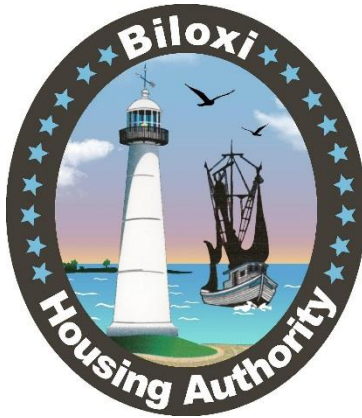


# **Biloxi Housing Authority**

## **Procurement Policy**



Approved by the Board of Commissioners  
Effective: March 13, 2019

**BILOXI HOUSING AUTHORITY  
PROCUREMENT POLICY**

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## **I. GENERAL PROVISIONS**

### **PURPOSE**

The purpose of this Procurement Policy (the "Policy") is to provide for the fair and ethical treatment of all persons or firms involved in purchasing by the Biloxi Housing Authority ("BHA"); ensure that supplies, services and construction are procured efficiently, effectively, and at the most favorable prices available to BHA; promote competition in contracting; provide safeguards for maintaining a procurement system of quality and integrity; and ensure that BHA purchasing actions are in full compliance with applicable federal, state and local laws.

### **APPLICATION**

This Policy applies to all contracts for the procurement of supplies, services and construction executed by BHA after the effective date of this Policy. This Policy shall apply to every expenditure of funds by BHA for public purchasing, regardless of the source of funds, including contracts which do not involve an obligation of funds (such as concession contracts); however, nothing in this Policy shall prevent BHA from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with applicable law. The term "procurement" as used in this Policy, includes both contracts and modifications (including change orders for construction or services) as well as purchase, lease, or rental of supplies and equipment. This Policy is guided by Mississippi Code Annotated Section 31-7-1 *et. seq.* (the "State Procurement Law") and 2 CFR Part 200 (the "Federal Procurement Regulations"). Strict compliance with the Federal Procurement Regulations is not required because operation of the Section 8 Program is specifically exempted from the Federal Procurement Regulations. However, should BHA implement a public housing program in the future or if the applicable law requires it, then all procurement actions related thereto must strictly comply with the Federal Procurement Regulations and applicable HUD guidance.

## **II. PROCUREMENT AUTHORITY AND ADMINISTRATION**

All procurement transactions shall be administered by the Contracting Officer, who shall be the Executive Director (the "Contracting Officer") or other individual he or she has authorized in writing to serve in his or her place (the "Designee"). The Executive Director shall establish a system of sanctions for violations of this Policy. The Executive Director or his or her Designee shall ensure that:

- A. Procurement requirements are subject to an annual planning process to assure efficient and economical purchasing;
- B. Contracts and modifications are in writing, clearly specifying the desired supplies, construction, or services, and are supported by sufficient documentation for procurement, including but not limited to (i) the method of procurement chosen, (ii) the selection of the contract type, (iii) the rationale for selecting or rejecting offers, and (iv) the basis for the contract price;
- C. All procedures for each procurement method or solicitation outlined below are followed in accordance with this Policy and in full compliance with applicable federal, state, and local law;
- D. An Independent Cost Estimate ("ICE") is prepared before solicitation issuance and an appropriate

safeguard is instituted for each procurement above the Micro Purchase and Small Purchase limitations (as defined below);

- E. A cost or price analysis is conducted upon receipt of responses for all procurements above the Micro Purchase amount;
- F. The contract award is made to the responsive and responsible bidder offering the lowest price (for sealed bid contracts) or, in the case of competitive proposals such as RFPs and RFQs (as defined below), the contract award is made to the offeror whose proposal offers the greatest value and advantage to BHA, considering price, technical, and other factors as specified in the solicitation; and
- G. That there are sufficient unencumbered funds available to cover the anticipated cost of each procurement before contract award or modification (including change orders), that the work is inspected before payment, and that payments are made promptly for contract work performed and accepted.

This Policy and any amendments or changes hereto shall be submitted to the Board of Commissioners ("Board") for approval. The Board appoints and delegates procurement authority to the Executive Director and is responsible for ensuring that any procurement policies adopted are appropriate for BHA.

### **III. PROCUREMENT METHODS**

If the BHA directly purchases required items, the Contracting Officer or Designee shall choose one of the following procurement methods, based on the nature and anticipated dollar value of the total purchases.

#### **A. Petty Cash Purchases**

The BHA maintains a One Thousand Dollar (\$1,000.00) petty cash account. The maximum per-purchase amount is limited to Seventy-Five Dollars (\$75.00). In cases considered an emergency, the maximum limit is One Hundred-Fifty Dollars (\$150.00) per occurrence, and may be handled through the petty cash account (the "Account"). The Account is established in an amount sufficient to cover small purchases made during a reasonable period, e.g., one month. For all Accounts, the BHA shall ensure that security is maintained and that only authorized individuals have access to the Account. This Account should be reconciled and replenished periodically.

#### **B. Micro Purchases - Purchases not over \$5,000.00 (Non-Competitive Proposals)**

The BHA has established a Micro Purchase Threshold of up to \$5,000.00 (the "Micro Purchase Threshold"). Purchases which do not involve an expenditure exceeding the Micro Purchase Threshold, exclusive of freight or shipping charges, may be made without advertising or otherwise requesting competitive quotes and/or bids. The BHA may award Micro Purchases without advertising or otherwise soliciting competitive quotations if the Contracting Officer or Designee considers the price to be reasonable (e.g., based on recent research, experience or prior purchases). The BHA may obtain bids or quotes orally (either in person or by telephone), by facsimile, in writing or through e-procurement. The award shall be made to the qualified vendor that provides the best value to BHA as determined by the Contracting Officer or Designee. To the

greatest extent feasible and to promote competition, Micro Purchases shall be distributed among qualified sources.

**C. Small Purchases - Purchases over \$5,000.00 but not exceeding \$50,000.00 (Competitive Bids)**

Purchases which involve an expenditure of more than Five Thousand Dollars (\$5,000.00) but not more than Fifty Thousand Dollars (\$50,000.00), exclusive of freight and shipping charges, (the "Small Purchase Threshold") may be made from the lowest and best bidder or offeror without publishing or posting advertisement for bids, provided at least two (2) competitive written bids or quotes have been obtained. A "competitive written bid" shall mean a bid that is (i) submitted on either a bid form furnished by the BHA or a vendor's letterhead (or other identifiable bid form) and signed by authorized personnel representing the vendor and (ii) developed independently and without knowledge of other bids or prospective bids based on comparable identification of the needs of the particular procurement. The BHA may accept bids submitted by facsimile, electronic mail, or other generally accepted method of information distribution. To the greatest extent feasible, and to promote competition, Small Purchases should be distributed among qualified sources.

**D. Sealed Bids - Purchases over \$50,000.00 (Construction/Sealed Bidding)**

Purchases involving an expenditure of more than Fifty Thousand Dollars (\$50,000.00), exclusive of freight and shipping charges, may be made from the lowest and best bidder after advertising for competitive sealed bids once each week for two (2) consecutive weeks in a regular newspaper published in Harrison County, Mississippi. The date as published for the bid opening shall not be less than seven (7) working days after the last published notice. However, if the purchase involves a construction project in which the estimated cost is in excess of Fifty Thousand Dollars (\$50,000.00), such bids shall not be opened in less than fifteen (15) working days after the last notice is published.

- a. Conditions for Use: Contracts shall be awarded based on competitive sealed bidding if the following conditions are present: (i) a complete, adequate, and realistic specification or purchase description is available; (ii) two or more responsible bidders are willing and able to compete effectively for the work; (iii) the procurement lends itself to a firm fixed price contract; and (iv) the selection of the successful bidder can be made based on the price. Sealed bidding is the preferred method for construction procurement.
- b. Solicitation and Receipt of Bids: An invitation for bids ("IFB") shall contain specifications and all contractual terms and conditions applicable to the procurement, which include (i) 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 and (ii) the time and place for both the receipt of bids and the public bid opening. All bids received shall be time stamped and shall remain closed and stored in a secure place until bid opening. A bidder may withdraw its bid at any time prior to bid opening.

- c. Bid Opening and Award: Bids shall be opened publicly and in the presence of at least one witness. An abstract of bids showing the name of each bidder and their bid price (including alternatives) shall be prepared and the bids shall be available for public inspection. The award shall be made as provided in the invitation for bids by written notice to the successful bidder. If equal low bids are received from responsible bidders, the award shall be made by drawing lots or similar random method as stated in the IFB. If only one responsive bid is received from a responsible bidder, the award shall not be made unless a cost or price analysis verifies the reasonableness of the price.
  
- d. Mistakes in Bids:
  - i. The Contracting Officer or Designee may waive minor informalities or allow the bidder to correct them. Minor informalities are insignificant mistakes that can be waived or corrected without prejudice to other bidders and have little or no effect on price, quantity, quality, delivery or contractual obligations.
  - ii. Before bid opening, the Contracting Officer or Designee may allow withdrawal of inadvertently erroneous bids, where appropriate, upon receipt of written or electronic notice of the erroneous bid received in the office designated by the IFB prior to the time set for bid opening.
  - iii. After bid opening, the Contracting Officer or Designee shall allow corrections in bids only if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price that was intended. A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clear and evident on the face of the bid document but the intended bid is unclear or if the bidder submits convincing evidence that a mistake was made. 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 BHA or fair competition shall be permitted.
  
- e. Construction project negotiations authority: If the lowest and best bid is not more than ten percent (10%) above the amount of funds allocated for a public construction or renovation project, then the BHA shall be permitted to negotiate with the lowest bidder and execute a contract for an amount not to exceed the funds allocated for the particular procurement.
  
- f. Bonding Requirements: In addition to the other requirements of this Policy, the following requirements apply for construction contracts exceeding \$50,000. Contractors shall be required to submit the following, unless otherwise not required by federal, state or local Laws:
  - i. A bid guarantee from each bidder equivalent to 5% of the bid price; and

- ii. A performance and payment bond in a penal sum of 100% of the contract price;  
or
- iii. A separate performance and payment bond each for 50% or more of the contract price.

#### **E. Competitive Proposals**

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 until the point of the award. The award should be made based on the proposal that represents the best overall value to the BHA, considering price and other factors (e.g., technical expertise, experience, quality of proposed staffing, etc.) set forth in the solicitation and not solely based on the lowest price.

- a. Conditions for use: Although competitive sealed bidding is generally the preferred method of procurement, a competitive proposal (i.e., a request for proposal ("RFP") or request for qualifications ("RFQ")) may be used if competitive sealed bidding is not practicable and advantageous for the BHA. The Competitive Proposal method is preferred for procuring Professional Services that will exceed the Small Purchase Threshold.
- b. Content of the RFP or RFQ: The RFP or RFQ shall clearly identify the importance and relative value of each of the evaluation factors as well as any sub-factors. Specifically, the RFP or RFQ should include, but not be limited to, the following information:
  - i. Instructions and information to offerors concerning the RFP or RFQ submission requirements (including the date and time for receipt of proposals or qualifications; the address of the office to which proposals or qualifications are to be delivered; the maximum time for proposal or qualification acceptance by the BHA; and the manner in which proposals or qualifications are to be submitted);
  - ii. Purchase description, evaluation factors, delivery or performance schedule, and any inspection and acceptance requirements that are not included in the purchase description;
  - iii. Contract terms and conditions, including warranty, bonding and other security requirements (if applicable);
  - iv. A statement that discussions may be conducted with offerors who submit proposals or qualifications determined to be reasonably likely to be selected for the award, but that proposals or qualifications may be accepted without such discussion; and
  - v. A statement of when and how price should be submitted.
- c. Public Notice: In addition to any method of public notice regarding the solicitation of RFPs

or RFQs currently being used by the BHA, the Contracting Officer or Designee shall also post the pending procurement (the "Notice") on the Mississippi procurement portal and the BHA's website. It may post the Notice on NAHRO's procurement portal. The Notice shall include: (i) the due date for responses; (ii) the name and telephone number of the Contracting Officer or Designee; and (iii) the means of obtaining the solicitation. The Notice shall be posted at least thirty (30) days before the date that proposals or qualifications are to be submitted to the Contracting Officer or Designee, unless a shorter time is deemed necessary for a particular procurement as determined in writing by the Contracting Officer or Designee.

- d. Timing for Submission of the RFP or RFQ: The BHA shall provide offerors a minimum of thirty (30) days to prepare their proposals or qualifications unless a shorter time is deemed necessary for a particular procurement as determined in writing by the Contracting Officer or Designee.
- e. Non-Disclosure: The BHA shall prevent disclosure of the number of offerors, identity of the offerors, and the contents of each offeror's proposal until after it has made the award, and then, it must follow applicable privacy and open records laws in releasing the same.
- f. Negotiations: Unless there is no need for negotiations with any of the offerors, negotiations may be conducted with offerors who submit proposals determined to have a reasonable chance of being selected for award, based on evaluation against the technical and price factors as specified in the RFP or RFQ. All negotiations shall be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. The purpose of negotiations shall be to seek clarification regarding deficiencies. The BHA will advise offerors of technical and price aspects of their proposals to assure full understanding and conformance to the solicitation requirements. No offeror shall be provided information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal. Offerors shall not be directed to reduce their proposed prices to a specific amount to be considered for an award. A common deadline shall be established for receipt of proposal revisions based on negotiations.
- g. Evaluation: The proposal or qualification shall be evaluated only on the criteria stated in the RFP or RFQ. The BHA shall establish an Evaluation Plan for each RFP or RFQ that fairly and thoroughly evaluates technical factors and price proposals. Each RFP or RFQ shall be evaluated by an appropriately appointed Evaluation Committee. The members of the Evaluation Committee shall have the relevant experience necessary to evaluate the proposals or qualifications and shall have no personal, financial, or familial interest with the offerors to be evaluated. Each Evaluation Committee member will be required to disclose any potential conflicts of interest and sign a Non-Disclosure Statement. An Evaluation Report summarizing the results of the evaluation shall be prepared prior to



award of a contract.

- h. Award: After evaluation of proposals or qualifications, the contract shall be awarded to the most responsive contractor whose qualifications, price and other factors considered, are the most advantageous to BHA. The Evaluation Committee shall prepare a report evaluating and recommending the award of the contract. The report shall: (i) rank offerors in order of evaluation; (ii) summarize the proposals or qualifications of each offeror; (iii) recommend the selection of an offeror for a contract; (iv) be clear about the reasons why the offeror was selected among others considered; and (v) detail the terms, conditions, scope of services, fees and other matters to be incorporated into the contract. The report shall be available to the public at least forty-eight (48) hours before the awarding of the contract. The Contracting Officer or Designee shall publish a notice summarizing the award on the Mississippi procurement portal and the BHA's website, which shall include but not be limited to, the nature, duration and amount of the contract, the name of the offeror and a statement that the contract is on file and available for public inspection in the office of the Contracting Officer or Designee.

#### **F. Architect and Engineers**

The BHA must procure Architect and Engineering services ("A/E Services") using Qualification Based Selection ("QBS") procedures, by utilizing the RFQ method. Sealed bidding shall not be used for solicitations of A/E Services. Under QBS procedures, competitor qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. QBS procedures shall not be used to purchase other types of services other than A/E Services.

#### **G. Non-Competitive Proposals**

- a. Conditions for use: Procurement shall be conducted competitively to the maximum extent possible. Procurement by non-competitive proposals may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids or competitive proposals, and one of the following applies:
  - i. The item is available only from a single source, based on a good faith review of available sources;
  - ii. An emergency exists that seriously threatens the public health, welfare or safety, or endangers property, or would otherwise cause serious injury to BHA, as may arise due to a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be a serious and immediate 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; or
  - iii. After solicitation with multiple sources, competition is determined inadequate.

- b. Justification: Each procurement based on noncompetitive proposals shall be supported by a written justification for using such procedures. The justification shall be approved in writing by the responsible Contracting Officer or Designee.

#### **H. Cancellation of Solicitations**

An IFB, RFP, or other solicitation may be cancelled before offers are due if: (i) the BHA no longer requires the supplies, services or construction; (ii) the BHA can no longer reasonably expect to fund the procurement; (iii) proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable; or (iv) other similar reasons that are in the best interests of the BHA.

If BHA has already received offers, an IFB, RFP, or other solicitation may be cancelled and all bids or proposals previously received may be rejected if: (i) the supplies, services, or construction are no longer required; (ii) ambiguous or otherwise inadequate specifications were provided by the BHA; (iii) prices exceed available funds and it would be inappropriate to adjust quantities in order for prices to fall within available funds; (iv) there is reason to believe that bids or proposals may have been collusive or may have been submitted in bad faith; (v) or for good cause of a similar nature when it is in the best interests of the BHA. The reasons for cancellation shall be documented in the procurement file and provided to any offeror solicited upon request by the offeror. A notice of cancellation shall be sent to all offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any re-solicitation or future procurement of similar items.

If all otherwise acceptable bids received in response to an invitation for bids are submitted at unreasonable prices, or only one bid is received and the price is unreasonable, the BHA shall cancel the solicitation and either: (i) re-solicit using an RFP or RFQ; or (ii) complete the procurement by using the competitive proposals method. The Contracting Officer must determine, in writing, that such action is appropriate, inform all bidders of the BHA's intent to negotiate, and give each bidder a reasonable opportunity to negotiate.

#### **IV. CONTRACTOR QUALIFICATIONS AND DUTIES**

##### **A. Contractor Responsibility:**

Procurement shall be conducted only with responsible contractors (i.e., those contractors who have the technical and financial competence to perform and who have a satisfactory record of integrity). Before awarding a contract, the BHA shall review the proposed contractor's ability to perform the contract successfully, considering factors such as the contractor's integrity and record of past performance (by, for example, contacting previous clients of the contractor, such as other public housing agencies).

##### **B. Suspension and Debarment:**

Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined ineligible by any other federal, state or local agency.

##### **C. Qualified Bidder's List:**

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

#### **V. TYPES OF CONTRACTS, CLAUSES, AND CONTRACT ADMINISTRATION**

##### **A. Contract Types:**

The BHA may use any type of contract that the Contracting Officer or Designee deems appropriate for the particular procurement and which will promote the best interests of the BHA. All BHA contracts shall include a clause identifying the type of contract. The following is a list of acceptable contract types for the BHA:

1. Firm fixed price.
2. Fixed price with economic adjustment.
3. Indefinite delivery/quantity.
4. Definite delivery/quantity
5. Multiple awards.

A cost reimbursement contract shall only be used if it is likely to be less costly than the acceptable contract types listed above or it is impracticable to satisfy the BHA needs without the use of a cost reimbursement contract. If a cost reimbursement contract is used, the proposed contractor's accounting system must be adequate to allocate costs in accordance with applicable cost principles for commercial firms. A time and materials contract may be used only if a written determination is made that no other contract type is

suitable. The time and materials contract shall include 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 BHA; (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 BHA than conducting a new procurement.

**C. Contract Clauses:**

All procurements shall include clauses that define the rights and responsibilities of the parties thereto. BHA contracts may also include, as applicable, the following clauses:

1. Termination for convenience;
2. Termination for default;
3. Equal Employment Opportunity;
4. Anti-Kickback Act; and
5. Non-Collusive Affidavit.

**D. Independent Cost Estimate:**

For purchases above the Micro Purchase and Small Purchase Thresholds, the BHA may prepare an ICE prior to solicitation in order to estimate the cost of the goods or services to be acquired. The level of detail contained in the ICE shall be commensurate with the cost and complexity of the item to be purchased.

**E. Cost and Price Analysis:**

The reasonableness of the price for all procurements based on bids, proposals, or qualifications shall be determined by performing a cost and price analysis. The BHA shall, through its cost and price analysis, confirm that the price is reasonable before executing a contract by using the following guidelines:

- a. Petty Cash and Micro Purchases – No formal cost or price analysis is required. The execution by the Contracting Officer (through a Purchase Order or P-Card) shall serve as the determination that the price obtained is reasonable, based on prior experience and other factors.
- b. Small Purchases – A comparison of each offer to other offers received and to other available sources of pricing information shall be a sufficient determination of the reasonableness of price and no further analysis shall be required. If only one response is received, the

Contracting Officer or Designee shall include a statement of reasonableness in the procurement file.

- c. Sealed Bids/Competitive Proposals – The presence of adequate competition should be sufficient to establish price reasonableness in the case of sealed bids and competitive proposals. However, the BHA must conduct a cost analysis to ensure that the price of a particular contract is reasonable in the event that (i) sufficient bids or proposals are not received; (ii) the price of bids or proposals received is substantially higher than the ICE, or (iii) BHA cannot reasonably determine price reasonableness.

## **VI. SPECIFICATIONS**

### **General:**

Specifications may be used in the procurement process to communicate to prospective contractors precisely what the BHA desires to purchase and to encourage fair competition. The BHA shall review specifications prior to solicitation to ensure that they do not contain unnecessary or duplicate items and that they are not unduly restrictive. Functional or performance specifications are the preferred types of specifications, while detailed product specifications shall be avoided whenever possible. The BHA should consider consolidating or breaking out procurements to obtain a more economical purchase. For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

### **Limitations:**

The BHA should avoid the following specification limitations: (i) geographic restrictions not mandated or encouraged by applicable state or local law (except for A/E Contracts, which may include geographic location as a selection factor if adequate competition is available); (ii) unnecessary bonding or experience requirements; (iii) brand name specifications (unless a written determination is made that only the identified item will satisfy the BHA's needs); and (iv) brand name or equal specifications (unless it is determined that only the identified items will satisfy the BHA's needs). References to "brand names or equal" specifications shall include a description of the item's essential characteristics in order to avoid restricting competition. Specifications shall be scrutinized to ensure that organizational conflicts of interest do not occur. Nothing in this Section VI or this Policy shall preempt any state licensing laws.

## **VII. ETHICS IN PUBLIC CONTRACTING**

**General:** Ethical standards apply to PHA employees, Contracting Officers, and anyone else with a vested interest in PHA contracts including members of the Board, other officials and agents of the authority, and contractors with whom the PHA does business.

### **A. Conflict of Interest:**

No BHA employee, officer or agent shall participate directly or indirectly in the selection, award, or administration of any contract if a conflict of interest, financial or otherwise, real or apparent, would be

involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the above.

No present or former employee, officer, or agent of the BHA or any member of his or her immediate family shall engage in selling or attempting to sell supplies, services, or construction to the BHA for one (1) year following the date such employment ceased.

**B. Gratuities and Kickbacks:**

The BHA officers, current employees, former employees within one (1) year of employment, or agents shall neither solicit, accept, or agree to accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. Further, it is a breach of ethical conduct and prohibited for any payment, gratuity, or offer of employment to be made by, or on behalf of, a contractor or subcontractor under contract to the prime contractor, higher tier subcontractor, or any person associated therewith as an inducement for the award of a subcontractor order.

**C. Confidential Information:**

The BHA expressly prohibits the disclosure of confidential information not authorized by the Contracting Officer or Designee to receive such confidential information. Confidential information includes but is not limited to: (i) the contents of bids (prior to bid opening) or proposals (prior to contract award); (ii) names of individuals or firms that submitted bids (prior to bid opening) or proposals (prior to contract award); (iii) BHA-generated information related to a procurement (including BHA cost estimates, contractor selection and evaluation plans, or specifications (before a solicitation is issued)); and (iv) any other information the disclosure of which would have a direct bearing upon the contract award or the competitive process. It is a breach of ethical conduct for any current or former BHA employee, officer, or agent to knowingly use confidential information for actual or anticipated personal gain or for actual or anticipated personal gain of any other person.

**D. Prohibition Against Contingent Fees:**

No contractor shall retain a person to solicit or secure a BHA contract for a commission, percentage, brokerage, or contingent fee, except for the retention of bona fide employees or a bona fide agency established for the purpose of securing business.

**E. Mississippi State Ethics Laws:**

This Section VII is in addition and supplemental to Section 109 of the Mississippi Constitution of 1890 and the Mississippi Ethics in Government Act, Mississippi Code Section 25-4-101 et Seq. Where this Section conflicts with any of the Mississippi State Ethics Laws, the more stringent requirements shall control.

**VIII. APPEALS AND REMEDIES:**

**A. General:** It is BHA policy to resolve all contractual issues informally at the agency level, without litigation. When appropriate, the BHA may consider the use of informal discussions between the parties with the assistance of individuals who did not participate substantially in the matter in dispute, to help resolve the differences.

**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 of a solicitation must be received before the due date of receipt of bids or proposals. Any protest of the award of a contract must be received within seventy-two (72) hours after the contract award is made, or the protest will not be considered. The Contracting Officer or Designee, at his or her discretion, may suspend the solicitation pending resolution of the protest, if warranted by the facts presented.

**C. Contract Claims:** All claims by a contractor relating to the 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 is final.

#### **IX. PURCHASING CARD POLICY**

A BHA credit card ("P-Card") may be used for purchases of materials and supplies that do not exceed the Small Purchase Threshold of \$50,000.00. The procedures for P-Card use shall comply with the purchasing methods for Micro Purchases (if the price does not exceed the Micro Purchase Threshold of \$5,000.00) or Small Purchases (if the price exceeds the Micro Purchase Threshold) up to the maximum credit amount of the P-Card's credit limit. The Contracting Officer or Designee may authorize specific BHA employees to use any BHA P-Card.

P-Card purchases not exceeding \$5,000.00 may be made without receiving written quotes, following the Micro Purchase guidelines contained herein. For any P-Card purchase exceeding \$5,000.00, the BHA must obtain a minimum of two (2) quotes, prepare a cost analysis, follow other Small Purchase guidelines contained herein, and ensure that the purchase does not exceed the credit limitations of the P-Card used. No purchases for services or construction contracts may be made on a BHA P-Card. P-Card use is restricted to materials and supplies on an as-needed basis when the use of a purchase order is not possible and/or when the need for the materials or supplies is determined to be urgent to correct a deficiency that is considered an emergency affecting the health and safety of staff and residents. Any person using a P-Card must obtain a record of payment received, such as a store receipt, online payment documentation or other receipt, and shall submit such record of payment to the BHA purchasing and/or accounting office.

#### **X. INSURANCE REQUIREMENTS FOR CONTRACTS**

All contractors, whether for construction or professional services, must obtain a minimum General Liability, Worker's Compensation and Automobile Insurance Policy in an amount not less than \$1,000,000.00 for each policy naming the BHA as an "Additional Insured" entity relating to any claim, loss, or liability arising out of ongoing and completed operations of the contractor or other named insured. This requirement shall be waived for professional services that do not require a physical presence on any BHA-owned property to perform the scope of work identified in the contract. Professional services that require employees to work and drive vehicles on BHA property (such as elevator repair and maintenance; fire alarm inspection, maintenance, and repair; telephone system maintenance and repair, lawn and landscaping maintenance; unit painting and cleaning; janitorial services, etc.), shall maintain proper insurance coverage prior to performing any work on BHA property. Insurance coverage must be maintained during the term of the contract.

All contracts shall contain the following waiver of subrogation:

Contractor shall be responsible for, and shall defend, indemnify and hold BHA harmless from and against, *any claims* for damages for loss or destruction of property of contractor, or for injury to, impairment of health of, or death of employees of Contractor or employees of Contractor's subcontractors that may arise from Contractor's operations under this Agreement. If Contractor obtains insurance to protect itself from loss or destruction of property, Contractor agrees that any such policy or policies of insurance shall be endorsed to provide a waiver of subrogation rights against BHA. Contractor shall also be responsible for and shall defend, indemnify and hold BHA harmless from and against, any claims for damages for loss or destruction of property of third parties that may arise from Contractor's operations under this Agreement. However, BHA shall have the right, at its option, to participate in the defense of any such suit without relieving Contractor of any obligation hereunder.

#### **XI. DISPOSITION OF SURPLUS PROPERTY**

Property, other than real property, that is no longer necessary for the BHA's purposes shall be transferred, sold, or disposed of in accordance with applicable federal, state and local Laws and regulations. The BHA may use any of the following methods to dispose of surplus property:

1. Sealed Bids;
2. Public Auction;
3. Donations to Charitable Organizations;
4. Recycle Facility; and
5. Fixed Price Sale at a reasonable value that considers depreciation.

#### **XII. BOARD APPROVAL OF PROCUREMENT ACTIONS**

The Board must approve all procurement actions, including purchase orders, that exceed the Small Purchase Threshold amount of \$50,000.00, in the aggregate, including any change orders or amendments, as permitted under state and local law. It is the responsibility of the Contracting Officer or Designee to ensure that all procurement actions are conducted in accordance with the policies contained herein.

#### **XIII. SELF-CERTIFICATION**

The BHA self-certifies that this Procurement Policy, and the BHA's procurement system, complies with all applicable federal, state and local laws and regulations; and, as such, the BHA is exempt from prior HUD review and approval of individual procurement action.