

PROCUREMENT POLICY

INTRODUCTION

This Statement of Procurement Policy is established for the Housing Authority of the City of Los Angeles (HACLA) for the acquisition of supplies, materials and equipment, personal and professional services, and construction and maintenance services in accordance with and subject to state and federal laws and regulations, including the following, as the same may be amended or superseded from time to time:

- Annual Contributions Contract (ACC) with the U.S. Department of Housing and Urban Development (HUD)
- HUD Notice SD-2015-01 (Transition to 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Guidance, issued February 26, 2015)
- 2 CFR at Part 200, particularly sections 200.318 through 200.326 (procurement standards)
- Cal. Labor Code sections 1720-1861 (Public Works)
- Cal. Public Contract Code
- Cal. Government Code
- Title 2 of the California Code of Regulations at sections 18110 – 18997 (Conflicts of Interest)
- Title 8 of the California Code of Regulations at sections 16000-16403 (Payment of Prevailing Wages upon Public Works)

I. GENERAL PROVISIONS

A. PURPOSE

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

B. APPLICATION

This Policy applies to all procurement actions of the Authority, regardless of the source of funds, except as noted under

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“exclusions,” below. However, nothing in this Policy shall prevent HACLA 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 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.

Exclusions

This policy does not apply to procurement activities funded using non-program income or to the following activities:

- Real estate purchase and sale transactions (see HACLA’s [Policy Guidelines for the Acquisition of Real Property](#))
- Loan transactions
- The solicitation or award of Housing Assistance Payment contracts unless otherwise elected by the Contracting Officer

C. APPLICABILITY OF FUNDING SOURCE

HACLA is eligible to receive funding from federal and non-federal sources. In carrying out its procurement activities, HACLA shall comply with any funding source requirements and all applicable laws and regulations, without necessarily imposing a higher standard than is necessary to ensure compliance with the applicable laws and regulations.

D. PUBLIC ACCESS TO PROCUREMENT INFORMATION

Procurement information that is not proprietary is a matter of public record and shall be available to the public to the extent provided in the California Public Records Act (Government Code Section 6250 et seq.) or similar applicable law, in accordance with HACLA’s Access to Records Policy.

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E. EMERGENCY

An emergency is defined as a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property or essential public service.

In case of an “emergency” situation, the President and CEO or his/her designee shall have the ability to conditionally override procurement policy provisions necessary to mitigate against the loss or impairment of life, health, property or essential service and/or ensure the continued operation of HACLA until such time as the next Board of Commissioners meeting where such actions would normally require Board of Commissioners approval.

F. DEFINITIONS

“Best Value” - A determination that follows from a procurement process in which a competitive proposal is evaluated for price and qualitative factors such as quality and performance, as judged against the solicitation’s evaluation criteria, and award selection is based upon the proposal that offers the most advantageous value to HACLA.

“Capital Fund” - The Capital Fund provides funds annually to Public Housing Agencies (PHAs) for capital and management activities, including modernization and development of public housing. The Capital fund also permits PHAs to use Capital Funds for financing activities, including payments of debt service and customary financing costs, in standard PHA developments and in mixed-finance developments, which include Public Housing.

“Contracting Officer” - The President and CEO or the person(s) designated in writing by the President and CEO to administer this Policy or portions thereof, develop procedures to effectuate this Policy or portions thereof, or the authority to contract and act as the authorized agent of HACLA in all dealings with Contractors.

“Contract” - A mutually binding legal relationship obligating the seller to furnish goods or services (including maintenance and construction work) and obligating HACLA to pay for them. The term includes all

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types of commitments that obligate HACLA to an expenditure of funds and that, except as otherwise authorized, are in writing. The term includes purchase orders and memoranda of understanding.

“Contractor” - The person or entity entering into the contract with HACLA to perform the services or provide the goods required under the contract documents.

“Competitive Proposal” - A technique for purchasing goods and services, usually of a technical nature, whereby qualified suppliers are solicited and the contract is awarded based on Best Value. It is generally used when conditions are not appropriate for the use of sealed (formal) bids. A Competitive Proposal, including one for a developer, may be undertaken as a RFP or RFQ (both as defined below), as the Contracting Officer shall determine, or any other competitive manner provided that such manner complies with federal law and the laws of the state of California, including all applicable regulations.

“Formal Bid” - A bid which must be advertised and forwarded in a sealed envelope and be in conformance with a prescribed format to be opened at a specified time.

“Labor surplus area business” - A business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the U.S. Department of Labor in 20 CFR 654, Subpart A, and in lists of labor surplus areas published by the Employment and Training Administration.

“Micro Purchase Threshold” - The federal Micro Purchase Threshold, which is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions). The federal Micro Purchase threshold is periodically adjusted for inflation. All such adjustments shall be applicable to this Policy as soon as the adjustment takes effect, without need of an amendment to this Policy to effectuate the same.

“Micro Purchase Procedures” - A simple and informal method for acquiring goods and services that do not exceed the Micro Purchase Threshold, as set forth in paragraph 3 of Article III (Procurement Methods), Section B (Small Purchases) of this Policy.

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"Minority business enterprise" - 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, African/Black Americans, Hispanic/Latino Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans and Hasidic Jewish Americans.

"Noncompetitive Proposal" - A method of procuring goods or services through a "sole source" (i.e., when HACLA solicits an offer from one source), a "single source" (i.e., when HACLA solicits offers from multiple sources but receives only one offer), or where competition is otherwise determined inadequate.

"Price Analysis" - An evaluation of price based on comparison to market prices, catalog prices, historical data, or other services.

"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, (5) real estate development services, and (6) other services.

"Public Works" - Construction including development, demolition, reconstruction (alteration), rehabilitation and other construction-related tasks (including maintenance and non-routine maintenance), whereby the payment of prevailing wages are triggered.

"Responsible" - A "Responsible" bidder, offeror or respondent, Contractor or subcontractor is one who satisfies the standards set forth in Section IV.A of this Policy.

"Responsive" - A "Responsive" bid or proposal is one that conforms to the essential requirements of the solicitation including, without limitation, specifications, delivery schedule, warranty, and submittal of the required documents.

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“Section 3” - Section 3 of the Housing and Urban Development Act of 1968, codified at 12 U.S.C. 1701u, as amended, and implemented at 24 CFR Part 75.

“Section 3 Contract” means a contract subject to HACLA’s Section 3 Policy and Compliance Plan, whether by virtue of Section 3 or HACLA’s imposition of Section 3 upon the contract.

“Simplified Acquisition Threshold” - The federal Simplified Acquisition Threshold, which is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) in accordance with 41 U.S.C. 1908. The federal Simplified Acquisition Threshold is periodically adjusted for inflation. All such adjustments shall be applicable to this Policy as soon as the adjustment takes effect, without need of an amendment to this Policy to effectuate the same.

“Small Purchase Procedures” - A relatively simple and informal method for procuring goods and services that do not exceed the Simplified Acquisition Threshold, as set forth in paragraph 4 of Article III (Procurement Methods), Section B (Small Purchases) of this Policy.

“Small business” - A business, which is independently owned, not dominant in its field of operation and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in 13 CFR 121 shall be used, unless HACLA determines that their use is inappropriate.

“Services” - As used herein means and includes labor, professional services, management consulting services, or a combination of services and supplies, which shall include construction projects.

“Supplies” - As used herein means and includes materials, commodities, and equipment.

“Women’s business enterprise” - A business that is at least 51% owned by a woman or women who are U.S. citizens and who control or operate the business.

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G. AMENDING PROCUREMENT POLICY

This Policy can only be amended through resolution and approval by the Board of Commissioners.

H. PROCUREMENT THRESHOLDS

HACLA's Board of Commissioners shall approve through resolution all contracts or commitments of funds that exceed the Simplified Acquisition Threshold.

The President and CEO is hereby authorized to enter into contracts or commit funds up to the Simplified Acquisition Threshold.

I. CHANGE IN LAW OR REGULATION

In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall apply and to the extent inconsistent with this Policy, shall automatically supersede the inconsistent provisions of this Policy.

II. PROCUREMENT AUTHORITY AND ADMINISTRATION

A. All procurement transactions shall be administered by the Contracting Officer, who shall be the President and CEO or other individual he or she has authorized in writing. The President and CEO or designee shall issue operational procedures to implement this Policy, which shall be based on the sources identified in the first paragraph of this Chapter, as may be applicable. The President and CEO or designee shall also establish a system of sanctions for violations of the ethical standards described in Section IX below, consistent with state and federal law.

B. The President and CEO or his/her designee shall ensure that:

1. Procurement requirements are subject to an annual planning process to assure efficient and economical purchasing;
2. Contracts and modifications are in writing, clearly specifying the desired supplies, services and construction, and are supported by sufficient documentation regarding the history of

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the procurement, including as a minimum the method of procurement chosen, the selection of the contract type, the rationale for selecting or rejecting offers, and the basis for the contract price;

3. For procurements other than those that follow the Small Purchase Procedures, public notice is given of each upcoming procurement; responses to such notice are honored to the maximum extent practical; bidders are provided sufficient time prior to the deadline for submission of bids or proposals; and notice of contract awards is made available to the public;
4. Solicitation procedures are conducted in full compliance with all applicable laws and regulations, including the federal standards set forth at 2 CFR at Part 200, particularly sections 200.318 through 200.326 (procurement standards);
5. For all solicitations not subject to the Small Purchase Procedures, 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. For all solicitations subject to the Small Purchase Procedures (except Micro Purchases that shall only require one reasonable quote), either (i) 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, or (ii) other reasonable and prudent means of ensuring price reasonableness are utilized, including, without limitation, securing multiple bids, comparing costs or prices with those paid by other public agencies for similar services or supplies, or comparing costs or prices with previous contracting costs for similar services or supplies.
7. Contract awards that exceed the Simplified Acquisition Threshold are made to Responsive and Responsible bidders that offer the lowest price (for sealed bid contracts) and to Responsible offerors whose competitive proposals offer the

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Best Value to HACLA, considering price (except for those Competitive Proposals made by RFQ, as defined below), technical, and other factors as specified in the solicitation, and that all participants in the solicitation are timely notified of the results.

8. 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; and
 9. HACLA complies with applicable HUD review requirements as provided in the operational procedures supplementing this Policy.
- C. Contracting authority under this Policy shall be vested in the following:
1. Contracting Officer. The Contracting Officer or designee shall have the authority to:
 - a. Approve any procurement up to the Simplified Acquisition Threshold;
 - b. Approve any change order to a construction contract authorized by the Board of Commissioners, pursuant to the provisions of this Policy;
 - c. Approve any change order or amendment to a Board authorized contract up to the Simplified Acquisition Threshold;
 - d. Approve any procurement of supplies, materials, services or equipment, without limit as to dollar amount, in the event of an Emergency as defined herein, provided that the nature and value of said purchases shall be reported to the Board of Commissioners at a public meeting at the earliest opportunity;

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- e. Reject any bid or offer where the Contracting Officer determines that the price is unreasonably low based upon an Independent Cost Estimate, competing bids or offers, or other reasonable means. Determining a bid price to be unreasonable considers not only the total price of the bid or offer, but the prices for individual items included within the bid or offer; and
 - f. Further delegate the authority set forth in this part in writing to other HACLA employees.
- 2. Board of Commissioners. The Board of Commissioners reserves to itself the authority to approve all procurements not delegated to the Contracting Officer.
- D. This Policy and any later changes shall be submitted to the Board of Commissioners for approval. The Board appoints, and delegates procurement authority to the President and CEO and is responsible for ensuring that any procurement procedures adopted in furtherance of this Policy are appropriate for HACLA.

III. PROCUREMENT METHODS

A. SELECTION OF METHOD

Upon the decision to purchase goods or services, one of the following procurement methods shall be chosen, based on the nature and anticipated dollar value of the total requirement.

B. SMALL PURCHASES

- 1. General: Any purchase not exceeding the Simplified Acquisition Threshold shall be made in accordance with the Small Purchase procedures authorized in this section. Purchase 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).

During the procurement planning process, if it is determined that any commodity/services will likely exceed the Simplified

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Acquisition Threshold, a formal procurement shall be conducted. Small purchases from one vendor will be limited to no more than the Simplified Acquisition Threshold aggregate in one calendar year.

2. Petty Cash Purchases: The Petty Cash Fund established by HACLA's Policy and Procedures for Petty Cash Fund may be utilized to meet the immediate and unplanned need for minor and/or emergency expenditures that do not exceed the threshold amount(s) stated in said procedures, but in no event shall the threshold amount exceed \$250.00. The Policy and Procedures for Petty Cash Fund shall be subject to the review, approval and amendment of the Chief Financial Officer or his or her designee. Said Policy and Procedures shall establish the overall amount of the fund, the maximum amount for each purchase, and shall either establish the appointment of one or more individuals as Petty Cash Administrators or the procedures for appointing such individuals.
3. Micro Purchases: For purchases that do not exceed the Micro Purchase Threshold only one written quotation need be solicited if the price received is considered reasonable given the nature of the goods or services being purchased. Such purchases must be distributed equitably among qualified sources. If practicable, a quotation shall be solicited from other than the previous source before placing a repeat order.
4. Small Purchases: For purchases in excess of the Micro Purchase Threshold that do not exceed the Simplified Acquisition Threshold, no less than three offerors shall be solicited to submit price quotations, which may be obtained orally, by telephone, in writing, or solicited using the Los Angeles Business Assistance Virtual Network (LABAVN). The names, addresses, and/or telephone numbers of the offerors and persons contacted, and the date and amount of each quotation shall be recorded and maintained as a public record (unless otherwise provided in State or local law). The Contracting Officer may also establish procedures, which are more stringent and designed to increase competition among suppliers and service providers.

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Award of Small Purchases shall be made on the following basis, unless otherwise authorized in writing by the Contracting Officer, which writing shall be retained in the Procurement file:

1. For contracts for services, award shall be made to the responsible vendor providing the Best Value quote.
2. For contracts for goods, contracts for goods with services, and contracts for maintenance and construction work, award shall be made to the Responsible vendor providing the lowest acceptable priced quote.
3. If non-price factors are used for purposes of evaluating quotes, such factors shall be disclosed in the solicitation.

C. SEALED BIDS

Formal competitive procurement using sealed bids is the preferred method for procuring construction, and supplies and services of a finite nature, amount and/or scope capable of being bid at a fixed cost anticipated to be in excess of the Simplified Acquisition Threshold. Sealed bid procurements shall be awarded to Responsible and Responsive bidders based on lowest cost.

1. Conditions for Use: Contracts shall be awarded based on competitive sealed bidding if the following conditions are present:
 - a. A complete, adequate and realistic specification or purchase description is available;
 - b. Two or more Responsible bidders are willing and able to compete effectively for the work;
 - c. The procurement lends itself to a firm fixed price contract, and the selection of the successful bidder can be made principally on the basis of price.

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2. Solicitations and Receipt of Bids: An invitation for bids shall be issued including specifications and all contractual terms and conditions applicable to the procurement. 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 secured and opened no sooner than the date and time advertised.
3. Bid Opening: Bids shall be opened publicly and in the presence of at least one witness. An abstract of bids shall be recorded and the bids shall be available for public inspection in accordance with the Authority's Access to Records Policy, as amended from time to time.
4. Award: Award shall be made based on lowest cost and as provided in the invitation for bids by written notice to the successful bidder. If equal low bids are received from Responsible bidders, award shall be made by drawing lots or similar random method, unless otherwise provided by law or 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. Correction and Withdrawal of Bids Prior to Bid Opening: Unless otherwise provided by state or federal law or regulation, any time prior to the date and time of bid opening, a bidder shall be permitted to correct or withdraw bids by written, faxed, or e-mail notice received in the office designated in the IFB.
6. Correction of Mistakes in Bids After Opening:

The following shall apply in the absence of controlling state or federal law or regulation:

- a. After bid opening, corrections in bids shall be permitted only if the bidder can show by clear and convincing evidence: (i) that a mistake of a nonjudgmental character was made, (ii) the nature of the mistake, and (iii) the price actually intended. A low bidder alleging a

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nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made.

- b. Any decision to allow correction of bid mistakes after bid opening shall be supported by a written determination signed by the Contracting Officer.
 - c. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of HACLA or fair competition shall be permitted.
6. Bonds: The following bonds (or equivalent as permitted by law) are required:
- a. For construction contracts awarded under an IFB where the value of the contract exceeds the Simplified Acquisition Threshold, (i) a bid guarantee equivalent to 5% of the bid price is required and (ii) a performance bond for 100% of the contract price is required.
 - b. For construction contracts that exceed \$25,000, a payment bond is required.

There are no bonding requirements for non-Public Works small purchases or competitive proposals; however, the Contracting Officer may require bonds in these latter circumstances when deemed appropriate. Unless otherwise specified in the solicitation, any bond submitted by a bidder pursuant to the above must be issued by a bond surety listed in U.S. Treasury Circular No.570.

D. COMPETITIVE PROPOSALS

Formal competitive procurement using competitive proposals is the preferred method for procuring professional services that will exceed the Simplified Acquisition Threshold and where conditions are not appropriate for the use of sealed bidding.

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Competitive proposals using Requests for Proposals shall be awarded to Responsible and Responsive offerors based on Best Value. Competitive proposals using Requests for Qualifications shall be awarded to the most qualified respondent.

1. Conditions for Use: Competitive proposals (including turnkey proposals for development) may be used if there is an adequate method of evaluating technical proposals and if HACLA determines that conditions are not appropriate for the use of sealed bids. An adequate number of qualified sources shall be solicited.
2. Solicitation: Competitive proposals shall be solicited through a "request for proposals" (RFP) or, where permitted, a "request for qualifications" (RFQ) issued by HACLA. The competitive proposal shall clearly identify the relative importance of price (except an RFQ which shall not consider price) and other evaluation factors and sub factors, including the weight given to each technical factor and sub factor. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors and the contents of their proposals.
3. Evaluations by Panel: Proposals shall be evaluated only on the criteria stated in the RFP or RFQ. Proposals shall be evaluated by a panel with expertise on the subject matter. The Contracting Officer or designee shall establish criteria for selecting panel members, including standards for ensuring that panelists have no conflicts of interest in accordance with Article IX, Ethics in Public Contracting. The Contracting Officer or designee shall ensure that panel members are insulated in their evaluation activities from interference or input from others.
4. Negotiations under Request for Proposals (RFP): The proposals shall be evaluated, rated and ranked in accordance with the technical and price factors specified in the RFP. If based on the initial evaluation HACLA determines there is a

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clear winning proposal (or multiple winning proposals), HACLA shall award the contract accordingly.

However, if, after the initial evaluation of proposals, HACLA determines there is a no clear winning proposal, negotiations as set forth in this section shall be conducted. HACLA determines the scope and extent of the negotiations.

- a. **Initial Discussions:** Discussions may be conducted with all responsible offerors whose proposals have a reasonable chance of being selected for award. These discussions are intended to maximize HACLA's ability to obtain Best Value and will be tailored to each offeror's proposal and are in accordance with the RFP criteria. The scope of discussions may include a proposal's weaknesses and deficiencies that could, in the opinion of the evaluation panel and/or Contracting Officer, be altered or better explained to materially enhance the proposer's potential for award. The scope of discussions may also include but not limited to the proposal's price, schedule, technical approach, contract terms and any other exceptions and deviations, as well as an offeror's prior contract performance.
- b. **Determination of Competitive Range:** After any initial negotiations are complete, the evaluation panel shall re-evaluate proposals based on the initial discussions and solicitation criteria, and re-determine the range of competitive scores. If the evaluation panel or Contracting Officer deems warranted, additional discussions with all offerors in the competitive range may be conducted.
- c. **Best and Final Offers (BAFOs):** All offerors with scores within the competitive range following discussions shall be provided an opportunity to revise and/or clarify their proposals, including price, by submitting a BAFO. A common deadline for receipt of BAFOs shall be established. BAFOs shall be evaluated by the entire evaluation panel in essentially the same manner as the

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initial evaluation of the proposals. The Contracting Officer or designee shall ensure that a full evaluation of BAFOs is conducted sufficient to support an award decision based on Best Value.

While BAFOs are usually requested once during the procurement process, in exceptional circumstances, the Contracting Officer or designee may determine that it is in HACLA's best interest to request a second round of BAFOs. In such cases, invitations for the second BAFO need only be sent to those offerors whose proposals are within the range of competitive scores following receipt of the first set of BAFOs.

- d. Treatment of Offerors: 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 by HACLA to bring its proposal up to the level of any other proposal.
5. Negotiations under Request for Qualifications (RFQ): Negotiations conducted under the RFQ differ from negotiations conducted under the RFP in that HACLA first selects the highest-ranked respondent, which is determined based on the proposal's technical factors, and then the parties engage in negotiations concerning price. If the parties cannot reach agreement on a fair and reasonable price and other material terms, HACLA will terminate negotiations and proceed to engage in negotiations with the next-highest rated respondent based on technical factors, again with intentions to reach agreement on price and other material terms. This process continues until HACLA and a responsible respondent reach agreement as to price and other material terms. Once HACLA has terminated negotiations with a respondent due to failure to reach agreement as to price and other material terms, the parties are precluded from engaging in further or additional negotiations.
 6. Architect/Engineer Services: Architect/engineer services for federally-funded projects shall be obtained by HUD's

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qualifications based selection procedures. Under qualifications based selection procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to the negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. Qualifications based selection procedures shall not be used to purchase other types of services, unless the Contracting Officer determines it is in the best interest of HACLA and determines it is permissible under applicable laws and regulations.

E. NONCOMPETITIVE PROPOSALS

1. Conditions for Use: Procurements shall be conducted competitively to the maximum extent possible. Procurement by noncompetitive proposals may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids or competitive proposals, and one of the following applies:
 - a. The item is available only from a single or sole source, based on a good faith review of available sources;
 - b. There is an Emergency as defined at Section I.D above;
 - c. HUD authorizes the use of noncompetitive proposals;
or
 - d. After solicitation of a number of sources, competition is determined inadequate.
2. Justification: Procurements based on noncompetitive proposals shall be supported by a written justification for using such procedures. The justification shall be approved in writing by the Contracting Officer.
3. Price Reasonableness: The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing a cost analysis, as described in III.F. below.

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F. COST AND PRICE ANALYSIS

1. General: A cost or price analysis shall be performed for all procurement actions, including contract modifications (except that no such price analysis shall be required if HACLA undertakes a RFQ involving a developer). The method of analysis shall be determined in accordance with 2 CFR Part 200 (for federally-funded procurements) and any other applicable laws and regulations. The degree of analysis shall depend on the facts surrounding each procurement.
2. Submission of Cost or Pricing Information: If the procurement is based on noncompetitive proposals, or when only one offer is received, or for other procurements as deemed necessary by HACLA (e.g., when contracting for professional, consulting or architect/engineer services) HACLA may utilize any of the approved methods for determining price reasonableness set forth at 2 CFR Part 200 or as otherwise approved by HUD.
3. Cost Analysis: Cost analysis shall be performed if an offeror/contractor is required to submit a cost breakdown as part of its proposal. When a cost breakdown is submitted: a cost analysis shall be performed of the individual cost elements; HACLA 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 cost principles (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation, 48 CFR Chapter 1). In establishing profit, HACLA 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.
4. Price Analysis: A comparison of prices shall be used in all cases other than those described in the Cost Analysis section above.

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G. CANCELLATION OF SOLICITATIONS

1. Solicitations may be canceled before offers or bids are due if: HACLA no longer requires the supplies, services or construction; HACLA 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 other reasons deemed in the best interest of HACLA as determined in its sole discretion.
2. A solicitation may be canceled and all bids or proposals that have already been received may be rejected if: the supplies, services or construction are no longer required; ambiguous or otherwise inadequate specifications were part of the solicitation; submitted bids evidence multiple bidders misunderstanding or confusion; the solicitation did not provide for consideration of all factors of significance to HACLA; 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 other good cause when deemed in the best interest of HACLA as determined in its sole discretion.
3. The reasons for cancellation shall be documented in the procurement file in accordance with 24 CFR 85.36(b)(9) or 2 CFR 200, as applicable, and the reasons for cancellation and/or rejection shall be provided upon request to any offeror solicited.
4. A notice of cancellation shall be sent to all offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any resolicitation 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, HACLA shall cancel the solicitation and either:

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- a. resolicit using a new invitation for bid with amendment as warranted; or
- b. resolicit using a request for proposals, provided, that the Contracting Officer determines in writing that such action is appropriate, all bidders are informed of HACLA's intent to resolicit using a request for proposals, and each Responsible bidder is given a reasonable opportunity to submit an offer in response to the new solicitation.

H. COOPERATIVE PURCHASING AND INTERGOVERNMENTAL AGREEMENTS

HACLA may enter into Federal, State or local intergovernmental agreements or utilize cooperative purchasing (a.k.a. "piggy-backing") to procure common goods and services that are routine in nature. HACLA may also enter into Federal, State or local intergovernmental agreements to secure services required by HACLA and offered from another public agency either directly or through a third party subcontract. The decision to use cooperative purchasing, an intergovernmental agreement or conduct a direct procurement shall be based on economy and efficiency. If utilizing an intergovernmental agreement involving a third party subcontractor, the interagency 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. HACLA is encouraged to use Federal or State excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs.

I. CONTRACTING WITH RESIDENT ORGANIZATIONS

Notwithstanding the provisions above pertaining to full and open competition in its procurements, HACLA may: (1) use the "alternative procurement process" to limit competition to resident-owned businesses, pursuant to 24 CFR Part 963; or (2) contract on a non-competitive basis with a resident management corporation pursuant to 24 CFR 964, Subpart C.

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J. CONTRACTING FOR LEGAL SERVICES

1. Contracting for legal services shall be conducted in accordance to all applicable HUD policy guidelines and HACLA procedures. HACLA shall not enter into a contract for federally-funded litigation-related legal services to exceed \$100,000 without the prior written concurrence of HUD's Regional Counsel, and shall not enter into a contract for federally-funded litigation services to exceed \$300,000 without the prior written concurrence of HUD's Regional Counsel and the Headquarters Program Associate General Counsel.
2. Additionally, with the exception of litigation involving HACLA acting as a Section 8 private owner or administrative and criminal proceedings and litigation relating to routine eviction proceedings, HACLA shall not initiate or enter into any of the following federally-funded activities without prior written concurrence from HUD:
 - a. litigation, including any civil action at law or proceeding in equity involving a program, project, or activity receiving HUD assistance;
 - b. appeals from adverse judgments; and
 - c. settlements arising out of litigation.

IV. BIDDER QUALIFICATIONS AND DUTIES**A. BIDDER RESPONSIBILITY**

Procurements shall be conducted only with Responsible bidders, offerors, respondents, contractors and subcontractors (collectively, "bidders" or "bidder") who have a satisfactory record of integrity, including without limitation, all licenses and certifications required to perform the contract directly and/or with the assistance of a subcontractor as permitted under law, and in good standing with HACLA as well as applicable licensing and federal, state or local boards or agencies.

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1. Standards. A Responsible bidder is one who meets the standards set forth below:
 - a. has adequate financial resources, or the ability to obtain such resources as required during performance of the contract;
 - b. is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments;
 - c. has a satisfactory record of performance;
 - d. is otherwise qualified and eligible to receive an award under applicable laws and regulations;
 - e. has the necessary organization, experience, operational controls, and technical skills, or the ability to obtain them; and
 - f. has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them.

2. Evaluation. Evaluation of the responsibility of prospective contractors may be made based upon the following sources:
 - a. a list of debarred, suspended or ineligible firms or individuals;
 - b. from the bidder's submittals, replies to questionnaires, financial data such as balance sheets, profits and loss statements, cash forecasts, and financial histories of bidder and affiliated concerns, current and past production records, list of tools, equipment, and facilities, written statements or commitments concerning financial assistance and subcontracting arrangements;
 - c. businesses that provide commercial credit rating reports, such as Dun and Bradstreet;

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- d. references from suppliers, subcontractors, banks and financial institutions, other government agencies, purchasing and trade associations, and better business bureaus and chambers of commerce; and
 - e. documented past performance on contracts with HACLA.
3. **Timing of Determination.** The Contracting Officer will determine whether a Bidder is Responsible prior to consideration of contract award in the case of sealed bids and small purchase procurements, and prior to the panel's evaluation of proposals in the case of competitive proposals.
 4. **Determination of Non-Responsible.** Bidders who have previously contracted or performed for HACLA and who are, or have been seriously deficient in contract performance, may be considered to be non-responsible. Documented past unsatisfactory performance may be sufficient to justify a finding of non-responsibility.
 5. **Documentation.** If a bidder is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the contract file, and the bidder shall be provided an opportunity to appeal the determination in accordance with, as applicable, HACLA's Procedures for Competitive Solicitation Protests or HACLA's Procedures for Non-Competitive Solicitation Protests.

B. BIDDER RESPONSIVENESS

1. Timing for federally-funded Public Works contracts. For federally-funded procurements involving construction and maintenance Public Works contracts that require a California contractor's license to perform, the Contractor must be properly licensed at the time the contract is awarded, or the Contractor will be deemed to be non-responsive and the bid rejected pursuant to Business and Professions Code section 20103.5.

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2. Timing for non-federally funded Public Works contracts. For procurements involving Public Works contracts that involve either (i) mixed funding from both federal and non-federal sources, or (ii) not federally funded, and require a California contractor's license to perform, the Contractor must be properly licensed at the time the bid is submitted, or the Contractor will be deemed to be non-responsive and the bid rejected pursuant to Business and Professions Code section 7028.15.
3. Timing for All Other Procurements. Unless otherwise provided herein, the Contracting Officer will determine whether a bidder is Responsive prior to consideration of contract award in the case of sealed bids and small purchase procurements, and prior to the panel's evaluation of proposals in the case of competitive proposals unless there is a legitimate reason for a later determination by the Contracting Officer or designee for Responsiveness such as the panels' need to evaluate all proposals to determine whether a proposal with identified exceptions and deviations is acceptable, reasonable and permitted by law and should be evaluated for contract recommendation notwithstanding said exceptions and deviations.

C. SUSPENSION AND DEBARMENT

Contracts shall not be awarded to debarred, suspended or ineligible contractors or contractors that are utilizing debarred, suspended or ineligible subcontractors. It is the contractor's responsibility to ensure that its subcontractors meet the above responsibility standards prior to contract bid opening. Contractors may be suspended, debarred or determined ineligible by HACLA or HUD in accordance with HUD regulations (24 CFR Part 24) or by other federal agencies (e.g., Department of Labor for violation of Secretary of Labor regulations), or by California law when necessary to protect HACLA in its business dealings.

D. QUALIFIED BIDDERS LISTS

Interested businesses who complete HACLA's vendor registration requirements and are determined eligible for contract awards shall

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be given an opportunity to be included on qualified bidders lists. Any pre-qualified lists of persons, firms or products which are used in the procurement of supplies and services shall be kept current and shall include enough qualified sources to assure competition where reasonably possible. 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 pre-qualified suppliers.

E. ORGANIZATIONAL CONFLICTS OF INTEREST

"Organizational conflict of interest" is defined as a situation in which the nature of the work to be performed under a HACLA contract and a contractor's organizational, financial, and contractual or other interests are such that:

1. The contractor possessed an unfair competitive advantage in competing for the contract, which could include those prohibited circumstances identified in 2 CFR 200.319(a);
2. Award of the contract may result in an unfair competitive advantage for future work; or
3. The contractor's objectivity in performing the contract work may be impaired.

HACLA shall endeavor to neutralize such conflicts by asking contractors to disclose any such organizational conflicts of interest when they submit their offers and to exclude contractors who provide services relating to studies or specification writing from competing for any subsequent contract which is based on such services.

V. TYPES OF CONTRACTS, CLAUSES, AND CONTRACT ADMINISTRATION

A. CONTRACT TYPES

Pursuant to HUD handbook 7460.8 Rev 1 (the "Handbook") and 2 CFR 200 as it may supersede the Handbook, any type of contract which is appropriate to the procurement and which will promote the best interests of HACLA may be used, provided that the cost plus a

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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. A cost reimbursement contract shall not be used unless it is likely to be less costly or it is impracticable to satisfy HACLA's needs otherwise, and the proposed contractor's accounting system is adequate to allocate costs in accordance with applicable cost principles [for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation (FAR), found in 48 CFR Chapter 1]. A time and 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:

- The option is contained in the solicitation;
- The option is a unilateral right of HACLA;
- The contract states a limit on the additional quantities and the overall term of the contract;
- The options are evaluated as part of the initial competition;
- The contract states the period within which the options may be exercised;
- The options may be exercised only at the price specified in, or reasonably determinable from, the contract; and
- The options may be exercised only if (i) determined to be more advantageous to HACLA than conducting a new procurement, and (ii) the contractor's performance has been satisfactory or better based upon a performance evaluation.

C. CONTRACT CLAUSES

In addition to containing a clause identifying the contract type, all federally funded contracts shall include any clauses required by federal statutes, executive orders, and their implementing regulations, as provided in 24 CFR 85.36(i) or as may be superseded by 2 CFR 200. The operational procedures required by Section II.A. of this Policy shall contain the text of all clauses and required certifications (such as required non-collusive affidavits and lobbying

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disclosures) used by HACLA.

D. CONTRACT ADMINISTRATION

HACLA shall maintain a contract administration system designed to ensure that contractors perform in accordance with their contracts. The operational procedures required by Section II.A. of this Policy shall contain guidelines for inspection of supplies, services or construction, adherence to insurance requirements, 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. CHANGE ORDERS TO PUBLIC WORKS CONTRACTS

Change orders to Public Works contracts shall be administered in accordance with the following:

Construction Contingency: The Board of Commissioners shall delegate to the Contracting Officer contingency authority to approve change orders in connection with the award of Public Works contracts. Said authority shall be established on a job-by-job basis based upon the total cost of the contract, the type of construction services and the length of the contract.

Change Order Approvals: Changes to the contract shall be approved by the Contracting Officer. The Contracting Officer shall ensure that proper technical approvals are secured prior to the approval of the change orders.

VI. SPECIFICATIONS**A. GENERAL**

All specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying HACLA's needs. Specifications shall be reviewed prior to solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. Functional or performance specifications are preferred. Detailed product specifications shall be

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avoided whenever possible. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase (but see VIII below). For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

B. LIMITATIONS

The following specification 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 specifications (unless a written determination is made that only the identified item will satisfy HACLA's needs); brand name or equal specifications (unless they list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use). Nothing in this 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 HACLA's computer needs and then allowing that consultant to compete for the subsequent contract for the computers).

VII. APPEALS AND REMEDIES

A. GENERAL

It is HACLA's policy to resolve all contractual issues informally at HACLA's level, without litigation. Disputes shall not be referred to HUD until all administrative remedies have been exhausted at HACLA. When appropriate, HACLA 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 HACLA to review a complaint or protest.

B. BID PROTESTS

Protests of contract solicitations and awards are permissible, but

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must strictly comply with HACLA's Procedures for Competitive Solicitation Protests or HACLA's Procedures for Non-Competitive Solicitation Protests, as applicable, as either may be amended from time to time.

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.

VIII. ASSISTANCE TO SMALL, MINORITY, WOMEN'S, LABOR SURPLUS AREA, SECTION 3, AND RESIDENT BUSINESS ENTERPRISES**A. REQUIRED EFFORTS**

Consistent with Presidential Executive Orders 11625, 12138 and 12432, Title VI of the Civil Rights Act of 1968, and Section 3 of the Housing and Urban Development Act of 1968, as amended, HACLA shall take all necessary affirmative steps to ensure that small, minority-owned and woman-owned business enterprises, labor surplus area businesses, and individuals or firms located in, or owned in substantial part by persons residing in, the area of a HACLA public housing development are used when possible. Such steps shall include, but shall not be limited to:

1. Including such firms, when qualified, on solicitation mailing lists;
2. Encouraging the participation of such firms through direct solicitation of bids or proposals whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;

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5. Using the services and assistance of organizations such as the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, and the City of Los Angeles Mayor's Office of Economic Development;
6. Including in all Section 3 Contracts, all provisions and attachments required by Section 3 of the Housing and Urban Development Act of 1968, as amended, and HACLA's Section 3 Policy and Compliance Plan.
7. Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed in 1 through 6 above.

Anticipated levels of participation may periodically be established by HACLA for small, minority-owned and woman-owned business enterprises, labor surplus area businesses, and business concerns which are located in, or owned in substantial part by persons residing in, the area of the project, in HACLA's prime contracts and subcontracting opportunities.

IX. ETHICS IN PUBLIC CONTRACTING**A. WRITTEN STANDARDS OF CONDUCT**

1. This section sets forth HACLA's written standards of conduct covering conflicts of interest and governing the actions of HACLA officers, employees and agents engaged in the selection, award and administration of contracts. (2 CFR 200.318(c)(1))
2. No HACLA officer, employee or agent shall participate in any decision related to the selection, award or administration of contracts if that individual has a prohibited conflict of interest arising from California's conflict of interest laws, including those set forth in the Political Reform Act (Government Code sections 81000 – 91014) and its implementing regulations. (2 Cal. Code of Regs. §§ 18110 – 18997)

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3. No HACLA officer, employee or agent shall participate in any decision related to the selection, award, or administration of a contract supported by a Federal award if a conflict of interest, real or apparent, would be involved. Such a conflict of interest would arise when the employee, officer, or agent, any members of his or her immediate family, his or her partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. (2 CFR 200.318(c)(1))
4. No HACLA officer, employee or agent shall solicit or accept gratuities, favors, or anything of monetary value from vendors or parties to subcontracts. However, the Contracting Officer may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value, which standards, if adopted, shall be included in the Implementing Procedures. (2 CFR 200.318(c)(1))
5. For federal contracts that are subject to the requirements of the Annual Contributions Contract (Form HUD-53012A), the following restrictions apply, unless waived by HUD:
 - a. Neither HACLA nor any of its vendors or their subcontractors may enter into any contract, subcontract, or arrangement in connection with a project under the ACC in which any of the following classes of people have an interest, direct or indirect, during his or her tenure or for one year thereafter:
 - (i) Any present or former member or officer of the governing body of HACLA, or any member of the officer's immediate family. There shall be excepted from this prohibition any present or former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the resident corporation, HACLA or a business entity.

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- (ii) Any employee of HACLA who formulates policy or who influences decisions with respect to the project(s), or any member of the employee's immediate family, or the employee's partner.
 - (iii) Any public official, member of the local governing body, or State or local legislator, or any member of such individuals' immediate family, who exercises functions or responsibilities with respect to the project(s) of HACLA.
 - b. No present or former HACLA employee, officer, or agent shall engage in selling or attempting to sell materials, services, or construction to HACLA for one year following the date such employment ceased. The term "sell" means signing a bid or proposal, negotiating a contract, contacting any HACLA employee, officer, or agent for the purpose of obtaining, negotiating, or discussing changes in specifications, price, cost allowances, or other terms of a contract; settling contract disputes; or any other liaison activity with a view toward the ultimate consummation of a sale, although the actual contract is negotiated by another person.
- 6. For federal contracts that are subject to the requirements of 24 CFR 982.161, the following restrictions apply, unless waived by HUD:
 - a. Neither HACLA nor any of its contractors or subcontractors may enter into any contract or arrangement in connection with the HCV program in which any of the following classes of persons has any interest, direct or indirect, during tenure or for one year thereafter:
 - (i) Any present or former member or officer of the PHA (except a participant commissioner);
 - (ii) Any employee of the PHA, or any contractor, subcontractor or agent of the PHA, who

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formulates policy or who influences decisions with respect to the programs;

- (iii) Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs; or
 - (iv) Any member of the Congress of the United States.
- b. Any member of the classes described above shall disclose their interest or prospective interest to HACLA and to HUD.

B. GRATUITIES, KICKBACKS, AND USE OF CONFIDENTIAL INFORMATION

HACLA officers, employees or agents shall not solicit or accept gratuities, favors or any items of monetary value in excess of \$50 from any contractors, potential contractors or parties to subcontracts, and shall not knowingly use confidential information for actual or anticipated personal gain.

C. PROHIBITION AGAINST CONTINGENT FEES

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

D. FORMER EMPLOYEES

A former HACLA employee, officer or agent shall not knowingly act as a principal or agent for anyone other than HACLA in connection with any contract or claim in which said person participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while a HACLA employee, officer or agent, where HACLA is a party or has a direct and substantial interest.

A former HACLA employee or officer shall not engage in selling or

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attempting to sell supplies, materials, services or equipment to HACLA for a period of one year after such employment ceases. The terms "sell " means signing a bid or proposal; negotiating a contract; contacting any HACLA employee for the purpose of obtaining, negotiating or discussing changes in specifications, price, cost allowances or other terms of a contract; settling contract disputes; or any other liaison activity with a view toward the ultimate consummation of a sale, even if the actual contract is negotiated by another person.