



Procurement Policies

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RECORD OF ADOPTION AND REVISIONS

Type of Approval Action*	Description of Action	Revision No.	Date
Board	<u>Initial Adoption of Policies.</u>	N/A	09/16/02
Administrative	<u>Small Works Roster:</u> only one quote required for non-federally funded construction projects less than \$2,000; use of Roster required for federally funded construction projects; includes State law requirement to “equitably distribute” solicitation opportunities.	2002-01	11/18/02
Administrative	<u>Purchasing Cards:</u> Changes in dollar threshold do not have to be approved by the Director of Finance and Administration but may be approved by the Contracting and Procurement Manager upon recommendation of the Department Director.	2002-02	11/18/02
Administrative	<u>Purchasing Cards:</u> Upon request of a Department Director receiving an employee transferring from another department, permits a Purchasing Card to be retained and not cancelled automatically.	2002-03	12/11/02
Regulatory	<u>Disputes, Protests, and Appeals:</u> Modifies the protest procedures in Chapter 23.030 (2a) for ITBs to be consistent with new State legislation regarding the timing in which a contractor may protest an award.	2003-01	6/7/03
Administrative	<u>Direct Payments:</u> Adds item to the list of Direct Payments for purchase of fuel and diesel with fuel cards. Clarifies language of item 7 on the list regarding credit card charges while on travel status.	2003-02	11/3/03
Administrative	<u>Direct Payments:</u> Clarifies the language of item 11 to reflect that it deals with “payments” and not “renewal” of agreements. Requires either Contracting and Procurement Manager or Director of Finance/IT approval, not both.	2005-01	01-14-05

RECORD OF ADOPTION AND REVISIONS

Type of Approval Action*	Description of Action	Revision No.	Date
Board	<u>Section 3 Preference Program:</u> Amends Chapter 21 by adopting of Section 3 Preference Program.	2005-02	07-18-05
Administrative	<u>Gas Cards:</u> Amends Chapter 14 by permitting the use of Gas Cards to respond to vehicle emergencies through the National Auto Club's Municipal Fleet Rescue Program.	2005-03	08-29-05
Administrative	<u>Title changes:</u> Amend Policies to reflect new Chief Financial Officer and Procurement and Contracts Manager	2008-01	07-18-08
Board	<u>Single Bid Limit Increase:</u> Amends Policy Chapters to reflect increase of dollar limit from \$2,000 to \$10,000 and from \$2,000 to \$25,000 for purposes of soliciting quotations on purchase orders, construction, consultant, and service provider contracting opportunities.	2009-01	3-19-09
Board	<u>Alternative Procurement:</u> Amends Chapter 12 to formally recognize SHA authority to use Request for Competitive Proposal (RFCP) process for Construction projects.	2009-01	3-19-09
Administrative	<u>Purchasing Card Program:</u> Amends Chapter 13 administrative records and reconciliation procedures.	2009-01	3-19-09
Administrative	<u>Section 3 Hiring Preference:</u> Amends Chapter 21 to incorporate policy previously approved by Board in 2005 concerning hiring preference for Section 3 eligible persons	2009-01	3-19-09

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Chapter 1: GENERAL PROVISIONS

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1.010 Purpose

The purpose of these SHA Procurement Policies is to establish a broad framework of policies and guidelines to ensure that SHA's purchasing and contracting functions promote administrative flexibility and efficiency, while at the same time maintaining prudent internal controls and compliance with applicable statutes and regulations.

Specific purposes of these Procurement Policies include, but are not limited to, the following:

1. Fairness and Objectivity: Providing a fair, objective, and equitable selection and contracting environment for all individuals and firms seeking to do business or contracting with SHA.
2. Ensuring Reasonable Costs: Promoting competition, and negotiating (where applicable), to ensure that SHA receives the most favorable prices and terms in its contracts.
3. Efficiency: Ensuring that supplies and services (consultant, construction, social services, etc.) are obtained efficiently and effectively.
4. Accountability: Promoting accountability of contracting actions by SHA employees and encouraging employees to protect SHA's financial and other interests.
5. Value-Added Procurement: Facilitating a procurement process that provides service and value to SHA in obtaining goods and services.
6. Ethical Standards: Ensuring that SHA's procurement activities are implemented with the highest regard for integrity, avoidance of conflicts of interest, and consistent with applicable ethical standards.
7. Legal Considerations: Complying with all applicable federal, state, and local statutes and regulations.

1.020 Scope

1. Funding Sources: SHA receives funds from federal, non-federal, and private funding sources. As such, in its procurement activities, SHA shall develop procedures designed to ensure compliance with applicable laws and regulations without necessarily imposing a higher standard than is necessary to ensure compliance.
 - a.) Where a requirement in these Policies is based only on federal requirements, SHA's Contracting and Procurement Manager may, on a case-by-case basis for

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non-federally funded contracts, apply a less stringent standard than outlined in the federal requirements, provided, however, that it is otherwise consistent with applicable Policies and that all State or other legal requirements are met.

- b.) Nothing in these Procurement Policies will prevent SHA from complying with the terms and conditions of any grant, contract, gift, or bequest that is otherwise consistent with law.
 - c.) The Chief Financial Officer shall maintain a list of SHA funds, specifying for each whether they are federal or non-federal funding sources, and shall make such a list available to SHA employees.
2. Included in Scope: The following shall be governed by these Procurement Policies:
- a.) Procuring, Purchasing, Leasing, or Renting:
 - Goods, Supplies, Equipment, Materials
 - Construction and Maintenance
 - Consultant Services
 - Architectural and Engineering (A & E) Consultant Services
 - Social Services
 - Other Services
 - b.) Selling
 - Concessions
 - Disposal of surplus material and equipment
3. Excluded from Scope: The following shall not be governed by these Procurement Policies:
- a.) Real Estate Purchase and Sale Transactions. (Surveys, appraisals, environmental site assessments, and financing analyses are considered Consultant services and governed by these Procurement Policies.)
 - b.) Loan transactions and documents.
 - c.) Sub-recipient or sub-grantee agreements and related change orders.
 - d.) Employment contracts.
 - e.) Limited partnership agreements.
 - f.) Award of housing or other vouchers to non-profit agencies.
 - g.) Housing Assistance Payment contracts.

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1.030 Compliance with Laws and Regulations

1. Applicable Laws and Regulations: In adopting these Procurement Policies, the Board of Commissioners and Executive Director affirm that the policies are in compliance with all applicable federal, state, and local laws and regulations, which may include, but not be limited to, the following:¹
 - a.) Federal
 - 24 CFR 85.36 (HUD Procurement Regulations)
 - 29 CFR Part 1, Procedures for Predetermination of Wage Rates
 - 29 CFR Part 3, Payment and Reporting of Wages Applicable to Federally Financed and Assisted Construction Contracts
 - 29 CFR Part 5, Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction
 - 29 CFR Part 7, Practice Before the Wage Appeals Board
 - HOPE VI Grant Agreements
 - ACC (Consolidated Annual Contributions Contract Between SHA and HUD), Form HUD-53012A
 - b.) State
 - Chapter 35.82 RCW (Housing Authorities Law)
 - Chapter 39.04 RCW (Public Works)
 - Chapter 39.08 RCW (Contractor's Bond)
 - Chapter 60.28 RCW (Liens for Labor, Materials, Taxes on Public Works)
 - Chapter 39.12 RCW (Prevailing Wages on Public Works)
 - Chapter 296-127 WAC (Prevailing Wages)
 - Chapter 39.80 RCW (Contracts for Architectural and Engineering Services)
2. Procedures Must Comply: Procurement procedures and contract language adopted administratively by the Executive Director or his/her designee must also comply with all applicable laws and regulations.²
3. HUD Handbooks and Guidelines: Consistent with 24 CFR 85.5 that refers to "handbooks and other nonregulatory materials," SHA recognizes HUD Handbooks and Guidelines as non-regulatory, non-binding advice, except to the extent that Handbooks or Guidelines articulate statutory or regulatory requirements. The non-regulatory nature of handbooks is further supported by 24 CFR 85.6 which states that "Federal agencies may not impose additional administrative requirements except in codified regulations published in the Federal Register."

¹ 24 CFR 85.36(b)(1): "Grantees [SHA]...will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section."

² 24 CFR 85.36(c)(3): SHA "will have written selection procedures for procurement transactions."

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4. Conflicts Between Policies and Other Laws or Regulations: In the event of a conflict between these Procurement Policies and any applicable law or regulation, the law or regulation will prevail.
5. Changes in Laws and Regulations: In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with these Procurement Policies, automatically supersede these Procurement Policies, and the Contracting and Procurement Manager shall make appropriate modifications to the Policies.

1.040 Responsibilities

1. Executive Director: The Executive Director is responsible for the management of all procurement for SHA, and shall hold Department Directors and other staff accountable for complying with these Procurement Policies and related Procurement Procedures to be adopted administratively by the Executive Director or his/her designee. The Executive Director shall ensure that all procurement activities of SHA are conducted consistent with the best interests of SHA and applicable laws and regulations.
2. Department Directors: Department Directors are responsible for managing the procurement-related activities of their department, for ensuring compliance with these Policies, and for ensuring, either directly or indirectly, the following:
 - a.) Making recommendations to the Purchasing Division for solicitations, contracts, and Change Orders that are consistent with these Policies and with adopted Procurement Procedures.
 - b.) Establishing “a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts and purchase orders.”³
 - c.) Assigning a Project Manager to each procurement and ensuring that the Project Manager understands his/her responsibilities including those related to financial management and regulatory compliance, and is provided with sufficient training and ongoing supervision either directly from the Department Director or indirectly through another manager or supervisor.
 - d.) Providing clear policy direction to subordinates responsible for managing projects.

³ 24 CFR 85.36(b)(2): “Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.”

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- e.) Ensuring that a solicitation or contract is appropriately coordinated with others in SHA, and reviewing proposed solicitations and contracting actions to avoid unnecessary or duplicative procurements.⁴
- f.) Evaluating the most economical, equitable, and efficient approach to a procurement, including whether to consolidate or split a procurement; where appropriate based on sound and documented business reasons, whether to lease or purchase items; and any other appropriate cost-benefit analyses.⁵ Procurements shall not be split in order to avoid various dollar thresholds related to the solicitation and selection process.
- g.) Reviewing all RFPs, RFQs, ITBs, and informal solicitations initiated by the department.
- h.) Determining the department's needs, and developing appropriate scopes of work and deliverables for solicitations and contracts that are clear, objective, and not restrictive of competition.
- i.) Developing an Independent Cost Estimate prior to solicitation.
- j.) Coordinating with the Budget Office to ensure there is sufficient funding available to accomplish work desired by the department.
- k.) Inspecting goods and services provided prior to approving invoices for payment.
- l.) Reviewing invoices received in a timely manner to ensure that:⁶
- The charges are consistent with the terms of the contract
 - The goods and services invoiced have been received consistent with the requirements of the contract
 - There is a sufficient amount of money available in the contract amount to pay for the goods or services
 - Payment is made within 30 days of receipt of an approved invoice.
- m.) Where appropriate and permitted by law, negotiating with contractors, consultants, and vendors to obtain the best prices for SHA, and for protecting the financial interests of SHA.
- n.) Conducting a Cost Analysis or Price Analysis in accordance with Chapter 8 of these Policies.

⁴ 24 CFR 85.36(b)(4): "Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items."

⁵ 24 CFR 85.36(b)(4): "Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach."

⁶ See Chapter 3.070 of these Policies for additional information.

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- o.)Monitoring the expiration date of a contract and requesting a Change Order, where appropriate, prior to the expiration date.
3. Contracting and Procurement Manager: The Contracting and Procurement Manager, acting upon the recommendation of Department Directors and others with sufficient Expenditure Authority, shall be responsible for ensuring the following:
- a.)Compliance with these Policies in reviewing and approving solicitations and contracts for SHA, and for ensuring that there is adequate competition.
 - b.)That recommendations from departments are accompanied by signatures of employees with appropriate Expenditure Authority.
 - c.)That an Independent Cost Estimate is prepared by the Project Manager or other independent party prior to approval of the solicitation by the Contracting and Procurement Manager.
 - d.)That a Cost Analysis or Price Analysis is performed by the Project Manager or other independent party prior to approval of any contract or Change Order by the Contracting and Procurement Manager consistent with Chapter 8 of these Policies.
 - e.)That solicitations, contracts, and Change Orders are in writing, clearly specifying the desired goods or services. The Contracting and Procurement Manager shall be responsible for developing contracts and Change Orders.
 - f.) That contracts are supported by sufficient documentation regarding the procurement process, including, at a minimum, the method of procurement chosen, the solicitation documents, bids or proposals received, and the rationale for selecting or rejecting bids or proposals.⁷
 - g.)That the dollar amount of a contract or Change Order, where appropriate, is encumbered in SHA's financial management system.
 - h.)Coordinating, hearing, and deciding upon all bidding and selection related protests and appeals.
 - i.) Maintaining the official and original contract files for SHA.
4. Budget Office: The Budget Office is responsible for working in partnership with departments in managing their budgets and for reviewing contracts and Change

⁷ 24 CFR 85.36(b)(9): "Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price."

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Orders prior to execution to ensure that sufficient funding exists to accomplish the work.

1.050 Approval of Policies

1. Adoption By Board of Commissioners: These Procurement Policies shall be adopted by the SHA Board of Commissioners and any substantive policy changes to the Policies must also be approved by the Board.
2. Self-Certification of Policies to HUD: Consistent with 24 CFR 85.36(g)(3)(ii), which authorizes a housing authority to self-certify to HUD that its procurement policies are in compliance with all applicable laws and regulations, the SHA Board of Commissioners, in adopting these Policies, certifies that the Procurement Policies are in compliance with all applicable laws and regulations, specifically including, but not limited to 24 CFR 85.36. Furthermore, the SHA Board of Commissioners authorizes the Executive Director to submit these Procurement Policies to HUD and to self-certify SHA's procurement system as defined in CFR 85.36(g)(3)(ii).⁸
3. Interpretation of Policies: In the event of an ambiguity, contradiction, or unforeseen situation not addressed clearly or directly in these Policies, the Executive Director, either directly or through the Chief Financial Officer or the Contracting and Procurement Manager, shall use his/her best professional judgment in making a decision that will best protect the interests of SHA, and ensure SHA's compliance with applicable statutory and regulatory requirements.

1.060 Approval of Procedures

1. Delegation of Approval Authority: In adopting these Procurement Policies, the Board of Commissioners authorizes the Executive Director or his/her designee⁹ to approve and implement appropriate Procurement Procedures that are consistent with these Procurement Policies. The Board shall hold the Executive Director responsible for ensuring the appropriateness of any Procurement Procedures adopted.

1.070 Procurement and Contract Files

The Purchasing Division shall "maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the

⁸ "A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review."

⁹ The Chief Financial Officer and the Contracting and Procurement Manager are appointed as designees of the Executive Director for the purpose of these Policies.

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following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.”¹⁰

1.080 Public Records

1. **Applicable Law:** SHA procurement information shall be a matter of public record to the extent provided for in RCW 42.17.250 et. seq. (the State of Washington Public Records law), and will be made available upon request and as provided in that statute.¹¹
2. **Photocopying Charges:** SHA may charge fifteen cents per page for each photocopy of public records requested.¹²
3. **Contractor Payroll Reports:** Payroll reports received by SHA from contractors and subcontractors on construction projects, for the purpose of monitoring prevailing wage requirements, shall not be released to outside parties *unless* the employees’ personal identifiers (e.g., name, address, social security number) are first deleted. Requests for such information shall be forwarded to the HUD Regional Labor Relations Office for review and response.¹³

¹⁰ 24 CFR 85.36(b)(9)

¹¹ RCW 47.15.250 et. seq.

¹² RCW 42.17.300

¹³ HUD Desk Guide LR-II, Labor Standards Administration and Enforcement Guidelines for HUD Program Participants, Section 2-10.

Chapter 2: DEFINITIONS

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- **A & E Consultant:** A Consultant in one of the following disciplines: Architecture, Engineering, Landscape Architecture, Land Surveying.¹⁴
- **Architecture:** The term "practice of architecture" means the rendering of services in connection with the art and science of building design for construction of any structure or grouping of structures and the use of space within and surrounding the structures or the design for construction of alterations or additions to the structures, including but not specifically limited to schematic design, design development, preparation of construction contract documents, and administration of the construction contract. (RCW 18.08.320(10))
- **Blanket Contract:** A competitively bid contract with a vendor for goods, supplies, equipment, materials, or non-consultant services in which prices are established and guaranteed during the life of the contract, unless adjusted by Change Order.
- **Buyer:** An employee of the Purchasing Division primarily responsible for the procurement of goods, supplies, equipment, materials, and services. See also Contract Administrator.
- **Change Order:** A written change to a contract, signed by both parties, modifying various terms of the contract such as scope of work, dollar amount, period of performance, or any other provisions.
- **Consultant:** A Consultant provides advice, recommendations, reports, analyses, evaluations, audits, surveys or other products of cognitive processes or expert or professional services. For the purpose of these Policies, Consultants providing architectural, engineering, landscape architectural, or land surveying services are considered as A & E Consultants, addressed separately in Chapter 11 of these Policies. For the purpose of these Policies, Service Providers are also considered as Consultants. See Service Providers. See also Chapter 10 of these Policies.
- **Contract Administrator:** An employee of the Purchasing Division primarily responsible for the procurement and administration of construction, A & E, and consultant and other service contracts. See also Buyer.
- **Contractor:** Any firm or entity with whom SHA contracts. As used in these Policies, Contractor may also refer to a Consultant, an A & E Consultant, a vendor, or a Service Provider.
- **Cost Analysis:** A written review and evaluation of whether the proposed cost of a contract, Purchase Order, or Change Order, not based on competitive prices received, is reasonable. See Chapter 8 of these Policies.

¹⁴ Chapter 39.80 RCW

Chapter 2: DEFINITIONS

- **Department Director:** The head of an SHA department.
- **Direct Payment:** A list of transactions that, by the nature of the transaction, are impractical or impossible to competitively bid because of market or other conditions, and that are thus exempt from competitive bidding requirements. See Chapter 17 of these Policies.
- **Emergency:** An emergency condition or event that seriously threatens the public health, welfare, or safety, endangers property, or would otherwise cause serious injury to SHA, as may arise by reason of a flood, earthquake, epidemic, fire, riot, equipment failure, or similar event, and the needs “will not permit a delay resulting from competitive solicitation.”¹⁵
- **Engineering:** The term "practice of engineering" within the meaning and intent of this chapter shall mean any professional service or creative work requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical, and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning, design and supervision of construction for the purpose of assuring compliance with specifications and design, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects.

A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this chapter, who practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself or herself to be a professional engineer, or through the use of some other title implies that he or she is a professional engineer; or who holds himself or herself out as able to perform, or who does perform, any engineering service or work or any other professional service designated by the practitioner or recognized by educational authorities as engineering. The practice of engineering shall not include the work ordinarily performed by persons who operate or maintain machinery or equipment. (RCW 18.43.020 (5))

- **Expenditure Authority:** The delegation of responsibility to various SHA employees to recommend, commit, and expend SHA financial resources up to a particular dollar limit. See Chapter 3 of these Policies.
- **Follow-On Contracts:** The process of taking advantage of competitive selection processes, prices, and contracts established by other governmental agencies. Also known as “Piggybacking.” See Chapter 18 of these Policies.
- **GC/CM:** General Contractor/Construction Manager. An alternative method of selecting and utilizing a construction contractor in accordance with Chapter 39.10

¹⁵ 24 CFR 85.36(d)(4)(i)(B)

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RCW. GC/CM means a firm with which SHA has “selected and negotiated a maximum allowable construction cost to be guaranteed by the firm, after competitive selection through formal advertisement and competitive bids, to provide services during the design phase that may include life-cycle cost design considerations, value engineering, scheduling, cost estimating, constructability, alternative construction options for cost savings, and sequencing of work, and to act as the construction manager and general contractor during the construction phase.”¹⁶

- **Independent Cost Estimate:** An estimate of the anticipated costs of a contract or Change Order prepared by SHA staff or other independent party to assist SHA in evaluating the reasonableness of costs proposed by a contractor, Consultant, or vendor. See Chapter 8 of these Policies.
- **Informal Solicitation:** A competitive selection process, without formal advertising, for soliciting goods and services that will cost \$100,000 or less . Refer to specific Chapter of these Policies for the type of goods or services sought.
- **Invitation to Bid (ITB):** A formally advertised competitive selection process used for obtaining goods and services that will cost more than \$100,000, where award is made based on the lowest price submitted by a responsible bidder with a responsive bid.¹⁷
- **Land Surveying:** The term "practice of land surveying" within the meaning and intent of this chapter shall mean assuming responsible charge of the surveying of land for the establishment of corners, lines, boundaries, and monuments; the laying out and subdivision of land; the defining and locating of corners, lines, boundaries and monuments of land after they have been established; the survey of land areas for the purpose of determining the topography thereof; the making of topographical delineations and the preparing of maps and accurate records thereof, when the proper performance of such services requires technical knowledge and skill. (RCW 18.43.020(9))
- **Landscape Architecture:** "Landscape architect" means a person who engages in the practice of landscape architecture as hereinafter defined. A person practices landscape architecture within the meaning and intent of this chapter who performs for hire professional services such as consultations, investigations, reconnaissance, research, planning, design or teaching supervision in connection with the development of land areas where, and to the extent that, the dominant purpose of such services is the preservation, enhancement, or determination of proper land uses, natural land features, ground cover and planting, naturalistic and aesthetic values, the settings and approaches to structures or other improvements, or natural drainage and erosion control. This practice shall include the location, design, and

¹⁶ RCW 39.10.061

¹⁷ The use in 24 CFR 85.36(d)(2)(i)(C) of the phrase “selection of the successful bidder can be made principally on the basis of price” refers not to price being one of many evaluation criteria, but that price is the only factor provided the bid is responsive and the bidder is responsible.

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arrangement of such tangible objects as pools, walls, steps, trellises, canopies, and other nonhabitable structures, and such features as are incidental and necessary to the purposes outlined herein. It involves the design and arrangement of land forms and the development of outdoor space including, but not limited to, the design of public parks, playgrounds, cemeteries, home and school grounds, and the development of industrial and recreational sites. (RCW 18.96.030)

- **Piggybacking:** The process of taking advantage of competitive selection processes, prices, and contracts established by other governmental agencies. Also known as “Follow-On Contracts.” See Chapter 18 of these Policies.
- **Price Analysis:** A written review and evaluation of competitive prices received by SHA to determine whether the proposed price of a Contractor is reasonable when compared with prices provided by others in the market. See Chapter 8 of these Policies.
- **Project Manager:** An SHA employee designated by a Department Director to manage all programmatic, financial, and other terms and conditions of a contract with an outside contractor, Consultant, service provider, or vendor.
- **Purchase Order:** A contract prepared by a Buyer, between SHA and a vendor for supplying goods and/or services.
- **Purchase Requisition:** A request form from an SHA employee with appropriate expenditure authority for obtaining goods and/or services. See Chapter 9 of these Policies.
- **Contracting and Procurement Manager:** The head of the Purchasing Division. As used in these Policies, all decisions reserved to the Contracting and Procurement Manager may also be made by the Chief Financial Officer.
- **Request for Competitive Proposals (RFCP):** A formally advertised and competitive selection process used for obtaining construction services that will cost more than \$100,000, in which the evaluation and selection of a Contractor cannot be based on price alone, but is based on established criteria that include price and other factors.
- **Request for Proposals (RFP):** A formally advertised and competitive selection process used for obtaining consultant and other services that will cost more than \$100,000, in which the evaluation and selection of a Consultant cannot be based on price alone, but is based on established criteria that include price and other factors.
- **Request for Qualifications (RFQ):** A formally advertised and competitive selection process used for obtaining A & E Consultant services that will cost more than \$100,000, in which the evaluation and selection of A & E Consultants is based on the consultants’ qualifications, and price is not used as an evaluation criterion. Part

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of evaluating an A & E Consultant's qualifications may include an evaluation of their proposed approach for performing the work. An RFQ may also be similarly used in the procurement of development partners.

- **Service Provider:** An agency, firm, or individual that performs non-consultant work, including ongoing management of programs and provision of services. Such services may include, but are not limited to, security, moving and storage, legal messengers, telephone answering service, routine systems maintenance for elevators and HVAC, youth tutoring, etc. One distinguishing feature of Service Providers is that the work they perform is not normally subject to federal or state prevailing wage requirements. For the purposes of these Policies, Service Providers are considered as Consultants. See Consultant. See also Chapter 10 of these Policies.
- **Small Works Roster:** The Small Works Roster, established under the authority of RCW 39.04.155, consists of contractors who have expressed an interest in doing business with SHA. The Roster permits SHA to select a contractor for certain construction projects without publicly advertising the work, but by following the process outlined in State law for soliciting bids from contractors on the Roster. See Chapter 12.030 of these Policies.
- **Sole Source:** The service or item "is available only from a single source,"¹⁸ based on a good faith review of available sources.

¹⁸ 24 CFR 85.36(d)(4)(i)(A)

Chapter 3: EXPENDITURE AUTHORITY

Chapter 3: EXPENDITURE AUTHORITY

3.010 General

Expenditure Authority refers to the delegation of responsibility to various SHA employees to recommend, commit, and expend SHA financial resources up to a particular dollar limit, for a cost center or business unit over which the employee has jurisdiction and control. Expenditure Authority does not include authority to execute contracts or agreements on behalf of SHA (see Chapter 5: Contracting Authority), or the authority to sign and approve invoices for payment on previously authorized contracts or Purchase Orders (See Chapter 3.070 below).

Expenditure Authority includes the following responsibilities:

1. To make project and programmatic decisions.
2. To recommend entering into a contract, executing a Change Order, or approving a Purchase Requisition.
3. To approve for payment expenditures on the Direct Payments list (items not subject to competition).
4. To carefully read and review applicable documents for accuracy and appropriateness.
5. To coordinate actions with other SHA employees and outside parties as may be appropriate.
6. To work with the Budget Office to ensure that adequate funds have been budgeted and are available for the proposed expenditure.
7. To conduct a Cost Analysis or Price Analysis demonstrating that the proposed price of a contract or Change Order is reasonable (see Chapter 8, Ensuring Reasonable Costs, for more information).
8. To act diligently in placing a priority on protecting SHA's financial and other interests.
9. To comply with SHA's procurement policies and procedures, including requirements related to ethical behavior (See Chapter 22, Ethical Standards, for more information).

3.020 Documents Authorized to Sign

An employee with Expenditure Authority shall have the authority to approve and sign the following, up to the dollar amount authorized to them by the Executive Director:

Chapter 3: EXPENDITURE AUTHORITY

1. Purchase Requisitions: Purchase Requisitions must be approved by an employee with Expenditure Authority consistent with the estimated dollar value of the proposed purchase. Approval of a Purchase Requisition may be in the form of a signature on a purchase requisition form or electronically through Enterprise One financial management system.
2. Recommendations for Approval of Contracts: All proposed contracts must be accompanied by a signed recommendation to the Contracting and Procurement Manager from an employee with an Expenditure Authority amount consistent with the amount of the contract.
3. Recommendations for Approval of Change Orders: All proposed Change Orders must be accompanied by a recommendation in writing or electronically to the Contracting and Procurement Manager from an employee with an Expenditure Authority amount consistent with the amount of the Change Order. Employees shall not deliberately split Change Orders in order to stay within their Expenditure Authority amount.
4. Recommendations for Release of Solicitations: All solicitations, including both formal RFCPs, RFPs, RFQs, ITBs and other such documents, and informal solicitations for goods or services, must be approved in writing or electronically by the Contracting and Procurement Manager before such solicitation is advertised or otherwise distributed to contractors, consultants, or vendors, except that informal solicitations of quotes for goods and supplies shall not require the approval of the Contracting and Procurement Manager. All recommendations to the Contracting and Procurement Manager for release of any solicitation must either be in writing or electronically through the Enterprise One financial management system, approved by an individual with Expenditure Authority for the estimated cost of the solicitation, or by the applicable Department Director. The Contracting and Procurement Manager shall review the recommendation and shall, if appropriate, approve the release of the solicitation. The Contracting and Procurement Manager may, on an exception basis, authorize the release of certain solicitations without his/her prior review. The Executive Director or his/her designee shall develop procedures and/or routing forms as may be appropriate to facilitate these approvals.
5. Recommendations for Selections and Awards: All recommendations must be in writing for selection of contractors, consultants, vendors, or other service providers subject to these Procurement Policies and be signed by an individual with Expenditure Authority for the estimated or actual award amount. The Contracting and Procurement Manager shall review the recommendation and, if appropriate, approve the selection or award the contract, except that all recommendations to the Contracting and Procurement Manager for non-competitive selections and awards must be in writing and signed by the Department Director or Executive Director (subject to Expenditure Authority limits). (See Chapter 3.040 (3) of these Policies)

Chapter 3: EXPENDITURE AUTHORITY

6. Authorization for Expenditures for Direct Payments: Authorization to pay for items listed on the Direct Payments list must be signed by an employee with Expenditure Authority in an amount consistent with the amount of the proposed payment.
7. Purchasing Card Payments: In submitting a monthly Purchasing Card statement to the Accounts Payable section for payment, in addition to the approval signature of the Purchasing Card Holder, the statement must also be approved by the employee's supervisor, who is automatically authorized to review and approve expenditures for a subordinate's Purchasing Card.

3.030 Executive Director

1. Responsibilities: The Executive Director shall be responsible for providing oversight and management of all expenditures for the agency.
2. Expenditure Authority Limit: Only the Executive Director may authorize SHA commitments and expenditures of more than \$50,000.
3. Delegation to Managers and Supervisors: In order to facilitate efficient procurement activities, the Board of Commissioners authorizes the Executive Director to delegate Expenditure Authority to appropriate managers and supervisors. Upon recommendation of a Department Director, the Executive Director may delegate Expenditure Authority to a manager or supervisor in an amount not to exceed \$15,000. Such delegation shall be in writing with the approval signature of the Executive Director. All changes in Expenditure Authority amounts must also be approved in writing by the Executive Director. The Board of Commissioners shall be notified in writing of all such delegations of Expenditure Authority by the Executive Director on an annual basis. The Executive Director may, in special circumstances and where justified based on the nature of the position, delegate Expenditure Authority to an employee who is not a manager or supervisor.
4. Purchasing Card Delegation: The Executive Director is authorized to delegate Expenditure Authority to certain employees through the use of an SHA credit card (Purchasing Card). Upon recommendation of a Department Director, the Executive Director may authorize the issuance of a Purchasing Card to employees.

3.040 Department Directors

1. Expenditure Authority Limit: Department Directors may approve financial commitments and authorize expenditures up to \$50,000 without written concurrence of the Executive Director. Department Directors are expected to exercise prudent care in the financial management of their department, ensuring compliance with the department's annual budget, protecting the financial and other interests of SHA, and ensuring proper coordination with the Executive Director and other Department Directors in authorizing the expenditure of SHA money.

Chapter 3: EXPENDITURE AUTHORITY

2. Travel, Training, Temporary Help: All requests and authorizations for actual expenditures for travel, training, or temporary help, must be approved by the Department Director. Requests or authorizations above \$50,000 (the Expenditure Authority limit of Department Directors) must be approved by the Executive Director.
3. Non-Competitive Selections: Subject to the \$50,000 Expenditure Authority limit, all non-competitive selection recommendations (emergency, sole source, proprietary, single response to a solicitation, etc.) must be approved by the Department Director and the Contracting and Procurement Manager. Those over \$50,000 must be approved by the Department Director, Executive Director, and Contracting and Procurement Manager.
4. Cancellation of Expenditure Authority: A Department Director may cancel the Expenditure Authority granted to an employee in the Director's department without approval from the Executive Director based on a change of job duties, abuse or mismanagement of Expenditure Authority by the employee, or other reasons sufficient for the Department Director. Such cancellation and reasons must be in writing to the Contracting and Procurement Manager.
5. Purchasing Card Limits: A Department Director may recommend in writing to the Contracting and Procurement Manager or Chief Financial Officer a change in an employee's Purchasing Card transaction limits.
6. Purchasing Card Cancellation: A Department Director may cancel the Purchasing Card of an employee in their department by providing written notice and reasons of such a request to the Contracting and Procurement Manager.
7. Authority of Acting Department Director: In the absence of a Department Director, the acting Department Director shall have \$50,000 of Expenditure Authority, subject to the following: The Department Director must, in writing and in advance of such absence, have notified the Executive Director, Controller, and the Contracting and Procurement Manager of the dates and times of the absence, and the name of the individual who he/she has appointed as acting Department Director. In the event that a Department Director is unable to issue such a notification, the Executive Director or acting Executive Director may authorize up to \$50,000 of Expenditure Authority to an acting Department Director.

3.050 Managers and Supervisors

1. Expenditure Authority Limit: Except as otherwise noted in these Policies, a manager or supervisor with Expenditure Authority may make recommendations, approve financial commitments, and authorize expenditures up to the Expenditure Authority amount approved in writing by the Executive Director, without the signature of the Department Director or Executive Director. The maximum amount of Expenditure Authority for a manager or supervisor shall be \$15,000. Managers and supervisors are expected to exercise prudent care in the financial management

Chapter 3: EXPENDITURE AUTHORITY

of the budgets for which they are responsible, protecting the financial and other interests of SHA, and ensuring proper coordination with their Department Director and other appropriate personnel within the agency.

2. Transfer to Another Position: The Expenditure Authority for a manager or supervisor shall be valid only while the employee is in the position for which the Expenditure Authority was originally granted. If the employee transfers to a different position where Expenditure Authority is required, the Executive Director, upon the recommendation of the Department Director, must re-authorize the Expenditure Authority for that employee.
3. Cancellation of Expenditure Authority: For abuse or mismanagement of Expenditure Authority or other sufficient reasons, the Department Director may cancel an employee's Expenditure Authority by submitting such cancellation notification in writing to the Contracting and Procurement Manager with an explanation for the reasons thereof.
4. Acting Managers or Supervisors: In the event that an individual is appointed as an acting manager or supervisor, either during the limited absence of the manager or supervisor or for a longer term assignment, any Expenditure Authority of the permanent manager or supervisor shall not be automatically transferred to the acting manager or supervisor. An acting manager or supervisor requiring Expenditure Authority must be formally delegated with that authority by the Department Director and Executive Director.

3.060 Purchasing Card Holders

1. Expenditure Authority Limit: All Purchasing Card Holders shall automatically be delegated with Expenditure Authority up to at least the amount of their per-transaction limit for use of the Purchasing Card. By separate action, the Executive Director may authorize some Purchasing Card Holders to have a higher Expenditure Authority amount.
2. Supervisors of Purchasing Card Holders: Supervisors of Purchasing Card Holders who are required to review and sign their approval of an employee's Purchasing Card statement are authorized to do so even if they have not specifically been delegated with Expenditure Authority. By separate action, a Department Director and the Executive Director may authorize some supervisors of Purchasing Card Holders to have an Expenditure Authority amount through the normal process.

3.070 Invoice Payment Authorization

1. Department Directors Responsibilities: Expenditure Authority does not authorize an employee to approve invoices for payment on a previously authorized contract, Change Order, or Purchase Order. Department Directors are responsible for developing and managing independent internal control procedures and dollar

Chapter 3: EXPENDITURE AUTHORITY

thresholds authorizing specific employees to sign and approve invoices for payment.

2. Employee Responsibilities: In signing and approving an invoice for payment on a previously authorized contract, Change Order, or Purchase Order, an employee verifies that the work being approved for payment was satisfactorily performed or the goods received, that the amount approved for payment is consistent with the terms of the contract or Purchase Order, that adequate funds remain in the contract or Purchase Order, and authorizes that a check be issued for payment of the invoice amount.

Chapter 4: INTERNAL SHA REVIEW OF CONTRACTS

Chapter 4: INTERNAL SHA REVIEW OF CONTRACTS

4.010 Development of Procedures

The Executive Director or his/her designee shall establish Procurement Procedures that will facilitate appropriate review of procurement-related actions. In developing such Procedures, the Executive Director shall promote accountability and expediency, while at the same time ensuring that procurement-related actions are in compliance with applicable statutory and regulatory requirements.

4.020 Procurement Actions Subject to Review

Procurement Procedures shall address the internal review and approval process for the following non-exclusive list:

1. Solicitation Documents: Request for Proposals (RFP), Request for Qualifications (RFQ), Invitation to Bid (ITB), informal solicitations.
2. Selection Documents: Cost or Price Analysis, Selection and Award Recommendations, Notices of Award, Non-Competitive Selections.
3. Contracts: Purchase Orders, Construction Contracts, Consultant and Professional Services Contracts, A & E Consultant Contracts, Agency Service Agreements, Property Management Contracts, Change Orders.

4.030 Expenditure Authority Amounts

Employees with Expenditure Authority amounts less than or equal to the amount of a proposed action are authorized to make recommendations for various procurement-related actions without approval from a manager, supervisor, or Department Director. However, a Department Director may establish internal departmental procedures that require additional reviews and approvals. In making such a recommendation, an employee has a responsibility to ensure that he/she has appropriately coordinated the proposed action with other affected staff and outside agencies, and that he/she has determined there is adequate funding available for the proposed action.

4.040 Review by Budget Section

Procurement Procedures to be adopted by the Executive Director or his/her designee shall ensure that procurement-related actions or expenditures estimated to cost \$10,000 or more are routed to the Budget Section in the Finance & Administration Department for review and approval as to budget availability prior to approval by the Contracting and Procurement Manager. The Procurement Procedures shall specify which actions require review and approval by the Budget Section.

Chapter 4: INTERNAL SHA REVIEW OF CONTRACTS

4.050 Review by General Counsel

Department Directors, Project Managers, and the Contracting and Procurement Manager shall consult with the General Counsel's office whenever procurement-related actions are unique, outside of the norm, are particularly large, costly, or complex, or may have legal, political, or public relations implications.

Chapter 5: CONTRACTING AUTHORITY

Chapter 5: CONTRACTING AUTHORITY

5.010 General

The Board of Commissioners and Executive Director find that it is in the best interests of SHA to delegate contracting authority to the Contracting and Procurement Manager in order to ensure quality control and expedite the approval process for procurement-related actions.

5.020 Signature Authorization

1. **Contracting and Procurement Manager Authorization:** The Contracting and Procurement Manager is authorized to sign all procurement-related documents on behalf of SHA upon the recommendation of an employee with Expenditure Authority for the dollar amount of the procurement-related action, and upon approval of the Budget Office as required by these Policies and applicable Procurement Procedures.
2. **Buyer Authorization:** Buyers in the Purchasing Division are authorized to issue and sign Purchase Orders on behalf of SHA upon the receipt of an approved Purchase Requisition, provided the amount of the Purchase Order is either less than \$10,000, or is based on unit prices that have been previously established through an authorized and current Blanket Contract that has been competitively bid and awarded. All other Purchase Orders shall be signed by the Contracting and Procurement Manager.
3. **Back-up Authorization:** In the absence of the Contracting and Procurement Manager, the Chief Financial Officer (or the acting Director of Finance & Administration) shall be authorized to sign the procurement-related documents described in this chapter.
4. **Determination by the Executive Director:** If necessary, the Executive Director shall make the final decision whether a particular document is procurement-related or non-procurement related.

5.030 Procurement-Related Documents

The following is a non-exclusive list of the procurement-related documents that the Contracting and Procurement Manager is authorized to sign on behalf of SHA:

1. Approval to release solicitations
2. Selection approvals and award notices
3. Construction contracts
4. Consultant and professional services contracts
5. A&E Consultant contracts
6. Agency Service Agreements

Chapter 5: CONTRACTING AUTHORITY

7. Change Orders
8. Purchase Requisitions and Purchase Orders

5.040 Non-Procurement-Related Documents

The following is a non-exclusive list of the non-procurement-related documents that shall not be signed by the Contracting and Procurement Manager, but by the Executive Director:

1. Real estate transactions
2. Loan documents
3. Limited partnership agreements
4. Sub-recipient or sub-grantee agreements and related change orders
5. Employment contracts
6. Award of housing or other vouchers to non-profit agencies
7. Housing Assistance Payment contracts

Chapter 6: ELIGIBILITY TO CONTRACT WITH SHA

Chapter 6: ELIGIBILITY TO CONTRACT WITH SHA

6.010 Debarment Status Review

The Purchasing Division shall ensure, prior to award of a contract that the proposed business has not been debarred, or otherwise declared ineligible for award, by an applicable regulatory agency. The following non-exclusive list of sources shall be reviewed when required:

1. U.S. General Services Administration's "List of Parties Excluded From Federal Procurement and Nonprocurement Programs"
2. U.S. Department of Housing and Urban Development's "Limited Denial of Participation" List
3. State of Washington, Department of Labor and Industries list of debarred contractors for prevailing wage violations (only required on construction projects)

6.020 Compliance with IRS Regulations

Prior to making payment to a business, the Purchasing Division shall ensure that SHA receives from the business (if not already on file), a W-9 or W-9 substitute form.

6.030 Performance Evaluation Program

SHA has developed and implemented a performance evaluation system to evaluate the performance of contractors doing business with SHA on its construction projects. Ratings on previous contracts from such a performance evaluation program may be used in evaluating when a business is responsible and capable of performing proposed work, and may also provide a mechanism for debarring businesses from contracting with SHA. SHA may develop and implement a similar performance evaluation system for use in evaluating consultants, and/or vendors.

6.040 Contractor Qualification Requirements

SHA may develop as part of construction bidding documents, specific and objective qualification requirements for the contractor or subcontractors that may be used in evaluating whether a contractor is a responsible bidder capable of performing the proposed work.

Chapter 7: CONTRACT DURATION

Chapter 7: CONTRACT DURATION

7.010 General Policy

1. **Competition:** As a government agency and stewards of the public's money, SHA acknowledges the importance of competition to ensure that it receives the best quality of goods and services at the most competitive prices. SHA also acknowledges the importance of spreading public contracting opportunities to the larger business community.
2. **Efficiency:** SHA acknowledges that longer-term contracts are often beneficial to both the business community and SHA in that they reduce costs necessary to conduct frequent solicitation processes, enable the business community to gain a proficiency and knowledge in meeting SHA's needs, and afford economies of financial return for the business community.
3. **Fairness:** In order to ensure fairness and meet the expectations of the business community, the length of any contract shall be limited to the time specified in the advertised solicitation. SHA shall generally not extend a contract beyond the advertised period, except for good and sufficient reasons as may be approved by the Contracting and Procurement Manager.

7.020 Length of Contracts

Recognizing the general policy outlined in this chapter, and acknowledging the difficulty of developing a standard contract length that is appropriate for all types of contracts, the following shall govern the length of SHA contracts:

1. Generally, a supply or service contract shall be established for one year, with an option to extend the contract for up to four additional one-year periods. The decision on the length of a contract shall be determined on a case-by-case basis, provided that the Contracting and Procurement Manager approves the contract length.
2. Solicitation documents and contracts shall include language about the anticipated length of a particular procurement.¹⁹

7.030 Contract Extensions

1. **Price Negotiations:** Contracts shall generally include provisions outlining the process or formula to be followed in negotiating the price for an extension of a contract's original term.

¹⁹ This provision is applicable only to those solicitation documents developed and contracts executed subsequent to the adoption of these Policies by the Board of Commissioners.

Chapter 7: CONTRACT DURATION

2. Available Funds: Contracts may be extended beyond the advertised or specified contract term in the event that sufficient, previously obligated funds remain available in the current contract.

Chapter 8: ENSURING REASONABLE COSTS

Chapter 8: ENSURING REASONABLE COSTS

8.010 Purpose and Definitions

1. General: As a public agency accountable to both the public and governmental funding agencies, SHA is committed to ensuring that the costs paid for obtaining necessary goods and services are reasonable and that SHA's interests are adequately protected.
2. Independent Cost Estimate: An estimate of the anticipated costs of a contract or Change Order prepared by SHA staff or other independent party to assist SHA in evaluating the reasonableness of costs proposed by a contractor, consultant, or vendor.
3. Price Analysis: A written review and evaluation of competitive prices received by SHA to determine whether the proposed price of a Contractor is reasonable when compared with prices provided by others in the market.
4. Cost Analysis: A written review and evaluation of whether the proposed cost of a contract, Purchase Order, or Change Order, not based on competitive prices received, is reasonable.

8.020 Thresholds for Application of This Chapter

1. The requirements of this Chapter for written Independent Cost Estimates, Cost Analysis, or Price Analysis shall apply if the estimated or actual dollar amount of the contract or Change Order equals or exceeds \$10,000. for construction and purchasing goods or services contracts and, 25,000 for consultant or professional services contracts. SHA staff are nevertheless expected to exercise prudent and conservative judgment in evaluating the reasonableness of a proposed expenditure of less than the applicable threshold. The Contracting and Procurement Manager or the Chief Financial Officer may require the completion of an Independent Cost Estimate, Cost Analysis, or Price Analysis on procurements valued at less than the required threshold if either determines the procurement warrants it.
2. Direct Payments: Transactions defined on the Direct Payments list in Chapter 17 of these Policies, based on the nature of the transactions, are exempt from the requirements of this Chapter for conducting Independent Cost Estimates, Cost Analysis, or Price Analysis.

8.030 Independent Cost Estimates

1. Purpose: The purpose of developing an Independent Cost Estimate is to assist SHA in evaluating:

Chapter 8: ENSURING REASONABLE COSTS

- a.) The reasonableness of prices obtained through competition where price was used as a selection criterion, or
 - b.) The reasonableness of prices proposed through a selection process where price *was not* used as a selection criterion.
2. When Required: Before soliciting bids or proposals,²⁰ or prior to starting contract negotiations after making a selection based on a Request for Qualifications process, SHA staff must develop an independent estimate of costs.
 3. Independence of Estimate: The Independent Cost Estimate may be prepared by qualified SHA staff or by an independent consultant engaged for the purpose of preparing such an estimate.

8.040 Price Analysis

1. Purpose: The purpose of a Price Analysis is to ensure that the price that SHA will be paying is reasonable based on competition in the market.
2. When Required: A Price Analysis is performed when SHA staff compare prices submitted as part of a competitive selection process. When price *is* used as the only selection criterion and competition exists, SHA must, prior to award of a contract, evaluate the price proposed for acquiring goods and services against responses received from competing firms.²¹ One of the most common uses of Price Analysis occurs when comparing bids received for a construction project.

8.050 Cost Analysis

1. Purpose: The purpose of the Cost Analysis is to ensure that the proposed price is reasonable, and shall include an analysis of individual components of the cost.
2. When Required: When price *is not* used as the only selection criterion, SHA must, prior to award of a contract or execution of a Change Order, conduct a Cost Analysis.²²

The following situations require that a Cost Analysis be performed:

- a.) Sole source selections
- b.) Emergency selections (The Contracting and Procurement Manager may waive preparation of a Cost Analysis for an emergency).

²⁰ 24 CFR 85.36(f)(1) only requires that the Independent Cost Estimate be done “before receiving bids or proposals.” SHA’s preferred practice is to perform the Independent Cost Estimate prior to soliciting bids or proposals, but it is acceptable if the estimate is not completed before soliciting as long as it is done “before receiving bids or proposals.”

²¹ 24 CFR 85.36(f)(1)

²² 24 CFR 85.36(f)(1)

Chapter 8: ENSURING REASONABLE COSTS

- c.) Single response to a solicitation
- d.) Contracts based on a Request for Qualifications (A & E contracts and development partners)
- e.) Change orders or other modifications that change the contract amount.
- f.) Contracts based on Formal (ITB, RFP, RFCP) or Informal Solicitations where price is one of the evaluation criteria.

3. Level of Specificity: In evaluating the reasonableness of a particular cost, SHA staff with the necessary experience and knowledge should conduct the Cost Analysis. In documenting such an analysis, there must be a level of specificity and independence appropriate to the contract or Change Order under review that describes what was analyzed.

- a.) Breakdown of Costs Required: For any contract or Change Order subject to a Cost Analysis, SHA must require that the contractor/consultant submit to SHA a cost breakdown of their price.

The Contractor/Consultant Cost Breakdown can be a valuable tool for SHA in evaluating the factors that make up the proposed price and in determining whether those prices are reasonable.

4. Exceptions: A Cost Analysis does not need to be conducted if the reasonableness of the price can be established based on a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation.²³

8.060 Specific Situations

1. Extent of Analysis: The requirements for ensuring reasonable costs in contracting apply to all SHA procurement activities (goods, supplies, construction, consultant, services), including changes to contracts.²⁴ The “method and degree of analysis is dependent on the facts surrounding the particular procurement situation.”²⁵ Thus, there is some degree in which each analysis is treated on a case-by-case basis depending on the size, nature, and complexity of the contract or Change Order.
2. Negotiation of Profit: Profit shall be negotiated separately in all cases where there is no price competition. “To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor’s investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.”²⁶

²³ 24 CFR 85.36(f)(1)

²⁴ 24 CFR 85.36(f)(1)

²⁵ 24 CFR 85.36(f)(1)

²⁶ 24 CFR 85.36(f)(2)

Chapter 8: ENSURING REASONABLE COSTS

3. Federal Cost Principles: For federally funded projects, the “costs or prices based on estimated costs for contracts...will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.” (see 24 CFR 85.22)²⁷
4. Cost Practices Prohibited: “The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.”²⁸
5. Time-and-Materials Contracts:²⁹ A time-and-materials contract may be used only:
 - a.)After a determination that no other contract payment type is suitable, and
 - b.)If the contract includes a ceiling price that the contractor exceeds at its own risk.

²⁷ 24 CFR 85.36(f)(3)

²⁸ 24 CFR 85.36(f)(4)

²⁹ 24 CFR 85.36(b)(10)

Chapter 9: GOODS, SUPPLIES, EQUIPMENT, MATERIALS

Chapter 9: GOODS, SUPPLIES, EQUIPMENT, MATERIALS

9.010 General

This Chapter deals primarily with the purchase of goods, supplies, equipment, materials, and certain non-consultant services, and is frequently referred to as “goods and supplies.” Generally, goods and supplies are obtained through the use of a Purchase Order. In addition, certain services, depending on their type and nature, may be obtained through the use of a Purchase Order, provided there is an adequate written scope of work and subject to the approval of the Contracting and Procurement Manager.

9.020 Informal Solicitations

1. Definition: 24 CFR 85.36(d)(1),³⁰ specifies that procurements costing \$100,000 or less qualify as “small purchases” that are not subject to formal advertising as part of the selection process. While these procurements may be conducted under less formal selection procedures, obtaining and comparing competitive prices from more than one vendor represents good public policy, and is required for the purchase of all goods, supplies, equipment, and materials costing \$10,000 or more. For small purchases under \$10,000, obtaining a price from only one vendor is considered acceptable³¹ if the price received is considered reasonable.³² For small purchases under \$10,000, where possible, the use of Blanket Contracts is encouraged to ensure competitive pricing has already been secured and they should be equitably distributed among vendors.
2. Evaluation Criteria:
 - a.) Generally, price shall be used as the primary evaluation criterion.³³

³⁰ “Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.”

³¹ 24 CFR 85.36(d)(1). This regulation requires that “if small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.” In adopting these Policies, SHA has determined that one source represents “an adequate number” for solicitations under \$10,000.

³² HUD Procurement Handbook, 7460.8 REV-1, Chapter 4-3B states: “...the PHA need not solicit competition if a single quoted price within a specified dollar limitation is known to be reasonable...this dollar limitation should normally be \$2,000.” It is clear that this language establishing the dollar limitation is only advisory (“should normally be”). Item 3 of Chapter 1.030 of these Policies states as follows: Consistent with 24 CFR 85.5, that refers to “handbooks and other nonregulatory materials,” SHA recognizes HUD Handbooks and Guidelines as non-regulatory, non-binding advice, except to the extent that Handbooks or Guidelines articulate statutory or regulatory requirements. The non-regulatory nature of handbooks is further supported by 24 CFR 85.6 which states that “Federal agencies may not impose additional administrative requirements except in codified regulations published in the Federal Register.”

³³ 24 CFR 85.36(d)(1): “If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.”

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b.)The geographic location of vendors submitting bids may not be used as an evaluation criterion.³⁴

3. Department Responsibilities:

a.)Department Directors are responsible for ensuring that Project Managers develop and provide “a clear and accurate description of the technical requirements”³⁵ of the item(s) to be purchased through a Purchase Order.

b.)Department Directors shall ensure that product descriptions on Purchase Requisitions do not unduly restrict competition. “The description may include a statement of the qualitative nature of the material, product, or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equal description may be used as a means to define the performance or other salient requirements of a material, product, or service. The specific features of the named brand which must be met...shall be clearly stated.”³⁶

c.)For purchases of \$10,000 or more, Department Directors shall ensure that an Independent Cost Estimate is developed for the goods sought prior to issuance of a solicitation for bids or quotations, provided however, that for standard, commercially available items, the purpose of an Independent Cost Estimate is fulfilled by obtaining and comparing prices from vendors (Price Analysis), and no separate Independent Cost Estimate shall be required.³⁷

4. Purchasing Division Responsibilities: The Purchasing Division shall:

a.)Review Purchase Requisitions submitted to ensure that they have been approved by an individual with sufficient Expenditure Authority.

b.)Review Purchase Requisitions to ensure that the goods sought are described in sufficient detail to price the item(s).

5. Informal Solicitation Requirements:

³⁴ 24 CFR 85.36(c)(2): “Grantees [SHA]...will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws.”

³⁵ 24 CFR 85.36(c)(3)(i): Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.”

³⁶ 24 CFR 85.36(c)(3)(i)

³⁷ 24 CFR 85.36(f)(1)

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- a.) In order to ensure adequate and sufficient competition in obtaining goods and supplies valued at \$10,000 or more, at least three vendors must be solicited.³⁸ Under special circumstances and for good and sufficient reasons, the Contracting and Procurement Manager may approve solicitation of just two vendors.
- b.) It is the policy of SHA to encourage the use of WMBEs as vendors.³⁹ Therefore, where possible, at least one WMBE shall be solicited for each procurement valued at \$10,000 or more.
- c.) Price quotations may be received orally, by fax, e-mail or other means. The decision about whether to request and receive price quotations orally or in writing shall be made by the Contracting and Procurement Manager based on the complexity of the solicitation. Simple solicitations may be handled orally, while more complex ones should be handled in writing. Any solicitation for goods which must be manufactured or assembled specifically for SHA, or for which installation is a component, should generally be transmitted and responses received in writing.
- d.) In soliciting prices for goods valued at \$10,000 or more, the Purchasing Division shall allow a sufficient length of time for vendors to prepare and submit their prices.

6. Cost or Price Analysis:

- a.) Department Directors shall ensure that an adequate and sufficient Cost Analysis or Price Analysis is conducted that demonstrates the reasonableness of the proposed contract amount (see Chapter 8 of these Policies for further information).⁴⁰ The Cost Analysis or Price Analysis must be in writing for all contracts of \$10,000 or more..

7. Non-Competitive Procurements: Refer to Chapter 16 of these Policies for information on Sole Source, Emergency, and Single Response to a solicitation.

8. Informal Solicitation Threshold: An informal solicitation may be used only for buying goods and supplies that will cost \$100,000 or less.⁴¹ Based on using an informal solicitation process, no contract may be awarded where the contract amount exceeds \$100,000, and payments during the life of the contract (including change orders) may not exceed \$100,000. In the event that additional goods and supplies are required under a contract that was based on an informal solicitation, such that the amount of payments would exceed \$100,000, a competitive selection process must be conducted for those additional goods and supplies and a contract

³⁸ 24 CFR 85.36(d)(3)(ii): "Proposals will be solicited from an adequate number of qualified sources."

³⁹ 24 CFR 85.36(e). See also Chapter 21 of these Policies.

⁴⁰ 24 CFR 85.36(f)(1)

⁴¹ The \$100,000 threshold is based on actual cost, not estimated cost.

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executed. In no event shall the amount of a contract based on an informal solicitation exceed \$100,000.

9. Federal Contract Provisions: Federally funded Purchase Orders shall contain, where applicable, contract language required by 24 CFR 85.36(i) as specified in Section 9.030, item 8.

9.030 Invitations to Bid

1. Definition: An Invitation to Bid (ITB) is a formally advertised⁴² and competitive selection process used for obtaining goods and supplies that will cost more than \$100,000, where award is made based on the lowest price submitted by a responsible bidder with a responsive bid.⁴³
2. When to Use ITBs: Generally, vendors providing goods, supplies, equipment, materials, and some services should be selected based on competitive bids. If the following criteria are met, an ITB should be utilized:⁴⁴
 - a.)The amount of the procurement, including any potential change orders, will cost more than \$100,000.
 - b.)A complete, adequate, and realistic specification or purchase description is available.
 - c.)Two or more responsible bidders are willing and able to compete effectively for the work.
 - d.)The project lends itself to a firm fixed price contract, and the selection of the successful bidder can be made principally on the basis of price.⁴⁵
3. Evaluation Criteria:
 - a.)Price shall be the evaluation criterion used, provided the bid is submitted by a responsible bidder with a responsive bid..⁴⁶

⁴² 24 CFR 85.36(d)(2)(ii)(A): "The invitation for bids will be publicly advertised..."

⁴³ The use in 24 CFR 85.36(d)(2)(i)(C) of the phrase "selection of the successful bidder can be made principally on the basis of price" refers not to price being one of many evaluation criteria, but that price is the only factor provided the bid is responsive and the bidder is responsible.

⁴⁴ These criteria are adapted slightly from the language contained in 24 CFR 85.36(d)(2).

⁴⁵ The use in 24 CFR 85.36(d)(2)(i)(C) of the phrase "selection of the successful bidder can be made principally on the basis of price" refers not to price being one of many evaluation criteria, but that price is the only factor provided the bid is responsive and the bidder is responsible.

⁴⁶ 24 CFR 85.36(d)(2)(i)(C): The "selection of the successful bidder can be made principally on the basis of price." This phrase refers not to price being one of many evaluation criteria, but that price is the only factor provided the bid is responsive and the bidder is responsible.

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b.)The geographic location of vendors submitting prices may not be used as an evaluation criterion.⁴⁷

4. Department Responsibilities:

a.)Department Directors are responsible for ensuring that Project Managers develop and write the following for an ITB:

- Sufficiently detailed, clear, and accurate description of the product to be provided and/or scope of work to be performed.⁴⁸
- Evaluation criteria, including weighting of each criterion, where price is used as the only criterion.⁴⁹
- List of items to be submitted with the bid.

b.)Department Directors shall ensure that product descriptions on Purchase Requisitions and in ITBs do not unduly restrict competition. “The description may include a statement of the qualitative nature of the material, product, or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equal description may be used as a means to define the performance or other salient requirements of a material, product, or service. The specific features of the named brand which must be met shall be clearly stated.”⁵⁰

c.)Department Directors shall ensure that an Independent Cost Estimate is developed for obtaining goods and supplies prior to issuance of an ITB, provided however, that for standard, commercially available items, the purpose of an Independent Cost Estimate is fulfilled by obtaining and comparing prices from vendors (Price Analysis), and no separate Independent Cost Estimate shall be required.⁵¹

5. Purchasing Division Responsibilities: The Purchasing Division shall:

⁴⁷ 24 CFR 85.36(c)(2): “Grantees [SHA]...will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws.”

⁴⁸ 24 CFR 85.36(c)(3)(i): Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.”

⁴⁹ 24 CFR 85.36(c)(3)(ii): Procurement procedures will ensure that all solicitations “identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.”

⁵⁰ 24 CFR 85.36(c)(3)(i)

⁵¹ 24 CFR 85.36(f)(1)

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- a.) Establish standard ITB documents to be used throughout SHA.
- b.) Advertise all ITBs.
- c.) Review and approve each ITB before it is sent to vendors to ensure that it is clear, consistent with requirements, and promotes competition.

6. Solicitation Requirements:

- a.) ITBs will be publicly advertised in the *Seattle Daily Journal of Commerce* newspaper.⁵²
- b.) It is the policy of SHA to encourage the use of WMBEs as vendors.⁵³ Therefore, where possible, at least one WMBE shall be solicited for each ITB.
- c.) ITBs should be advertised and available for review by vendors for a sufficient length of time to provide vendors with adequate time to prepare and submit bids.⁵⁴
 - The length of time shall be determined based on a number of factors, including but not limited to, the estimated dollar value of the work to be performed or goods provided, and the complexity of the procurement.
 - Generally, it is expected that ITBs will be advertised and available for review by vendors for 25 calendar days before bids are due. However, dependent upon the particular procurement, the Contracting and Procurement Manager may determine that adequate competition and preparation and submission of bids may be accomplished in a shorter period of time, and the 25 calendar day guideline may be adjusted appropriately.
 - The Contracting and Procurement Manager, in consultation with the applicable Department Director, shall make the final decision on the length of time an ITB is advertised.

7. Evaluation and Award:

- a.) Price shall be used as the evaluation criterion. This shall be identified in the ITB.
- b.) Department Directors shall ensure that an adequate and sufficient Cost Analysis or Price Analysis is conducted that demonstrates the reasonableness of the

⁵² 24 CFR 85.36(d)(2)(ii)(A): The invitation for bids will be publicly advertised...” Where known, additional vendors shall also be solicited [24 CFR 85.36(d)(2)(ii)(A)].

⁵³ 24 CFR 85.36(e). See also Chapter 21 of these Policies.

⁵⁴ 24 CFR 85.36(d)(2)(ii)(A): The Invitation to Bid shall provide vendors with “sufficient time prior to the date set for opening the bids.”

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proposed contract amount (see Chapter 8 of these Policies for further information).⁵⁵

c.) Refer to Chapter 16 of these Policies for information on Sole Source, Emergency, and Single Response to a solicitation.

8. Federal Contract Provisions: Federally funded contracts resulting from selection based on an Invitation to Bid shall contain, where applicable, contract language required by 24 CFR 85.36(i) and as described below:

- Breach of Contract: “Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.”
- Termination: “Termination for cause and for convenience by [SHA]...including the manner by which it will be effected and the basis for settlement.” (All Purchase Orders in excess of \$10,000).
- EEO Requirements: “Compliance with Executive Order 11246 of September 24, 1965, entitled ‘Equal Employment Opportunity,’ as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60)” (All Purchase Orders for construction in excess of \$10,000).
- Copeland “Anti-Kickback” Act: “Compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3).” (All Purchase Orders for construction or repair).
- Davis-Bacon Act: “Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5).” (Required for construction Purchase Orders in excess of \$2,000 and...when required by Federal grant program legislation).
- Contract Work Hours and Safety Standards Act (CWHSSA): “Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5).” (Required for construction Purchase Orders in excess of \$2,000, and other Purchase Orders in excess of \$2,500 which involve the employment of mechanics or laborers).
- HUD Requirements and Reporting Standards: “Notice of awarding agency requirements and regulations pertaining to reporting.”⁵⁶

⁵⁵ 24 CFR 85.36(f)(1)

⁵⁶ This clause requires SHA to include in contracts any reporting requirements applicable to the terms of a particular grant or funding source that may be helping to fund the contract. The language noted in this section should not be included verbatim as specified in 24 CFR 85.36 (i). It is included in 24 CFR 85.36

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- Patent Rights: “Notice of awarding agency⁵⁷ requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.”
- Copyrights: “Awarding agency⁵⁸ requirements and regulations pertaining to copyrights and rights in data.”
- Audit: “Access by [SHA]..., the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.”
- Records Retention: “Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.”
- Environmental Regulations: “Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).” (Purchase Orders in excess of \$100,000).
- Energy Efficiency: “Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).”

9.040 Request for Proposals

1. Definition: A Request for Proposals (RFP) is a formally advertised⁵⁹ and competitive selection process used for obtaining services from a Service Provider that will cost more than \$100,000, and where the evaluation and selection of a vendor cannot be based on price alone,⁶⁰ but is based on established criteria⁶¹ that include price and other factors.⁶²

more as an instructional reminder to SHA to be aware of particular reporting requirements of a grant or funding source.

⁵⁷ “Awarding agency” refers to HUD in this context.

⁵⁸ “Awarding agency” refers to HUD in this context.

⁵⁹ 24 CFR 85.36(d)(3)(i): “Requests for proposals will be publicized...”

⁶⁰ 24 CFR 85.36(d): “The technique of competitive proposals...is generally used when conditions are not appropriate for the use of sealed bids.”

⁶¹ 24 CFR 85.36(d)(3)(i): “Requests for proposals will...identify all evaluation factors and their relative importance.”

⁶² 24 CFR 85.36(d)(3)(iv): “Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.”

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2. When to Use RFPs: For purposes of these Policies, a Service Provider is defined as a Consultant and the requirements and processes for using an RFP for a Service Provider are outlined in Chapter 10 of these Policies.

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10.010 Definitions

1. General:

- a.) Consultants provide advice, recommendations, reports, analyses, evaluations, audits, surveys or other products of cognitive processes or expert or professional services. For the purpose of these Policies, Consultants providing architectural, engineering, landscape architectural, or land surveying services are considered as A & E Consultants, addressed separately in Chapter 11 of these Policies.
- b.) Service Providers perform non-consultant work including the provision of community and supportive services, ongoing management of programs and provision of services. Examples of Service Providers include but are not limited to: security firms, moving companies, legal messengers, telephone answering service, elevator maintenance, youth tutoring, etc. One distinguishing feature of Service Providers is that the work they perform is not normally subject to federal or state prevailing wage requirements.
- c.) Terminology in These Policies: For ease of reading, this Chapter of the Policies will refer to both Consultants and Service Providers as Consultants.

10.020 Informal Solicitations

1. Definition: 24 CFR 85.36(d)(1)⁶³ specifies that procurements costing \$100,000 or less qualify as “small purchases” that are not subject to formal advertising as part of the selection process.⁶⁴
2. Informal Solicitation Threshold: An informal solicitation may be used only for those Consultant services that will cost \$100,000 or less over the life of the contract (including change orders).⁶⁵ Based on selection through an informal solicitation process, no contract may be awarded where the contract amount exceeds \$100,000, and payments during the life of the contract may not exceed \$100,000. In the event that additional services are required under a contract that was based on an informal solicitation, such that the amount of payments would exceed \$100,000, a competitive selection process must be conducted for those additional services and a contract executed. In no event shall the amount of a contract based on an informal solicitation exceed \$100,000.

⁶³ “Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.”

⁶⁴ The \$100,000 threshold is based on actual costs, not estimated costs.

⁶⁵ The \$100,000 threshold is based on actual costs, not estimated costs.

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3. When to Use Informal Solicitation Process: While procurements of \$100,000 or less may be conducted under less formal selection procedures, competition, including the use of price as one of the evaluation criteria, represents good public policy, and is required for all Consultant services costing \$25,000 or more. For small contracts under \$25,000, obtaining a price from only one Consultant is acceptable⁶⁶ if the price received is considered reasonable.⁶⁷ Additionally and where possible, solicitation opportunities for small contracts under \$25,000 shall be “equitably distribute[d]” among the consultants on SHA’s Consultant Roster Program.
4. Evaluation Criteria:
 - a.) Price shall be used as an evaluation criterion.⁶⁸
 - b.) Experience of the consultant, expertise and qualifications of staff to be used, along with availability to perform the services and other factors may also be used as evaluation criteria.
 - c.) The geographic location of consultants submitting proposals may not be used as an evaluation criterion.⁶⁹
5. Department Responsibilities:
 - a.) Department Directors are responsible for ensuring that Project Managers develop and write the following for a proposed informal solicitation:
 - Sufficiently detailed, clear, and accurate scope of work.⁷⁰

⁶⁶ 24 CFR 85.36(d)(1). This regulation requires that “if small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.” In adopting these Policies, SHA has determined that one source represents “an adequate number” for solicitations under \$25,000.

⁶⁷ HUD Procurement Handbook, 7460.8 REV-1, Chapter 4-3B states: “...the PHA need not solicit competition if a single quoted price within a specified dollar limitation is known to be reasonable...this dollar limitation should normally be \$2,000.” It is clear that the language in this Handbook establishing the dollar limitation is only advisory (“should normally be”). Item 3 of Chapter 1.030 of these Policies states as follows: Consistent with 24 CFR 85.5, that refers to “handbooks and other nonregulatory materials,” SHA recognizes HUD Handbooks and Guidelines as non-regulatory, non-binding advice, except to the extent that Handbooks or Guidelines articulate statutory or regulatory requirements. The non-regulatory nature of handbooks is further supported by 24 CFR 85.6 which states that “Federal agencies may not impose additional administrative requirements except in codified regulations published in the Federal Register.”

⁶⁸ 24 CFR 85.36(d)(1): “If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.” Some non-consultant services such as language interpreters and property management services are often procured based on price alone, making the solicitation more of a bid than a proposal.

⁶⁹ 24 CFR 85.36(c)(2): “Grantees [SHA]...will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws.”

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- Evaluation criteria, including weighting of each criterion, where price is used as one of the criteria.⁷¹
- List of items to be submitted with the proposal.

b.) For contracts of \$25,000 or more, Department Directors shall ensure that an Independent Cost Estimate is developed for the consultant services sought prior to receipt of any proposals.⁷² See Chapter 8 Ensuring Reasonable Costs for more information regarding Independent Cost Estimates.

c.) Department Directors are responsible for appointing an evaluation panel of at least three qualified members (including one person designated as the chair) to review and rate proposals received. Generally, it is in SHA's best interests for SHA staff to hold the majority position on panels including non-SHA members.

6. Purchasing Division Responsibilities: The Purchasing Division shall:

a.) Establish standard informal solicitation documents to be used throughout SHA.

b.) Review and approve each informal solicitation before it is sent to consultants to ensure that it is clear, consistent with requirements, and promotes competition.

7. Informal Solicitation Requirements:

a.) In order to ensure adequate and sufficient competition in obtaining consultant services, at least three consultants must be solicited.⁷³ Under special circumstances and for good and sufficient reasons, the Contracting and Procurement Manager may approve solicitation of just two consultants.

b.) It is the policy of SHA to encourage the use of WMBEs as consultants.⁷⁴ Therefore, where possible, at least one WMBE shall be solicited for each informal solicitation.

c.) The requirements and responses relating to most informal solicitations should be communicated in writing between SHA and the consultants. Where the requirements are simple and the selection decision can be made solely on the basis of price, Procurement Procedures may provide for communicating requirements and receiving responses orally instead of in writing. The

⁷⁰ 24 CFR 85.36(c)(3)(i): Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured."

⁷¹ 24 CFR 85.36(c)(3)(ii): Procurement procedures will ensure that all solicitations "identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals."

⁷² 24 CFR 85.36(f)(1): "...grantees must make independent estimates before receiving bids or proposals."

⁷³ 24 CFR 85.36(d)(3)(ii): "Proposals will be solicited from an adequate number of qualified sources."

⁷⁴ 24 CFR 85.36(e). See also Chapter 21 of these Policies.

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Contracting and Procurement Manager shall review and approve such information before it is communicated orally to Consultants.

- d.) Informal solicitations should be available for review by consultants for a sufficient length of time to provide consultants with adequate time to prepare and submit proposals.
- e.) Procurement Procedures shall outline requirements for receipt of proposals, including, but not limited to, addressing to whom proposals should be submitted, the means of solicitation and proposal submission (electronic or hard copy), and deadlines for submission.

8. Evaluation and Award:

- a.) Evaluation criteria shall be included in the informal solicitation, along with the weighting to be assigned to each criterion.
- b.) The evaluation panel appointed by the Department Director shall evaluate proposals received based only on the established criteria.⁷⁵
- c.) SHA shall enter into negotiations with the highest ranked consultant in an effort to execute a Contract.⁷⁶ In the event that negotiations are unsuccessful, SHA may proceed to negotiate with the next highest ranked Consultant.
- d.) Department Directors shall ensure that an adequate and sufficient Cost Analysis or Price Analysis is conducted that demonstrates the reasonableness of the proposed contract amount (see Chapter 8 of these Policies for further information).⁷⁷ The Cost Analysis or Price Analysis must be in writing for all contracts of \$25,000 or more.
- e.) Contracts based on an informal solicitation shall normally be either based on a fixed-price, cost-reimbursement,⁷⁸ or unit price model.

9. Federal Contract Provisions: Federally funded contracts shall contain, where applicable, contract language required by 24 CFR 85.36(i) as specified in Chapter 10.030 below:

⁷⁵ 24 CFR 85.36(d)(3)(iii): "Grantees [SHA]...will have a method for conducting technical evaluations of the proposals received and for selecting awardees." This regulation is technically not applicable to an informal solicitation but it provides good guidance.

⁷⁶ 24 CFR 85.36(3)(d)(iv): "Awards will be made to the responsible firm whose proposal is most advantageous to the program." This regulation is technically not applicable to an informal solicitation but it provides good guidance.

⁷⁷ 24 CFR 85.36(f)(1)

⁷⁸ 24 CFR 85.36(3): "...either a fixed-price or cost-reimbursement type contract is awarded." This regulation is technically not applicable to an informal solicitation but it provides good guidance.

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10. Non-Competitive Procurements: Refer to Chapter 16 of these Policies for information on Sole Source, Emergency, and Single Response to a solicitation.

10.030 Request for Proposals

1. Definition: A Request for Proposals (RFP) is a formally advertised⁷⁹ and competitive selection process used for obtaining consultant services that will cost more than \$100,000, and where the evaluation and selection of a Consultant cannot be based on price alone,⁸⁰ but is based on established criteria⁸¹ that include price and other factors.⁸²
2. Evaluation Criteria:
 - a.) Price shall be used as an evaluation criterion.⁸³
 - b.) Experience of the consultant, expertise and qualifications of staff to be used, along with availability to perform the services and other factors may also be used as evaluation criteria.
 - c.) The geographic location of Consultants submitting proposals may not be used as an evaluation criterion.⁸⁴
3. Department Responsibilities:
 - a.) Department Directors are responsible for ensuring that Project Managers develop and write the following for a RFP:
 - Sufficiently detailed, clear, and accurate scope of work.⁸⁵
 - Evaluation criteria, including weighting of each criterion, where price is used as one of the criteria.⁸⁶

⁷⁹ 24 CFR 85.36(d)(3)(i): "Requests for proposals will be publicized..."

⁸⁰ 24 CFR 85.36(d): "The technique of competitive proposals...is generally used when conditions are not appropriate for the use of sealed bids."

⁸¹ 24 CFR 85.36(d)(3)(i): "Requests for proposals will...identify all evaluation factors and their relative importance."

⁸² 24 CFR 85.36(d)(3)(iv): "Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered."

⁸³ 24 CFR 85.36(d)(3)(iv): "Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered."

⁸⁴ 24 CFR 85.36(c)(2): "Grantees [SHA]...will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws."

⁸⁵ 24 CFR 85.36(c)(3)(i): Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured."

⁸⁶ 24 CFR 85.36(c)(3)(ii): Procurement procedures will ensure that all solicitations "identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals."

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- List of items to be submitted with the proposal.
- b.) Department Directors shall ensure that an Independent Cost Estimate is developed for the work prior to issuance of an RFP.⁸⁷
- c.) Department Directors are responsible for appointing an evaluation panel of at least three qualified members (including one person designated as the chair) to review and rate proposals received. Generally, it is in SHA's best interests for SHA staff to hold the majority position on panels including non-SHA members.
4. Purchasing Division Responsibilities: The Purchasing Division shall:
- a.) Establish standard RFP documents to be used throughout SHA.
 - b.) Advertise the RFP.
 - c.) Review and approve each RFP before it is made available to consultants to ensure that it is clear, consistent with requirements, and promotes competition.
 - d.) Distribute the RFP and addenda.
 - e.) Receive proposals submitted in response to RFPs.
 - f.) Be eligible to serve as coordinator and facilitator of the evaluation panel.
 - g.) Prepare the Contract based on negotiations.
5. Solicitation Requirements:
- a.) RFPs will be publicly advertised in the *Seattle Daily Journal of Commerce* newspaper.⁸⁸
 - b.) It is the policy of SHA to encourage the use of WMBEs as consultants.⁸⁹ Therefore, where possible, at least one WMBE shall be solicited for each RFP.
 - c.) RFPs should be advertised and available for review by consultants for a sufficient length of time to provide consultants with adequate time to prepare and submit proposals.
 - The length of time shall be determined based on a number of factors, including but not limited to, the estimated dollar value of the work to be performed, the complexity of the work, the degree to which SHA is requesting consultants to

⁸⁷ 24 CFR 85.36(f)(1)

⁸⁸ 24 CFR 85.36(d)(3)(i): "Requests for proposals will be publicized..."

⁸⁹ 24 CFR 85.36(e). See also Chapter 21 of these Policies.

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develop a proposal or project approach versus merely providing information about qualifications, experience, and availability.

- Generally, it is expected that RFPs will be advertised and available for review by consultants for 25 calendar days before proposals are due. However, dependent upon the particular procurement, the Contracting and Procurement Manager may determine that adequate competition and preparation and submission of proposals may be accomplished in a shorter period of time, and the 25 calendar day guideline may be adjusted appropriately.
- The Contracting and Procurement Manager, in consultation with the applicable Department Director, shall make the final decision on the length of time an RFP is advertised.

d.) Procurement Procedures shall outline requirements for receipt of proposals,⁹⁰ including, but not limited to, addressing to whom proposals should be submitted, the means of solicitation and proposal submission (electronic or hard copy), and deadlines for submission.⁹¹

6. Evaluation and Award:

a.) Evaluation criteria and the relative weight of each criterion shall be included in the RFP.⁹²

b.) The evaluation panel appointed by the Department Director shall evaluate proposals received based only on the established criteria and upon the proposal submitted.⁹³

c.) SHA shall enter into negotiations with the highest ranked consultant in an effort to execute a Contract..⁹⁴ In the event that negotiations are unsuccessful, SHA may proceed to negotiate with the next highest ranked Consultant.

d.) Department Directors shall ensure that an adequate and sufficient Cost Analysis or Price Analysis is conducted that demonstrates the reasonableness of the

⁹⁰ 24 CFR 85.36(d)(3)(i): "Any response to publicized requests for proposals shall be honored to the maximum extent practical."

⁹¹ 24 CFR 85.36(d)(3)(i): Notwithstanding this regulation ("Any response to publicized requests for proposals shall be honored to the maximum extent practical."), Procurement Procedures shall establish and define the priority of submission of proposals by the required deadline.

⁹² 24 CFR 85.36(d)(3)(i): "Requests for proposals will be publicized and identify all evaluation factors and their relative importance."

⁹³ 24 CFR 85.36(d)(3)(iii): "Grantees [SHA]...will have a method for conducting technical evaluations of the proposals received and for selecting awardees."

⁹⁴ 24 CFR 85.36(3)(d)(iv): "Awards will be made to the responsible firm whose proposal is most advantageous to the program."

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proposed contract amount (see Chapter 8 of these Policies for further information).⁹⁵

e.) Contracts based on an RFP shall normally be either based on a fixed-price or a cost-reimbursement model.⁹⁶

7. Federal Contract Provisions: Federally funded contracts shall contain, where applicable, contract language required by 24 CFR 85.36(i) and as described below:

- Breach of Contract: “Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.”
- Termination: “Termination for cause and for convenience by [SHA]...including the manner by which it will be effected and the basis for settlement.” (Not required for contracts of \$10,000 or less)
- HUD Requirements and Reporting Standards: “Notice of awarding agency requirements and regulations pertaining to reporting.”⁹⁷
- Patent Rights: “Notice of awarding agency⁹⁸ requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.”
- Copyrights: “Awarding agency⁹⁹ requirements and regulations pertaining to copyrights and rights in data.”
- Audit: “Access by [SHA]..., the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.”
- Records Retention: “Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.”

⁹⁵ 24 CFR 85.36(f)(1)

⁹⁶ 24 CFR 85.36(d)(3): “...either a fixed-price or cost-reimbursement type contract is awarded.”

⁹⁷ This clause requires SHA to include in contracts any reporting requirements applicable to the terms of a particular grant or funding source that may be helping to fund the contract. The language noted in this section should not be included verbatim as specified in 24 CFR 85.36 (i). It is included in 24 CFR 85.36 more as an instructional reminder to SHA to be aware of particular reporting requirements of a grant or funding source.

⁹⁸ “Awarding agency” refers to HUD in this context.

⁹⁹ “Awarding agency” refers to HUD in this context.

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- Environmental Regulations: “Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).”¹⁰⁰
 - Energy Efficiency: “Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).”
8. Non-Competitive Procurements: Refer to Chapter 16 of these Policies for information on Sole Source, Emergency, and Single Response to a solicitation.

¹⁰⁰ 24 CFR 85.36(i)(12) is only required for contracts in excess of \$100,000.

Chapter 11: A & E CONSULTANT SERVICES

Chapter 11: A & E CONSULTANT SERVICES

11.010 Definitions

1. Cost Prohibited as a Selection Criterion: Architectural & Engineering (A & E) Consultant Services are a subset of Consultant Services. The primary distinction between the two is that SHA may not use cost as an evaluation criterion when selecting a firm for performing A & E work. Instead, consistent with the requirements of Chapter 39.80 RCW and 24 CFR 85.36(d)(3)(v),¹⁰¹ the evaluation criteria must be limited to factors that relate to a Consultant's qualifications and competence to perform the desired work. SHA must select the "most highly qualified"¹⁰² A & E Consultant to provide the services.
2. Disciplines Covered: Consistent with Chapter 39.80 RCW, the following four disciplines are included in the category of A & E Consultant Services, regardless of whether the project is funded with federal or non-federal funds:
 - a.) Architecture
 - b.) Engineering
 - c.) Landscape Architecture
 - d.) Land Surveying
3. Distinguishing Between A & E Work and Non-A & E Work
 - a.) General: Because price may not be used as a criterion for selection of consultants performing A & E work, and price must be used as a one criterion for selection of consultants performing other work, it is important to distinguish what work is A & E work and what is non-A & E work. It is to SHA's advantage to use price as one criterion for selection of consultants when permitted. This helps to ensure that SHA is obtaining the most value for its money and represents good public policy. The definitions regarding the practice of each profession as outlined in State law are found in Chapter 2 (Definitions) of these Policies.
 - b.) Issues to Consider in Making a Determination: Generally, distinguishing between A & E work and non-A & E work is based on the following:
 - If State law does not require that the work in question be performed by someone licensed or registered in one of the four professions cited above, then the work must be classified as non-A & E work and price must be used as an evaluation criterion.

¹⁰¹ "Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort."

¹⁰² Chapter 39.80 RCW.

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- If State law requires that the work in question be performed by someone licensed or registered in one of the four professions cited above, then the work should be considered as A & E work and price may not be used as an evaluation criterion.¹⁰³
- The mere fact that the scope of services for a particular contract is likely to be performed by, or may be performed by, someone who is licensed or registered in one of the four professions cited above does not mean that the work is A & E work. In order for it to be considered A & E work, the type of service SHA is seeking must be required by State law to be performed by someone licensed or registered in one of these four professions. As an example, if the design of something requires the stamp of a licensed engineer, then the work must be performed by an engineer.

11.020 A & E Consultant Roster (Informal Solicitations)

1. **Thresholds:** 24 CFR 85.36(d)(1)¹⁰⁴ specifies that procurements costing \$100,000 or less qualify as “small purchases” that are not subject to formal advertising as part of the selection process.¹⁰⁵ However, Chapter 39.80 RCW requires that A & E Consultant services be advertised, either specifically or generally, regardless of the dollar amount.
2. **Roster:** SHA may establish through a Request for Qualifications process a Roster of qualified A & E Consultants who may be selected for specific scopes of work under an expedited proposal submittal process (informal solicitation). In establishing such a Roster, SHA shall ensure that the Roster is maintained with current information and that there are a sufficient number of qualified A & E Consultants on the Roster to “ensure maximum open and free competition.”¹⁰⁶ Projects that are estimated to cost more than \$100,000.00 over the life of the contract, including any potential change orders, must be formally advertised pursuant to Chapter 11.030.
3. **Evaluation Criteria:**
 - a.) Price may not be used as an evaluation criterion.

¹⁰³ 24 CFR 85.36(d)(3)(v): “The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.”

¹⁰⁴ “Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.”

¹⁰⁵ The \$100,000 threshold is based on actual costs, not estimated costs.

¹⁰⁶ 24 CFR 85.36(c)(4): “Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition.”

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- b.) Experience of the A & E Consultant, expertise and qualifications of staff to be used, along with availability to perform the services and other factors may also be used as evaluation criteria.
- c.) The geographic location of A & E Consultants submitting qualifications may be used as an evaluation criterion provided that “its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.”¹⁰⁷

4. Department Responsibilities:

- a.) Department Directors are responsible for ensuring that Project Managers develop and write the following for a proposed informal solicitation:
 - Sufficiently detailed, clear, and accurate scope of work.¹⁰⁸
 - Evaluation criteria, including weighting of each criterion. Price or cost may not be used as an evaluation criterion.¹⁰⁹
 - List of items to be submitted for evaluation.

b.) For contracts of \$25,000 or more, Department Directors shall ensure that an Independent Cost Estimate is developed for the consultant services sought prior to issuance of a solicitation.¹¹⁰

- c.) Department Directors are responsible for appointing an evaluation panel of at least two qualified members (including one person designated as the chair) to review and rate submittals received.

5. Purchasing Division Responsibilities: The Purchasing Division shall:

- a.) Establish standard informal solicitation documents to be used throughout SHA.
- b.) Review and approve each informal solicitation before it is made available to A & E Consultants to ensure that it is clear, consistent with requirements, and promotes competition.
- c.) Be eligible to serve as coordinator and facilitator of the evaluation panel.

¹⁰⁷ 24 CFR 85.36(c)(2)

¹⁰⁸ 24 CFR 85.36(c)(3)(i): Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.”

¹⁰⁹ 24 CFR 85.36(c)(3)(ii): Procurement procedures will ensure that all solicitations “identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.”

¹¹⁰ 24 CFR 85.36(f)(1): “...grantees must make independent estimates before receiving bids or proposals.”

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6. Informal Solicitation Requirements:

- a.) In order to ensure adequate and sufficient competition in obtaining A & E consultant services, all of the A & E Consultants on the appropriate Roster category must be solicited.
- b.) It is the policy of SHA to encourage the use of WMBEs as consultants.¹¹¹ Therefore, where possible, at least one WMBE shall be solicited for each informal solicitation.
- c.) Informal solicitations should be available for review by A & E Consultants for a sufficient length of time to provide A & E Consultants with adequate time to prepare and submit qualifications.
- d.) Informal solicitations and responses of qualifications should be in writing.
- e.) Procurement Procedures shall outline requirements for receipt of submittals, including, but not limited to, addressing to whom submittals should be sent the means of solicitation and submission (electronic or hard copy), and deadlines for submission.

7. Evaluation and Award:

- a.) Evaluation criteria shall be included in the informal solicitation, along with the weighting to be assigned to each criterion.
- b.) The evaluation panel appointed by the Department Director shall evaluate submittals received based only on the established criteria.
- c.) SHA shall enter into negotiations for fair and reasonable compensation with the highest ranked A & E Consultant in an effort to execute a Contract. In the event that negotiations are unsuccessful, SHA may proceed to negotiate with the next highest ranked Consultant.
- d.) Department Directors shall ensure that an adequate and sufficient Cost Analysis or Price Analysis is conducted that demonstrates the reasonableness of the proposed contract amount (see Chapter 8 of these Policies for further information).¹¹² The Cost Analysis or Price Analysis must be in writing for all contracts of \$25,000 or more.
- e.) Contracts based on an informal solicitation shall normally be either based on a fixed-price or a cost-reimbursement model.

¹¹¹ 24 CFR 85.36(e). See also Chapter 21 of these Policies.

¹¹² 24 CFR 85.36(f)(1)

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8. Federal Contract Provisions: Federally funded contracts shall contain, where applicable, contract language required by 24 CFR 85.36(i) as described below in Chapter 11.030, item #7.
9. Non-Competitive Procurements: Refer to Chapter 16 of these Policies for information on Sole Source, Emergency, and Single Response to a solicitation.

11.030 Request for Qualifications

1. Definition: A Request for Qualifications (RFQ) is a formally advertised¹¹³ and competitive selection process used for obtaining consultant services that will cost more than \$100,000, and where the evaluation and selection of an A & E Consultant is based on the consultants' qualifications,¹¹⁴ and where price is not used as an evaluation criterion.¹¹⁵ Part of evaluating an A & E Consultant's qualifications may include an evaluation of their proposed approach for performing the work. The term "A & E Consultant" as used in this section shall also refer to development partners who are also obtained through the use of a Request for Qualifications.
2. Evaluation
 - a.) Price may not be used as an evaluation criterion.
 - b.) Experience of the A & E Consultant, expertise and qualifications of staff to be used, along with availability to perform the services and other factors may also be used as evaluation criteria.
 - c.) The geographic location of A & E Consultants submitting qualifications may be used as an evaluation criterion provided that "its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract."¹¹⁶
3. Department Responsibilities:
 - a.) Department Directors are responsible for ensuring that Project Managers develop and write the following for an RFQ:

¹¹³ 24 CFR 85.36(d)(3)(i): "Requests for proposals will be publicized..."

¹¹⁴ 24 CFR 85.36(d)(3)(v): "Grantees [SHA]...may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation."

¹¹⁵ 24 CFR 85.36(d)(3)(v): "The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services."

¹¹⁶ 24 CFR 85.36(c)(2)

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- Sufficiently detailed, clear, and accurate scope of work.¹¹⁷
 - Evaluation criteria, including weighting of each criterion, where price is not used as one of the criteria.¹¹⁸
 - List of items to be submitted with the qualifications.
- b.) Department Directors shall ensure that an Independent Cost Estimate is developed for the work prior issuance of an RFQ.¹¹⁹
- c.) Department Directors are responsible for appointing an evaluation panel of at least two qualified members (including one person designated as the chair) to review and rate qualifications received.
4. Purchasing Division Responsibilities: The Purchasing Division shall:
- a.) Establish standard RFQ documents to be used throughout SHA.
 - b.) Advertise the RFQ.
 - c.) Review and approve each RFQ before it is made available to consultants to ensure that it is clear, consistent with requirements, and promotes competition.
 - d.) Be eligible to serve as coordinator and facilitator of the evaluation panel.
5. Solicitation Requirements:
- a.) It is the policy of SHA to encourage the use of WMBEs as A & E Consultants.¹²⁰ Therefore, where possible, at least one WMBE shall be solicited for each RFQ.
 - b.) RFQs should be advertised and available for review by A & E Consultants for a sufficient length of time to provide A & E Consultants with adequate time to prepare and submit qualifications.
 - The length of time shall be determined based on a number of factors, including but not limited to, the estimated dollar value of the work to be performed, the complexity of the work, the degree to which SHA is requesting consultants to develop a proposal or project approach versus merely providing information about qualifications, experience, and availability.

¹¹⁷ 24 CFR 85.36(c)(3)(i): Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured."

¹¹⁸ 24 CFR 85.36(c)(3)(ii): Procurement procedures will ensure that all solicitations "identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals."

¹¹⁹ 24 CFR 85.36(f)(1)

¹²⁰ 24 CFR 85.36(e). See also Chapter 21 of these Policies.

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- Generally, it is expected that RFQs will be advertised and available for review by A & E Consultants for 25 calendar days before submittals are due.¹²¹ However, dependent upon the particular procurement, the Contracting and Procurement Manager may determine that adequate competition and preparation and submission of qualifications may be accomplished in a shorter period of time, and the 25 calendar day guideline may be adjusted appropriately.
- The Contracting and Procurement Manager, in consultation with the applicable Department Director, shall make the final decision on the length of time an RFQ is advertised.

c.) Procurement Procedures shall outline requirements for receipt of submittals,¹²² including, but not limited to, addressing to whom responses should be submitted, the means of solicitation and submission of responses (electronic or hard copy), and deadlines for submission.¹²³

d.) SHA may establish through a Request for Qualifications process a Roster of qualified A & E Consultants who may be selected for specific scopes of work under an expedited proposal submittal process. In establishing such a Roster, SHA shall ensure that the Roster is maintained with current information and that there are a sufficient number of qualified A & E Consultants on the Roster to “ensure maximum open and free competition.”¹²⁴

6. Evaluation and Award:

- a.) Evaluation criteria shall be included in the RFQ, along with the weighting to be assigned to each criterion.
- b.) The evaluation panel appointed by the Department Director shall evaluate submittals received based only on the established criteria.¹²⁵
- c.) SHA shall enter into negotiations for fair and reasonable compensation¹²⁶ with the highest ranked A & E Consultant.¹²⁷ In the event that negotiations are

¹²¹ Quote Handbook here as advice only.

¹²² 24 CFR 85.36(d)(3)(i): “Any response to publicized requests for proposals shall be honored to the maximum extent practical.”

¹²³ 24 CFR 85.36(d)(3)(i): Notwithstanding this regulation (“Any response to publicized requests for proposals shall be honored to the maximum extent practical.”), Procurement Procedures shall establish and define the priority of submission of proposals by the required deadline.

¹²⁴ 24 CFR 85.36(c)(4): “Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition.”

¹²⁵ 24 CFR 85.36(d)(3)(iii): “Grantees [SHA]...will have a method for conducting technical evaluations of the proposals received and for selecting awardees.”

¹²⁶ 24 CFR 85.36(d)(3)(v): Firm is selected “subject to negotiation of fair and reasonable compensation.”

¹²⁷ 24 CFR 85.36(3)(d)(iv): “Awards will be made to the responsible firm whose proposal is most advantageous to the program.”

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unsuccessful, SHA may proceed to negotiate with the next highest ranked Consultant.

- d.) Department Directors shall ensure that an adequate and sufficient Cost Analysis or Price Analysis is conducted that demonstrates the reasonableness of the proposed contract amount (see Chapter 8 of these Policies for further information).¹²⁸
- e.) Contracts based on an RFQ shall normally be either based on a fixed-price or a cost-reimbursement model.¹²⁹

7. Federal Contract Provisions: Federally funded contracts shall contain, where applicable, contract language required by 24 CFR 85.36(i) and as described below:

- Breach of Contract: “Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.”
- Termination: “Termination for cause and for convenience by [SHA]...including the manner by which it will be effected and the basis for settlement.” (Not required for contracts of \$10,000 or less)
- HUD Requirements and Reporting Standards: “Notice of awarding agency requirements and regulations pertaining to reporting.”¹³⁰
- Patent Rights: “Notice of awarding agency¹³¹ requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.”
- Copyrights: “Awarding agency¹³² requirements and regulations pertaining to copyrights and rights in data.”
- Audit: “Access by [SHA]..., the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.”

¹²⁸ 24 CFR 85.36(f)(1)

¹²⁹ 24 CFR 85.36(3): “...either a fixed-price or cost-reimbursement type contract is awarded.”

¹³⁰ This clause requires SHA to include in contracts any reporting requirements applicable to the terms of a particular grant or funding source that may be helping to fund the contract. The language noted in this section should not be included verbatim as specified in 24 CFR 85.36 (i). It is included in 24 CFR 85.36 more as an instructional reminder to SHA to be aware of particular reporting requirements of a grant or funding source.

¹³¹ “Awarding agency” refers to HUD in this context.

¹³² “Awarding agency” refers to HUD in this context.

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- Records Retention: “Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.”
 - Environmental Regulations: “Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).”¹³³
 - Energy Efficiency: “Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).”
8. Non-Competitive Procurements: Refer to Chapter 16 of these Policies for information on Sole Source, Emergency, and single response to a solicitation.

¹³³ 24 CFR 85.36(i)(12) is only required for contracts in excess of \$100,000.

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12.010 Bids versus Proposals

Generally, contractors for construction and maintenance projects should be selected based on competitive bids (evaluated solely upon price) instead of proposals (evaluated on price and other factors). If the following criteria are met, competitive bidding should be utilized:¹³⁴

1. A complete, adequate, and realistic specification is available.
2. Two or more responsible bidders are willing and able to compete effectively for the work.
3. The project lends itself to a firm fixed-price contract, and the selection of the successful bidder can be made principally on the basis of price.¹³⁵

12.020 Selection Methodologies

1. Design, Bid, Build: Generally, most construction projects will employ a selection methodology in which a separate designer and contractor are hired to complete the project. Under the traditional “Design, Bid, Build” system, an Invitation to Bid will be advertised, competitive bids will be received, and the project will be awarded to the lowest responsive bid submitted by a responsible bidder.
2. Alternate Selection Methodologies: When the criteria in 24 CFR 85.36(d)(2)(i) are not applicable, SHA may elect to use alternate solicitation methods for the selection of a Contractor, which may include such methodologies as the General Contractor Construction Manager (GC/CM), Request for Competitive Proposals (RFCP), or Design-Build (DB) model.¹³⁶ In such a situation, the Contractor’s price is evaluated along with other criteria relating the contractor’s abilities to perform the contract. The standard form of solicitation used is the Proposal method.

Value Engineering: Value Engineering, the systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lowest cost, is one of the tasks that the Contractor may be asked to perform on a Contract.¹³⁷

¹³⁴ These criteria are adapted slightly from the language contained in 24 CFR 85.36(d)(2).

¹³⁵ The use in 24 CFR 85.36(d)(2)(i)(C) of the phrase “selection of the successful bidder can be made principally on the basis of price” refers not to price being one of many evaluation criteria, but that price is the only factor provided the bid is responsive and the bidder is responsible.

¹³⁶ While Chapter 39.10 RCW does not list SHA as an agency authorized to utilize the GC/CM methodology for “public works,” Chapter 35.82 RCW, the Housing Authorities Law, authorizes SHA to conduct “housing projects” and does not define such construction projects contracted for by a housing authority as “public works.” Thus, SHA, as a housing authority, is not currently subject to the requirements or restrictions imposed by Chapter 39.10 RCW.

¹³⁷ 24 CFR 85.36(b)(7) encourages the use of Value Engineering.

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12.030 Small Works Roster (Informal Solicitation)

1. **Definition:** SHA's Small Works Roster was established under the authority of RCW 39.04.155. In 2009, SHA joined the eCitygov.net alliance which allows us to access eCitygov.net's Shared Procurement Portal's (SPP) rosters, including its Small Works Roster for construction. The Small Works Roster consists of contractors who have expressed an interest in doing business with one or more members of the alliance. The Roster permits SHA to select a contractor for certain construction projects without otherwise publicly advertising the work, but by following the process outlined in State law for soliciting bids from contractors on the Roster.
2. **Annual Advertisement:** Consistent with the requirements of State law, eCitygov.net annually publishes an advertisement inviting contractors to apply for the Roster. This advertisement identifies SHA as a participating Agency. Contractors may apply for the SPP Roster anytime during the year.¹³⁸
3. **Impact of Funding Source on Bidding Requirements:**
 - a.) **Non-Federally Funded Projects:** SHA may select contractors for non-federally funded projects valued at less than \$200,000 by using the Small Works Roster process.
 - For non-federally funded construction projects estimated to cost less than \$10,000, it is not required to solicit bids from more than one contractor, provided that a qualified contractor is selected from the Small Works Roster and that a reasonable price is negotiated for the work.¹³⁹
 - For non-federally funded construction projects costing \$200,000 or less that are not advertised, only contractors on the Small Works Roster may be solicited. Solicitation opportunities must be "equitably distribute[d]" among the contractors on the Small Works Roster.
 - Non-federally funded construction projects valued at more than \$200,000 must be publicly advertised.¹⁴⁰

¹³⁸ 24 CFR 85.36(c)(4): "Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition." The sentence in the regulation ("Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.") does not apply directly to the use of the Small Works Roster since placement on the Roster is required by State law prior to soliciting bids for non-federally funded projects. In the event that the Roster is used as a tool for obtaining the names of contractors on federally funded projects, additional names may be added to the Roster after solicitation.

¹³⁹ The time and effort involved in soliciting bids from contractors for projects estimated to cost \$10,000 or less is administratively costly.

¹⁴⁰ The \$100,000 threshold is based on actual costs, not estimated costs.

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b.) Federally-Funded Projects: The federal “simplified acquisition threshold” is currently set at \$100,000. Thus, construction projects less than this amount may use the informal selection procedures of the Small Works Roster in selecting a contractor (no advertising required).¹⁴¹

- For federally funded construction projects estimated to cost less than \$10,000, it is not required to solicit bids from more than one contractor,¹⁴² provided that a qualified contractor is selected and that a reasonable price is negotiated for the work.¹⁴³
- For federally funded construction projects costing \$100,000 or less that are not advertised, only contractors on the Small Works Roster may be solicited. Solicitation opportunities must be “equitably distribute[d]” among the contractors on the Small Works Roster.
- Federally funded construction projects valued at more than \$100,000 must be publicly advertised.¹⁴⁴

4. Specifications and Contracts:

a.) Bid Guarantee: Specifications shall indicate whether bidders must submit a bid guarantee with their bid in an amount not less than five percent of the amount bid. For projects of \$100,000 or less, the bid guarantee requirement may be waived and not included in bidding documents.¹⁴⁵

b.) Contract Bond: Specifications shall require the successful contractor to submit a Payment and Performance Bond (Contract Bond) or a separate Payment Bond and a separate Performance Bond in the amount of 100% of the awarded

¹⁴¹ 24 CFR 85.36(d)(1): “Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000).

¹⁴² 24 CFR 85.36(d)(1). This regulation requires that “if small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.” In adopting these Policies, SHA has determined that one source represents “an adequate number” for solicitations under \$10,000.

¹⁴³ HUD Procurement Handbook, 7460.8 REV-1, Chapter 4-3B states: “...the PHA need not solicit competition if a single quoted price within a specified dollar limitation is known to be reasonable...this dollar limitation should normally be \$2,000.” It is clear that this language establishing the dollar limitation is only advisory (“should normally be”). Item 3 of Chapter 1.030 of these Policies states as follows: Consistent with 24 CFR 85.5, that refers to “handbooks and other nonregulatory materials,” SHA recognizes HUD Handbooks and Guidelines as non-regulatory, non-binding advice, except to the extent that Handbooks or Guidelines articulate statutory or regulatory requirements. The non-regulatory nature of handbooks is further supported by 24 CFR 85.6 which states that “Federal agencies may not impose additional administrative requirements except in codified regulations published in the Federal Register.”

¹⁴⁴ The \$100,000 threshold is based on actual costs, not estimated costs.

¹⁴⁵ 24 CFR 85.36(h)(1) addresses the requirement for a bid guarantee but only for projects more than \$100,000. There is no requirement in State law mandating the use of a bid guarantee.

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contract amount,¹⁴⁶ provided, however, consistent with RCW 39.04.155, that SHA may waive the requirement for obtaining a Payment and Performance Bond for a project estimated to cost less than \$35,000.

- c.) Retainage: Consistent with the requirements of Chapter 60.28 RCW, SHA shall withhold retainage from the contractor in the amount of 5% of each payment to the contractor, provided, however, consistent with RCW 39.04.155, that SHA may waive the requirement to withhold retainage for a project estimated to cost less than \$35,000. As an alternative to withholding retainage, State law permits the contractor to submit a bond in lieu of retainage.
 - d.) Prevailing Wages: Specifications shall require the payment of applicable prevailing wages, and contracts shall identify the wage schedule applicable to the project by including a copy of the wages or by incorporating the wages by reference. When the applicable schedule is referenced, the contract shall include instructions for accessing the wage schedule.
 - e.) Federal Contract Provisions: Federally funded contracts shall contain, where applicable, contract language required by 24 CFR 85.36(i) as described below in 12.040 item 2 (d).
5. Non-Competitive Procurements: Refer to Chapter 16 of these Policies for information on Sole Source, Emergency, and Single Response to a solicitation.
6. Department Responsibilities:
- a.) Department Directors are responsible for ensuring that Project Managers develop sufficiently detailed, clear, and accurate¹⁴⁷ drawings and specifications for a project to permit fair and consistent competition, or that the Project Manager reviews the drawings and specifications developed by an outside consultant.¹⁴⁸
 - b.) Department Directors shall ensure that the drawings and specifications do not unduly restrict competition to certain brand name products. “The description may include a statement of the qualitative nature of the material, product, or

¹⁴⁶ 24 CFR 85.36(h)(2): “A performance bond on the part of the contractor for 100 percent of the contract price. A ‘performance bond’ is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.” 24 CFR 85.36(h)(3): “A payment bond on the part of the contractor for 100 percent of the contract price. A ‘payment bond’ is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provide for in the contract.” See also Chapter 39.08 RCW (Contractor’s Bond).

¹⁴⁷ 24 CFR 85.36(c)(3)(i): Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.”

¹⁴⁸ 24 CFR 85.36(d)(2)(ii)(B): “The invitation for bids...will include any specifications and pertinent attachments [and] shall define the items or services in order for the bidder to properly respond.” See also 24 CFR 85.36(c)(3)(ii): Procurement procedures will ensure that all solicitations “identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.”

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service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equal description may be used as a means to define the performance or other salient requirements of a material, product, or service. The specific features of the named brand which must be met...shall be clearly stated.”¹⁴⁹

- c.) For contracts of \$10,000 or more, Department Directors shall ensure that an Independent Cost Estimate is developed for the services sought prior to receipt of any bids.¹⁵⁰
- d.) Department Directors are responsible for ensuring that only bids received by the published deadline are considered for evaluation.
- e.) Department Directors are responsible for reviewing the bidder evaluation performed by the Project Manager to ensure that the bidder under consideration for award is a responsible bidder.

7. Purchasing Division Responsibilities: The Purchasing Division shall:

- a.) Establish standard construction bidding documents to be used throughout SHA.
- b.) Review and approve each informal solicitation before it is made available to contractors to ensure that it is clear, consistent with requirements, and promotes competition.
- c.) Evaluate bids for responsiveness to the specifications.
- d.) Assist Project Managers in evaluating the responsibility of a bidder, and make final decision on bidder responsibility.

8. Solicitation Requirements:

Unless the Contracting and Procurement Manager or Chief Financial Officer approves of an alternate solicitation method, the Small Works Roster shall be used for obtaining bids for all informal solicitations.

- a.) For contracts estimated to cost more than \$10,000.00, bids will be solicited consistent with the procedures in State law regarding the Small Works Roster, and with the requirements of 24 CFR 85.36 for “small purchases,” which requires

¹⁴⁹ 24 CFR 85.36(c)(3)(i)

¹⁵⁰ 24 CFR 85.36(f)(1): “...grantees must make independent estimates before receiving bids or proposals.”

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that “price or rate quotations...be obtained from an adequate number of qualified sources.”¹⁵¹

b.) Informal Solicitations should be available for review by contractors for a sufficient length of time to provide contractors with adequate time to prepare and submit their bids.¹⁵²

- The length of time shall be determined based on a number of factors, including but not limited to, the estimated dollar value of the work to be performed, the complexity of the work, and general market conditions at the time.
- Generally, it is expected that an informal solicitation will be available for review by contractors for a minimum of 5 calendar days before bids are due.
- The Contracting and Procurement Manager, in consultation with the applicable Department Director, shall make the final decision on the length of time an Informal Solicitation is under review by contractors.

c.) It is the policy of SHA to encourage the use of WMBEs as contractors and subcontractors.¹⁵³ Where possible, at least one WMBE firm shall be included in the solicitation.

d.) All bids received by the required deadline will be evaluated.

e.) Procurement Procedures shall outline requirements for receipt of bids, including, but not limited to, addressing where bids should be submitted, and deadlines for submission.

9. Evaluation and Award:

a.) The Purchasing Division shall evaluate whether the bids submitted are responsive to the specifications.¹⁵⁴

b.) The Project Manager and Purchasing Division shall evaluate whether the bidder submitting the lowest responsive bid is a responsible bidder. Responsibility analysis includes, but is not limited to, verifying contractor compliance with the bidder responsibility requirements of RCW 39.04.350, as well as issues related to the capability of the bidder to successfully complete the work (based on a

¹⁵¹ 24 CFR 85.36(d)(1). This regulation requires that “if small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.” In adopting these Policies, SHA has determined that one source represents “an adequate number” for solicitations under \$10,000.

¹⁵² 24 CFR 85.36(d)(2)(ii)(A): The ITB shall provide contractors “sufficient time prior to the date set for opening the bids.”

¹⁵³ 24 CFR 85.36(e). See also Chapter 21 of these Policies.

¹⁵⁴ 24 CFR 85.36(d)2): The bid must conform “with all the material terms and conditions of the invitation for bids.”

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review of past performance and other factors), financial stability, personnel, equipment, etc.¹⁵⁵

- c.) If a contract is to be awarded, it shall be awarded only to a responsible bidder submitting the lowest responsive bid.¹⁵⁶
- d.) The geographic location of contractors may not be used as an evaluation criterion.¹⁵⁷
- e.) SHA shall reserve the right to reject any or all bids “if there is a sound documented reason.”¹⁵⁸
- f.) Contracts shall be for a firm fixed-price based on either a lump sum amount or the summation of unit prices.¹⁵⁹ On a unit price contract, SHA shall pay the contractor only for actual quantities installed, and thus the awarded contract amount may vary from the actual amount paid to the contractor.

12.040 Formal Solicitation (ITB or Alternate Proposal method)

1. **Definition:** An Invitation to Bid (ITB) or Proposal method is a formally advertised¹⁶⁰ competitive selection process used for obtaining construction and maintenance services that will cost more than \$100,000. **Note:** A project funded with non-federal funds may, however, under the provisions of State law, utilize the Small Works Roster process (not requiring formal advertising) for projects less than \$200,000.¹⁶¹
2. **Specifications and Contracts:**
 - a.) **Bid/Proposal Guarantee:** Specifications shall require that bidders submit a bid guarantee with their bid/proposal in an amount not less than five percent of the

¹⁵⁵ 24 CFR 85.36(b)(8): SHA “will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.”

¹⁵⁶ 24 CFR 85.36(d)(2)(ii)(D): “A firm fixed-price contract award will be made in writing to the lowest and responsive and responsible bidder.” The regulation cited here is not stated accurately: bids are responsive while bidders are responsible. The cited regulation does not control solicitation of contracts of \$100,000 or less, but it does offer good guidance regarding evaluation of responsiveness and responsibility.

¹⁵⁷ 24 CFR 85.36(c)(2)

¹⁵⁸ 24 CFR 85.36(d)(2)(ii)(E). Technically, this regulation does not apply to contracts of \$100,000 or less but nevertheless offers good guidance.

¹⁵⁹ 24 CFR 85.36(d)(2): “...a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder...” Technically, this regulation does not apply to contracts of \$100,000 or less but nevertheless offers good guidance.

¹⁶⁰ 24 CFR 85.36(d)(2)(ii)(A): “The invitation for bids will be publicly advertised...”

¹⁶¹ RCW 39.04.155

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total amount bid (the maximum dollar amount that could be awarded when additives and alternates are considered).¹⁶²

- b.) Contract Bond: Specifications shall require the successful contractor to submit a Payment and Performance Bond (Contract Bond) or a separate Payment Bond and a separate Performance Bond in the amount of 100% of the awarded contract amount.¹⁶³
- c.) Prevailing Wages: Specifications shall require the payment of applicable prevailing wages and contracts shall include a copy of such wage rates.
- d.) Federal Contract Provisions: Federally funded contracts shall contain contract language required by 24 CFR 85.36(i) and as described below:
- Breach of Contract: “Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.”¹⁶⁴
 - Termination: “Termination for cause and for convenience by [SHA]...including the manner by which it will be effected and the basis for settlement.”
 - EEO: “Compliance with Executive Order 11246 of September 24, 1965, entitled ‘Equal Employment Opportunity,’ as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).”
 - Copeland "Anti-Kickback" Act: “Compliance with the Copeland ‘Anti-Kickback’ Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3).”
 - Davis-Bacon Act: “Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5) (...when required by Federal grant program legislation).”

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

¹⁶³ 24 CFR 85.36(h)(2): “A performance bond on the part of the contractor for 100 percent of the contract price. A ‘performance bond’ is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.” 24 CFR 85.36(h)(3): “A payment bond on the part of the contractor for 100 percent of the contract price. A ‘payment bond’ is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provide for in the contract.” See also Chapter 39.08 RCW (Contractor’s Bond).

¹⁶⁴ 24 CFR 85.36(i)(1) regarding breach of contract provisions applies only for contracts above the simplified acquisition threshold, currently established at \$100,000.

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- Contract Work Hours and Safety Standards Act (CWHSSA): “Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5).”
 - HUD Requirements and Reporting Standards: “Notice of awarding agency requirements and regulations pertaining to reporting.”¹⁶⁵
 - Patent Rights: “Notice of awarding agency¹⁶⁶ requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.”
 - Copyrights: “Awarding agency¹⁶⁷ requirements and regulations pertaining to copyrights and rights in data.”
 - Audit: “Access by [SHA]..., the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.”
 - Records Retention: “Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.”
 - Environmental Regulations: “Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).”¹⁶⁸
 - Energy Efficiency: “Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).”
3. Non-Competitive Procurements: Refer to Chapter 16 of these Policies for information on Sole Source, Emergency, and Single Response to a solicitation.

¹⁶⁵ This clause requires SHA to include in contracts any reporting requirements applicable to the terms of a particular grant or funding source that may be helping to fund the contract. The language noted in this section should not be included verbatim as specified in 24 CFR 85.36 (i). It is included in 24 CFR 85.36 more as an instructional reminder to SHA to be aware of particular reporting requirements of a grant or funding source.

¹⁶⁶ “Awarding agency” refers to HUD in this context.

¹⁶⁷ “Awarding agency” refers to HUD in this context.

¹⁶⁸ 24 CFR 85.36(i)(12) is only required for contracts in excess of \$100,000.

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4. Department Responsibilities:

- a.) Department Directors are responsible for ensuring that Project Managers develop sufficiently detailed, clear, and accurate¹⁶⁹ drawings and specifications for a project to permit fair and consistent competition, or that the Project Manager reviews the drawings and specifications developed by an outside consultant.¹⁷⁰
- b.) Department Directors shall ensure that the drawings and specifications do not unduly restrict competition to certain brand name products. “The description may include a statement of the qualitative nature of the material, product, or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equal description may be used as a means to define the performance or other salient requirements of a material, product, or service. The specific features of the named brand which must be met shall be clearly stated.”¹⁷¹
- c.) Department Directors are responsible for reviewing the evaluation performed by the Project Manager of the bidder under consideration for award to ensure that the bidder is a responsible bidder.

5. Purchasing Division Responsibilities: The Purchasing Division shall:

- a.) Establish standard general conditions for construction to be used in all of SHA’s construction specifications.
- b.) Advertise the solicitation opportunity.
- c.) Review and approve each solicitation before it is sent to contractors to ensure that it is clear, consistent with requirements, and promotes competition.
- d.) Distribute solicitation documents and addenda to contractors.

¹⁶⁹ 24 CFR 85.36(c)(3)(i): Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.”

¹⁷⁰ 24 CFR 85.36(d)(2)(ii)(B): “The invitation for bids...will include any specifications and pertinent attachments [and] shall define the items or services in order for the bidder to properly respond.” See also 24 CFR 85.36(c)(3)(ii): Procurement procedures will ensure that all solicitations “identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.”

¹⁷¹ 24 CFR 85.36(c)(3)(i)

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- e.) Accept ITB bids received by the bid submittal deadline and publicly open and read bids.¹⁷²
- f.) Evaluate pricing of Proposals. Note: Proposals are not opened or read publicly.
- g.) Evaluate bids for responsiveness to the specifications.
- h.) Assist Project Managers in evaluating the responsibility of a bidder.

6. Solicitation Requirements:

- a.) ITBs or Proposals will be publicly advertised in the *Seattle Daily Journal of Commerce* newspaper.¹⁷³
- b.) ITBs or Proposals should be advertised and available for review by contractors for a sufficient length of time to provide contractors with adequate time to prepare and submit their bids or proposals.¹⁷⁴
- c.) The length of time shall be determined based on a number of factors, including but not limited to, the estimated dollar value of the work to be performed, the complexity of the work, and general market conditions at the time.
- d.) Generally, it is expected that ITBs or Proposals will be advertised and available for review by contractors for 25 calendar days before bids are due. However, dependent upon the particular procurement, the Contracting and Procurement Manager may determine that adequate competition and preparation and submission of bids may be accomplished in a shorter period of time, and the 25 calendar day guideline may be adjusted appropriately.
- e.) The Contracting and Procurement Manager, in consultation with the applicable Department Director, shall make the final decision on the length of time a solicitation opportunity is advertised.
- f.) It is the policy of SHA to encourage the use of WMBEs as contractors and subcontractors.¹⁷⁵
- g.) "All ITB bids [received by the required deadline] will be publicly opened at the time and place prescribed in the invitation for bids."¹⁷⁶

¹⁷² 24 CFR 85.36(d)(2)(ii)(C).

¹⁷³ 24 CFR 85.36(d)(2): "Bids are publicly solicited."; 24 CFR 85.36(d)(2)(ii)(A).

¹⁷⁴ 24 CFR 85.36(d)(2)(ii)(A): The ITB shall provide contractors "sufficient time prior to the date set for opening the bids."

¹⁷⁵ 24 CFR 85.36(e). See also Chapter 21 of these Policies.

¹⁷⁶ 24 CFR 85.36(d)(2)(ii)(C)

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- h.) Procurement Procedures shall outline requirements for receipt of bids or proposals, including, but not limited to, addressing where bids or proposals should be submitted, and deadlines for submission.
- i.) Proposal Solicitation Requirements: If an Alternate Solicitation method is used, the following processes are also required:
- Advertising: Proposal solicitation will identify all evaluation factors and their relative importance.
 - Evaluation: SHA shall have a method for conducting evaluations of the technical proposals.
 - Award: Award will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

7. Evaluation and Award:

- a.) SHA shall evaluate whether the bids submitted are responsive to the specifications.¹⁷⁷
- b.) SHA shall evaluate whether the bidder submitting the lowest responsive bid is a responsible bidder.¹⁷⁸ Responsibility analysis includes, but is not limited to, verifying contractor compliance with the bidder responsibility requirements of RCW 39.04.350, as well as issues related to the capability of the bidder to successfully complete the work (based on a review of past performance and other factors), financial stability, personnel, equipment, etc.¹⁷⁹
- c.) If a contract is to be awarded, it shall be awarded only to a responsible bidder submitting the lowest responsive bid.¹⁸⁰
- d.) The geographic location of contractors may not be used as an evaluation criterion.¹⁸¹
- e.) SHA shall reserve the right to reject any or all bids “if there is a sound documented reason.”¹⁸²

¹⁷⁷ 24 CFR 85.36(d)2): The bid must conform “with all the material terms and conditions of the invitation for bids.”

¹⁷⁸ 24 CFR 85.36(d)(2): “contract...is awarded to the responsible bidder.”

¹⁷⁹ 24 CFR 85.36(b)(8): SHA “will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.”

¹⁸⁰ 24 CFR 85.36(d)(2)(ii)(D): “A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder.” The regulation cited here is not stated accurately: bids are responsive while bidders are responsible.

¹⁸¹ 24 CFR 85.36(c)(2)

¹⁸² 24 CFR 85.36(d)(2)(ii)(E)

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f.) Contracts shall be for a firm fixed-price based on either a lump sum amount or the summation of unit prices.¹⁸³ On a unit-price contract, SHA shall only pay the contractor for actual quantities installed, and thus the awarded contract amount may vary from the actual amount paid to the contractor.

12.050 Prevailing Wages

1. Federal vs. State Prevailing Wages: The prevailing wage rates applicable to a construction or maintenance project will be determined by whether the project is funded with federal or non-federal funds.¹⁸⁴ If a project is funded with both federal and non-federal funds, regardless of the amount of federal funds involved, federal prevailing wage rates shall be applicable.¹⁸⁵
2. Applicability of Federal Prevailing Wage Requirements: Federal prevailing wage requirements shall apply only to construction projects of more than \$2,000 that contain federal funds.¹⁸⁶
3. Records Disclosure of Contractor Payroll Reports: Payroll reports received by SHA from contractors and subcontractors on construction projects, for the purpose of monitoring prevailing wage requirements, shall not be released to outside parties *unless* the employees' personal identifiers (e.g., name, address, social security number) are first deleted. Requests for such information shall be forwarded to the HUD Regional Labor Relations Office for review and response.¹⁸⁷

¹⁸³ 24 CFR 85.36(d)(2): "...a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder..."

¹⁸⁴ The applicability of prevailing wages established by the U.S. Department of Labor versus the U.S. Department of Housing and Urban Development shall be governed by regulations of those agencies.

¹⁸⁵ 24 CFR 965.101

¹⁸⁶ Davis-Bacon Act (40 USC 276a to 276a-7).

¹⁸⁷ HUD Desk Guide LR-II, Labor Standards Administration and Enforcement Guidelines for HUD Program Participants, Section 2-10.

Chapter 13: PURCHASING CARDS

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13.010 Purpose

SHA has authorized that certain employees be issued bank-sponsored VISA credit cards (Purchasing Cards) in SHA's name, in order to expedite the purchasing and payment process and reduce the administrative costs of small purchase transactions.

13.020 Approval by Executive Director

1. **Delegated Purchasing Authority:** Because the use of Purchasing Cards represents delegated purchasing authority, only the Executive Director (or acting Executive Director) may authorize an employee to be issued a Purchasing Card. Such approval shall be upon the written recommendation of the Department Director, on a form to be determined by the Contracting and Procurement Manager.
2. **Dollar Thresholds:** In authorizing a Purchasing Card for an individual employee, the standard dollar threshold for transactions shall be \$300 per transaction and \$2,000 per month. Exceptions may be approved based on demonstrated need, provided that the per transaction threshold shall not exceed \$2,000 for any employee.
3. **Supervisory Review of Transactions:** In approving the issuance of a Purchasing Card to an individual employee, the Executive Director automatically authorizes that individual's supervisor to review and approve the employee's monthly expenditures with the Purchasing Card.
4. **Expenditure Authorization:** In approving the issuance of a Purchasing Card to an individual employee, the Executive Director automatically approves Expenditure Authority for the employee in the amount of the per transaction threshold for the Purchasing Card, consistent with the policies related to Expenditure Authority in Chapter 3 of these Policies.

13.030 Administrative Responsibilities

1. **Contracting and Procurement Manager:** The Contracting and Procurement Manager shall be responsible for managing the Purchasing Card program on behalf of SHA, and may delegate certain administrative functions to Purchasing Division staff.
2. **Blocked Merchant Category Codes:** The Contracting and Procurement Manager shall ensure that inappropriate Merchant Category Codes (MCCs) are not available to Purchasing Card holders. Upon written request and justification by a Department Director to unblock MCCs for an employee in order to meet legitimate business needs, the Contracting and Procurement Manager shall direct the bank issuing the cards to make the necessary changes.

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3. Dollar Threshold Changes: Changes to a Purchasing Card holder's per transaction thresholds or per month threshold may be approved upon written request and justification to the Contracting and Procurement Manager from the Department Director. The Contracting and Procurement Manager shall make the final decision and shall consult the Chief Financial Officer as may be appropriate.
4. Temporary Dollar Threshold Changes: A Department Director may request a temporary (less than one week for the per transaction threshold) change to a Purchasing Card holder's per-transaction threshold or per-month threshold, by forwarding a written request and justification to the Contracting and Procurement Manager. The request shall state the reasons for the change and the date on which the original threshold should be reinstated. The Contracting and Procurement Manager shall make the final decision on such requests.
5. Cancellation of Purchasing Cards: A Department Director, for an employee under his/her supervision, or the Chief Financial Officer or Contracting and Procurement Manager for any employee, may cancel the Purchasing Card of an employee for good and sufficient reasons.
6. Accounts Payable Section: The Accounts Payable Section shall be responsible for reviewing monthly statements submitted by Purchasing Card holders to ensure compliance with various procedures of the program.

13.040 Changes in Employee Status

1. Employee Transfers to a Different Position in the Same Department: If a Purchasing Card holder takes a different position in the same department, the Department Director shall evaluate whether the employee's new position still requires the use of a Purchasing Card. If the Purchasing Card is no longer required, the Department Director shall contact the Contracting and Procurement Manager to have the card cancelled.
2. Employee Transfers to Different Department or Terminates from SHA: In the event a Purchasing Card holder takes a position in another department or terminates their employment with SHA, the Purchasing Card shall be cancelled unless the receiving Department Director requests that it be retained. It shall be the responsibility of the sending Department Director to notify the Contracting and Procurement Manager of such Purchasing Cards to be cancelled.

13.050 Purchasing Card Holder Responsibilities

1. Compliance with Requirements: Purchasing Card holders are responsible for knowing and complying with these Policies and procedures adopted governing use of Purchasing Cards and applicable procurement requirements.

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2. Obtaining Reasonable Prices: Purchasing Card holders are responsible for ensuring that the prices paid for their purchases are reasonable, and that, where appropriate, price comparisons are obtained.¹⁸⁸
3. For Official SHA Business Only: Purchasing Card holders may use Purchasing Cards for official SHA business only. Personal use of the Purchasing Card is strictly prohibited, and may subject an employee to disciplinary action.
4. Prohibited Uses: Purchasing Cards may not be used for the following:
 - Cash advances from financial institutions;
 - Purchase of equipment, material, or supplies restricted by policies, guidelines or contractual agreements such as fuel and food and beverages (Note: Some incidental purchases of light refreshments (food and beverages) are permitted as long as the purchases are incidental and related to the conduct of official SHA business such as an SHA-sponsored community or resident meeting)
 - Travel and travel-related expenses such as lodging, meals, and transportation.
5. Splitting Transactions Prohibited: In establishing per-transaction and per-month thresholds for the use of Purchasing Cards, it is SHA's policy that Purchasing Card holders shall not deliberately split a purchase in order to obtain goods or services that are in excess of the approved thresholds. On a case-by-case basis, with the written approval of the Department Director and the Contracting and Procurement Manager, established thresholds may be increased for certain individuals with specific and unique purchasing needs, but in no event shall the amount per transaction be authorized for more than \$2,000.
6. Security of Purchasing Cards: Purchasing Card holders must safeguard their Purchasing Card against loss, theft, and unauthorized use. No Purchasing Card holder may loan their card or give their card number to any other individual. Each Purchasing Card holder is responsible for the security of his/her card at all times. In order to minimize liability for unauthorized use, the card holder must report a lost or stolen card immediately.
7. Record Keeping and Monthly Reconciliation: Each Purchasing Card holder shall keep receipts, invoices, or other appropriate documentation for all purchases made with the Purchasing Card. On a monthly basis, each Purchasing Card holder must file a report (on a form to be provided by the Contracting and Procurement Manager) of all transactions made with the card, and reconcile transactions made with those reported on the bank statement. Reports are due no later than the 5th of

¹⁸⁸ 24 CFR 85.36(d)(1). This regulation requires that "if small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources." In adopting these Policies, SHA has determined that one source represents "an adequate number" for Purchasing Card transactions under \$2,000.

Chapter 13: PURCHASING CARDS

the following month to Accounts Payable. If the Purchasing Card holder misses this deadline his/her card may be put on temporary suspension until the documentation is received by accounts payable. Purchasing Card holders who turn in their reports past the due date twice within one year will have their purchasing card suspended for two months. If after reinstatement the Purchasing Card holder is late with his/her reports within the next twelve month period the employee's purchasing card privileges will be terminated. If the Purchasing Card holder does not receive his/her bank statement by the end of the month of the statement period the employee is to notify accounts payable or Purchasing to obtain an electronic copy of the statement.

8. Disputes and Discrepancies: Purchasing Card holders are responsible for reporting disputes and discrepancies of charges to the bank sponsoring the Purchasing Card and following through to resolve the issue, and for notifying the SHA Accounts Payable section of such issues.
9. Disciplinary Actions: Purchasing Card holders who violate these Policies or procedures established by SHA may be subject to disciplinary action.

13.060 Supervisory Responsibilities

Supervisors are responsible for reviewing monthly reports of usage of Purchasing Cards by employees reporting to them to determine that the expenditures are valid and necessary for the conduct of SHA business and that the purchases made were not for the personal use of any individual.

Chapter 14: GAS CARDS

Chapter 14: GAS CARDS

14.010 Administration of Gas Cards

1. Gas Card Custodian: The Chief Financial Officer and the Contracting and Procurement Manager shall appoint a Buyer to serve as Gas Card Custodian to administer SHA's Gas Card program. The Gas Card Custodian shall be responsible for the activating, deactivating, and canceling of all Gas Cards upon proper authorization.
2. Authorization for Gas Cards: Gas Card authorization for an employee must be requested in writing to the Gas Card Custodian by the employee's supervisor.
3. Personal Identification Numbers: The Gas Card Custodian shall assign a Personal Identification Number (PIN) to each Gas Card holder or employee authorized to use a vehicle-based Gas Card. Employees are responsible for keeping their PIN confidential and not sharing it with anyone else.
4. For Official SHA Business Only: Employees with a Gas Card PIN may use the Gas Card for official SHA business only. Personal use of the Gas Card is strictly prohibited, and may subject an employee to disciplinary action.
5. Security of Gas Cards: Gas Cards issued to employees may not be loaned to any other individual and must be kept secure at all times. Employees using SHA vehicles are responsible for the security of the Gas Card in the vehicle.
6. Restrictions on Use: Acceptable charges with the Gas Card include fuel, oil, and small routine maintenance items such as bulbs and wipers not exceeding \$15.00. Gas Cards may also be used to respond to vehicle emergencies when done through the National Auto Club's Municipal Fleet Rescue Program. Gas Cards may not be used for major purchases, service, or parts exceeding \$15.00.

Chapter 15: PETTY CASH

Chapter 15: PETTY CASH

15.010 General Policy

Small purchases under \$50 may be made through the use of petty cash. The Controller will ensure that the following policy objectives are met:

1. Account Establishment: A petty cash account should be established in an amount sufficient to cover small purchases made during a reasonable period (e.g., one month).
2. Non-Repetitive Purchases: Petty cash purchases should be kept to a minimum and should not be used for repetitive purchases.
3. Authorized Usage: Petty cash may be used for items such as:
 - a.) Reimbursement to employees for the purchase of goods or services.
 - b.) Reimbursement to employees for meals and fees paid for attending a pre-approved professional association meeting.
4. Security: The security of the petty cash account shall be maintained, and access to the account should be limited only to authorized individuals.
5. Reconciliation: The petty cash account shall be periodically reconciled and replenished.
6. Audit: The petty cash account is subject to audit by the Controller or other authorized individuals.

Chapter 16: NON-COMPETITIVE PROCEDURES

Chapter 16: NON-COMPETITIVE PROCUREMENTS

16.010 Restricting Competition Prohibited

Procurement practices that restrict competition are prohibited. Examples of such practices, cited in 24 CFR 85.36(c)(1), include the following:

1. Unreasonable Requirements: “Placing unreasonable requirements on firms in order for them to qualify to do business.”¹⁸⁹
2. Experience and Bonding: “Requiring unnecessary experience and excessive bonding.”¹⁹⁰
3. Non-Competitive Pricing Practices: “Noncompetitive pricing practices between firms or between affiliated companies.”¹⁹¹
4. Certain Retainer Contracts: “Noncompetitive awards to consultants that are on retainer contracts.”¹⁹²
5. Conflict of Interest: “Organizational conflicts of interest.”¹⁹³
6. Brand Name Specificity: “Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement.”¹⁹⁴
7. Arbitrary Actions: “Any arbitrary action in the procurement process.”¹⁹⁵

16.020 Permissible Non-Competitive Procurements

In certain instances and situations, the procurement of goods and services without adequate competition is permissible:

1. Sole Source: The service or item “is available only from a single source,”¹⁹⁶ based on a documented good faith review of available sources.
2. Emergency: An emergency exists that seriously threatens the public health, welfare, or safety, endangers property, or would otherwise cause serious injury to SHA, as may arise by reason of a flood, earthquake, epidemic, fire, riot, equipment failure, or

¹⁸⁹ 24 CFR 85.36(c)(1)(i)

¹⁹⁰ 24 CFR 85.36(c)(1)(ii)

¹⁹¹ 24 CFR 85.36(c)(1)(iii)

¹⁹² 24 CFR 85.36(c)(1)(iv)

¹⁹³ 24 CFR 85.36(c)(1)(v)

¹⁹⁴ 24 CFR 85.36(c)(1)(vi)

¹⁹⁵ 24 CFR 85.36(c)(1)(vii)

¹⁹⁶ 24 CFR 85.36(d)(4)(i)(A)

Chapter 16: NON-COMPETITIVE PROCEDURES

similar event, and the needs “will not permit a delay resulting from competitive solicitation.”¹⁹⁷

3. Inadequate Competition: After solicitation from a number of sources, only a single response is received, or competition is determined to be inadequate.¹⁹⁸
4. HUD Authorization: HUD has authorized a non-competitive process.¹⁹⁹

16.030 Justifications

1. Selection: Department Directors shall submit in writing to the Contracting and Procurement Manager a recommendation justifying the reasons why competitive selection requirements should be waived.
2. Price Reasonableness: Consistent with the requirements of Chapter 8 of these Procurement Policies, Department Directors are responsible for ensuring that a Cost Analysis is prepared for all non-competitive procurements in order to ensure that the proposed price is reasonable.²⁰⁰

¹⁹⁷ 24 CFR 85.36(d)(4)(i)(B)

¹⁹⁸ 24 CFR 85.36(d)(4)(i)(D)

¹⁹⁹ 24 CFR 85.36(d)(4)(i)(C)

²⁰⁰ 24 CFR 85.36(d)(4)(ii): “Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.”

Chapter 17: DIRECT PAYMENTS LIST

Chapter 17: DIRECT PAYMENTS LIST

17.010 Definition

The Direct Payments List (also known as Competitive Exceptions) is a list of transactions which, by the nature of the transaction, are impractical or impossible to competitively bid because of market or other conditions, and are thus exempt from competitive bidding requirements. These transactions do not have to be justified as a Non-Competitive Procurement (see Chapter 16) but may be obtained directly by an employee with adequate Expenditure Authority. Depending on the item, there may or may not be a contract or Purchase Order outlining the terms and conditions.

17.020 Modifications to Direct Payments List

The Executive Director, either directly or through the Contracting and Procurement Manager, may make modifications administratively to the Direct Payments List without seeking approval of the Board of Commissioners, provided that the changes are consistent with applicable statutory and regulatory requirements and that the current list is made readily available to SHA employees.

17.030 Interpretation of Direct Payments List

In the event of ambiguity or uncertainty as to whether an item is or is not subject to competition and whether it should be included on the Direct Payments List, the Contracting and Procurement Manager or the Chief Financial Officer shall review the matter and make the final decision.

17.040 Direct Payment List

The following items are on the Direct Payments List:

1. Utility bills (Water, Sewer, Electricity, Natural Gas, and other regulated utility expenses)
2. Postage and other purchases from the U.S. Postal Service
3. Licenses, permits, and fees from governmental or regulatory entities at the federal, state, or local level.
4. Purchases from other governmental entities (federal, state, city, local, port districts, Public Development Authorities [PDAs], housing authorities, state colleges and universities, state hospitals, etc.) where the governmental entity provides goods or services not available from the private sector.
5. Emergency housing for SHA residents at motels/hotels with which SHA has executed an Emergency Housing Agreement, or as otherwise authorized by the Contracting and Procurement Manager or a Buyer.
6. Service or use fees paid to governmental cooperative purchasing organizations.
7. Fuel card charges for gasoline and diesel.

Chapter 17: DIRECT PAYMENTS LIST

8. Charges for official SHA business on personal credit card while on SHA travel status.
9. Legal services such as arbitration fees, litigation fees, witness fees, court costs, and related expenses (but not the cost of outside counsel, investigations, or related matters), when approved by the General Counsel.
10. Legal settlements of disputed matters, and judgment claims against SHA (for use only with approval by the General Counsel).
11. Payments for existing annual maintenance, service, or support agreements for computer and telecommunication-related services. Payments for existing software license agreements. These require the approval of the Contracting and Procurement Manager or the Chief Financial Officer.
12. Traffic control (flagging) by off-duty police officers (only when required).
13. Travel expenses for SHA employees, residents, program participants, volunteers, or members of the Board of Commissioners necessary to conduct SHA business.
14. Training registration fees and tuition for pre-established, non-SHA specific, off-site classes, seminars, workshops, etc. for SHA employees, residents, program participants, volunteers, and members of the Board of Commissioners.
15. Testing and travel expenses of employment applicants (including moving expenses for eligible personnel). This includes travel expenses of certain out-of-state job applicants. Travel expenses of job applicants must be approved by the applicable Department Director and by the Director of Finance and Information Technology).
16. Conference and convention expenses and fees for SHA employees, residents, program participants, volunteers, or members of the Board of Commissioners conducting SHA business.
16. Advertisements for employment opportunities, purchasing and contracting solicitations, sale of surplus items, public announcements and outreach, etc. (all media). This exception does not include printing, design, or graphics services.
17. Freight bills, express shipping, common carriers, delivery services.
18. Honoraria and stipends.
19. Entertainment such as speakers, lecturers, musicians, performing artists. Only when such expenses are permitted by the grant funding the activity.
20. Insurance deductible and/or retained losses (requires approval of the SHA Risk Control Administrator).
21. Taxi, public transportation, and toll fares; mileage and incidental parking expenses.
22. Publications and subscriptions (newspapers, magazines, books, pre-printed materials, reprints, publishers page charges, electronic publications, online subscription services, pre-recorded audio or video cassettes, slide presentations, tapes, CDs, diskettes when purchased from the publisher or producer; etc.).
23. Mailing lists (print or electronic).
24. Professional association membership dues, fees, licenses, accreditation, and certifications.
25. Royalties, broadcast rights, and film rentals from the producer or protected distributors.
26. Petty cash purchases and reimbursements less than \$50.
27. Transactions not subject to these Procurement Policies as noted in Chapter 1.020 (3).

Chapter 17: DIRECT PAYMENTS LIST

28. Special items pre-approved by the Contracting and Procurement Manager or by the Chief Financial Officer.

Chapter 18: COOPERATIVE INTERGOVERNMENTAL AGREEMENTS

Chapter 18: COOPERATIVE INTERGOVERNMENTAL AGREEMENTS

18.010 General Policy

Consistent with the requirements of 24 CFR 85.36(b)(5)²⁰¹, and in order to promote efficiency and competition in the procurement of goods and services, SHA may enter into agreements with other governmental agencies and regional or national intergovernmental purchasing networks or associations. The purpose of a cooperative intergovernmental agreement is to take advantage of a competitive selection process already conducted by another agency and thus save SHA the time and expense of conducting its own selection process. In evaluating the use of a cooperative intergovernmental agreement, the Contracting and Procurement Manager shall review for reasonableness the standards in the competitive selection process conducted by the other agency.

18.020 Government Competition with Private Sector

SHA may enter into an intergovernmental agreement with another government agency to procure goods and services when the agency provides goods or services not available from the private sector. In the event the private sector also offers such goods or services, the Executive Director or his/her designee shall evaluate on a case-by-case basis what would be in the best interests of SHA, and whether to contract directly with the agency or to conduct a competitive selection process.²⁰²

²⁰¹ "To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services."

²⁰² HUD Procurement Handbook, 7460.8 REV 1, Section 8, 4-42 C, Agreement vs. Procurement.

Chapter 19: CONCESSIONS

Chapter 19: CONCESSIONS

19.010 General Policy

1. Competitive Selection Process: In selecting concessionaires for various SHA revenue-producing activities, including but not limited to vending and laundry machines operation, parking lot management, cellular and other communication antenna space leases, etc., SHA shall generally conduct a competitive selection process similar to those outlined for RFPs.
2. Objectives of Competition: While SHA is committed to a competitive selection process to help ensure openness in notifying concessionaires about business opportunities, SHA's primary objective in conducting a competitive selection process shall be to ensure that SHA's objectives of revenue generation and service delivery are met.
3. Waiver of Competition: On a case-by-case basis, the Chief Financial Officer may decide whether a competitive selection process shall be required for selecting a concessionaire.

Chapter 20: DISPOSAL OF SURPLUS PROPERTY

Chapter 20: DISPOSAL OF SURPLUS PROPERTY

20.010 General Policy

The Chief Financial Officer shall be responsible for the disposition of surplus property (non-real property) no longer necessary for SHA's purposes and shall establish procedures for the transfer, sale, or disposal of such property, consistent with applicable laws. (See SHA "Accounting Manual of Operations" and "Property Manual of Operations.") The Purchasing Division may be asked by the Chief Financial Officer to assist in the advertising and bidding for disposal of surplus property.

Chapter 21: DIVERSITY IN CONTRACTING

Chapter 21: DIVERSITY IN CONTRACTING

21.010 General Policy

1. Diversity in Contracting Encouraged: The Seattle Housing Authority will take affirmative steps and encourage the use of women- and minority-owned businesses (WMBEs), businesses owned by economically disadvantaged persons, and small businesses as contractors, subcontractors consultants, and service providers.
2. Participation by WMBEs: In reporting participation by WMBEs on SHA contracts, generally, SHA will consider as WMBEs businesses that have been certified by appropriate agencies, although, where appropriate, SHA may also consider businesses as WMBEs that it can verify from available information to be owned by women or minorities.
3. HUD Section 3 Requirements: SHA will comply with Section 3 of the Housing Act of 1968, as amended by Section 915 of the Housing and Community Development Act of 1992, regarding use of Section 3 certified businesses and Section 3 eligible individuals.²⁰³ SHA will provide a preference to Section 3 businesses in the award of contracts, regardless of funding source, as described below:
 - A. In awarding contracts based on bids (where price is the sole determining factor for award), SHA will award contracts to the low bidder; provided however, if a Section 3 business' bid exceeds the low bid by no more than 10%, SHA may award the contract to the Section 3 business at the price bid by the Section 3 business.
 - B. In awarding contracts based on proposals in which price is one factor in determining award, the evaluation criteria will provide for 20 points to be assigned to any qualified Section 3 business, unless the Executive Director, upon recommendation of the director of the department awarding the contract determines, based upon the circumstances, that fewer points should be established in the evaluation criteria. Qualified Section 3 businesses shall receive the maximum number of points authorized in this evaluation criterion.
 - C. Generally, SHA will evaluate Section 3 businesses that have been certified by appropriate agencies, although, where appropriate, SHA may also evaluate Section 3 businesses that it can verify from available information to meet the requirements to qualify as a Section 3 business.
 - a. A business may qualify as a Section 3 business if the business is owned by Section 3 qualified persons who live in the City of Seattle and who meet the prescribed income limitations based on family size.

²⁰³ 24 CFR 135 contains more specific requirements regarding Section 3 requirements.

Chapter 21: DIVERSITY IN CONTRACTING

- b. A business may qualify as a Section 3 business if 30% or more of their permanent, full-time employees (core employees within the last 12 months) are Section 3 qualified persons who live in the City of Seattle and meet the prescribed income limitations based on family size.
 - c. A business may qualify as a Section 3 business based on a commitment to subcontract with other Section 3 businesses for more than 25% of the dollar amount all subcontracts, as provided in 24 CFR 135.5. Such businesses shall be required to submit with their bid or proposal a plan describing how they will implement the subcontracting commitment. Prior to an award or selection by SHA, the subcontracting plan shall be evaluated by SHA to determine if it is reasonable and attainable. SHA shall monitor the compliance of a selected Section 3 business with their subcontracting commitment. All solicitations and contracts, shall include provisions for declaring a breach of contract for failure to meet the subcontracting commitment, and for assessing penalties or damages for such a breach.
- D. New Hire/First Source Hiring: On select projects, SHA shall apply a 100% Section 3 hiring goal. For any new employment opportunities (“new hires”) on the project, the Contractors shall be required to fill those new hire positions with qualified Section 3 eligible persons. If no qualified Section 3 candidates can be secured, the contractor will be free to secure employees by other means. The Seattle Housing Authority will make available to contractors, the full compliment pre-screening and case management services provided by The Job Connection to assist in meeting this goal.

Definition of “New Hire”: A “new hire” is defined as an employee of the Contractor or any of its subcontractors who is hired specifically for the Project as a full-time employee for permanent, temporary, or seasonal employment, and who has not been a regular employee of the Contractor or any of its subcontractors during the preceding twelve month period.

21.020 WMBEs Defined

WMBEs are defined below based on current certification standards of the Washington State Office of Minority and Women’s Business Enterprises (OMWBE).²⁰⁴

1. Women’s Business Enterprise (WBE): A business that is 51% owned and controlled by a woman or combination of women, and is certified as such by OMWBE.
2. Minority Business Enterprise (MBE): A business that is 51% owned and controlled by a minority or combination of minorities, and is certified as such by OMWBE.

²⁰⁴ Chapter 39.19 RCW and WAC 326-02-030.

Chapter 21: DIVERSITY IN CONTRACTING

3. Minority Women's Business Enterprise (MWBE): A business that is 51% owned and controlled by a minority woman or combination of minority women, and is certified as such by OMWBE.
4. Combination Business Enterprise (CBE): A business that is 50% owned and controlled by a minority male and 50% owned and controlled by a non-minority female, and is certified as such by OMWBE.

21.030 Affirmative Steps Outlined

Affirmative steps may include, but not be limited to, the following:

1. Place WMBEs on solicitation lists: Place qualified WMBEs on solicitation lists and bidders lists.²⁰⁵
2. Solicit WMBEs when possible: Encourage WMBE participation through direct solicitation whenever they are potential sources.²⁰⁶
3. Advertising: When appropriate, advertise in applicable publications likely to be read by WMBEs.
4. Plan Centers: For construction projects, provide plans and specifications to qualified plan centers that serve WMBEs.
5. Split contracts into smaller segments: Divide contract work, when economically and logistically feasible, into smaller tasks or quantities to permit maximum participation by WMBEs.²⁰⁷
6. Delivery schedules that encourage use of WMBEs: Establish delivery schedules, where the requirement permits, which encourage participation by WMBEs.²⁰⁸
7. Use outside resources: Use the services and assistance from the Contractors Development Competitiveness Center, (CDCC), U.S. Small Business Administration (SBA), OMWBE, the Northwest Business Development Council, and the Minority Business Development Agency of the U.S. Department of Commerce.²⁰⁹
8. Require prime to take affirmative steps: Require the prime contractor, if subcontracts are to be awarded, to take the affirmative steps listed in this subsection, and encourage them to subcontract with qualified WMBEs to the maximum extent possible.²¹⁰

²⁰⁵ 24 CFR 85.36(e)(2)(i)

²⁰⁶ 24 CFR 85.36(e)(2)(ii)

²⁰⁷ 24 CFR 85.36(e)(2)(iii)

²⁰⁸ 24 CFR 85.36(e)(2)(iv)

²⁰⁹ 24 CFR 85.36(e)(2)(v)

²¹⁰ 24 CFR 85.36(e)(2)(vi)

Chapter 21: DIVERSITY IN CONTRACTING

Chapter 22: ETHICAL STANDARDS

Chapter 22: ETHICAL STANDARDS

22.010 General Provisions

1. Applicable Law and Regulations: In the conduct of SHA's procurement system, SHA employees shall be aware of, and comply with, the following non-exclusive list of laws, regulations, and advice, which are hereby incorporated by reference as part of these Policies:
 - a.) 24 CFR 85.36(b)(3) - HUD Procurement Regulations
 - b.) RCW 35.82.050 - Washington State Housing Authorities Law
 - c.) Terms and Conditions, Constituting Part A of a Consolidated Annual Contributions Contract Between Housing Authority and the United States of America, Section 19 – Conflict of Interest.
 - d.) HUD Procurement Handbook, 7460.8, Chapter 10 – Ethics in Public Contracting. (Advisory only)
 - e.) SHA Code of Ethics

Contracts not funded with federal funds shall not be bound by any of the federal requirements noted above in a.), c.), and d.).
2. Employee Defined: As used in this chapter, the term “employee” shall include an SHA employee, an agent of SHA, any member of the employee's immediate family, an employee's partner, an organization which employs, or is about to employ, any of the above,²¹¹ a commissioner, or appointee to any decision-making body for SHA.²¹²
3. Disciplinary Actions: Breaches of the ethical standards of this Chapter of the Procurement Policies may result in an SHA employee being subject to disciplinary actions, consistent with SHA policies and procedures.²¹³

22.020 Conflict of Interest

No SHA employee shall:

1. Contract Selection, Award, Administration: Participate in the selection, award, or administration of a contract if a conflict of interest (direct or indirect financial interest,

²¹¹ 24 CFR 85.36(b)(3)(i-iv)

²¹² RCW 35.82.050.

²¹³ 24 CFR 85.36(b)(3): “To the extent permitted by State or local law or regulations, such standards for conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's or subgrantee's officers, employees, or agents, or by contractors or their agents.”

Chapter 22: ETHICAL STANDARDS

personal involvement, or other interest)²¹⁴, real or apparent, would be involved.²¹⁵ Participation shall include, but not be limited to: serving on an evaluation panel to select a firm; reviewing, endorsing, or recommending an award or selection; approving or rejecting an award of a contract or Purchase Order.

2. Ownership and Business Interests: Own or hold an interest in any contract or property or engage in any business, transaction, or professional or personal activity that would²¹⁶
 - a.) Be, or appear to be, in conflict with the employee's official duties, or
 - b.) Secure, or appear to secure, an unwarranted privilege or advantage for the employee, or
 - c.) Prejudice, or appear to prejudice, the employee's independence of judgment in the exercise of his or her official duties relating to SHA.
3. Confidential Information: Knowingly use confidential information for the employee's or another's actual or anticipated personal gain.

22.030 Gifts and Gratuities

1. Prohibition: An employee may not solicit or accept gifts, entertainment, gratuities, favors, or anything of monetary value from contractors or subcontractors, or potential contractors or subcontractors that could influence, or be perceived to influence, contracting or purchasing decisions.²¹⁷
2. Exception: In general, a nominal gift of less than \$25.00 in value that was not solicited by an employee, and which can be and is shared with all employees and/or the public, may be considered acceptable. Employees are expected to exercise good judgment before accepting any gift, and to check with a supervisor or manager if in doubt.²¹⁸

22.040 Contracting with Former SHA Employees

The following shall apply to contracts financed in whole or in part with federal funds:

²¹⁴ RCW 35.82.050(2): "No commissioner, employee, or appointee to any decision-making body for the housing authority shall act in an official capacity in any manner in which such commissioner, employee, or appointee to any decision-making body of the housing authority has a direct or indirect financial or personal involvement."

²¹⁵ 24 CFR 85.36(b)(3): "No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved."

²¹⁶ RCW 35.82.050(1)

²¹⁷ 24 CFR 85.36(b)(3)

²¹⁸ 24 CFR 85.36(b)(3)

Chapter 22: ETHICAL STANDARDS

1. One Year Prohibition: Within one year after an employee leaves SHA, SHA shall not contract with such employee if the employee was responsible for formulating policy or influencing decisions with respect to the project(s) being contracted for.²¹⁹
2. Waiver: For good cause, HUD may waive the one year prohibition requirement.²²⁰

²¹⁹ Section 19 (A)(1)(ii) – Conflict of Interest. Terms and Conditions, Constituting Part A of a Consolidated Annual Contributions Contract Between Housing Authority and the United States of America.

²²⁰ Section 19 (A)(4) – Conflict of Interest. Terms and Conditions, Constituting Part A of a Consolidated Annual Contributions Contract Between Housing Authority and the United States of America.

Chapter 23: DISPUTES, PROTESTS, AND APPEALS

Chapter 23: DISPUTES, PROTESTS, AND APPEALS

23.010 Policy

1. **Resolve Internally:** SHA shall attempt to resolve all procurement-related (solicitation, award, and contractual) disputes, protests, and appeals internally without outside review by either HUD or the court system. (Unless otherwise specified, this section will use the term “protest” to also include disputes and appeals.)
2. **Notification to HUD:** Consistent with HUD regulations, SHA shall notify HUD of procurement protests received by SHA.²²¹
3. **HUD’s Judgment:** It is HUD’s policy not to substitute their judgment for SHA’s in the resolution of protests, unless the matter is primarily a Federal concern as outlined below.²²²

23.020 HUD’s Review of Protests

HUD will review a procurement-related protest against SHA subject to the following:

1. **SHA Administrative Remedies:** The protestor must have exhausted all administrative remedies and procedures with SHA first, and
2. **Violation of Federal law:** The protest must be based on a violation of Federal law or regulations and the requirements of 24 CFR 85.36(b)(12)²²³, or
3. **Violation of SHA’s Protest Procedures:** The protest must be based on a violation of SHA’s procedures for failure to review a protest.²²⁴

Protests received by HUD other than those based on the factors cited above will be referred by HUD to SHA for resolution.²²⁵

23.030 Filing Deadlines

Consistent with HUD regulations requiring that SHA have protest procedures,²²⁶ the following deadlines for filing protests with SHA shall apply:

²²¹ 24 CFR 85.36(b)(12): “Grantees [SHA]...shall in all instances disclose information regarding the protest to the awarding agency [HUD].”

²²² 24 CFR 85.36(b)(11): “Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern.”

²²³ 24 CFR 85.36(b)(12)(i): “Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities).”

²²⁴ 24 CFR 85.36(b)(12)(ii): “Violations of the grantee’s [SHA’s]...protest procedures for failure to review a complaint or protest.”

²²⁵ 24 CFR 85.36(b)(12)(ii): “Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.”

Chapter 23: DISPUTES, PROTESTS, AND APPEALS

1. Solicitations: Any protest against a solicitation issued by SHA must be received by the Contracting and Procurement Manager before the bid or proposal submittal deadline, or it will not be considered.
2. Awards:
 - a.) Any protest against the award of a contract based on an ITB must be received by the Contracting and Procurement Manager no later than two full business days after the bid submittal deadline, or before award of the contract, whichever is earlier, or the protest will not be considered. SHA shall not execute a contract “with anyone other than the protesting bidder without first providing at least two full business days’ written notice” of SHA’s “intent to execute a contract for the project.”²²⁷
 - b.) Any appeal of a decision by SHA to reject a bid submitted in response to an ITB must be received by the Contracting and Procurement Manager within two business days after being notified in writing of SHA’s decision, or the appeal will not be considered.
 - c.) Any protest against the award of a contract based on an RFP or RFQ or appeal of a decision by SHA to reject a proposal, must be received by the Contracting and Procurement Manager within three business days after notification to an unsuccessful proposer that they were not selected, or the protest will not be considered.
 - d.) Any protest against the award of a contract based on an informal solicitation must be received by the Contracting and Procurement Manager prior to award, or the protest will not be considered. Consistent with the nature of the informal process contemplated by 24 CFR 85.36(d)(1), it shall be the responsibility of contractors, consultants, and vendors to call SHA regarding the status of a contract award.

23.040 Form and Manner of Filing Protests

1. In Writing: All protests must be in writing, signed, and explain the basis of the protest, or it will not be considered.
2. File with Contracting and Procurement Manager: All protests must be filed with SHA’s Contracting and Procurement Manager, 120 6th Avenue North, P.O. Box 19028, Seattle, WA 98109-1028.

²²⁶ 24 CFR 85.36(b)(12): “Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements...”

²²⁷ Washington State Law, Engrossed Substitute House Bill 2056, Chapter 300, Laws of 2003.

Chapter 23: DISPUTES, PROTESTS, AND APPEALS

23.050 SHA's Review of Protests

1. Contracting and Procurement Manager's Role: SHA's Contracting and Procurement Manager shall review and investigate properly filed protests and issue a written decision to the protestor.
2. Appeal to SHA's Chief Financial Officer: Any further appeal of a formal decision by the Contracting and Procurement Manager must be received by SHA's Chief Financial Officer within two business days of receipt of the written decision by the Contracting and Procurement Manager, or the appeal will not be considered. Properly filed appeals of the decisions of the Contracting and Procurement Manager shall be reviewed and investigated by the Chief Financial Officer who shall issue SHA's final decision.

23.060 Contractual Claims and Disputes

SHA is responsible for the handling and resolution of all contractual claims and disputes according to the requirements and procedures outlined in each contract.²²⁸ Consistent with HUD regulations, "violations of law will be referred [by SHA] to the local, State, or Federal authority having proper jurisdiction."²²⁹

²²⁸ 24 CFR 85.36(b)(11): "Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts."

²²⁹ 24 CFR 85.36 (b)(11)