5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.
- c. In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

B. DISPOSITION OF SUPPLIES

1. Disposition: If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the HACC shall compensate the awarding agency for its share.

APPENDIX

REFERENCE GUIDE TO HACC PROCUREMENT POLICY

The following is a quick reference guide to HACC's Procurement Policy:

Procurement Policy

**Applicable Sections of
HUD, Illinois and Local
Laws, Rules and
Regulations**

I. Definitions

II. General Provisions

A. Purpose

[24 C.F.R. §85.36(b)(1) &
(c)(3) on written
procurement procedures]

B. Application

[24 C.F.R. §85.36(b) on
selection procedures]

**C. Public Access to
Procurement Information**

[See Illinois FOIA]

III. Procurement Authority and Administration

A. Authority

[24 C.F.R. §85.36]

B. Executive Director's Duties

[24 C.F.R. §85.36(b) - plan
economical and efficient
procurement; §85.36(b)(9)
on contract files; §85.36(f)
on an independent cost
estimates and §85.36(g) on
HUD review]

IV. Ethics in Public Contracting

A. General

[24 C.F.R. § 85.36(b)(3)]

B. Conflict of Interest

[24 C.F.R. §85.36(b)(3)]

**C. Gratuities, Kickbacks, and Use
of Confidential Information**

[24 C.F.R. §85.36(b)(3)]

V. Procurement Methods

- A. Selection of Method** [24 C.F.R. §85.36(d)]
**Chapter 4 of HUD
Procurement Handbook]**
- B. Small Purchase Procedures** [24 C.F.R. §85.36(d)(1)]
- C. Sealed Bids** [24 C.F.R §85.36(d)(2);
§85.36(h)]
- D. Competitive Proposals** [24 C.F.R §85.36(d)(3)]
- E. Non-competitive Proposals** [24 C.F.R. §85.36(d)(4)]
- F. Cost and Price Analysis** [24 C.F.R. §85.36(f)]
- G. Cancellation of Solicitations**
- H. Cooperative Purchasing** [24 C.F.R §85.36(b)(5)&(6)]

VI. Contractor Qualifications and Duties

- A. Contractor Responsibility** [24 C.F.R §85.36(b)(8)]
- B. Suspension and Debarment** [24 C.F.R. §85.36(i)]
- C. Qualified Bidder's List** [24 C.F.R. §85.36(c)(4)]

VII. Types of Contracts, Clauses and Contract Administration

- A. Contract Types** [24 C.F.R. §§85.36(b)(10),
(f)(4)]
- B. Options**
- C. Contract Clauses** [24 C.F.R. §85.36(i), (b)(7)]
- D. Contract Administration** [24 C.F.R. §85.36(b)(2)]
- E. Contract Modification** [24 C.F.R. §85.36(f) & (g)(2),

**Sec. 6-10 of HUD
Procurement Handbook]**

VIII. Specifications

- A. General** [24 C.F.R. §§85.36(b)(4),
(c)(3)(i)]
- B. Limitations** [24 C.F.R. §85.36(c)(1) & (2)]

IX. Appeals and Remedies

- A. General** [24 C.F.R. §85.36(b)(11)]
- B. Bid Protests** [24C.F.R. § 85.36(b)(12)]
- C. Contract Claims** [24 C.F.R. §85.36(b)(11)]

X. Assistance to Small and Other Businesses

- A. Definitions**
- B. Required Efforts** [24 C.F.R. §85.36(e)], [24
C.F.R. §963.10 & Part 135]

XI. Disposition of Equipment and Supplies

- A. Disposition of Equipment** [24 C.F.R.§85.32]
- B. Disposition of Supplies** [24 C.F.R.§85.33]

**Amendment
To
HACC Procurement Policy**

Capital Fund Stimulus Grant Procurement Policy

This Amendment to the HACC Procurement Policy applies only to procurements utilizing Capital Fund Stimulus Grants.

This Amendment hereby incorporates the American Recovery and Reinvestment Act of 2009 ("ARRA") procurement requirements as contained in the following documents:

1. PIH Notice 2009-12.
2. OMB Guidance on the Buy American provisions at 2 CFP Part 176.
3. Applicable ACC Amendment(s) for Recovery Act grants.

The provisions of these documents are incorporated by reference into HACC's Procurement Policy as it applies to procurements utilizing ARRA funds.