PUERTO RICO PUBLIC HOUSING ADMINISTRATION

DEPARTMENT OF TATE

Regulation No. 6405
Date: March 12, 2002

Approved: Ferdinand Mercado
Secretary of State

By: _____
Giselle Romero García
Assistant Secretary for Services

PROCUREMENT MANUAL

PUERTO RICO PUBLIC HOUSING ADMINISTRATION
PROCUREMENT MANUAL

TABLE OF CONTENTS

SECTION I. LEGAL BASIS ..... -1-

SECTION II. GENERAL PROVISIONS ..... -2-

A. Purpose ..... -2-

B. Scope ..... -2-

SECTION III. OFFICIAL RECORDS ..... -4-

SECTION IV. DEFINITIONS ..... -4-

SECTION V. PROCUREMENT ADMINISTRATION ..... -13-

SECTION VI. DELEGATION OF PROCUREMENT AUTHORITY ..... -14-

SECTION VII. PROCUREMENT PLANNING ..... -15-

A. General ..... -15-

B. Specific ..... -15-

SECTION VIII. PROCUREMENT MANUAL FORMS ..... -17-

A. General ..... -17-

B. Specific ..... -17-

SECTION IX. METHODS OF PROCUREMENT ..... -18-

A. Small Purchases Method ..... -20-

1. Policy Summary ..... -20-

a. Petty Cash ..... -21-

b. Small purchases between $50.01 and $2,000.00 ..... -22-
c. Small purchases between $2,000.01 and $100,000.00 .... -22-
2. Procedures ..... -24-
B. Sealed Bidding Method ..... -26-
1. Policy Summary ..... -26-
2. Procedures ..... -27-
a. Solicitation and Receipt of Bids ..... -27-
b. Pre-Bid Conference ..... -29-
c. Bid Opening and Award ..... -29-
d. Mistakes in Bids ..... -32-
e. Bonds ..... -33-
C. Competitive Proposals Method ..... -36-
1. Policy Summary ..... -36-
2. Procedures ..... -37-
a. Solicitation, Pre-Submission Conference, and Receipt of Proposals ..... -37-
b. Proposals Opening, Evaluation, Negotiation, and Award . -41-
c. Post Award Documentation ..... -45-
d. Qualifications Based Selection ..... -46-
e. Post Award Documentation ..... -51-
D. Requirements Contracts ..... -53-
1. Policy Summary ..... -53-
2. Procedures ..... -53-
E. IDIQ Contracts ..... -54-

SECTION X. CONTRACTING WITH RESIDENT-OWNED BUSINESSES . -56-
A. Qualifications ..... -56-
B. Ability to Complete the Work ..... -57-
C. Procedures ..... -57-

SECTION XI. NON-COMPETITIVE PROCUREMENT AND EMERGENCY CONTRACTS ..... -58-
A. Non-Competitive Proposals Method ..... -58-

1. Conditions for Use ..... -58-
2. Supporting Documents ..... -59-
3. Cost/Price Analyses and Award ..... -60-
B. Emergency Procurement ..... -63-
1. Grave ..... -63-
2. Urgent ..... -63-
3. Special Rules for Emergency Procurements ..... -63-

SECTION XII. CANCELLATION OF SOLICITATIONS ..... -65-
A. A Small Purchase, an IFB, RFP, QBS, or any other solicitation may be cancelled before the Offers are due if: ..... -65-
B. A Small Purchase, an IFB, RFP, QBS, or any other solicitation may be cancelled after the advertised due date for submission of Offers and all Offers received may be returned if: ..... -65-

SECTION XIII. CONTRACT TYPES AND CLAUSES ..... -66-
A. Contract Types ..... -66-
B. Contract Clauses ..... -66-

SECTION XIV. CONTRACT MODIFICATIONS AND CHANGE ORDERS . -68-
A. Policy Summary ..... -68-
B. Forms ..... -68-
C. Procedures ..... -69-
D. Records ..... -71-

SECTION XV. COST OR PRICE ANALYSES ..... -72-
A. Policy Summary ..... -72-
B. Cost Analysis ..... -73-
C. Price Analysis ..... -74-

SECTION XVI. CONTRACTOR QUALIFICATIONS AND DUTIES ..... -75-

SECTION XVII. CONTRACT ADMINISTRATION AND MONITORING .. -76-

A. Policy Summary ..... -76-
B. User Area's Responsibilities ..... -77-
C. Acceptance or Rejection of Goods/Services ..... -78-
D. Suspension and Debarment ..... -79-

SECTION XVIII. APPEALS AND REMEDIES ..... -79-
A. Policy Summary ..... -79-
B. Procedures ..... -80-

SECTION XIX. SMALL BUSINESS PARTICIPATION ..... -80-
A. Policy Summary ..... -80-

SECTION XX. ETHICS IN PROCUREMENT ..... -80-
A. Policy Summary ..... -80-
B. Compliance ..... -81-
C. Contract Inducement ..... -83-
D. Conflict of Interests Involving Contracts ..... -83-
E. Gratuities ..... -85-
F. Kickbacks and Collusive Practices ..... -85-
G. Use of Confidential Information ..... -86-
H. Prohibition Against Contingent Fees ..... -86-
I. Additional Prohibitions ..... -86-
J. Sanctions ..... -88-

SECTION XXI. OTHER PROVISIONS ..... -89-

SECTION XXII. EFFECTIVENESS ..... -90-

PUERTO RICO PUBLIC HOUSING ADMINISTRATION
PROCUREMENT MANUAL

SECTION I. LEGAL BASIS

Pursuant to authority granted to the Puerto Rico Public Housing Administration (PRPHA) in Act No. 66 of August 17, 1989, as amended ("Act No. 66") and authority delegated to the PRPHA in Administrative Order No. Hd 00.19 issued by the Secretary (the "Secretary") of the Department of Housing of the Commonwealth of Puerto Rico (the "Department") on March 13, 2000 pursuant to Act No. 97 of June 10, 1972, as amended, (the "Department's Organic Act"), and, in accordance with (i) Act No. 170 of August 12, 1988, as amended, known as the Puerto Rico Uniform Administrative Procedure Act (PRUAPA), (ii) Section 85.36 of Title 24 of the Code of Federal Regulations ("24 CFR §85.36"), as in effect on the date hereof and as the same may be hereinafter amended, (iii) the Annual Contributions Contract executed by and among the United States Department of Housing and Urban Development (HUD), the Department and the PRPHA, and (iv) the provisions of the HUD Procurement Handbook 7460.8 REV-1 (Procurement Handbook for Public Housing Agencies and Indian Housing Authorities) (the "HUD Procurement Handbook"), issued in January, 1993 by HUD's Office of Public and Indian Housing, as in effect on the date hereof and as the same may be hereinafter amended, THE PRPHA, pursuant to the official prior written approval of the Secretary, HEREBY adopts this Procurement Manual (the "Manual") to govern each and every PRPHA procurement process funded totally or partially with federal funds. Regulation No. 6106 of February 25, 2000 concerning the Department's Bid Board ("Regulation No. 6106 ") and Regulation No. 5258 of June 1, 1995, as amended, concerning the Department's Board of Appeals ("Regulation No. 5258") will supplement this

Manual; in the event of conflict between the provisions of Regulation No. 6106 and this Manual or between the provisions of Regulation No. 5258 and this Manual, the provisions of this Manual will prevail.

SECTION II. GENERAL PROVISIONS

A. Purpose

The purpose of this Manual is to provide for the fair treatment of all persons or entities involved in each and every PRPHA procurement process funded totally or partially with federal funds; to assure that goods, services and construction works are procured efficiently, without unjustified delay, and at the lowest cost available to the PRPHA; to promote competition in contracting with the PRPHA; to provide safeguards for maintaining a procurement system of quality and integrity; and to assure that such procurement processes are in full compliance with applicable federal laws, rules and regulations, including but not limited to, 24 CFR §85.36, and applicable state laws, rules and regulations.

B. Scope

The procurement policies and procedures contained herein are applicable to each and every procurement process required under PRPHA programs and activities funded totally or partially with federal funds (hereinafter referred to as a "procurement process" or "procurement processes").

SECTION III. OFFICIAL RECORDS

The PRPHA shall keep a record (the "Procurement File") of each procurement process, which record shall be the PRPHA official record of said procurement process and shall document in detail the significant history of the same, as required by 24 CFR §85.36(b)(9).

Each Procurement File shall include, without limitation, the following information and documents concerning each procurement process:

1. A memorandum explaining the rationale for the method of procurement used and for the selection of the contract type;

2. A memorandum explaining the rationale for the selection or rejection of the contractor;

3. The basis for the contract price;

4. Any and all notices relating to any actions taken by the PRPHA and/or any procedures;

5. Any and all determinations, whether interlocutory or final, made by the PRPHA, any User Area, Management Agent or Resident Management Council, the Procurement Director, the Procurement Area staff, the Evaluating Committee, the Administrator, the Secretary, the Department, the Bid Board, and/or the Board of Appeals;

6. Any and all motions, allegations, questions, comments, petitions or requirements filed with the PRPHA or the Department by any Person or Entity;

7. Any and all documents or information requested, received, and/or considered by the PRPHA, its agents, and/or the Department; and

8. Any and all memoranda drafted by any PRPHA official and/or Department official.

The Procurement File shall constitute the exclusive grounds for action by the PRPHA in the award of any Contract or Purchase Order, as applicable, and for any subsequent administrative and/or judicial proceeding or review related thereto.

The Procurement File shall be a public record, except for such documents and/or information which the Administrator determines, in writing, to be privileged and/or confidential under applicable law. Except as otherwise provided herein, the Procurement File shall be available to the public for inspection after the award of each Contract or Purchase Order. The Procurement File shall be kept by the PRPHA for three (3) years after the date final payments are made and/or the Contract or Purchase Order is closed out (24 CFR §85.36(i)(11)), or such other longer period of time as may be provided in any applicable state laws, rules and regulations concerning access to governmental documents.

The Administrator shall establish an administrative unit within the Procurement Area for the filing of each and every Procurement File upon close out.

SECTION IV. DEFINITIONS

1. A/E Services – Architect and/or engineer professional services.
2. Award – Written statement whereby the PRPHA, with the approval of the Bid Board in the appropriate cases, determines the rights, obligations, and privileges that correspond to any Person or Entity in relation to a particular procurement process.
3. Administrative Order – Written authorization from the Secretary required for each and every procurement process that exceeds $100,000.00.
4. Administrator - The highest-level executive in the PRPHA with the responsibility of organizing, directing, and executing all of the PRPHA's functions and duties.
5. Annual Contributions Contract (ACC) – Consolidated contractual agreement executed by and between HUD and the PRPHA, the latter with the approval of the Department, which sets forth the requirements applicable to those PRPHA projects funded, whether totally or partially, with federal funds, and pursuant to which HUD

assists the PRPHA in providing decent, safe, and sanitary housing for low income families. The ACC shall be in the form prescribed by HUD and under the same, HUD agrees to provide assistance in the development, modernization, and/or operation of any low income housing project (s) under the United States Housing Act of 1937, as amended (sometimes hereinafter referred to as the "Act") (42 U.S.C. § 1437 et seq.), and the PRPHA agrees to develop, modernize, and operate the project(s) in compliance with all the provisions of the ACC and all applicable HUD regulations and implementing requirements and procedures (24 C.F.R. § 968.105).

6. Bid Board – Administrative body within the Department which approves the recommendation for award made by the Administrator for each procurement process in excess of $100,000.00 conducted hereunder.

7. Board of Appeals – Administrative body within the Department which has primary jurisdiction to evaluate and resolve the appeals, claims, and/or motions for reconsideration filed with respect to any PRPHA procurement process.

8. Bid – In the Sealed Bidding Method, it is the Offer submitted by each Bidder.

9. Bidder – It is any Person or Entity who responds to a solicitation issued by the PRPHA in any Sealed Bidding procurement process by submitting a Bid.

10. Bonds and Warranties – Obligations in favor of the PRPHA wherein a Person or Entity ensures compliance by the Contractor with the Contract.

11. Change Order – A written document evidencing and containing all the terms and conditions of a unilateral Modification made by the PRPHA to any Contract or Purchase Order, pursuant to a Changes Clause contained therein. Each and every Change Order must be authorized and signed by the Administrator.

12. Competitive Proposals Method – The competitive method of procurement used when the Small Purchase Method and the Sealed Bidding Method are not feasible. Under this method, the PRPHA will issue an RFP or QBS, as applicable.

13. Competitive Range – In the Competitive Proposal Method, it comprises the Proposals that, after evaluation by the Evaluating Committee and the Procurement Director are determined to have a reasonable chance of receiving the award.

14. Contract – The written commitment executed by and between the PRPHA and the selected Offeror, who is thereupon known as the Contractor, whereby the PRPHA encumbers appropriations of funds in exchange for the provision by the Contractor of: (i) goods, (ii) work, including without limitation construction work, and/or (iii) services, including Non-Personal Services; for the direct benefit of the PRPHA under such terms and conditions as may be contained in said written commitment, which may include, without limitation, changes, default, remedy, and termination provisions.

15. Contractor – A vendor, Bidder or Offeror, as applicable, who is awarded and executes a Contract or a Purchase Order with the PRPHA.

16. Cure Notice – Written notice issued to a Contractor to the effect that the Contract may be terminated by reason of default if the condition endangering performance of the Contract is not corrected within the number of days specified therein.

17. Delivery Order – It is an order for goods placed by the PRPHA under an IDIQ Contract or a Requirements Contract.

18. Emergency – Situation which causes unexpected and unforeseen public needs and which requires immediate action by the PRPHA because of the danger it poses to the life, health or public safety of the PRPHA housing projects' residents, including,

without limitation, a situation which would cause injury to the PRPHA as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure or similar event. The emergency may only be declared by the Administrator, the Secretary and/or the Governor of Puerto Rico.

19. Entity – A juridical person, whether organized for profit or not for profit, including without limitation, a partnership, association, firm, institution, entity, consortium, foundation, corporation, cooperative, or group of persons.

20. Evaluating Committee – Administrative body within the PRPHA comprised by at least three (3) PRPHA employees designated by the Secretary and which is assigned the following responsibilities, among others: (i) evaluation of Proposals, (ii) assisting the Procurement Director in the conduct of Negotiations, and (iii) making written recommendations to the Administrator for the award of Contracts or Purchase Orders, as applicable. The members of the Evaluating Committee are subject to removal, for cause, by the Administrator. There may be more than one Evaluating Committee.

21. Finance Bureau – The Finance Bureau of the PRPHA.

22. Indefinite Delivery - Indefinite Quantity Contract (IDIQ Contract) - Contract which provides for a minimum and a maximum amount of specific goods and/or services which may be procured by the PRPHA during any one fiscal year or such other longer period of time not to exceed the PRPHA Five Year Capital Improvement Plan (the "5-Year Plan"), with deliveries or performance to be scheduled by placing Task Orders or Delivery Orders, as applicable, with the Contractor whose Offer is the most advantageous to the PRPHA, price and/or other factors considered. An IDIQ Contract may be awarded under the Small Purchases, Sealed Bidding, or the

Competitive Proposals Methods, as provided in this Manual, and may be awarded to one or more Contractors, depending on the complexity of the project(s) procured by the PRPHA under said IDIQ Contract.

23. Insurance Area – The Insurance Area of the PRPHA.

24. Invitation for Bids (IFB) – Under the Sealed Bidding Method, the written solicitation for Bids publicly advertised to potential Bidders for the procurement of goods, work, and/or services, not including A/E Services, for the PRPHA.

25. Management Agent (MA) – The Contractor in charge of the management and/or maintenance of any given PRPHA housing project(s).

26. Minority Owned Business – Entity whose management and daily operations are controlled by, and where at least 51% of the voting stock is owned by, a Person or Persons who are either (i) Black American; (ii) Hispanic American; (iii) Native American; (iv) Asian Pacific American; (v) Asian Indian American; or (vi) Hasidic Jewish American.

27. Modification – Includes the capitalized forms of the verb Modify; it refers to a unilateral or bilateral written revision or change to a Contract or Purchase Order within the original scope thereof, after the award and execution, or during the performance of such Contract or Purchase Order. The Modification of a Contract or Purchase Order shall be initiated only by the PRPHA. Unilateral Modifications may only be made by the PRPHA pursuant to a Changes Clause contained in the original Contract or Purchase Order and must be evidenced in a Change Order. All Modifications must be approved in writing by the Administrator.

28. Negotiation – Includes the capitalized forms of the verb Negotiate; it refers to that phase during any Competitive Proposals Method procurement process whereby the

Procurement Director, with the assistance of the Evaluating Committee, discusses with an Offeror who is within the Competitive Range the terms of his/her Proposal with the intention of allowing such Offeror to revise its Proposal.

29. Non-Competitive Proposals Method – The method of procurement applicable when the PRPHA is faced with one or more of the following situations: (i) the item or service needed is available only from a single source, (ii) an Emergency or public exigency will not allow enough time for a competitive procurement, (iii) inadequate response is received to a competitive solicitation, and/or (iv) HUD authorizes the use of non-competitive proposals. In any of the above situations, the PRPHA may solicit a Proposal from only one (1) source, as justified in writing.

30. Non-Personal Services – Any service where the personnel rendering the same are not subject, either by the contract terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the government and its employees, that is, any service which does not constitute a government post. For purposes of this definition a government post is deemed to exist when a given set of responsibilities and duties require the employment of a natural person in a regular, continuous and stable manner, which person, by reason of such government employment, acquires rights and prerogatives, such as vacation leave, sick leave, State Insurance Fund coverage, and participation in a governmental retirement plan, among other statutorily established rights and privileges of governmental personnel. Non-Personal Services may include professional services, but does not include A/E Services.

31. Offer – It is a generic term utilized to refer to the response submitted by any vendor, Offeror or Bidder to a solicitation issued by the PRPHA in any procurement process.

32. Offeror – It is any Person or Entity responding to a solicitation issued by the PRPHA in any Competitive Proposals, including QBS, or Non-Competitive Proposals procurement process, by submitting a Proposal.

33. Operations Area – The Operations Area of the PRPHA.

34. Person – A natural person, an individual.

35. Procurement Area – Administrative unit within the PRPHA in charge of coordinating, supervising, and monitoring each and every procurement process within the PRPHA, and under the direction and supervision of the Procurement Director.

36. Procurement Director – The highest level officer appointed by the Administrator to direct the Procurement Area with the following responsibilities, among others: (i) approval of the specifications, including the cost estimate, prepared by the User Area for any solicitation of procurement; (ii) receipt of all Offers; (iii) conduct any and all Negotiations with the assistance of the Evaluating Committee, and/or the User Area, as necessary; (iv) directly supervise the conduct of cost/price analyses by the Procurement Area staff; (v) determination of Responsibility of the Bidder otherwise recommended for award; and (vi) determination of Responsibility of the Offeror otherwise recommended for award.

37. Procurement Manual Forms (PMF) – Forms that must be completed by the User Area, any Management Agent, and/or Resident Management Council in order to initiate a procurement process in the Procurement Area.

38. Proposal – In the Competitive Proposal, QBS, and Non-Competitive Proposal Methods, it is the Offer submitted by each Offeror; if other than a QBS, it must include a cost breakdown.

39. Purchase Order – Firm fixed-price Contract used to formalize the purchase of goods, work, and/or services in an aggregate amount equal to or under the Small Purchases threshold amount of $100,000.00.

40. Qualifications Based Selection (QBS) – Under the Competitive Proposal Method, a form of procurement for A/E Services by means of a written solicitation in which price is not requested nor is used as an evaluation factor; instead, a Proposal including only technical qualifications is submitted and reviewed and a reasonable price negotiated with the best qualified Offeror, who must be duly licensed in Puerto Rico.

41. Request for Proposals (RFP) – Under the Competitive Proposal Method, the written solicitation publicly advertised to potential Offerors for the submission of Proposals based on the specifications, terms and conditions set forth therein. The RFP will also include the evaluation factors and criteria for Proposal evaluation and Contract award.

42. Requirements Contract – Contract which provides for the satisfaction of all actual purchase requirements of the PRPHA for specific goods and/or services during any one fiscal year or shorter period, with deliveries or performance to be scheduled by placing Task Orders or Delivery Orders, as applicable, with the Contractor up to a determined, not to exceed a fixed, amount of specific goods and/or services, at fixed prices. A Requirements Contract may be awarded under the Small Purchases, Sealed Bidding, or the Competitive Proposals Methods as provided in this Manual.

43. Resident Management Council (RMC) – In any particular PRPHA public housing project, it is the Entity composed by residents of said project, who is in charge of the

management and/or maintenance of said project under the terms and conditions of a Contract executed with the PRPHA.

44. Resident Owned Business (ROB) - Any Entity which is owned and controlled by PRPHA public housing residents as provided in this Manual and in 24 CFR Part 963. The term Resident Owned Business may include sole proprietorships owned and controlled by a single PRPHA resident as provided herein and in 24 CFR Part 963.

45. Responsibility – Includes the adjective Responsible; it is a written determination made by the Procurement Director with respect to the Bidder or Offeror otherwise recommended for award and who, in addition to having the technical and financial capacity to deliver the goods, work, and/or services procured in any given procurement process, is also determined to be of proven integrity, and have a satisfactory record of past performance and compliance with public policy.

46. Responsive Bid – A Bid which conforms exactly to the requirements set forth in the Invitation for Bids (IFB).

47. Sealed Bidding Method – The competitive procurement method in which the PRPHA by means of an IFB requests sealed Bids for the provision of goods, services, and/or construction work. In this method of procurement a public bid opening is held by the Procurement Director or its designee, and the evaluation of Bids and the award of the Contract is based on the Responsive Bid with the lowest price submitted by a Responsible Bidder.

48. Secretary – The highest-level executive in the Department.

49. Section 963 Contracts – Contracts awarded to Resident Owned Businesses as provided herein and in compliance with 24 C.F.R. Part 963.

50. Small Purchase Method – Competitive method for the procurement of goods, work and/or services in an aggregate amount equal to or less than $100,000.00.

51. Task Order – It is an order for work and/or services placed by the PRPHA under an IDIQ Contract or a Requirements Contract.

52. User Area – Department, bureau, unit, or area of the PRPHA requesting goods, work, and/or services through the Procurement Area by completing a PMF.

SECTION V. PROCUREMENT ADMINISTRATION

Pursuant to authority granted the PRPHA in Administrative Order No. Hd 00.19 and in the Annual Contributions Contract, the Administrator is the Contracting Officer for the purposes of administering the PRPHA procurement system. All procurement processes shall be the responsibility of the Administrator. The award of Contracts and Purchase Orders shall be made by the Administrator, with the approval of the Bid Board in the appropriate cases.

The Administrator shall:

1. Have the authority to award, without intervention of the Bid Board, all procurement processes in amounts equal to or less than $100,000.00, and all Non-Competitive and Emergency procurements in amounts equal to or less than $100,000.00;

2. Upon the approval of the Bid Board, have the authority to award and execute on behalf of the PRPHA all Contracts in excess of $100,000.00;

3. Issue any and all administrative bulletins necessary to clarify and implement this Manual;

4. Take all disciplinary actions necessary to correct any violations of the ethical standards set forth in this Manual and applicable federal and state laws, rules and regulations;

5. Ensure that all the procurement processes of the PRPHA are consistent with the Annual Contributions Contract and the Annual Procurement Plan in order to assure the most efficient and economical procurement;

6. Ensure that every procurement process will have a complete Procurement File with all the information required by this Manual and applicable federal and state laws and regulations;

7. Ensure that the PRPHA adheres to the procurement and program requirements of 24 CFR §85.36 and the HUD Procurement Handbook for each and every procurement funded totally or partially with federal funds;

8. Ensure that the PRPHA complies with applicable HUD review requirements in the establishment of operational procedures hereunder;

9. Ensure that recommendations to the Bid Board for the award of Contracts in excess of $100,000.00 are made to the Responsible Bidder with the Responsive Bid offering the lowest price, or to the Responsible Offeror whose Proposal is most advantageous to the PRPHA price and other factors considered;

10. Ensure that all Contracts, Purchase Orders, Task Orders, Delivery Orders, Modifications, and/or Change Orders are issued in writing and are supported by all the required documentation.

SECTION VI. DELEGATION OF PROCUREMENT AUTHORITY

The Administrator may delegate in writing the development, implementation and administration of PRPHA's procurement goals and objectives to the Sub-Administrator of the PRPHA.

Upon the death, removal, renunciation, sickness or other incapacity or any absence of the Administrator, the Sub-Administrator of the PRPHA shall be and act as the PRPHA's Contracting Officer.

SECTION VII. PROCUREMENT PLANNING

A. General

The PRPHA's procurement goals and objectives shall be managed through the development and implementation of an Annual Procurement Plan. Each and every User Area, Management Agent, and Resident Management Council will develop their respective annual procurement plan to reflect their respective needs and will submit copies of said plan to the Operations Area, the Finance Bureau, and the Administrator. Based on this information, and in consultation with the Finance Bureau, the Operations Area shall develop a comprehensive procurement plan (the "Annual Procurement Plan"), which shall be approved by the Administrator and will allow the PRPHA to avoid duplicate and/or contradictory purchases and shall constitute a master plan for procurement.

The Annual Procurement Plan shall be divided in sections by each and every User Area, Management Agent, and Resident Management Council, and copies of the relevant sections shall be distributed to each User Area, Management Agent, and Resident Management Council. The Annual Procurement Plan does not constitute a pre-authorization of procurement, but a procurement guide for each User Area, Management Agent, Resident Management Council, and shall be implemented to the maximum extent feasible and in accordance with good administrative practice and sound business judgement.

B. Specific

It shall be the responsibility of each and every User Area, Management Agent, and Resident Management Council to develop an annual procurement plan for the next succeeding fiscal year and submit a copy of the same to the Operations Area, the Finance Bureau, and the Administrator on or before December 30th of the current fiscal year. These procurement plans must: (i) describe the scope of goods, work, and/or services reasonably expected to be procured during the next succeeding fiscal year based on the procurement experience of the previous fiscal year and projected needs; (ii) include individual cost estimates therefor; and (iii) specify the dates when the goods, work, and/or services are expected to be required by the User Area, Management Agent, or Resident Management Council, as applicable. This annual procurement planning does not release the User Areas, Management Agents, or Resident Management Councils from compliance with the final Annual Procurement Plan and the provisions of this Manual, including, without limitation, the use of the appropriate PMF's.

The Operations Area, in consultation with the Finance Bureau, shall develop the Annual Procurement Plan for the next succeeding fiscal year which shall be an aggregate, comprehensive summary of those procurement processes projected by the User Areas, the Management Agents, and the Resident Management Councils and which have been determined to be appropriate and realistic by the Operations Area, in accordance with its overview of the PRPHA's mission, procurement needs, and budget for said period. The Operations Area shall submit the Annual Procurement Plan for the next succeeding fiscal year to the Administrator on or before March 15th of the current fiscal year. The Administrator shall approve the Annual Procurement

Plan, together with the PRPHA operating budget for the next succeeding fiscal year, on or before April 15th of the current fiscal year.

The Annual Procurement Plan shall identify the aggregate needs of the PRPHA and its agents using the following data elements:

1. Description of the projected needs (goods, work, and/or services) of the User Areas, the Management Agents, and the Resident Management Councils for the next succeeding fiscal year;

2. The cost estimate of each and every planned procurement project and the aggregate estimated cost of all planned procurement projects;

3. Approximate delivery dates and dates when the procurement requests are due to the Procurement Area;

4. The method of procurement to be used, such as Small Purchases, IFB, RFP, QBS, and, to the extent feasible, the type of Contract to be used such as Requirements Contracts and/or Section 963 Contracts; and

5. The justification of the need for, and the goal of, each and every planned procurement project.

SECTION VIII. PROCUREMENT MANUAL FORMS

A. General

The Procurement Manual Forms (PMF's) shall be utilized by all the User Areas, the Resident Management Councils, and the Management Agents each and every time any type of procurement process takes place.

B. Specific

The PMF's will be utilized in accordance with this Manual and the written instructions on each individual form. The forms are included herein as Appendices and

include the PMF-01 (Small Purchases), the PMF-02 (Competitive Proposals), the PMF-03 (Procurement File Internal Control Checklist), and the PMF-04 (RMC and MA Audit Checklist). Each Procurement File must contain the appropriate PMF's.

SECTION IX. METHODS OF PROCUREMENT

In general, the PRPHA shall use the following methods for procuring goods, work, and/or services: (i) Small Purchases, (ii) Sealed Bidding, (iii) Competitive Proposals, including Qualifications Based Selection (for A/E Services only), (iv) Non-Competitive Proposals, and (v) Emergency purchases. Procurements under the method identified in (i) above shall be awarded by means of Petty Cash Vouchers or Purchase Orders, depending on the amount of the procurement as hereinafter provided. Procurements under the methods identified in (ii), (iii), (iv) and (v) above shall be awarded by means of a Contract, except as otherwise provided herein. The PRPHA must include in each Procurement File a memorandum stating why a particular method of procurement was chosen for the given procurement process and the type of contract that will be awarded in the given procurement process.

All procurement processes filed with the Procurement Area shall be consistent with the Annual Procurement Plan or have a written justification for the unplanned procurement attached to the corresponding PMF.

In order to commence a procurement process, the User Area will request a certification of availability of funds from the Finance Bureau. The Finance Bureau will review said request and, if funds are allocated in the PRPHA budget for that particular procurement process, the Finance Bureau will certify funding availability and code the procurement process.

The PRPHA may charge each prospective Bidder or Offeror requesting a copy of any IFB or RFP, QBS or any other solicitation materials, the actual cost of reproduction of such materials and up to a ten percent (10%) administrative surcharge.

The PRPHA shall conduct all procurement processes in a manner providing for full and open competition and shall avoid all conditions that may restrict such competition. Examples of such restrictions include, but are not limited to, the following:

1. Imposing unreasonable requirements (i.e. requirements that are not relevant to the scope of the solicitation) on Offerors and Bidders, which may reduce their ability to qualify to do business with the PRPHA;
2. Requiring unnecessary experience or excessive bonding;
3. Allowing non-competitive pricing practices (collusion) between Offerors or Bidders, or between affiliated Offerors or Bidders;
4. Allowing individual and/or organizational conflicts of interest;
5. Specifying only a "brand name" product, instead of allowing "an equal" product to be offered by describing the expected performance or other relevant procurement requirements; or
6. Tolerating any capricious or arbitrary action by PRPHA personnel in any procurement process.

The PRPHA reserves its right to Negotiate with more than one Offeror at the same time and/or to award a given procurement process to more than one Offeror. These reserves must be conspicuously stated in the solicitation materials of each procurement process.

In each and every case where the total sum of the Contract, Task Order, Delivery Order, Modification or Change Order to be awarded exceeds $100,000.00, the Procurement Area will prepare an Administrative Order for the approval of the Secretary, which Administrative

Order will first be forwarded to the Administrator for review and approval. Upon the Administrator's approval, the Administrative Order, along with, in the appropriate cases, a copy of the Bid Board's approval of the award, will then be forwarded to the Secretary for review and approval. Upon the execution by the Secretary of the Administrative Order, the Administrative Order shall be returned to the Procurement Area and shall be included in the Procurement File.

A. Small Purchases Method

1. Policy Summary

Any procurement process equal to or less than $100,000.00 in the aggregate may be made in accordance with the Small Purchases Method authorized herein. The solicitation shall not be artificially divided so as to qualify as a Small Purchase under this sub-section A. The PRPHA shall analyze repetitively ordered items, work or services for volume purchasing opportunities under Requirements Contracts or IDIQ Contracts, as applicable. If there is a recurring need for goods, work, and/or services, the PRPHA may initiate the corresponding procurement and award one or more Requirements Contract(s) or IDIQ Contract(s) against which the PRPHA may order on an "as needed" basis as provided in any such contract(s).

Small Purchases will be conducted by the Procurement Area and authorized by the Administrator through one of the methods described below. The selection factors will be disclosed to those solicited and an adequate number of qualified sources shall be solicited for competitive prices or rate quotes. All solicitations, quotations, and determinations shall be in writing.

Small Purchases must be adequately documented by utilizing and fully complementing a PMF-01. The Procurement Area will not process any Small Purchase request that does not comply with this Manual.

a. Petty Cash

Petty Cash purchases should be kept to the minimum which is absolutely necessary since purchasing in limited quantities is not an economical method of procurement.

User Areas may use Petty Cash Vouchers to make small purchases of $50.00 or less which can be satisfied by local sources. A written request will be prepared by the User Area describing the goods, work and/or services needed, any and all specifications required, and stating that price reasonableness shall be determined by comparing competitive quotes, catalogs or market prices. At least one (1) quotation must be solicited by the User Area, and a selection may be made based upon only one (1) quotation as long as the price received is reasonable and the Petty Cash purchases are alternated among qualified vendors. Only the said written request together with the vendor's sales ticket shall justify a Petty Cash Voucher for each such purchase.

The Administrator shall ensure that at least one (1) Petty Cash Account is established in an amount sufficient to cover petty cash purchases estimated to be made by all the User Areas during any thirty (30) days period. Security shall be maintained so that only authorized individuals (each a "Petty Cash Purchasing Officer") within each User Area have access to the Petty Cash Account(s). The Petty Cash Account(s) shall be periodically

audited (at least every six (6) months) by the PRPHA Internal Audit Office to validate proper use and to verify that the Account total equals Petty Cash on hand plus the total accumulated Petty Cash Vouchers.

b. Small purchases between $50.01 and $2,000.00

For Small Purchases between $50.01 and $2,000.00, the User Area shall complete a PMF-01, which will describe the goods, work, and/or services needed, any and all specifications required, and state that price reasonableness shall be determined by comparing competitive quotes, catalogs or market prices. The PMF-01 must be signed by the Director of the User Area.

Once the PMF-01 is signed, the User Area shall submit the same to the Procurement Area, who shall solicit at least one (1) quote from potential Contractors. The quotation may be obtained by fax, electronic mail (Internet) or other form of writing, and must be signed by the potential Contractor in accordance with applicable laws. A selection may be made based upon only one (1) quotation as long as the price received is reasonable and Small Purchases under this sub-section are alternated among qualified Contractors.

The Procurement Director shall approve, in writing, the quotation which is deemed fair and reasonable for the procured goods, work or services, and shall create a Purchase Order, with its corresponding Purchase Order Number. The Administrator shall ratify the Purchase Order by signing the same.

c. Small purchases between $2,000.01 and $100,000.00

For any and all Small Purchases between $2,000.01 and $100,000.00, the User Area shall complete a PMF-01, which will describe the goods, work, and/or services needed, any and all specifications required, and state that price reasonableness shall be determined by comparing competitive quotes, catalogs or market prices. The PMF-01 must be signed by the Director of the User Area.

Once the PMF-01 is signed, the User Area shall submit the same to the Procurement Area, who shall request at least three (3) different price quotations from potential Contractors. The quotations may be obtained by fax, electronic mail (Internet) or other form of writing, and must be signed by the potential Contractors in accordance with applicable laws.

Awards shall be made by the Administrator, upon the written recommendation of the Procurement Director, to the Contractor who meets the specifications, scope of work, and delivery dates required in the solicitation part of the Purchase Order and provides the lowest acceptable price quotation.

If non-price factors are to be used in the determination of the award, they shall be disclosed in the written solicitation or by separate written notice to the sources from whom quotations were solicited and an adequate period of time not to exceed five (5) calendar days, will be given for the submission of revised quotations. Award shall be made by the Administrator, upon the written recommendation of the Procurement Director, to the Contractor who meets the specifications, scope of work, and delivery dates required in the

solicitation part of the Purchase Order and best satisfies the price and any and all non-price factors specified by the PRPHA.

2. Procedures

The following procedures shall apply to all Small Purchases $50.01 and up:

a. The User Area will fill out form PMF – 01 completely and in detail and attach to it all the required documents and/or information, including the solicitation information, a cost estimate, and a certification of funds from the Finance Bureau. The Director of the User Area shall sign the completed PMF - 01 and will submit the same to the Procurement Area.

b. The Procurement Area will review the PMF - 01 within ten (10) working days from the date of receipt.

c. Upon approval of the PMF-01 and Contractor selection, the Purchase Order shall be issued, in writing, copies of which shall be sent to the Finance Bureau and the requesting User Area, informing the Purchase Order Number and the projected delivery date. The Purchase Order information will be entered by the Procurement Area staff into the Fundware system for processing within ten (10) working days from the said Purchase Order. Each Small Purchase will be cross-referenced to the Purchase Order Number.

d. Each Small Purchase shall have a separate Procurement File containing all the relevant information and/or documentation, such as the PMF - 01, the Finance Bureau certification, the determination of price reasonableness, a copy of the Purchase Order signed by the Administrator, and any brochures or specification sheets.

e. Each PMF - 01 shall request only similar items, items in the same commodity group, or items grouped together based upon their usage (i.e. hammers, nails, screws, etc.) and which might be considered a specific category of items (i.e. "carpentry supplies"). If in doubt, the User Area shall consult with the Procurement Area which is the best way to identify the Small Purchase.

f. The User Area must ensure that the cost estimate, the Finance Bureau certification and the corresponding Fundware account code are included in the PMF-01. The PMF-01 will not be processed without this information.

g. Items that are covered by a Requirements Contract or an IDIQ Contract should show a Contract or Purchase Order Number in the Fundware account system. This indicates that the item has previous approval under a Requirements Contract or an IDIQ Contract, and that only the PMF-01 and the Finance Bureau certification may be required. Purchases where all items are covered by a Requirements Contract or an IDIQ Contract will be expedited by the Procurement Area staff. User Areas shall consult with the Procurement Area and may submit separate PMF-01's for goods, work, and/or services previously approved under separate Requirements Contracts or IDIQ Contracts.

h. User Areas are responsible for monitoring the status of their Small Purchases. Whenever the Procurement Area determines that a PMF-01 must be put in "Hold", it will immediately notify the User Area and will indicate, in writing, the reason(s) for this determination. It will be the responsibility

of the User Area to resolve any problems identified in said written determination. The Procurement Area shall not process a PMF-01 until all problems identified in the "Hold" determination are resolved.

i. The Procurement Area, through one of its officials, will be responsible for regularly reviewing PMF-01's submitted for processing, in order to determine whether procurements may be prospectively consolidated or broken down to obtain more economical purchases under Requirements Contracts. The Procurement Director is responsible for the proper processing of each Small Purchase and that each such purchase is in compliance with all criteria set forth in each solicitation. The Administrator shall ensure that Small Purchases are alternated among qualified Contractors.

B. Sealed Bidding Method

1. Policy Summary

For procurement processes expected to exceed the Small Purchase limitation of $100,000.00, competitive procurement shall be conducted by either the Sealed Bidding or Competitive Proposals Methods.

Contracts shall be awarded based on the Sealed Bidding Method if the following conditions are present:

a. A complete, adequate and realistic specification or purchase description is available;

b. Two or more Bidders are willing and able to compete effectively for the business solicited;

c. The procurement lends itself to a firm fixed price Contract; and

d. The selection of the successful Responsible Bidder can be made on the basis of price.

An Invitation for Bids ("IFB") shall be publicly advertised and solicited and a fixed-price Contract will be awarded to the Responsible Bidder with the Responsive Bid with the lowest price. The IFB must include all the terms and conditions of the solicited procurement process and indicate how price will be evaluated.

The Sealed Bidding Method can be used to procure Non-Personal Services Contracts, excluding professional services contracts and contracts for the provision of A/E Services. To obtain these either an RFP or a QBS procurement process, as applicable, must be conducted as provided in this Manual.

2. Procedures

a. Solicitation and Receipt of Bids

The User Area shall prepare the PMF-02, which will describe the scope of work, goods, and/or services needed, and any and all specifications required. The PMF-02 will include a cost estimate and a Finance Bureau certification and will be signed by the Director of the User Area.

The User Area will forward the signed PMF-02 to the Procurement Area for processing. All documents which are required in the PMF-02 must be attached to the form, otherwise the request will not be processed by the Procurement Area. The Procurement Area may request additional documents and/or information as it may deem reasonably necessary.

Upon receipt of the PMF-02 and all the required documents, the Procurement Area shall evaluate the same, and shall prepare the IFB and the advertisement. The PMF-02 shall then be forwarded to the Insurance Area for review and determination of the corresponding insurance and bonding requirements, in writing. The Procurement Director shall evaluate the above documentation and shall sign his/her approval on the PMF0-02 and forward the same to the Administrator, with his/her recommendation and including the reasons therefor.

The Administrator, upon the recommendation of the Procurement Director, shall sign the advertisement for the IFB, which shall be published for ten (10) working days prior to the due date for submission of Bids, excluding Saturdays, Sundays and local holidays, or such other period of time as may be determined to be adequate based on the complexity of the procurement process solicited. The advertisement shall state the date, time and place for the submission of Bids, the pre-bid conference, if any, and the public bid opening.

The IFB shall include the specifications, and all contractual terms and conditions, and any exhibits applicable to the procurement process. The IFB shall clearly describe the scope of work, goods, and/or the services to be contracted by the PRPHA and include a statement that the award will be made to the Responsible Bidder whose Responsive Bid meets the requirements of the IFB and who has the lowest price.

All Bids shall be addressed to the Procurement Director and upon receipt shall be date-time stamped, but not opened, and shall be stored in a

secured place, until the advertised date, time and place for the public bid opening. No PRPHA official, agent, or employee may open a Bid prior to the date, time and place advertised for the bid opening. Any Bidder may withdraw a Bid at any time prior to the public bid opening.

b. Pre-Bid Conference

After the IFB is advertised, and before the Bids submission due date, the Procurement Director may hold a pre-bid conference with the prospective Bidders to discuss the IFB. The pre-bid conference shall be conducted by the Procurement Director or its designee. Notice of any scheduled pre-bid conference shall be included in the IFB. The date of the conference should allow Bidders adequate time to review the IFB and adequate time to revise their Bids before the submission due date. Nothing in the conference will change the terms of the IFB unless and until an amendment to the IFB is issued in writing by the Procurement Director. A log of the prospective Bidders attending the conference and a minute of the pre-bid conference must be prepared, in writing, and shall be part of the Procurement File. A summary of the conference shall be made available to prospective Bidders. Attendance to the pre-bid conference shall not be mandatory.

Prospective Bidders may submit written questions to the Procurement Area questions regarding the IFB, which questions shall be answered, in writing, by the Procurement Area staff. The responses to said questions will be made available to all the prospective Bidders, and shall be part of the Procurement File.

c. Bid Opening and Award

The bid opening shall be conducted by the Procurement Director, or its designee (the "Bid Opening Official"), on the date, time and place advertised in the IFB. Any interested party shall be permitted to attend the bid opening. The Bid Opening Official shall open all the Bids submitted and read aloud the Bidders' names and the Bid prices. This information shall be recorded in the minute of the bid opening, which minute shall be part of the Procurement File. No Contract shall be awarded nor any commitment shall be made to any Bidder at the bid opening. Any questions and disagreements raised by Bidders at the bid opening shall be taken under advisement and resolved by the Procurement Director after review of all the relevant facts.

A written summary of all the Bids shall be prepared by the Bid Opening Official, showing the names of the Bidders and the prices, including alternates, if any. This summary shall be part of the Procurement File.

If Responsive Bids with equally low prices are received from Responsible Bidders, the award shall be decided by lottery, which lottery shall be conducted by the Bid Board. If only one Bid is received and it is a Responsive Bid from a Responsible Bidder, then, prior to any award: (i) a cost or price analysis must be conducted by the Procurement Area verifying the reasonableness of the price, and (ii) the PRPHA must secure HUD's prior written approval.

The Procurement Director shall certify to the Administrator: the Responsive Bid from the Responsible Bidder offering the lowest price, and shall include its reasons for such determination.

The Administrator shall review the Procurement Director's written certification and shall submit its written recommendation for award to the Bid Board.

The Bid Board shall approve the recommendation for the award of the Contract to the Responsible Bidder with the Responsive Bid with the lowest price, and shall submit said approval to the Administrator for the award of the Contract. The Bid Board may request the Procurement File for review and the Procurement Director and/or the Administrator must be available to answer questions or comments from the Bid Board regarding the procurement process. In the event the Bid Board does not agree with the recommendation made by the Administrator, the Bid Board will return the same to the Administrator and the Procurement Director for revision in accordance with the Bid Board's written comments. The Bid Board's reasons for returning the recommendation must be stated in a memorandum addressed to the Procurement Director, the Administrator, and the Secretary. The Bid Board must take a determination on the Administrator's recommendation within fifteen (15) working days from the receipt of the Administrator's written recommendation for award. If a determination is not made within the aforesaid term, the Bid Board shall lose jurisdiction over the particular procurement process, in which case, subject to the written approval of the Administrator, the Responsive Bid from the Responsible Bidder offering the lowest price will be automatically approved and awarded as previously recommended.

Upon the Bid Board's approval of the Administrator's recommendation, the Administrator shall then award the Contract as approved and shall notify, in writing: (i) each unsuccessful Bidder, and (ii) the successful Responsible Bidder. In each such notification, the Administrator will include the reasons for such determinations.

If total sum of the Contract to be awarded exceeds $100,000.00, the Procurement Area shall prepare and obtain an Administrative Order as provided herein.

The written notice given to the successful Responsible Bidder (the "Contractor Notification") will indicate the date, time and place for the execution of the Contract, and the obligation to submit the Post Award Documentation (as hereinafter defined). A Contract is not binding on the PRPHA unless it is signed by the Administrator.

Upon the execution of the Contract, the Procurement Director will retain the original for the Procurement File and will distribute copies of the Contract to the Director of the User Area who requested the procurement process, the Finance Bureau, and the Contractor.

d. Mistakes in Bids

Bidders are bound by their Bids, however, correction or withdrawal of Bids may be permitted in accordance with the following rules: (i) before the bid opening, a Bidder may withdraw or correct a Bid upon receipt by the Procurement Director of the Bidder's written request therefor; and (ii) after the bid opening, corrections in Bids may be permitted only if the Bidder can show by clear and convincing evidence, dated prior to the submission of the

Bid, that there was an obvious mistake of fact, arithmetical calculations, or other item of nonjudgmental character, and/or the Bid price actually intended is clearly evident from examining the Bid.

All decisions to allow correction or withdrawal of Bids, either prior to or after bid opening, shall be supported by factual information submitted in writing by the Bidder and factual findings set forth in a written determination prepared and executed by the Procurement Director. After the bid opening, no changes in Bids shall be permitted except as provided above.

e. Bonds

Pursuant to 24 C.F.R. §85.36(h), in each and every procurement process for construction work or facility improvements where the Contract exceeds the Small Purchase limitation of $100,000.00, the following bonds and guarantees shall be requested: (i) a bid guarantee to assure that, if awarded the Contract, the Bidder or Offeror will accept and perform the Contract; (ii) a performance bond to assure that the Contract is successfully carried out and completed; and (iii) a payment bond to assure that the Contractor pays its subcontractors. Failure to comply with the above requirements in the percentages set forth below shall result in either the rejection of the Offer or the termination of the Contract.

(1) For construction contracts, Bidders or Offerors, as applicable, shall be required to submit the following guarantees:

(a) A bid guarantee from each Bidder or Offeror, as applicable, equivalent to 5% of the Contract price;

(b) A payment bond equivalent to 100% of the Contract price; and

(c) A performance bond equivalent to 100 % of the Contract price.

(2) For construction contracts funded with Public Housing Capital Funds or funds from its predecessor programs, each Bidder or Offeror, as applicable, shall be required to submit the following:

(a) A bid guarantee from each Bidder or Offeror, as applicable, equivalent to 5% of the Contract price; and

(b) One of the following:

(i) A payment and performance bond for 100% of the Contract price; or

(ii) Separate payment and performance bonds, each for 50% or more of the Contract price; or

(iii) A cash escrow equivalent to 20% of the Contract price; or

(iv) An irrevocable letter of credit equivalent to 25% of the Contract price.

(3) For conventional development projects funded pursuant to the United States Housing Act of 1937, as amended, each Bidder or Offeror, as applicable, shall be required to submit the following:

(a) A bid guarantee from each Bidder or Offeror, as applicable, equivalent to 5% of the Contract price; and

(b) One of the following:

(i) A payment and performance bond equivalent to 100% of the Contract price; or

(ii) A cash escrow equivalent to 20% of the Contract price; or

(iii) An irrevocable letter of credit equivalent to 25% of the Contract price.

All bonds required hereunder must meet all applicable HUD requirements. All bonds must be issued by a surety or insurance company duly authorized to do business in the Commonwealth of Puerto Rico, accepted by HUD, and "Treasury listed". A bond shall not exceed the surety's underwriting limitation and shall be properly executed. The PRPHA will reject any Offer that does not include the appropriate bid guarantee or which is submitted with a bond that does not comply with the requirements set forth herein.

f. Post Award Documentation

Within ten (10) working days, excluding Saturdays, Sundays and local holidays, from the date of the execution of the Contract, the Contractor must provide the following documents to the Procurement Area, as applicable (the "Post Award Documentation"):

1. Certificates of Insurance (General and Automobile insurance) approved by the Insurance Area and issued by insurance companies authorized to conduct business in Puerto Rico and with a Best rating of B+; originals of the insurance policies, with copies sent to the Insurance Area for review and approval;

2. Payment and Performance Bonds, as hereinbefore provided; and

3. All documents required in Appendix 5 of this Manual.

If the Contractor does not provide the required Post Award Documentation within the time frame specified herein, a five (5) working days extension may be allowed upon the Contractor's submission of evidence of good cause for the delay and the Administrator's written approval therefor. If the Contractor fails to provide the Post Award Documentation, the PRPHA may terminate the Contract for default by the Contractor, and the Bid Board and the Administrator shall proceed to approve and award the Contract to the Responsible Bidder whose Responsive Bid offered the next lowest price.

Once the Post Award Documentation has been submitted in accordance with the Contractor Notification and the Insurance Area has approved the certificates of insurance, if applicable, and the Contractor is in compliance with the applicable requirements of the HUD Procurement Handbook, the Procurement Area will issue a notice to proceed to the Contractor with a copy to the User Area who requested the procurement.

It will be the responsibility of said User Area to monitor the Contractor's performance under the Contract in accordance with the provisions of Section XVII of this Manual.

C. Competitive Proposals Method

1. Policy Summary

The Competitive Proposals Method shall be used when the PRPHA needs to initiate a procurement process expected to exceed the Small Purchases limitation of $100,000.00 and: (i) multiple technical factors will be evaluated in addition to price; (ii) price will not be the determining factor for selecting the Contractor; (iii) there is an adequate method of evaluating technical proposals; and (iv) the conditions for the use of the Sealed Bidding

Method are not met. Professional services where there is no employer-employee supervisory relationship, but excluding A/E Services, must be procured using the Competitive Proposals Method. A/E Services must be procured by Qualifications-Based Selection (QBS) as provided below.

When using the Competitive Proposals Method a Request for Proposals ("RFP") shall be publicly advertised and solicited and the Contract will be awarded to the Responsible Offeror whose Proposal is most advantageous to the PRPHA, price and other factors considered. The RFP must include a table of contents and a comprehensive statement of the scope of work, goods, and/or services to be contracted, along with the intended goals and objectives of the PRPHA for the particular procurement. The RFP shall also identify price and all other evaluation criteria and their relative importance, and whether Negotiations shall or shall not be conducted.

2. Procedures

a. Solicitation, Pre-Submission Conference, and Receipt of Proposals

The User Area will submit the PMF-02 to the Procurement Area, which must describe the scope of work, goods, and/or services needed and include the specifications, evaluation criteria, cost estimate, Finance Bureau certification, and other supporting documents required. The User Area shall develop an evaluation plan, which shall include the evaluation criteria and a rating sheet (hereinafter, a "Rating Sheet"), which Rating Sheet will list the evaluation criteria and the weight given to each evaluation factor, taking into consideration any and all evaluation criteria included in applicable HUD regulations.

A maximum rating will be assigned to each evaluation factor and a rating description shall be clearly stated. For example: "the rating 'Excellent', or 20 points out of 20 points available for the particular evaluation factor means: ..." or "the rating 'Good' or 15 points out of 20 points available for the particular evaluation factor means: ..." and so forth.

The evaluation plan will allow for fair and thorough evaluation of technical and cost proposals to be solicited in the RFP, taking into consideration any and all HUD regulations applicable to the particular procurement.

Once the PMF-02 is completed it must be signed by the Director of the User Area and then it will be forwarded to the Procurement Area. The Procurement Area will evaluate the PMF-02 and all the related information and documentation provided by the User Area and will prepare the RFP, including the aforesaid evaluation criteria, and the advertisement. The PMF-02 shall then be forwarded to the Insurance Area for review and determination of the corresponding insurance requirements, in writing. The Procurement Director shall evaluate the above documentation and shall sign his/her approval on the PMF-02 and forward the same to the Administrator, with his/her recommendation and including the reasons therefor.

The Administrator, upon the recommendation of the Procurement Director, shall sign the advertisement for the RFP, which shall be published for ten (10) working days prior to the due date for submission of Proposals, excluding Saturdays, Sundays and local holidays, or such other period of time as may be determined to be adequate based on the complexity of the

procurement process solicited. The advertisement shall state the date, time and place for the submission of Proposals, the pre-submission conference, if any, and the opening of Proposals.

The RFP shall include the specifications, and all contractual terms and conditions, and any exhibits applicable to the procurement process. The RFP shall clearly describe the needs of the PRPHA and/or the scope of work, goods, and/or services to be contracted by the PRPHA and shall identify the relative importance of price and other evaluation factors.

All Proposals shall be addressed to the Procurement Director and upon receipt shall be date-time stamped, and stored in a secured place, until the submission due date. No PRPHA official, agent, or employee may open a Proposal prior to the advertised submission due date. Any Proponent may withdraw a Proposal at any time prior to the submission due date.

After the RFP is advertised, and before the submission due date, the Procurement Director may hold a pre-submission conference (hereinafter, a "Pre-Submission Conference") with the prospective Offerors to discuss the RFP. The Pre-Submission Conference shall be conducted by the Procurement Director or its designee. Notice of any scheduled Pre-Submission Conference shall be included in the RFP. The date of the Conference should allow Offerors adequate time to review the RFP and adequate time to revise their Proposals before the submission due date. Nothing in said Conference will change the terms of the RFP unless and until an amendment to the RFP is issued in writing by the Procurement Director. In the Pre-Submission Conference, the Procurement Director will answer the Offerors' questions

regarding the RFP. A log of the prospective Offerors attending the Conference and a minute of the Pre-Submission Conference must be prepared, in writing, and shall be part of the Procurement File. A summary of said Conference shall be made available to prospective Offerors. Attendance to the Pre-Submission Conference shall not be mandatory.

Prospective Offerors may submit to the Procurement Area written questions regarding the RFP, which questions shall be answered, in writing, by the Procurement Area staff. The responses to said questions will be made available to all the prospective Offerors, and shall be part of the Procurement File.

The Procurement Area shall keep a log of all the Proposals received. Proposals faxed to the PRPHA in response to the RFP will not be accepted. Within the next five (5) working days from the submission due date, the Procurement Area shall open the Proposals and shall: (i) review its contents for completion; (ii) separate the portion of the Proposal referring to cost, for analysis by the Procurement Area as hereinafter provided; (iii) separate the financial portion of the Proposal for evaluation by the Procurement Area in case a determination of Responsibility is required to be made (as hereinafter provided); and (iv) separate the technical portion of the Proposal for remittance within the next five (5) working days to the Evaluating Committee for evaluation.

Proposals shall not be opened in public since they may contain trade secrets or other privileged or confidential information. No PRPHA official, agent, or employee shall disclose to any Person or Entity, including but not

limited to, other PRPHA officials, agents, or employees, any information related to the Proposals, including without limitation (i) the number of Offerors; (ii) the identity of the Offeror(s); and (iii) the contents of the Proposal(s).

b. Proposals Opening, Evaluation, Negotiation, and Award

The Evaluating Committee will evaluate all the Proposals received from the Procurement Director from a technical standpoint, using the evaluation criteria advertised in the RFP and detailed in the evaluation plan prepared by the User Area..

In order to prepare its written Evaluation Report, the Evaluating Committee will evaluate each Proposal using a separate Rating Sheet for each Proposal, and the score given to each Proposal with respect to each evaluation factor stated in the Rating Sheet will be explained and justified, in writing.

The Evaluating Committee may request the Procurement File for review, and the Director of the User Area requesting the procurement and/or the Procurement Director must be available to answer questions or comments from the Evaluating Committee regarding the particular procurement process.

After the Evaluation Report is prepared, the Procurement Director with the assistance of the Evaluating Committee will determine the Offerors whose Proposals are within the Competitive Range. This determination shall be in writing and will be included in the Procurement File.

The Procurement Area shall then perform a cost analysis for each and every Proposal within the Competitive Range.

If Negotiations were contemplated in the RFP, Negotiations may be conducted by the Procurement Director with the assistance of the Evaluating Committee and only with Offerors within the Competitive Range, with the intention of allowing such Offeror to revise its Proposal and to facilitate arriving at a Contract that will be most advantageous to the PRPHA, price and other evaluation factors considered. The User Area requesting the particular procurement may be represented in the Negotiation, as deemed necessary by the Procurement Director.

A Pre-Negotiation Memorandum may be prepared by the Procurement Area staff with the assistance of the Evaluating Committee, establishing: (i) any issues arising under each Proposal, and (ii) the cost/price and technical objectives of the particular Negotiation, based on the cost analysis conducted by the Procurement Area and the Evaluation Report made by the Evaluating Committee.

Negotiations will be conducted equally and fairly among all Offerors within the Competitive Range. Negotiations will be conducted with each such Offeror individually by the Procurement Area staff under the supervision of the Procurement Director. In the coordination of the Negotiations, the Procurement Area staff will take, in advance, such precautionary measures as may be necessary in order to avoid consultation, confrontation, and/or collusion among the Offerors with whom the Procurement Director is Negotiating.

As part of the Negotiation, the Procurement Director and/or the Evaluating Committee through the Procurement Director may submit written

questions to the Offerors within the Competitive Range, which written answers shall be filed promptly by said Offerors with the Procurement Director, and shall be part of the Procurement File.

A Negotiation Memorandum shall be prepared by the Procurement Director documenting the results of the Negotiations. All clarifications and/or revisions to Proposals resulting from the Negotiation must be submitted by the Offerors, in writing, as part of their Best and Final Proposals and before the due date established in advance by the Procurement Director for the submission of Best and Final Proposals.

After Best and Final Proposals are received, the Evaluating Committee shall conduct its final evaluation from the technical standpoint, taking into consideration the original Proposals and the Best and Final Proposals, and, shall then submit its final Evaluation Report to the Procurement Director. The Procurement Director with the assistance of the Evaluating Committee, as necessary, shall perform a cost-technical trade-off to determine the Proposal which is the most advantageous to the PRPHA, price and other factors considered, and shall then make its written recommendation for award, including its reasons therefor, to the Administrator.

The Administrator shall review the Evaluating Committee's final Evaluation Report and the Procurement Director's written recommendation for award and shall submit its written recommendation for award to the Bid Board.

The Bid Board shall approve the recommendation for the award of the Contract to the Responsible Offeror whose Proposal is the most advantageous to the PRPHA, price and other factors considered, and shall submit said approval to the Administrator for the award of the Contract. The Bid Board may request the Procurement File for review and the Procurement Director, the Evaluating Committee, and/or the Administrator must be available to answer questions or comments from the Bid Board regarding the procurement process. In the event the Bid Board does not agree with the recommendation made by the Administrator, the Bid Board will return the recommendation to the Administrator and the Procurement Director for revision in accordance with the Bid Board's written comments. The Bid Board's reasons for returning the recommendation must be stated in a memorandum addressed to the Procurement Director, the Administrator, and the Secretary. The Bid Board must take a determination on the Administrator's recommendation within fifteen (15) working days from the receipt of the Administrator's written recommendation for award. If a determination is not made within the aforesaid term, the Bid Board shall lose jurisdiction over the particular procurement process, in which case, subject to the written approval of the Administrator, the Contract will be automatically approved and awarded as previously recommended.

Upon the Bid Board's notification of its approval, the Administrator shall then award the Contract as approved and shall notify, in writing: (i) each unsuccessful Offeror, and (ii) the successful Responsible Offeror whose Proposal was the most advantageous to the PRPHA, price and other

evaluation factors considered. In each such notification, the Administrator will include the reasons for such determinations.

If total sum of the Contract to be awarded exceeds $100,000.00, the Procurement Area shall prepare and obtain an Administrative Order as provided herein.

The written notice given to the successful Responsible Offeror (the "Contractor Notification") will indicate the date, time and place for the execution of the Contract, and the obligation to submit the Post Award Documentation (as hereinafter defined). A Contract is not binding on the PRPHA unless it is signed by the Administrator.

Upon the execution of the Contract, the Procurement Director will retain the original for the Procurement File and will distribute copies of the same to the Director of the User Area who requested the procurement process, the Finance Bureau, and the Contractor.

c. Post Award Documentation

Within ten (10) working days, excluding Saturdays, Sundays and local holidays, from the date of the execution of the Contract, the Contractor must provide the following documents to the Procurement Area, as applicable (the "Post Award Documentation"):

1. Certificates of Insurance (General and Automobile insurance) approved by the Insurance Area and issued by insurance companies authorized to conduct business in Puerto Rico and with a Best rating of B+; originals of the insurance policies, with copies sent to the Insurance Area for review and approval;

2. Payment and Performance Bonds, as hereinbefore provided; and

3. All documents required in Appendix 5 of this Manual.

If the Contractor does not provide the required Post Award Documentation within the time frame specified herein, a five (5) working days extension may be allowed upon the Contractor's submission of evidence of good cause for the delay and the Administrator's written approval therefor. If the Contractor fails to provide the Post Award Documentation, the PRPHA may terminate the Contract for default by the Contractor, and the Bid Board and the Administrator shall proceed to approve and award the Contract to the Responsible Offeror whose Proposal was the next most advantageous to the PRPHA, price and other factors considered.

Once the Post Award Documentation has been submitted in accordance with the Contractor Notification and the Insurance Area has approved the certificates of insurance, , if applicable, and the Contractor is in compliance with the applicable requirements of the HUD Procurement Handbook, the Procurement Area will issue a notice to proceed to the Contractor with a copy to the User Area who requested the procurement.

It will be the responsibility of said User Area to monitor the Contractor's performance under the Contract in accordance with the provisions of Section XVII of this Manual.

d. Qualifications Based Selection

As permitted under applicable federal procurement regulations, any Contract in an aggregate amount in excess of the Small Purchase limitation

of $100,000.00 and for A/E Services may be awarded by Qualifications-Based Selection (QBS).

Under the QBS method, the User Area completes a PMF-02 describing the A/E Services requested and including the evaluation criteria, cost estimate, Finance Bureau certification, evaluation plan, and other supporting documents required for any Competitive Proposals procurement process, however, price shall not be a key evaluation factor in a QBS procurement process. The PMF-02 must be signed by the Director of the User Area.

Once the PMF-02 is completed and signed, it will be forwarded to the Procurement Area. The Procurement Area will evaluate the PMF-02 and all the related information and documentation provided by the User Area and will prepare the solicitation materials, including the aforesaid evaluation criteria and the advertisement for the QBS procurement. The PMF-02 shall then be forwarded to the Insurance Area for review and determination of the corresponding insurance requirements, in writing. The Procurement Director shall evaluate the above documentation and shall sign his/her approval on the PMF-02 and forward the same to the Administrator, with his/her recommendation and including the reasons therefor.

The Administrator, upon the recommendation of the Procurement Director, shall sign the advertisement for the QBS, which shall be published for ten (10) working days prior to the due date for submission of Proposals, excluding Saturdays, Sundays and local holidays, or such other period of time as may be determined to be adequate based on the complexity of the

procurement. The advertisement shall state the date, time and place for the submission of Proposals, and the Pre-Submission Conference, if any.

The QBS shall include the specifications, and all contractual terms and conditions, and any exhibits applicable to the procurement process. The QBS shall clearly describe the needs of the PRPHA and the scope of the A/E, Services to be contracted by the PRPHA, and shall identify the relative importance of each and every evaluation factor, and shall state that Negotiations will be conducted by the Procurement Director with the assistance of the Evaluating Committee.

All Proposals shall be addressed to the Procurement Director and upon receipt shall be date-time stamped, and stored in a secured place, until the submission due date.

After the QBS is advertised, and before the Proposals submission due date, the Procurement Director may hold a Pre-Submission Conference with the prospective Offerors, as provided hereinabove for the Competitive Proposals procurement method.

The Procurement Area shall keep a log of all the Proposals received. Proposals faxed to the PRPHA in response to the QBS will not be accepted. Within the next five (5) working days from the submission due date, the Procurement Area shall open the Proposals, review its contents for completion and send the Proposals within the next five (5) working days to the Evaluating Committee for evaluation.

Proposals shall not be opened in public since they may contain trade secrets or other privileged or confidential information. No PRPHA official,

agent, or employee shall disclose to any Person or Entity, including but not limited to, other PRPHA officials, agents, or employees, any information related to the Proposals, including without limitation (i) the number of Offerors; (ii) the identity of the Offeror(s); and (iii) the contents of the Proposal(s).

The Evaluating Committee will evaluate all the Proposals received from the Procurement Director, using the evaluation criteria advertised for the QBS and described in the evaluation plan prepared by the User Area.

In order to prepare its written Evaluation Report, the Evaluating Committee will evaluate each Proposal using a separate the Rating Sheet for each Proposal, and the score given to each Proposal with respect to each evaluation factor stated in the Rating Sheet will be explained and justified, in writing.

The Evaluating Committee may request the Procurement File for review, and the Director of the User Area requesting the procurement and/or the Procurement Director must be available to answer questions or comments from the Evaluating Committee regarding the particular procurement process.

The Evaluating Committee will rank the Offerors in descending order based on their qualifications, and the Procurement Director, with the assistance of the Evaluating Committee, will Negotiate with the best qualified Offeror for a fair and reasonable economic compensation until an agreement is reached or the list of qualified Offerors is exhausted.

After the Negotiation, the Procurement Director shall make a written determination of Responsibility and will submit its written recommendation for award, including the reasons therefor, to the Administrator.

The Administrator shall review the Procurement Director's written recommendation for award and shall submit its written recommendation for award to the Bid Board.

The Bid Board shall approve the recommendation of award of the Contract to the Responsible best qualified Offeror with whom a fair and reasonable economic compensation has been negotiated, and shall submit said approval to the Administrator for the award of the Contract. The Bid Board may request the Procurement File for review and the Procurement Director and/or the Administrator must be available to answer questions or comments from the Bid Board regarding the procurement process. In the event the Bid Board does not agree with the recommendation made by the Administrator, the Bid Board will return the recommendation to the Administrator and the Procurement Director for revision in accordance with the Bid Board's written comments. The Bid Board's reasons for returning the recommendation must be stated in a memorandum addressed to the Procurement Director, the Administrator, and the Secretary. The Bid Board must take a determination on the Administrator's recommendation within fifteen (15) working days from the receipt of the Administrator's written recommendation for award. If a determination is not made within the aforesaid term, the Bid Board shall lose jurisdiction over the particular procurement process, in which case, subject to the written approval of the

Administrator, the Contract will be automatically approved and awarded as previously recommended.

Upon the Bid Board's notification of its approval, the Administrator shall then award the Contract as approved and shall notify, in writing: (i) each unsuccessful Offeror, and (ii) the successful Responsible best qualified Offeror. In each such notification, the Administrator will include the reasons for such determinations.

If total sum of the Contract to be awarded exceeds $100,000.00, the Procurement Area shall prepare and obtain an Administrative Order as provided herein.

The written notice given to the successful Responsible best qualified Offeror (the "Contractor Notification") will indicate the date, time and place for the execution of the Contract. A Contract is not binding on the PRPHA unless it is signed by the Administrator.

Upon the execution of the Contract, the Procurement Director will retain the original for the Procurement File and will distribute copies of the same to the Director of the User Area who requested the procurement process, the Finance Bureau, and the Contractor.

e. Post Award Documentation

Within ten (10) working days, excluding Saturdays, Sundays and local holidays, from the date of the execution of the Contract, the Contractor must provide the following documents to the Procurement Area, as applicable (the "Post Award Documentation"):

1. Certificates of Insurance (General and Automobile insurance) approved by the Insurance Area and issued by insurance companies authorized to conduct business in Puerto Rico and with a Best rating of B+; originals of the insurance policies, with copies sent to the Insurance Area for review and approval;

2. Payment and Performance Bonds, as hereinbefore provided; and

3. All documents required in Appendix 5 of this Manual.

If the Contractor does not provide the required Post Award Documentation within the time frame specified herein, a five (5) working days extension may be allowed upon the Contractor's submission of evidence of good cause for the delay and the Administrator's written approval therefor. If the Contractor fails to provide the Post Award Documentation, the PRPHA may terminate the Contract for default by the Contractor, and the Bid Board and the Administrator shall proceed to approve and award the Contract to the Responsible next best qualified Offeror with whom a fair and reasonable economic compensation is Negotiated.

Once the Post Award Documentation has been submitted in accordance with the Contractor Notification and the Insurance Area has approved the certificates of insurance, , if applicable, and the Contractor is in compliance with the applicable requirements of the HUD Procurement Handbook, the Procurement Area will issue a notice to proceed to the Contractor with a copy to the User Area who requested the procurement.

It will be the responsibility of said User Area to monitor the Contractor's performance under the Contract in accordance with the provisions of Section XVII of this Manual.

Each and every Contract awarded under the QBS method shall contain a clause precluding the Contractor from competing for award of other Contracts related to A/E Services and solicited by the PRPHA if the award of said other A/E Services Contract would result in an organizational conflict of interest, such as unfair competitive advantage or impairment of Contractor objectivity, among other conflicts.

D. Requirements Contracts

1. Policy Summary

A procurement process for the award of a Requirements Contract may be initiated by any User Area or the Procurement Area, whoever first identifies the requirements for repeatedly purchased goods, services, and/or construction work. Depending on the aggregate amount of the proposed Requirements Contract, an IFB, RFP, or Small Purchases procurement method will be used for the award of the Requirements Contract. The Procurement Area, in conjunction with the User Area, has the discretion to determine whether any goods, construction work and/or services are to be purchased using a Requirements Contract, based upon either the Annual Procurement Plan or the frequent use of the goods, work, and/or services not already covered by a Requirements Contract.

2. Procedures

The PRPHA shall issue an IFB, RFP, or use a Small Purchases procurement method, as applicable, and shall establish a Requirements Contract for each category of repeatedly purchased goods, work, and/or services required by the PRPHA. A Requirements Contract Number shall be given by the Procurement Area and each Task Order and/or Delivery Order approved thereunder will be cross-referenced to said Requirements Contract Number.

The User Area requesting any goods, work, and/or services covered by a Requirements Contract shall submit a Task Order or a Delivery Order request, as applicable, to the Procurement Area, who will evaluate the request and the Procurement Director shall issue the Task Order or Delivery Order, as applicable, by signing the same. with reference to the Requirements Contract Number. Copies of the Task Order or Delivery Order, as applicable, shall be sent to the Finance Bureau and the User Area requesting the same. The Procurement Area, the Finance Bureau, and each User Area will be responsible for monitoring the total dollar amount of the Requirements Contracts to ensure that neither the Contractor nor the User Areas exceed the face amount of the same. The Finance Bureau will not authorize payments that exceed the face amount of each particular Requirements Contract, unless and until the face amount of said Requirements Contract is Modified.

E. IDIQ Contracts

1. Policy Summary

A procurement process for the award of an Indefinite Delivery - Indefinite Quantity Contract may be initiated by any User Area or the Procurement Area, whoever first identifies the need for such a contract and its compliance with the applicable requirements. Depending on the aggregate amount of the proposed IDIQ Contract, an IFB, RFP or Small Purchases Procurement Method will be used for the award of the same. The Procurement Director, in conjunction with the Director of the User Area, has the discretion to determine whether any goods and/or services are to be purchased using an IDIQ Contract, based upon either the Annual Procurement Plan or the frequent use of the goods, work, and/or services not already covered by an IDIQ Contract or a Requirements Contract.

2. Procedures

The PRPHA shall issue an IFB, RFP or use a Small Purchases Procurement Method, as applicable, depending on the complexity of the project(s) to be procured. The procurement must require that the PRPHA order and the Contractor furnish at least a stated minimum quantity of supplies or services, and, if ordered by the PRPHA, the Contractor must furnish any additional quantities, not to exceed a stated maximum. The Procurement Area or the User Area requesting the IDIQ Contract, as applicable, shall establish a reasonable maximum quantity and a minimum quantity, which must be more than a nominal quantity, but not more than the amount that the PRPHA is reasonably certain to order.

The User Area requesting any goods, work and/or services covered by an Indefinite Quantity -Indefinite Delivery Contract, shall submit a Task

Order or Delivery Order request, as applicable, to the Procurement Area, who will evaluate the request and the Procurement Director shall issue the Task Order or Delivery Order, as applicable, by signing the same with reference to the IDIQ Contract Number. Copies of the Task Order or Delivery Order, as applicable, shall be sent to the Finance Bureau and User Area requesting the same. The Procurement Area, the Finance Bureau, and each User will be responsible for monitoring the total dollar amount of the IDIQ Contracts to ensure that neither the Contractor nor the User Areas exceed the maximum amount. The Finance Bureau will not authorize payments that exceed the maximum amount of each particular IDIQ Contract, unless and until the maximum amount of said contract is Modified.

SECTION X. CONTRACTING WITH RESIDENT-OWNED BUSINESSES

Pursuant to 24 C.F.R. Part 963, the PRPHA may solicit and contract with Resident Owned Businesses (ROB) for the procurement of goods, services and/or construction work by following the applicable method of procurement as set forth herein and in 24 C.F.R. §85.36(d), with solicitation limited to ROB's. An award shall not be made to an ROB if the Contract or Purchase Order exceeds the price normally paid for comparable goods, services, and/or construction work in the area of the ROB's housing project. The eligibility requirements set forth in 24 C.F.R. Section 963.10 shall apply to any and all procurement processes under this Section and include, but are not limited to, the following:

A. Qualifications

1. The ROB shall submit a Certification that it is an ROB and all the documents required in Appendix 5 of this Manual;

2. The ROB's disclosure of ownership interests must indicate that the business management and daily business operations decisions are controlled by, and at least 51% of the voting stock is owned by, one or more Persons, or Entities comprised of Persons, who are PRPHA public housing residents;

3. The PRPHA has to verify and the owners must show proof that they are actual PRPHA public housing residents by providing copies of current signed leases;

4. The ROB should be registered with the PRPHA's Economic Development Area as an ROB.

B. Ability to Complete the Work

1. The Administrator, the Procurement Director, the Evaluating Committee and/or the Bid Board, as applicable, will evaluate the Offeror's integrity, record of past performance and compliance with public policy, and its financial and technical resources to deliver the goods, construction work and/or services solicited in the particular procurement process;

2. Completion of courses in Business Administration or Financial Management, proof of job training or apprenticeship in a particular trade, business, or profession is encouraged;

3. The ROB must have the required insurance, and payment and performance bonds (to the extent required). However, the PRPHA, in its discretion, may restructure any such insurance requirements in the procurement process in question to permit ROB participation.

C. Procedures

The PRPHA shall follow the Small Purchases, Sealed Bidding, Competitive Proposals or Non-Competitive Procurement methods, depending on the nature of the procurement process, but will limit solicitation among ROB's. Joint ventures between a ROB and a private Person or Entity are allowed, but the private Person or Entity must meet, singly, the PRPHA requirements for a Responsible Offeror.

The PRPHA will create a registry of ROB's that meet the PRPHA requirements set forth in Part B of this Section. After the registry has been created, the PRPHA may issue solicitationsto ROB's only for any given procurement process. The ROB's may also enter into a joint venture with another ROB to meet PRPHA's procurement requirements. At all times, the selected ROB must own and control at least 51% of the joint venture and receive at least 51% of the profits from any and all operations of the joint venture. The ROB will submit a certification as to the number of Contracts and/or Purchase Orders awarded to it and/or to any such joint venture under this Section, stating the total dollar amount of each such Contracts and/or Purchase Orders awarded. An ROB is not eligible to participate in a procurement process under this Section if the ROB has been awarded Contracts, Purchase Orders, Task Orders, or Delivery Orders with a total combined dollar value of $1,000,000.00 or more under this Section. See 24 C.F.R. §963.10(d).

SECTION XI. NON-COMPETITIVE PROCUREMENT AND EMERGENCY CONTRACTS

A. Non-Competitive Proposals Method

1. Conditions for Use

Procurement processes shall be conducted competitively to the maximum extent possible. However, pursuant to 24 C.F.R. §85.36(d)(4), the

Non-Competitive Proposals Method may be used only when (i) award of a Contract or Purchase Order is not feasible using either the Small Purchases, the Sealed Bidding, or the Competitive Proposals Methods, and (ii) one of the following applies:

A. The item is available only from a single source after a thorough review of available sources;

B. An Emergency or public exigency exists that requires the procurement of goods, work, and/or services, and is such that will not permit a delay resulting from competitive solicitation. The Emergency procurement shall be limited to those goods, services, or construction work strictly necessary to abate the Emergency;

C. After solicitation from an adequate number of sources, competition is determined inadequate; or

d. HUD has authorized the use of the Non-Competitive Proposals Method.

Each and every Non-Competitive procurement process expected to exceed $100,000.00 will require HUD's written approval.

2. Supporting Documents

A PMF will be utilized by the User Area for each Non-Competitive Procurement process. The specific PMF to be used will depend on the amount of the procurement (PMF-01 for amounts equal to or less than $100,000.00 and PMF-02 for amounts equal to or over $100,000.01). The PMF will describe the goods, work and/or services requested and include, as

applicable, the selection or evaluation factors, cost estimate, Finance Bureau certification, evaluation plan, and other supporting documents required in the PMF utilized. The User Area will justify, in writing, the need to use the Non-Competitive Procurement Method in each case. The specific PMF must be signed by the Director of the User Area.

Once the PMF is completed and signed, it will be forwarded to the Procurement Area, who will evaluate the PMF and the documentation provided by the User Area and shall prepare a solicitation document describing the goods, work and/or services requested, including the selection or evaluation factors prepared by the User Area, and requesting a quotation or Proposal, as applicable. The Procurement Director shall evaluate the above documentation and sign his/her approval on the PMF and forward the same to the Administrator with his/her recommendation and including the reasons therefor.

The Administrator must approve the use of the Non-Competitive Procurement Method, in writing, and for those procurements expected to exceed $100,000.00 obtain HUD's approval for the Non-Competitive procurement process, in writing, prior to the issuance of the solicitation document by the Procurement Area.

If the procurement is expected to exceed $100,000.00, the solicitation document must advise the Offeror to be solicited that his/her Proposal must include a breakdown of the proposed costs.

3. Cost/Price Analyses and Award

The Procurement Area will use cost or price analyses, as applicable, to verify the proposed cost data, the projections of the data, and the specific elements of cost and profit set forth in the quotation or Proposal received. The Procurement Director will make a written determination of Responsibility of the vendor or Offeror, as applicable, from whom a quotation or Proposal is received and then make its written recommendation for award to the Administrator, including the reasons therefor, and specifying the reasonableness of the cost or price.

The Administrator shall review the Procurement Director's written recommendation for award and if the Non-Competitive procurement process does not exceed the $100,000.00 Small Purchases threshold, the Administrator shall award the Purchase Order to the Responsible vendor whose quotation offers a reasonable price to the PRPHA. If the Non-Competitive procurement process exceeds the $100,000.00 Small Purchases threshold, the Administrator shall submit its written recommendation for award to the Bid Board.

In the aforesaid case, the Bid Board shall approve the recommendation for award of the Contract to the Responsible Offeror whose Proposal is reasonable to the PRPHA, price and other evaluation factors considered, and shall submit said approval to the Administrator for the award of the Contract. The Bid Board may request the Procurement File for review and the Procurement Director and/or the Administrator must be available to answer questions or comments from the Bid Board regarding the procurement process. In the event the Bid Board does not agree with the recommendation

made by the Administrator, the Bid Board will return the recommendation to the Administrator and the Procurement Director for revision in accordance with the Bid Board's written comments. The Bid Board's reasons for returning the recommendation must be stated in a memorandum addressed to the Procurement Director, the Administrator, and the Secretary. The Bid Board must take a determination on the Administrator's recommendation within fifteen (15) working days from the receipt of the Administrator's written recommendation for award. If a determination is not made within the aforesaid term, the Bid Board shall lose jurisdiction over said procurement process, in which case, subject to the written approval of the Administrator, the Contract will be automatically approved and awarded as previously recommended.

Upon the Bid Board's notification of its approval, and/or award by the Administrator as applicable, the Administrator shall then notify the selected Contractor or vendor, as applicable, including the reasons for such determination.

If total sum of the Contract exceeds $100,000.00, the Procurement Area shall prepare and obtain an Administrative Order, as provided herein, and shall also submit the Contract to HUD for approval.

In the case of Contracts, the written notice given to the successful Offeror (the "Contractor Notification") will indicate the date, time and place for the execution of the Contract. A Contract is not binding on the PRPHA unless it is signed by the Administrator.

Upon the execution of the Contract, the Procurement Director will retain the original for the Procurement File and will distribute copies of the same to the Director of the User Area who requested the procurement process, the Finance Bureau, and the Contractor.

B. Emergency Procurement

1. Grave

Emergency situations which require the procurement of goods, work, and/or services to be delivered and/or the Contract work begun within twelve (12) hours (hereinafter, a "Grave Emergency Procurement"), will be addressed and evaluated by the Procurement Director and approved in writing by the Administrator, in the most expedite manner feasible.

2. Urgent

Emergency situations which require the procurement of goods, services, and/or work to be delivered and/or the Contract work begun within seventy-two (72) hours (hereinafter, an "Urgent Procurement"), will be addressed and evaluated by the Procurement Director and will be approved in writing by the Administrator, in the most expedite manner feasible.

Both Grave Emergency Procurements and Urgent Procurements will be conducted by the Procurement Area staff on a priority basis.

3. Special Rules for Emergency Procurements

a. The User Area will submit to the Procurement Area the appropriate PMF including a written justification of the Emergency situation which does not permit competitive procurement; said PMF must be signed by the Director of the User Area.

b. The User Area will submit a cost estimate.

c. The User Area shall submit a funding certification from the Finance Bureau.

d. The User Area must submit a recommended source and any other explanation or related documents and/or information as may be requested by the Procurement Area.

e. Once the User Area has submitted all the required documents to the Procurement Area, the Procurement Director will obtain a price quotation or a Proposal, depending on the complexity of the procurement, from the recommended source and will evaluate and review all the above documentation in order to determine (i) reasonableness of price, based on previous experience and the cost estimate, and (ii) conformity with the PRPHA Emergency Plan.

f. In the case of Grave Emergency Procurements, the Procurement Director will submit the above documentation, with his/her recommendation, to the Administrator. In the case of Urgent Procurements, the Procurement Director will submit the above documentation, with his/her written recommendation, to the Administrator.

g. The Administrator shall, upon the recommendation of the Procurement Director, award a Purchase Order, but if the amount of the Emergency procurement exceeds $100,000.00, the Administrator must submit its recommendation for the award of a Contract to the Bid Board for approval.

h. The Procurement Area must perform a cost/price analysis of the Emergency procurement before the award of the Purchase Order or Contract, or thereafter as soon as possible.

SECTION XII. CANCELLATION OF SOLICITATIONS

A. A Small Purchase, an IFB, RFP, QBS, or any other solicitation may be cancelled before the Offers are due if:

1. The PRPHA no longer requires the goods, services or construction work solicited; or
2. The PRPHA can no longer or reasonably expect to fund the procurement process until the Contract or Purchase Order is closed out; or
3. Amendments proposed to the initial solicitation are material and determined by the PRPHA to be such that a new solicitation would be most advantageous to the PRPHA.

B. A Small Purchase, an IFB, RFP, QBS, or any other solicitation may be cancelled after the advertised due date for submission of Offers and all Offers received may be returned if:

1. The PRPHA no longer requires the goods, services, or construction work; or
2. Ambiguous or otherwise inadequate specifications were included in the solicitation; or
3. The solicitation did not include all the selection or evaluation factors that are of significance to the PRPHA; or
4. The projected cost exceeds available funds and it is not appropriate to adjust quantities solicited to come within available funds; or

5. There is reason to believe that Offers are not bona fide, or may not have been independently arrived at through open competition, or may be collusive; or

6. For just cause, when it is in the best interest of the PRPHA.

C. The reason for cancellation shall be set forth in writing by the Administrator and will be included in the Procurement File and notified in writing to all the vendors, Offerors, and Bidders solicited.

D. In the event of an IFB, if all otherwise Responsive Bids received in response to the IFB are at unreasonable prices, or only one Responsive Bid is received and the price is unreasonable, the PRPHA may cancel the IFB and/or complete the procurement by using other Competitive or Non-Competitive procurement methods provided in this Manual, provided that all of the following occur:

1. The Administrator issues a written determination to such effect;

2. All Bidders are informed of the PRPHA's intent to negotiate; and

3. Each Bidder is given a reasonable opportunity to negotiate.

SECTION XIII. CONTRACT TYPES AND CLAUSES

A. Contract Types

The PRPHA will utilize the type of Contract that will serve its best interest in the particular procurement process. The preferred types of contracts are firm fixed-price Contracts and Requirement Contracts. However, other types of Contracts may be used as long as they are allowed in the HUD Procurement Handbook.

B. Contract Clauses

All Contracts shall contain, among others, a clause identifying the type of Contract, and all the mandatory clauses contained in HUD Form 5370 (or Form

5370(A), 5370(C), or Form 51915-A depending on the type of Contract). Each Contract shall also include all other clauses required by applicable federal and state laws, rules and regulations, including, without limitation:

1. All the provisions required by 24 C.F.R. §85.36(i);

2. Termination for Convenience;

3. Termination for Cause and/or Termination for Default;

4. Compliance with Executive Order No. 11246 of September 24, 1965 entitled "Equal Employment Opportunity", as amended;

5. HUD and Puerto Rico ethical standards;

6. Compliance with the Copeland "Anti-Kickback" Act, and the Davis-Bacon Act;

7. Compliance with the Contract Work Hours and Safety Standards Act as to reporting requirements;

8. HUD requirements regarding Patent Rights;

9. HUD requirements regarding copyrights and rights in data;

10. Retention of records for a minimum of three (3) years after close-outs;

11. Examination of Records by United States Comptroller General and HUD;

12. Compliance with the Clean Air and Water Acts;

13. Compliance with the Energy Efficiency Standards issued by the Puerto Rico Energy Affairs Administration;

14. Award Protests and Contracts Claims;

15. Value Engineering;

16. Payment of Funds to Influence Certain Federal Transactions;

17. MBE/WBE and Section 3 Requirements; and

18. Drug-Free Workplace Act.

SECTION XIV. CONTRACT MODIFICATIONS AND CHANGE ORDERS

A. Policy Summary

Exceptionally, it may be necessary for the PRPHA to Modify an awarded and executed Contract or Purchase Order during the performance of the Contract or Purchase Order in order to address (i) unforeseeable or unpreventable changes required by the PRPHA, or (ii) revise the performance of the Contractor.

Prior to initiating any Modification, the User Area must determine, in writing, that the proposed change is within the scope of the original Contract or Purchase Order. Unilateral Modifications must be authorized pursuant to a Changes Clause contained in the original Contract or Purchase Order. Bilateral Modifications must be agreed upon mutually by and between the PRPHA and the Contractor. Any Modification outside the general scope of the original Contract or Purchase Order must be considered for a new procurement, and will be conducted as a separate procurement process.

In the case of unilateral Modifications, a Change Order will be issued by the PRPHA describing the Modification required and formalizing such unilateral Modification to the Contract or Purchase Order. Change Orders must be signed by the Administrator in all cases. In the case of bilateral Modifications, a written Contract Modification will be prepared by the PRPHA and signed by the Contractor and the Administrator and shall describe the Modification and set forth the agreed upon cost, schedule, or other revisions to the original Contract or Purchase Order.

B. Forms

Unilateral Modifications to a Contract or Purchase Order will be in the form of a Change Order which will be signed by the Administrator. Bilateral Modifications to a Contract or Purchase Order will be in the form of a written Contract Modification which shall set forth any and all cost and schedule revisions and will be signed by both the Administrator and the Contractor.

C. Procedures

Depending on whether it is a unilateral or bilateral Modification, a Change Order or written Contract Modification request will be prepared by the User Area in consultation with the Procurement Area, and shall include the following:

a. A detailed description of the proposed Modification, including the new projected delivery date;

b. A reference to the applicable specifications, drawings, or qualifications upon which the Contract or Purchase Order was originally developed and awarded, as applicable;

c. Modified architectural drawings, as applicable;

d. A detailed cost estimate, including a fixed price for, or the maximum price of, the Modification;

e. The Contractor's (and sub-contractors, if applicable) itemized breakdown of the proposed costs of the Modification, if available;

f. Certification by the Finance Bureau of funds availability;

g. A written justification for the Modification;

h. A certification that the Modification is within the scope of the original Contract or Purchase Order; and

i. In the case of unilateral Modifications, a certification that such Modification is being done pursuant to a Changes Clause contained in the original Contract or Purchase Order.

Extraordinary Modifications, that is, Modifications where the User Area is requesting a change in the Contract or Purchase Order that increases the total dollar amount of said Contract or Purchase Order by seven percent (7%) or more, or the time of completion by thirty (30) days or more, will require, in addition to the aforesaid documents, an Ethics Certification signed by the Director of the User Area. The Ethics Certification shall: (i) describe the circumstances necessitating the Modification, (ii) that said circumstances were not reasonably foreseeable at the time the Contract or Purchase Order was solicited, awarded, and/or executed, (iii) cite the federal, state, legal, administrative provision, or contractual clause pursuant to which the Modification is being requested, and (iv) certify that the Modification is in the best interests of the PRPHA.

Depending on whether it is a unilateral or bilateral Modification, a Change Order or written Contract Modification request shall be prepared for each case. Once the corresponding document is complete, it shall be signed by the Director of the User Area and forwarded to the Procurement Area, who will evaluate the same, and will approve the specifications, all contractual terms and conditions, and any exhibits applicable to the Modification. In the case of bilateral Modifications, the Procurement

Director or its designee shall conduct any negotiation necessary to arrive at an agreement with the Contractor that best serves the PRPHA's mission of providing decent, safe and sanitary housing to the PRPHA public housing residents. The Procurement Area shall prepare a draft of the document formalizing the Modification which shall clearly describe the scope of the Modification to the Contract or Purchase Order, and shall identify the price and all other components of the same.

The Procurement Director shall evaluate the above documentation and shall sign his/her approval on said draft, and forward the same to the Administrator, with his/her recommendation, including the reasons therefor.

The Administrator, upon the written recommendation of the Procurement Director, shall approve the Modification.

Upon the Administrator's approval of the Modification: (i) in the case of unilateral Modifications, a copy of the Change Order shall be given to the Contractor upon receipt of which the Contractor must start working on the change requested; or (ii) in the case of bilateral Modifications, the Contractor shall receive a notification stating the date, time and place for the execution of the written Contract Modification containing the Modification mutually agreed upon by and between the PRPHA and the Contractor. A Contract Modification is not binding on the PRPHA unless it is signed by the Administrator.

D. Records

The Procurement File will include all documents related to each and every Modification to the original procurement, including the following:

1. . Any additional Contract or Purchase Order requirements resulting from the Modification;

2. Funding coding and authorization number from the Finance Bureau;

3. Proof of insurance in effect covering the Modification and acceptance thereof by the Insurance Area;

4. To the extent applicable, HUD's Field Office written approval of the Modification;

5. Number and description of each and every Modification to the Contract or Purchase Order; and

6. Itemized and aggregate cost of all Modifications to the Contract or Purchase Order.

SECTION XV. COST OR PRICE ANALYSES

A. Policy Summary

Pursuant to 24 C.F.R. §85.36 and the HUD Procurement Handbook, a cost or price analysis shall be conducted for each and every procurement process, including any and all Modifications. The method and degree of cost or price analysis shall depend on the facts surrounding each procurement process.

If the particular procurement process is a Sealed Bidding process where only one Responsive Bid is received, or if it refers to a QBS procurement of A/E Services, or if it is a Non-Competitive Proposal procurement, or if it is a Modification, or a Termination settlement, the particular Bidder, Offeror, or the Contractor, as applicable, shall submit to the Procurement Area the following:

1. An itemized breakdown of projected costs and profits; and

2. Commercial pricing and sales information, sufficient to enable the PRPHA to verify the reasonableness of the proposed costs and price, such as, among others, a catalog or other evidence of the market price of a commercial product sold in substantial quantities to the general public, or documentation showing that the offered price is set by law or regulation.

B. Cost Analysis

The User Area is responsible for the preparation and delivery of a cost estimate to the Procurement Area in order to commence any procurement process. No IFB, RFP, QBS or other procurement process shall commence unless a cost estimate is attached to the corresponding PMF. The Procurement Area will return any PMF or other procurement request to the User Area unless a cost estimate is attached thereto.

Whenever a cost analysis is required it shall be performed by the Procurement Area staff, with the assistance of the User Area requesting the procurement, and shall focus on the individual cost elements of the particular Offer. The PRPHA shall have a right to audit Offeror's or Bidder's books and records pertinent to such costs, and profit shall be analyzed separately. Costs shall be allowed only to the extent that they are consistent with applicable federal cost principles.

In establishing profit, the Procurement Area shall consider factors such as the complexity and risk of the work involved, the Offeror's or the Bidder's investment and productivity, the amount of subcontracting, the quality of past performance, and industry profit rates in the Puerto Rico area for similar work.

For the preparation of a cost analysis, the Procurement Area must answer the following questions:

1. State the total costs of the procurement process or Modification or Termination, including a copy of the cost breakdown submitted by the Offeror, Bidder, or Contractor, as applicable;

2. What was the User Area cost estimate for the procurement process prior to the solicitation or sole source action? If this is an Emergency Contract, did the Procurement Director conduct a cost analysis? If so, attach copy.

3. If this procurement process is a sole source or Emergency Contract, either before or after the award, based on the cost estimate prepared by the User Area indicate the difference between the proposed or actual cost and what it would have cost if a competitive procurement method was used. If the proposed or actual cost is ten percent (10%) greater than the cost estimate, the Director of the User Area must explain the variance, in writing.

4. Is the cost estimate: (i) set by law, rules or regulations, (ii) based on previous Contracts, (iii) based on current catalogs/price list, (iv) based on an independent estimate cost prepared by the User Area or on its behalf? Attach copy, as applicable.

It is recommended that the Procurement Area consult the HUD Procurement Handbook when performing a cost analysis.

C. Price Analysis

A price analysis is the review and evaluation of the price proposed by a vendor, an Offeror, a Bidder, or a Contractor, as applicable, in order to determine its reasonableness, without evaluating separate cost elements, that is, without

performing a cost analysis. In the case of Small Purchases and in most Sealed Bidding processes, except as otherwise hereinabove provided, the PRPHA shall perform a comparison of prices received against the independent cost estimate prepared by the User Area, to ensure that the price selected is reasonable.

The Procurement Area shall conduct a price analysis by using one or more of the following procedures:

1. Compare proposed prices received in response to the solicitation.

2. Compare proposed prices with actual prices in Contracts awarded during the last two (2) fiscal years and with other current proposed prices for the same or similar goods, work or services.

3. Apply simple yardsticks (such as dollars per pound, per square foot, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry.

4. Compare competitive price lists, published market prices of commodities and similar indices, and inquire about discount or rebate arrangements.

5. Compare proposed prices with the independent cost estimate prepared by the User Area.

SECTION XVI. CONTRACTOR QUALIFICATIONS AND DUTIES

Contracts and/or Purchase Orders shall be awarded to and executed only with Responsible Contractors, that is, those who (i) have the technical experience and financial capability for at least satisfactory performance, and (ii) who have a record of proven integrity, of satisfactory past performance, and of compliance with public policy either with the PRPHA or other state governmental agencies.

The PRPHA reserves its right to not enter into a Contract or Purchase Order with a Person or Entity against whom a determination of non-Responsibility has been previously made by the PRPHA or other state governmental agency. Before awarding a Contract or Purchase Order, the PRPHA shall review the ability of the vendor, the Offeror, or the Bidder, as applicable, to perform in order to make a determination of Responsibility in accordance with the aforesaid standards, and considering, but not limited to, the following factors:

1. technical and financial capabilities;
2. record of past performance with the PRPHA or other state governmental agencies;
3. record of past performance with private clients;
4. past and current compliance with public policy; and
5. reputation of integrity in the business.

Based on the aforesaid review, the Procurement Area shall prepare a written determination of Responsibility or non-Responsibility, as applicable, including the reasons therefor, and shall include said determination in the Procurement File and in the written notification to the relevant vendor, Offeror or Bidder.

SECTION XVII. CONTRACT ADMINISTRATION AND MONITORING

A. Policy Summary

Contract administration means the activities conducted to ensure that both the Contractor and the PRPHA perform the Contract in accordance with the terms and conditions of the Contract as awarded and executed in writing. Contract monitoring means those activities carried out to evaluate Contractor performance and to ensure that Contract results, including any Modifications, achieve the goals of the PRPHA with respect to the particular procurement and remain in the best interest of the

PRPHA and its mission to provide decent, safe, and sanitary housing to the PRPHA public housing residents.

While the Procurement Area has the primary responsibility for administering the Contract and ensuring that the Contractor meets all terms and conditions, the requesting User Area has the crucial responsibility of monitoring the Contractor's performance under the Contract and enforce applicable bonds and/or warranties with the assistance of the Procurement Area until the close out of the Contract.

If the Contractor is not satisfactorily performing under the Contract, the User Area will notify the Procurement Area, in writing, and the Procurement Area will evaluate the situation and decide whether to terminate the Contract for default, send a Cure Notice, enforce applicable bonds and/or warranties, or any other feasible alternatives.

Upon satisfactory completion of the Contract, the Procurement Area in conjunction with the User Area will close out the Contract. All Contract records must be kept by each Contractor and the PRPHA for a minimum of three (3) years after final payment and/or close out of the Contract.

B. User Area's Responsibilities

1. The User Area will not authorize or issue any Change Orders.

2. The User Area is responsible for monitoring each Contractor's performance and for reporting, in writing if possible, to the Procurement Area any and all incidents of non-compliance with the terms and conditions of the Contract. If in doubt as to whether an incident is noncompliant, the User Area must contact the Procurement Area.

3. The User Area is responsible for promptly inspecting, accepting, rejecting or taking any and all necessary action(s) with respect to delivery of conforming or non-conforming goods, construction work and/or services and is responsible for supervising the performance of the same. The PRPHA is not obligated to accept or pay for the goods or services until the User Area has had the opportunity to inspect them. Inspection must occur within a reasonable time after delivery of goods, construction work and/or services. If the Procurement Area fails to specify a particular defect because of failure to inspect by the User Area within a reasonable time, or because of failure of the User Area to adequately inspect when such defect(s) could have been found by reasonable inspection, the PRPHA may be deemed to have waived its right to rejection based on that particular defect.

4. After the completion of the Contract, the User Area will submit to the Procurement Area a performance evaluation of the Contractor's performance under the Contract, which evaluation shall be part of the Procurement File.

C. Acceptance or Rejection of Goods/Services

Acceptance shall take place by the User Area, in concurrence with the Procurement Area. Upon receipt of evidence of acceptance, the Finance Bureau will pay the Contractor at the Contract rate for any and all goods, services and/or construction work accepted, within the time allotted by the Finance Bureau for payment of invoices.

When goods, work, and/or services do not conform to the Contract, the User Area shall inform the Procurement Area, who shall:

1. Reject defective goods, construction work and/or services, in which case, the Contractor may be declared in default, unless she or he can furnish conforming items within the Contract delivery schedule; or

2. Issue a Cure Notice requiring the Contractor to cure the defective goods, construction work and/or services within a special delivery schedule

If the Contractor does not cure the defects, the Procurement Area may accept the goods, construction work and/or services and negotiate a reduction in the Contract price, or terminate the Contract for default.

D. Suspension and Debarment

Purchase Orders or Contracts shall not be awarded to debarred, suspended, non-Responsible or ineligible Contractors. Contractors may be suspended or debarred by HUD in accordance with the debarment procedures determined by HUD in accordance with 24 C.F.R. Part 24 as in effect on the date hereof and as the same may be amended from time to time.

SECTION XVIII. APPEALS AND REMEDIES

A. Policy Summary

It is the PRPHA's policy to informally resolve any and all issues arising under or with respect to a Contract or Purchase Order at the PRPHA level without litigation. Disputes, protests and other claims shall be handled in accordance with the applicable provisions of Regulation No. 5258 and Regulation No. 6106 to the extent modified by this Manual. Claims of violations of federal law or regulations shall be reviewed by HUD after all administrative remedies at the local level have been exhausted.

B. Procedures

Any Person or Entity who has been adversely affected by an award determination made under the provisions of this Manual may file a claim with the Board of Appeals within ten (10) calendar days from the date of receipt of the notification of such award. Claims received outside the aforesaid period of time will not be considered timely filed. A claim against the award of a Contract or Purchase Order will be processed by the Board of Appeals in accordance with Regulation No. 5258 to the extent modified by this Manual.

SECTION XIX. SMALL BUSINESS PARTICIPATION

A. Policy Summary

The PRPHA shall take appropriate affirmative action ensure that small businesses, Minority Owned Businesses, women's business enterprises, Resident-Owned Businesses, and labor surplus area businesses have sufficient opportunity to participate in all procurement processes financed in whole or in part with PRPHA funds or funds administered by the PRPHA.

The PRPHA shall, consistent with applicable federal and state laws and regulations, establish goals for the participation of the above referenced businesses in the PRPHA's procurement processes.

SECTION XX. ETHICS IN PROCUREMENT

A. Policy Summary

Since the awarding of a Contract or Purchase Order by the PRPHA involves the expenditure of taxpayer funds, those PRPHA officials, agents, and employees involved in each procurement process and the Contractors each owes a fiduciary duty to the PRPHA. Therefore, no official, agent or employee of the PRPHA shall

participate directly or indirectly in the selection, award, administration, or monitoring of any Contract or Purchase Order if a conflict of interest, real or apparent, results. Accordingly, all PRPHA officials, agents, employees, and Contractors shall maintain an exemplary degree of honesty, integrity and impartiality when procuring, directly or indirectly, goods, work, and/or services, and executing and/or performing under Contracts or Purchase Orders for the PRPHA. It is mandatory that each and every official, employee and agent adheres strictly to the standards of ethics in public contracting as set forth in 24 C.F.R. §85.36(b)(3), in the HUD Procurement Handbook, in this Manual, and in all applicable federal and state laws and regulations now in effect or as hereinafter amended.

B. Compliance

1. No PRPHA official, agent, or employee shall open any Offer at any date, time or place other than those indicated in the public advertisement of the procurement. If an Offer is opened by mistake or accidentally, then the envelope containing the Offer shall be signed by the person who opened the same, including a reference to said person's position within the PRPHA, which person shall then take said envelope to the person within the Procurement Area staff designated to address this type of situation, who, in turn, shall immediately write on the envelope: (1) an explanation of the opening, (2) the date and time when opened, and (3) the procurement identification number. Said person from the Procurement Area staff shall then sign and re-seal the envelope and turn it over to the Procurement Area staff in charge of its safekeeping until the scheduled opening.

2. No PRPHA official, agent, or employee shall disclose any information relative to any Offer to any Person or Entity (including another Bidder or Offeror).

3. No PRPHA official, agent, or employee shall disclose to any Person or Entity any information related directly or indirectly to the IFB, RFP, or QBS or any other procurement process prior to their public advertisements.

4. No PRPHA official, agent, or employee shall award a Contract or Purchase Order based on criteria or specifications other than those publicly advertised through an IFB, RFP, QBS or the relevant solicitation materials.

5. No PRPHA official, agent, or employee shall solicit, demand, accept, receive or attempt to solicit, demand, accept, or receive any bribe, benefit or kickback, whether directly or indirectly, for any favorable or unfavorable action with respect to any procurement process, including, but not limited to, the award of a Contract or Purchase Order, or the determination of the price to be paid by the PRPHA under any Contract or Purchase Order.

6. No PRPHA official, agent, or employee shall Modify or attempt to Modify a Contract except in accordance with the applicable provisions of this Manual.

7. All PRPHA officials, agents and employees shall report to the Administrator, HUD, and law enforcement officials any offer of a bribe, benefit or kickback made to such PRPHA official, agent or employee.

8. No PRPHA official, agent or employee shall solicit, demand, accept, receive, or attempt to solicit, demand, accept, or receive for the benefit of himself/herself or of any other Person or Entity anything of value from any Person, Entity, Contractor, vendor, Bidder or Offeror, with the intention of influencing or rewarding such official, agent, or employee in connection with the award of any Contract, Purchase Order, procurement process, business, transaction or series of transactions involving the PRPHA.

C. Contract Inducement

No Contractor or its officials, employees, agents, or sub-contractors shall make any payment, or offer any gratuity, benefit, offer of present or future employment, or anything of value to any PRPHA official, agent or employee in connection with any Contract, Purchase Order, procurement process, or other business involving the PRPHA.

No payment, gratuity, benefit, value, or offer of a present or future employment shall be made in connection with any Contract, Purchase Order, procurement process, or other business involving the PRPHA by any Contractor, sub-contractor, or any Person or Entity associated therewith, as an inducement for the award of a Task Order, Delivery Order, sub-contract, or sub-order. This prohibition shall be set forth in each and every PRPHA solicitation materials, Contracts, Requirement Contracts, Task Orders, Delivery Orders, and Purchase Orders.

D. Conflict of Interests Involving Contracts

1. It is a violation of ethics for any PRPHA official, agent or employee to participate directly or indirectly in the award of any Contract, Purchase

Order, or any other procurement process in which said official, agent or employee knows or should have known that any of his/her relatives, up to the fourth degree of consanguinity or second degree of affinity (hereinafter, "Relatives"), have a financial interest, or any business or organization in which said official, agent, or employee, or any of his/her Relatives, has a financial interest; or any other Person or Entity with whom said official, agent or employee, or any of his/her Relatives, are negotiating or have an arrangement concerning present or future employment or other financial interest.

2. Any PRPHA official, agent or employee who exercises or has exercised any functions or responsibilities with respect to any Contract, Purchase Order or other procurement process, or who is in a position to participate in the decision-making process or gain inside information with regards to any Contract, Purchase Order or other procurement process shall not seek nor obtain a financial interest or benefit from said Contract, Purchase Order or other procurement process, or have an interest in any Contract, sub-contract, Purchase Order, or other agreement with respect thereto, or the proceeds thereunder, either for himself/herself, his/her Relatives, or for those with whom he/she has business ties, during his/her tenure with the PRPHA and for one (1) year after he/she leaves the PRPHA, except as otherwise may be provided for in the Annual Contributions Contract.

3. Upon discovery of any actual or potential conflict of interest involving a PRPHA official, agent or employee, such official, agent or employee shall

promptly file a written statement of disqualification and shall withdraw from further participation in the procurement process in question.

4. Any PRPHA official, agent or employee who obtains any benefit from any Contract, Contract Modification, Change Order, Purchase Order, Task Order, Delivery Order or other procurement awarded by the PRPHA with a Person or Entity with whom such PRPHA official, agent or employee has an economic or financial interest, shall immediately report such benefit to the Administrator.

E. Gratuities

It is a breach of ethical standards for any Contractor, vendor, Bidder, or Offeror to offer, give, or agree to offer or to give to any PRPHA official, agent or employee a gratuity, benefit or an offer of employment, and for any PRPHA official, agent or employee or former PRPHA officer, agent or employee to solicit, demand, accept, receive, or agree to solicit, demand, accept or receive any such gratuity, benefit or offer of employment.

F. Kickbacks and Collusive Practices

It is a violation of applicable state law for any Contractor, Bidder, or Offeror to offer, give, or agree to offer or to give any payment, gratuity, benefit or offer of employment to a PRPHA official, agent or employee as an inducement for the award of any given procurement process.

It is a breach of ethical standards for any Contractor or sub-contractor under a Contract, to offer any payment, gratuity, benefit, or offer of employment to another Contractor, sub-contractor or a higher-tiered sub-contractor, or to any Person or

Entity associated therewith, as an inducement for the award of a Contract, Purchase Order, Task Order, Delivery Order, or sub-contract.

G. Use of Confidential Information

No PRPHA official, agent or employee shall disclose any information related to any procurement process to any Person or Entity before the award of any given procurement process, if such information has not been previously disclosed to the general public pursuant to an official written advertisement or notification of the Administrator.

It is a breach of ethical standards for any PRPHA official, agent or employee or former official, agent or employee to use any privileged or confidential information gained during his/her tenure with the PRPHA for actual or potential personal gain, or for the actual or potential personal gain of any other Person or Entity associated therewith.

H. Prohibition Against Contingent Fees

No PRPHA official, agent or employee shall be retained, or retain a Person or Entity to solicit or secure or attempt to solicit or secure the award of any given procurement process under any agreement or understanding for a commission, percentage, brokerage fee, or contingent fee, except for retention of bona fide employees or bona fide established selling agencies. This includes the prohibition against influence-peddling that might occur when a former PRPHA official, agent or employee is hired on a contingent basis by a Person or Entity seeking the award of any given procurement process, or participating in any other PRPHA procurement process.

I. Additional Prohibitions

1. No present or former PRPHA official, agent or employee shall act as a principal or agent for anyone other than the PRPHA in connection with any Contract, Purchase Order or other PRPHA procurement process in which, the official, agent or employee participated personally and/or substantially through decision, approval, recommendation, rendering of advice, investigation, or otherwise while employed at the PRPHA or any contract or other agreement to which the PRPHA is a party, has or has had a direct and substantial interest or involvement.

2. No Person or Entity in which a PRPHA official, agent or employee has a financial interest shall act as a principal or agent for any Person or Entity in connection with any Contract, Purchase Order or procurement process under this Manual.

3. Contemporaneous employment of a PRPHA official, agent or employee by any Person or Entity contracting or actively seeking the award of a Contract, Purchase Order or other procurement process with the PRPHA is strictly prohibited.

4. No present or former PRPHA official, agent or employee shall provide services nor attempt to sell goods, services, work, or construction work to the PRPHA for a period of one (1) year following the date such employment ceased, except as otherwise provided in this Manual. The terms "provide services" or "sell" means signing a Bid or Proposal, submitting quotations, Negotiating, discussing or changing specifications, price, costs, allowances, or other items of a Contract or Purchase Order, settling any Contract or Purchase Order disputes or any other liaison activity with a view toward the

ultimate consummation of a Contract or Purchase Order, even though the actual Contract or Purchase Order is being Negotiated by or awarded to another Person or Entity.

J. Sanctions

1. Any PRPHA official, agent or employee found to have violated any of the provisions of this Section or to have furnished false or misleading information to the PRPHA with the intent to mislead, shall be subject to employment sanctions, including, but not limited to, immediate dismissal, in accordance with applicable employment laws and regulations.

2. Any PRPHA official, agent or employee who intentionally files a false or misleading statement of the financial interests, or knowingly fails to file a statement required to be filed hereunder within a reasonable time frame shall be subject to immediate dismissal.

3. Any PRPHA official, agent, employee, or Contractor who fails to provide documents or information requested by the PRPHA shall be subject to sanctions, including immediate dismissal or termination of rights under any contract.

4. Any violation of government ethics committed by any PRPHA official, agent or employee will be referred to the Government Ethics Office of the Commonwealth of Puerto Rico.

5. Any Contract or Purchase Order negotiated, entered into, or performed in violation of any provisions of this Manual shall be terminated by the PRPHA for cause or convenience, as applicable.

6. Any official action taken by any official, agent or employee of the PRPHA in violation of any of the provisions of this Manual, may be voidable by the PRPHA.

SECTION XXI. OTHER PROVISIONS

The policies and procedures contained herein apply to all procurement processes taken by the PRPHA after the effective date of this Manual and will not affect any procurement process completed prior to said effective date.

This Manual supersedes all previous PRPHA procurement regulations, policies, and procedures, and any other internal administrative circulars, bulletins, or memoranda relating to the procurement by or for the PRPHA or any of its agents of any and all goods, services, construction work and/or other property.

In the event that any part(s), provision(s), or clause(s) of this Manual is (are) invalidated by any federal or state court with jurisdiction, the remaining provisions shall remain in full force and effect.

Nothing in this Manual shall preclude the PRPHA from maintaining an action for the accounting of any pecuniary benefit received by any Person or Entity, or to recover damages for any acts or practices, in violation of this Manual or other applicable laws and regulations.

This Manual has been adopted in the English language with a Spanish translation. In case of inconsistencies between the English and Spanish versions, the English version shall prevail.

[Remainder of Page Intentionally Left Blank.]

SECTION XXII: EFFECTIVENESS

This Manual will become effective immediately upon its filing with the Department of State of the Commonwealth of Puerto Rico.

Enacted in San Juan, Puerto Rico this 6 day of march, 2001.

ILEANA ECHEGOYEN
SECRETARY
DEPARTMENT OF HOUSING

CARLOS LABOY
ADMINISTRATOR
PRPHA

Estado Libre Asociado de Puerto Rico
Departamento de Estado
San Juan, Puerto Rico

40.2-3

Para
Myrna Rodriguez

13 de marzo de 2002

Hon. Ileana Echegoyen Santalla
Secretaria
DEPARTAMENTO DE VIVIENDA
P.O. Box 21365
San Juan, Puerto Rico 00928-1365

Estimada señora Echegoyen Santalla:

El **12 de marzo de 2002, a las 12:54 p.m.,** quedó radicado en este Departamento, a tenor con las disposiciones de la Ley Núm. 170 del 12 de agosto de 1988, según enmendada, el **Manual de Adquisiciones de la Administración de Vivienda Pública, en sus versiones en español e inglés.**

Nos place informarle que a dicho expediente le correspondió el número **6405.**

Cordialmente,

Giselle Romero García
Secretaria Auxiliar de Servicios

GRG/et

Anejo