



Yolo County Housing

Lisa A. Baker, Executive Director

147 W. Main Street
WOODLAND, CA 95695

Woodland: (530) 662-5428
Sacramento: (916) 444-8982
TTY: (800) 545-1833, ext. 626

BOARD OF COMMISSIONERS

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DATE: July 9, 2009
TO: YCH Board of Commissioners
FROM: Lisa A. Baker, Executive Director
SUBJECT: **Review and Approve Resolution Authorizing an Addendum to the YCH Procurement Policy and Procedures to meet ARRA requirements**

RECOMMENDED ACTIONS:

That the Board of Commissioners:

1. Review and Approve the Resolution authorizing an addendum Procurement and Contracting Policy for Yolo County Housing; and
2. Review and approve conforming changes to the Procurement Policy; and
3. Authorize the Executive Director to implement.

BACKGROUND / DISCUSSION

In June 2006, the Board of Supervisors became the Board of Commissioners for Yolo County Housing (YCH). Since this time, the YCH has worked to improve its overall financial, fiscal and accounting systems. As a result, the YCH has improved internal accounting and tightened day-to-day operations, as well as established and installed checks and balances within the system. As part of this process, in 2007, staff created and, on March 6, 2007, the Board approved a Procurement and Contracting Policy for the YCH which would govern current and future procurement and contract management functions of the agency and ensure that oversight is incorporated into the process of contracting for goods and services, as well as helping to ensure that the YCH maximizes its use of funds.

In 2009, YCH received \$1.2 million in Capital Fund Stimulus funds under ARRA. These funds carry specific requirements that necessitate an Addendum to the existing policy. In addition, in order to conform to ARRA requirements, as well as to enhance business efficiency, staff is proposing two changes to the existing policy.

Included as an attachment is the proposed addendum. The main requirements of the Addendum are:

1. That PHA's are subject only to procurement requirements in 24 CFR Part 85 and are not required to comply with other state and local procurement requirements for purposes of ARRA funding;

2. That the "Buy American" provisions found in section 1605 of the Act are incorporated into solicitations and awards made with these funds;
3. That the threshold for small purchases is set at \$100,000 and awards under this amount do not require advertisement, only the solicitation of three (3) quotes;
4. That HUD mandatory contract provisions be included in the documents.

In addition, staff is recommending that the procurement policy be amended to allow for the inclusion of mandatory forms in the section that already outlines mandatory contract clauses and that the threshold for contracts that have to come before the Board be set at \$100,000 instead of \$50,000. This would be in conformance with the small purchase threshold of \$100,000 which has already been established by HUD outside of ARRA requirements and is consistent with earlier Board direction that \$50,000 would be the preliminary threshold it set in 2007 as the Agency went through stabilization and that it would review this threshold at a subsequent date. This threshold will also necessitate a change in the Signature Authority Policy, which will be brought before the Board at a subsequent meeting.

FISCAL IMPACT

Will allow the Agency to enter into agreements for use of ARRA funds. Failure to adopt the Addendum will mean that ARRA funds will not be accessible to the YCH from HUD.

CONCLUSION

Staff recommends the approval of the Resolution and Addendum.

Attachment: Resolution
Addendum to Procurement Policy
Revised Procurement Policy

YOLO COUNTY HOUSING

RESOLUTION NO. _____

(Resolution Authorizing Adoption of an Addendum to the YCH Procurement Policy and Procedures to meet ARRA Requirements)

WHEREAS, within Notice PIH 2009-12, HUD directs that Public Housing Agencies (PHA's) shall amend their procurement standards and policies in order to expedite and facilitate the use of ARRA funds; and

WHEREAS, this amendment can only be used for procurements related to Capital Fund Stimulus Grants awarded under ARRA; and

WHEREAS, this modification must be done in writing and be consistent with YCH policies and procedures.

NOW, THEREFORE, BE IT RESOLVED, ORDERED AND FOUND by the Board of Commissioners of the Housing Authority of the County of Yolo, as follows:

1. Each of the foregoing recitals is true and correct.
2. The attached Addendum to the Yolo County Housing Procurement Policy is hereby accepted and approved.
3. The Addendum incorporates the required ARRA provisions and the Executive Director, as the contracting officer, is authorized to implement the Addendum.

EFFECTIVE DATES: This Resolution shall take effect from and after the date of its adoption and will expire, in conformance with Notice PIH 2009-12, on March 31, 2010 unless subsequently extended by either HUD or the Board of Commissioners.

PASSED AND ADOPTED, by the Board of Commissioners of the Housing Authority of the County of Yolo, County of Yolo, State of California, this 9th day of July, 2009 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Helen M. Thomson, Chair
Board of Commissioners of the
Housing Authority of the County of Yolo

Approved as to Form:

Agency Counsel

By _____
Sonia Cortés

Attest:
Ana Morales, Clerk
Board of Commissioners of the
Housing Authority of the County of Yolo

By _____
Deputy

2009 ARRA ADDENDUM TO YCH PROCUREMENT POLICY

Whereas, in Notice PIH 2009-12, the U.S. Department of Housing and Urban Development (HUD) directs Public Housing Authorities to "amend their procurement standards and policies in order to expedite and facilitate the use of stimulus funds," Yolo County Housing has created this addendum to address items specifically required by ARRA. This addendum can ONLY be used for funds awarded under the 2009 ARRA Capital Fund Stimulus Grant.

Amended Procurement Policy

For purposes of the Capital Fund Stimulus Grant Procurement Policy, the following hereby implements the statute as follows:

1. Except as provided for within Notice PIH 2009-12, issued on March 18, 2009, all requirements listed within the current Yolo County Housing (YCH) procurement policy shall remain in effect for any procurement executed by the YCH, with the following exceptions:

a. Any requirements relating to the procurement of goods and services arising under state and local laws and regulations shall NOT apply to Capital Fund Stimulus Grants; YCH shall instead follow the requirements of 24 CFR Part 85.

b. In accordance with the existing YCH procurement policy, the small purchase limit shall be \$100,000. This is the threshold at which the YCH shall solicit and receive at least three (3) quotes (advertisement not required).

c. The "Buy American" requirements of Section 1605 of the Recovery Act of 2009 shall be included as a part of any solicitation and award pertaining to ARRA monies.

d. In accordance with existing law and practice, all mandatory contract clauses required by the Act shall be included in any bid solicitation.

2. Consistent with the requirements of the above Notice, this Policy shall expire on March 31, 2010 unless otherwise extended by the Board of Commissioners.

YOLO COUNTY HOUSING - PROCUREMENT POLICY

PREFACE

This Procurement Policy is established by the Yolo County Housing Board of Commissioners to provide Yolo County Housing Authority (Authority) staff with a set of policies for procurement of supplies, equipment, services and construction activities.

I. GENERAL PROVISIONS

GOAL OF THE PROCUREMENT POLICY

This Procurement Policy is established to provide for the fair and equitable treatment of all persons or firms involved in purchasing by the Authority; assure that supplies, equipment, services, and construction activities are procured efficiently, effectively, and at the most favorable prices available to the Authority; promote competition in contracting; provide safeguards by maintaining a centralized procurement system of quality and integrity; and to assure that Authority purchasing actions are in full compliance with applicable Federal standards, HUD regulations, and State and local laws.

The objective of the Contracting/Procurement Division is to add value to the Authority through the procurement of quality goods, services and construction at a fair and reasonable cost. A contractor should attempt to meet a minimum of twenty-five percent (25%) resident employment (monitored on a weekly basis) as well as encourage contractors to exceed this minimum goal; provide maximum contracting opportunities for minority and women owned businesses; and adhere to the term and conditions of any existing labor memorandum of understanding. On competitive proposals, the YCH will place a higher value during the selection process on those contractors who meet or exceed the minimum twenty-five percent (25%) of resident employment and provide maximum contracting opportunities for minority and women owned businesses.

An introduction to YCH Procurement briefing shall be given to new employees, and will provide continuous training for the staff on current issues, laws, regulations and procurement innovations.

APPLICATION

This Procurement Policy applies to all contracts and procurement actions undertaken by the Authority. It shall apply to every expenditure of funds by the Authority for public purchasing, regardless of the source of the funds, including Comprehensive Grant Programs, HOPE VI Programs, and Operating Subsidy funds. Nothing in this Procurement Policy shall prevent the Authority from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with law. The term "procurement," as used in this Procurement Policy includes Purchase Orders, Contracts and Contract Modifications, used to obtain supplies, equipment, services, construction activities, and the lease or rental of supplies, equipment or facilities.

PUBLIC ACCESS TO PROCUREMENT INFORMATION

Procurement information shall be a matter of public record to the extent provided in the California Public Records Act (Government Code Section 6250 et seq.).

UNAUTHORIZED OBLIGATIONS

Under no circumstances, except as stated below, are funds to be obligated by the Authority and members of its staff unless authorized through the proper procurement process as outlined in this Policy or the Authority Procurement Procedures. The Executive Director will take positive action to preclude, to the maximum extent possible, the need for procurement actions to be ratified by the Board of Commissioners after funds have been expended by the Authority staff.

In cases where time is of the essence in order to protect lives, property or in other emergency situations, the Executive Director, acting as the Contracting Officer for the Authority, is authorized to obligate money on behalf of the Authority. The procurement action including related justification documents will be submitted as a resolution to the Board of Commissioners for prior approval, or ratification if funds have been obligated by the Executive Director's action.

NO PRE-PAYMENT / PAYMENT IN ADVANCE FOR GOODS OR SERVICES

The Authority will only authorize payments to vendors or contractors if the following conditions are met: for services, the work must have been rendered and is deemed acceptable; for goods, the items must have been received and accepted; the price is determined to be fair and reasonable. Payments to governmental agencies and public utilities will be made in conformance with the requirements of those entities.

COST AND PRICE ANALYSIS

A cost or price analysis shall be performed for all procurement actions, including contract modifications, in order to determine price reasonableness.

CANCELLATION OF SOLICITATIONS

An Invitation for Bid, Request for Proposal, Request for Qualifications or other solicitation may be cancelled by the Authority at anytime before opening.

1. A solicitation may be cancelled and all bids or proposals that have already been received will be returned at any time prior to the awarding of a contract.
2. Any and all bids may be rejected if there is a sound documented reason.

AMENDING PROCUREMENT POLICY OR PROCEDURES

1. The Procurement Policy of the Authority as stated within this document will only be amended through resolution and approval of the Board of Commissioners.

ECONOMIC OPPORTUNITIES FOR PUBLIC HOUSING RESIDENTS

In order to ensure that employment opportunities are available to Authority residents, the Board of Commissioners expects all contractors to adhere to the requirements outlined under Section 3 of the Housing and Urban Development Act of 1968 as stated in 24 CFR 135, Determination and Order No. D-109 of Commission Resolution 4604 - Determination and Order to Establish a Goal of Hiring Residents to Constitute a minimum of twenty-five percent (25%) of the total workforce for all construction contracts performed by the Authority, and other resolutions as the Commission shall adopt from time to time.

II. PROCUREMENT AUTHORITY AND ADMINISTRATION

A. CONTRACTING OFFICER

The Executive Director is the Contracting Officer with the authority to delegate to the Director of Contracting to act on behalf of the Contracting Officer in carrying out the Authority's contracting program.

B. PROCEDURES

The Authority shall issue operational procedures (Procedures) to implement this Procurement Policy, which shall be based on 24 CFR 85.36 Procurement, HUD's Handbook 7460.8, "Procurement Handbook for Public Housing Agencies", HUD's Annual Contributions Contract, 24 CFR 941 Public Housing Development for Public Housing Agencies, 24 CFR 135 Contracting Opportunities for Project Area Businesses, 24 CFR 963 Contracting With Resident Owned Businesses, and the State of California's Public Contract Code.

Such procedures shall be found in each bidding document and may be updated from time to time to remain current with federal statutes, executive orders and regulations.

C. REVISIONS

This Procurement Policy and any later changes shall be submitted to the Board of Commissioners for approval. The Board of Commissioners appoints and delegates procurement authority to the Executive Director and is responsible for ensuring that any procurement policies adopted are appropriate for the Authority.

D. PROCUREMENT THRESHOLDS

The Board of Commissioners shall approve all Contracts or commitments of funds that exceed One Hundred Thousand Dollars (\$100,000).

III. PROCUREMENT METHODS

One of the following procurement methods shall be chosen, based on the nature and anticipated dollar value of the total procurement:

A. SMALL PURCHASES

1. **General:** Any procurement not exceeding One Hundred Thousand Dollars (\$100,000) may be made in accordance with HUD's Small Purchase procedures and as authorized in this section. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section (except as may be reasonably necessary to comply with Assistance to Small and Other Businesses or to constitute purchases not requiring Commission review).
2. **Petty Cash Purchases:** Small purchases under Fifty Dollars (\$50) which can be satisfied by local sources may be processed through the use of a Petty Cash Account (Petty Cash Account not to exceed Five Hundred Dollars (\$500)).
3. **Purchases under \$100,000:** For small purchases in excess of \$50 but not exceeding \$100,000 no less than three (3) offerors shall be solicited to submit a price quotation, bid or proposal depending on the complexity of the procurement. For small purchases of \$50 to \$5,000, documented telephonic price quotations are sufficient.

B. SEALED BIDS

For procurements under the Comprehensive Grant Program and the HOPE VI Programs, sealed bidding is the preferred method used for all construction and equipment contracts. (24 CFR 85.36(c) (4)(d)(2)).

C. COMPETITIVE PROPOSALS

1. Request for Proposals (RFP): Competitive proposals may be used if there is an adequate method of evaluating technical proposals (price and other factors considered - 24 CFR 85.36, Evaluation Criteria 7460.8 REV 1, 4-20) and where the Authority determines that conditions are not appropriate for the use of sealed bids. An adequate number of qualified sources shall be solicited and given sufficient time to provide a responsive proposal.
2. Request for Qualifications (RFQ): The Government Code of the State of California requires the selection of professional services which includes architectural, landscape architectural, engineering, environmental, land surveying or construction project management firms be procured by the Qualification Based Selection Process.

D. NONCOMPETITIVE PROPOSALS

1. Conditions for Use: Procurements shall be conducted competitively to the maximum extent possible. Procurement by noncompetitive proposals may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids, or competitive proposals, and one of the following applies:
 - a. The item is available only from a sole source, determined by market research or there is a reasonable basis that the Authority's minimum need can only be satisfied by a unique supply, service or

trade.

- b. A public exigency or an emergency situation exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the Authority, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency;
 - c. For those procurements over One Hundred Thousand Dollars (\$100,000), HUD authorizes the use of a noncompetitive proposal; or
 - d. After solicitation of a number of sources, competition is determined inadequate.
2. Justification: Each procurement based on noncompetitive proposals shall be supported by a written justification for using such procedures (24 CFR 85.36 (c) (4)(d)(4)). The Contracting Officer shall approve the justification in writing. In addition, the justification will be submitted to the Board of Commissioners for their consideration and approval, as part of their resolution package.
3. Price reasonableness: The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing a cost analysis.

E. COOPERATIVE PURCHASING

The Authority may enter into Federal, State of California and local intergovernmental agreements to purchase or use common goods and services as authorized by law. The decision to use an intergovernmental agreement or conduct a direct procurement shall be based on economy and efficiency.

IV. CONTRACTOR QUALIFICATIONS AND DUTIES

CONTRACTOR RESPONSIBILITY

Procurements shall be conducted only with responsive and responsible contractors and vendors, who have the technical and financial competence to perform and who have a satisfactory record of integrity.

SUSPENSION AND DEBARMENT

Purchase Orders or Contracts shall not be awarded to any firm at any tier (subcontractors) which is debarred, suspended, or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

V. TYPES OF CONTRACTS, CLAUSES, AND CONTRACT ADMINISTRATION

CONTRACT TYPES

Any type of contract which is appropriate to the procurement and which will promote the best interests of the Authority may be used. However, cost-plus-a-percentage-of-cost and percentage of construction cost methods are prohibited.

OPTIONS

Options for additional quantities or performance periods may be included in contracts, as long as there is a written determination in file which includes the fund availability, statement as to the continuing need for the item, indication as to whether the option was included and evaluated as part of the basic contract, and a review of the market price to indicate whether the option is still economical for the Authority, consistent with Authority Procedures (24 CFR 85.36(b)(9), 7460.8 REV-1, 6-2 OPTIONS). The Authority may not enter into a contract, including any option period, for a term in excess of five (5) years.

CONTRACT CLAUSES AND REQUIRED FORMS

In addition to containing a clause identifying the contract type, all contracts shall include all clauses required by Federal statutes, executive orders, and their implementing regulations, as provided in 24 CFR 85.36 (i).

In addition, all contracts shall use all forms required by Federal statutes, executive orders and their implementing regulations, including Non-Segregated Facilities, Non-Collusion Affidavit, Non-Debarment and all applicable forms.

CONTRACT ADMINISTRATION

After the award of a contract, a Contract Administrator will be assigned by the Department Head, to ensure that the contractor's work and performance is acceptable and that they are paid accordingly. Contract Administrator's responsibilities are: monitor and review payment submittals, assure contractor performance in accordance with the terms and conditions of the contract, monitoring the contractor's efforts to assure the minimum twenty-five percent (25%) resident hiring, approve or reject progress schedules, etc. (CFR 85.36 (b) (2)).

CONTRACT MODIFICATION

The Executive Director is authorized to approve all contract modifications not to exceed a cumulative total of One Hundred Thousand Dollars (\$100,000) per project. All modifications or amendments in excess of a cumulative total of One Hundred Thousand Dollars (\$100,000) require Board of Commissioners' approval. All modifications (change orders) in excess of fifteen percent (15%) of the original contract award price will require a written justification as to the reasons (differing site conditions, change of schedule, unforeseen conditions, monitoring the contractors efforts to assure the minimum twenty-five percent (25%) resident hiring throughout the life of the project, etc.) and to validate the reasonableness of price.

VI. SPECIFICATIONS AND PURCHASE REQUEST

- A. All specifications shall be drafted to encourage full and open competition. Requester must ensure that they are not unduly restrictive, and do not represent unnecessary or duplicative items. Specification must be included with the Purchase Request.
- B. All procurement actions will require a Purchase Request to initiate a process signed and approved by the Department Head. This is an internal form prepared by a department in response to a requirement. It is the responsibility of the requesting department to provide complete and accurate purchase information necessary to initiate the procurement action.

VII. APPEALS AND REMEDIES

A. GENERAL

It is the Authority's policy to resolve all contractual issues informally at the Authority level and in conformance with the requirements of the dispute clauses in the contract.

B. BID PROTESTS

A protest against a solicitation must be received in writing before the due date for receipt of bids or proposals and submitted to the Contracting Officer. Protest against the award of a contract must be received in writing and submitted to the Contracting Officer. Bid protests will be resolved in conformance with the requirements of the bid documents.

C. CONTRACT CLAIMS

All claims by a vendor or contractor relating to performance of a contract shall be submitted in writing to the Executive Director or designee for a written decision. The Authority, within sixty (60) days, will decide the claim or notify the contractor of the date by which the decision will be made. The contractor may request a conference on the claim. Claims will be resolved in conformance with the requirements of the contract. The Executive Director's decision shall inform the vendor or contractor of their appeal rights.

VIII. ASSISTANCE TO WOMEN OWNED BUSINESSES, SMALL AND MINORITY OWNED BUSINESSES

REQUIRED EFFORTS

Consistent with Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, the Authority shall make efforts to ensure that small and minority-owned businesses, women-owned business enterprises, labor surplus area businesses, and individuals or firms located in or owned in substantial part by persons residing in the area of an Authority development are used when possible.

OUTREACH

The Board of Commissioner's goal is that contractors and vendors doing business with the Authority reflect the diversity of the residents. For each procurement, maximum outreach will be made into the women and minority business community. When appropriate, proposal evaluations will provide additional consideration for offerors providing a higher level of women or minority owned business participation or a higher level of resident employment.

IX. ETHICS IN PUBLIC CONTRACTING

The Authority shall adhere to the following code of conduct, consistent with applicable State or local law:

CONFLICT OF INTEREST

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

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

GRATUITIES, KICKBACKS, AND USE OF CONFIDENTIAL INFORMATION

Authority officers, employees, volunteers or agents shall not solicit or accept gratuities, favors, or anything of monetary value from vendors or contractors, potential contractors, or parties to subcontracts, and shall not knowingly use confidential information for actual or anticipated personal gain.

PROHIBITION AGAINST CONTINGENT FEES

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

X. REFERENCE DOCUMENTS

- **24 CFR 85.36 - Procurement**
Website: http://www.access.gpo.gov/nara/cfr/waisidx_00/24cfr85_00.html
 - **24 CFR 135 - Contracting Opportunities for Project Area Businesses**
Website: http://www.access.gpo.gov/nara/cfr/waisidx_00/24cfr135_00.html
 - **24 CFR 941 - Public Housing Development for Public Housing Agencies**
Website: http://www.access.gpo.gov/nara/cfr/waisidx_00/24cfr941_00.html
 - **24 CFR 963 - Contracting with Resident Owned Businesses**
Website: http://www.access.gpo.gov/nara/cfr/waisidx_00/24cfr963_00.html
 - **HUD Handbook 7460.8 - Procurement Handbook for Public Housing Agencies**
Website: <http://www.hud.gov/pih/publications/7460-8h/7460-8h.html>
 - **HUD's Annual Contributions Contract**
Website: http://www.hud.gov/pih/ffmd/finmanagement_faq.html
http://www.hudclips.org/sub_nonhud/cgi/pdf/22829a.pdf
- State of California Public Contract Code**
Website: <http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=pcc&codebody=&hits=20>