



# Housing Kitsap Procurement Policy

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## **SECTION 1. INTRODUCTION**

- 1.1 General.** Established for the Kitsap County Consolidated Housing Authority dba Housing Kitsap (hereinafter, "Housing Kitsap") by Action of Housing Kitsap's Board of Commissioners (Board), this Procurement Policy (Policy) complies with the Annual Contributions Contract (ACC) between Housing Kitsap and the United States Department of Housing and Urban Development (HUD), federal regulations, including 24 CFR §85 and 2 CFR §200, and state regulations for procurement utilizing state and local funds and public works. This Policy applies when Housing Kitsap, as opposed to some other entity in which Housing Kitsap is a partner or member, is conducting the procurement and federal dollars are funding the project.

## **SECTION 2. GENERAL PROVISIONS**

- 2.1 General.** Housing Kitsap shall:

- 2.1.1** Provide for a procurement system of quality and integrity;
- 2.1.2** Provide for the fair and equitable treatment of all persons or firms involved in purchasing by Housing Kitsap;
- 2.1.3** Ensure that supplies and services (including construction) are procured efficiently, effectively, and at the most favorable and valuable prices available to Housing Kitsap;
- 2.1.4** Promote competition in contracting consistent with the requirements of 2 CFR §200.319.
- 2.1.5** Assure Housing Kitsap purchasing actions are in full compliance with applicable federal law and standards, HUD regulations, Washington State law and local laws.
- 2.1.6** Avoid acquisition of unnecessary or duplicative items. 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. 2 CFR §200.318.
- 2.1.7** Foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, Housing Kitsap will consider entering into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
- 2.1.8** Use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

- 2.2 Application.** This Policy applies to all procurement actions of Housing Kitsap, regardless of the source of funds, except as noted under "exclusions" below. However, nothing in this Policy shall prevent Housing Kitsap from complying with the terms and conditions of any grant, contract, gift, or bequest that is otherwise consistent with the law. When both federal and non-federal grant funds are used for a project, the work to be accomplished with the funds should be separately identified prior to procurement so that appropriate requirements can be applied, if necessary. If

it is not possible to separate the funds, federal procurement regulations shall be applied to the total project. If funds and work can be separated and work can be completed by a new contract, then regulations applicable to the source of funding may be followed.

## **2.3 Definitions.**

**2.3.1** “Competitive Proposal” means a proposal submitted by an offeror in response to a request for proposal (RFP) or a request for qualifications (RFQ) advertised by Housing Kitsap.

**2.3.2** “Micro-purchase” means an acquisition of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold, which is currently \$10,000 and is subject to change. 2 CFR §200.1 & 320; 48 CFR §2.101; 41 USC §1902 (a)(1).

**2.3.3** “Procurement” means as used in this Policy, includes the procuring, purchasing, leasing, or renting of: (1) goods, supplies, equipment, and materials, (2) construction and maintenance, (3) consultant services, (3) Architectural and Engineering (A/E) services, (5) Social Services, and (6) other services.

**2.3.4** “Sealed Competitive Bidding” means a sealed bid submitted by a contractor in response to an invitation for bid (IFB) or competitive solicitation placed by Housing Kitsap.

**2.3.5** “Simplified Acquisition Threshold” means the dollar amount below which Housing Kitsap may purchase property or services using small purchase methods. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 C.F.R Subpart 2.1 (Definitions) and in accordance with 41 USC §1908, 2 CFR §200.1 & 320. As of June 2018, the simplified acquisition threshold is \$250,000. 48 CFR §2.101.

**2.4 Exclusions.** This policy does not govern administrative fees earned under the Section 8 voucher program, the award of vouchers under the Section 8 program, the execution of landlord Housing Assistance Payments contracts under that program, or non-program income, e.g., fee-for-service revenue under 24 CFR §990. These excluded areas are subject to applicable state and local requirements.

**2.5 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 Policies, automatically supersede these Policies.

## **2.6 Multiple Funding Sources and Prevailing Wages.**

**2.6.1 Multiple Funding Sources.** Where Housing Kitsap is utilizing multiple sources of funding, the most restrictive policy should be followed except where specifically preempted by federal law or regulation.

**2.6.2 Prevailing Wages – State Funding.** For all public works and maintenance contracts, prevailing wages are required. State prevailing wages as provided in chapter 39.12 RCW and chapter 296-127 WAC are required except where specifically preempted by federal

law or regulation.

**2.6.3 Prevailing Wages – Federal Funding.** For all prime construction contracts in excess of \$2,000, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. 2 CFR §200, Appendix II – Davis-Bacon Act (40 USC §3141–3148).

### **SECTION 3. ETHICS IN PUBLIC CONTRACTING**

**3.1 General.** Housing Kitsap hereby establishes this code of conduct regarding procurement issues and actions and shall implement a system of sanctions for violations. This code of conduct, etc., is consistent with applicable Federal, State, or local law. Housing Kitsap employees found in willful non-compliance with this policy are subject to disciplinary action under Housing Kitsap’s Employee Handbook up to and including dismissal.

**3.2 Conflicts of Interest.** No employee, officer, Board member, or agent of Housing Kitsap shall participate directly or indirectly in the selection, award, or administration of any contract if a conflict of interest, either real or apparent, would be involved. 2 CFR §200.318. This type of conflict would be when one of the persons listed below has a financial or any other type of interest or tangible personal benefit in a firm competing for the award:

- An employee, officer, Board member, or agent involved in making the award;
- 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);
- His/her partner; or
- An organization which employs or is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

**3.3 Gratuities, Kickbacks, and Use of Confidential Information.** No officer, employee, Board member, or agent of Housing Kitsap shall ask for or accept gratuities, favors, or items of more than nominal value (i.e. inexpensive hat with logo) from any contractor, potential contractor, or party to any subcontract, and shall not knowingly use confidential information for actual or anticipated personal gain. 2 CFR §200.318.

**3.4 Prohibition Against Contingent Fees.** Contractors wanting to do business with Housing Kitsap must not hire a person to solicit or secure a contract for a commission, percentage, brokerage, or contingent fee, except for bona fide established commercial selling agencies.

### **SECTION 4. PROCUREMENT PLANNING**

**4.1 General.** Planning is essential to managing the procurement function properly. Hence, Housing Kitsap will periodically review its record of prior purchases, as well as future needs, to:

- 4.1.1** Find patterns of procurement actions that could be performed more efficiently or economically; specifically, Housing Kitsap will establish and maintain a log of procurement lessons learned to help increase efficiency in each subsequent procurement action.
  - 4.1.2** Maximize competition and competitive pricing among contracts and decrease Housing Kitsap's procurement costs, including using value engineering for construction projects of sufficient size;
  - 4.1.3** Reduce Housing Kitsap administrative costs;
  - 4.1.4** Ensure that supplies and services are obtained without any need for re-procurement (i.e., resolving bid protests); and
  - 4.1.5** Minimize errors that occur when there is inadequate lead time.
  - 4.1.6** Consideration shall be given to storage, security, and handling requirements when planning the most appropriate purchasing actions.
- 4.2 Domestic Preferences for Procurements.** As appropriate and to the extent consistent with law, Housing Kitsap should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. 2 CFR §200.322. For purposes of this section:
- "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
  - "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- 4.3 Procurement of recovered materials.** Housing Kitsap and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, 42 U.S.C. 6962. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. 2 CFR §200.323.

Housing Kitsap should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may

include purchasing compostable items and other products and services that reduce the use of single-use plastic products. 2 CFR §200.323.

## **SECTION 5. PROCUREMENT METHODS**

**5.1 Price Breakdown Prohibited.** Housing Kitsap shall not break down requirements aggregating more than the purchase thresholds set below into several purchases that are less than the applicable threshold merely to avoid any requirements that apply to purchases that exceed the stated threshold.

**5.2 Petty Cash Purchases.** Purchases under \$50 may be handled through the use of a petty cash account. Petty Cash Accounts may be established in an amount sufficient to cover small purchases made during a reasonable period, e.g., one month. For all Petty Cash Accounts, Housing Kitsap shall ensure that security is maintained and that only authorized individuals have access to the account. These accounts should be reconciled and replenished periodically.

### **5.3 Purchases or Leases of Supplies, Materials, or Equipment**

**5.3.1** Supplies, materials, and equipment are considered tangible items which are manufactured and are moveable at the time of purchase. It is important to distinguish between materials, supplies and equipment used in public works contracts as opposed to non-public works contracts as different bidding requirements apply to each. Examples include office supplies, off the shelf software, hardware, trucks, copy machines, auto parts, gravel, or janitorial supplies.

**5.3.2 Purchases Totaling More than \$75,000 – Sealed Bidding.** For purchases totaling more than \$75,000, the sealed competitive bidding process described in Section 8 of this Policy will be used. The lowest responsive and responsible bidder, as defined in RCW 39.26.160 and addressed in Section 12 of this Policy, shall be selected. After reviewing all bid submissions, Housing Kitsap may enter into negotiations with the lowest responsive and responsible bidder in order to determine if the bid may be improved. RCW 39.26.160(4). Housing Kitsap may not use this negotiation opportunity to permit a bidder to change a nonresponsive bid into a responsive bid. Records of bids obtained shall be maintained and open to public inspection. Records regarding all bids will be retained in accordance with Section 21 of this policy.

**5.3.3 Purchases Totaling \$10,000.01 to \$75,000 – Price Quotations.** For purchases totaling \$10,000.01 to \$75,000, price quotes shall be solicited from three (3) to five (5) vendors and the contract will be awarded to the lowest responsive and responsible bidder, as defined in RCW 39.26.160 and addressed in Section 12 of this Policy, shall be selected. Quotes must be in writing and may be solicited through fax, email, E-Procurement, or by other reasonable method. Whenever possible, quotes must be obtained from vendors on an approved vendor list. Records of quotations obtained shall be maintained and open to public inspection. Records regarding all quotes will be retained in accordance with Section 21 of this policy.

**5.3.4 Purchases Totaling \$10,000 and Under – Price Quotations.** Whenever practical, price quotes shall be solicited from up to three (3) vendors for purchases or leases of supplies,

materials, or equipment in amounts not exceeding \$10,000 in a single transaction. Quotes must be in writing and may be solicited through fax, email, E-Procurement, or by other reasonable method. Purchases shall be distributed equitably among qualified suppliers. 2 CFR §200.320(a); 41 USC §1902. Records regarding all quotes will be retained in accordance with Section 21 of this policy. Records of quotations obtained shall be maintained and open to public inspection.

#### **5.4 Professional Services (Does Not Include Architect and Engineering Services)**

- 5.4.1** Professional services are those provided by an independent contractor and which require specialized knowledge, advanced education, or professional licensing or certification and where the primary service provided is mental or intellectual, involving the consistent exercise of judgment and discretion. Professional services may include computer programmers, accountants, attorneys, physicians, consultants, and graphic artists.
- 5.4.2** Federal funds may not be used to procure legal services when prohibited by 2 CFR §200.435.
- 5.4.3 Services Totaling Above \$75,000 – Competitive Proposal.** For professional services contract totaling above \$75,000, the competitive proposal process (RFP or RFQ) described in Section 9 of this policy will be used.
- 5.4.4 Services Totaling \$10,000.01 to \$75,000 – Price Quotations.** For professional services totaling \$10,000.01 to \$75,000 price quotations will be invited from at least three (3) qualified providers. Whenever possible quotes must be solicited from the Consultant Roster. Quotes must be in writing and may be solicited through fax, email, E-Procurement, or by other reasonable method. The contract will be awarded to the qualified provider whose proposal is most advantageous to Housing Kitsap with price and other factors considered. Records of quotations obtained shall be maintained and open to public inspection. Records regarding all quotes will be retained in accordance with Section 21 of this policy.
- 5.4.5 Services Totaling \$10,000 or Less – Price Quotation.** Housing Kitsap must solicit one (1) or more price quotes and ensure that the price for the services is reasonable in the industry and that the provider is qualified. Whenever possible quotes must be solicited from the Consultant Roster. Quotes must be in writing and may be solicited through fax, email, E-Procurement, or by other reasonable method. The contract will be awarded to the qualified provider whose proposal is most advantageous to Housing Kitsap with price and other factors considered. Records regarding all quotes will be retained in accordance with Section 21 of this policy. Records of quotations obtained shall be maintained and open to public inspection.

#### **5.5 Public Works Projects**

- 5.5.1** Public Work means all work, construction, alteration, repair, or improvement other than ordinary maintenance. RCW 39.04.010.
- 5.5.2 Federally Funded Projects.**

- A. **Projects Totaling More than \$250,000 – Sealed Bidding.** For public works projects using federal funds totaling more than the Simplified Acquisition Threshold (currently \$250,000) the sealed competitive bidding process described in Section 8 of this Policy will be used.
- B. **Projects Totaling \$10,000.01 to \$250,000 – Bid Quotations.** For public works projects totaling \$10,000.01 to \$250,000 price quotations will be invited from at least three (3) contractors and the contract will be awarded to the lowest bidder. Quotes must be in writing and may be solicited through fax, email, E-Procurement, or by other reasonable method. After an award is made, the bid quotations shall be open to public inspection and available by electronic request. Records regarding all quotes will be retained in accordance with Section 21 of this policy.
- C. **Projects Totaling \$10,000 or Less – Bid Quotation.** For public works projects totaling \$10,000 or less price quotations will be invited from at least one (1) contractor and the contract will be awarded to the lowest bidder. Quotes must be in writing and may be solicited through fax, email, E-Procurement, or by other reasonable method. After an award is made, the bid quotations shall be open to public inspection and available by electronic request. Records regarding all quotes will be retained in accordance with Section 21 of this policy

### 5.5.3 State Funded Projects.

- A. **Contracts Totaling \$150,000 and Above – Sealed Competitive Bidding.** For public works projects using state funds totaling more than \$150,000 the sealed competitive bidding process described in Section 8 of this Policy will be used. The lowest responsive and responsible bidder, as defined in RCW 39.04.350 and addressed in Section 12 of this Policy, shall be selected and awarded the contract.
- B. **Small Works Roster.**
  - 1. Housing Kitsap may establish and use a small works roster for awarding contracts under RCW 39.04.151 through 39.04.154. RCW 35.82.076.
  - 2. **Projects Totaling less than 150,000 – Direct Contracting.** Direct Contracting cannot be used for projects involving federal funds. Direct contracting can be used for stated funded public works projects, which cost less than \$150,000, not including sales tax. RCW 39.04.152. The following procedures will be used for Direct Contracting:
    - The Director of Procurement, in consultation with other staff as needed, will develop a project notice, which will include:
      - i. A scope of work including the nature of the work to be performed as well as materials and equipment to be furnished. Detailed plans and specifications are not required. RCW 39.04.152(3);
      - ii. A project timeline;
      - iii. A budget. RCW 39.04.152(4)(b)(i).;



- iv. Any bonding and retainage requirements;
  - v. A contract sample; and
  - vi. Responsibility Criteria Certification.
- Selection of Prospective Contractor. Housing Kitsap will select a prospective contractor from the applicable roster and email the selected contractor the project notice and a timeline for response. If a prospective contractor does not respond to the project notice within the specified time period, another contractor will be selected from the applicable roster. In selecting a prospective contractor, Housing Kitsap will consider the following:
    - i. If 6 or more small business\* contractors are on the roster, Housing Kitsap must choose one of the small businesses on the roster that have indicated interest in performing work in the applicable geographical area. RCW 39.04.152(4)(b)(i).
    - ii. If there are 5 or less small business\* contractors on the applicable roster, Housing Kitsap may direct contract with any contractor on the roster. RCW 39.04.152(4)(b)(ii).
    - iii. Housing Kitsap must rotate through the contractors on the roster and must, when qualified contractors are available from the roster who may perform the work or deliver the services within the budget described in the notice or request for proposals, utilize different contractors on different projects. RCW 39.04.152(4)(b)(i).
    - iv. A qualified contractor is one who meets the responsible bidder criteria in RCW 39.04.350 and has completed a responsibility criteria certification. Housing Kitsap will not enter into a contract for a contractor that does not meet responsibility criteria in RCW 39.04.350.
    - v. The Director of Procurement will utilize a tracking system to ensure that Housing Kitsap is rotating through the contractors on an applicable basis.
    - vi. Housing Kitsap must notify the small and veteran-owned businesses on the applicable roster when direct contracting is utilized. RCW 39.04.152(4)(b)(iii).

\* "Small business" means a business meeting the certification criteria for size, ownership, control, and personal net worth adopted by the office of minority and women's business enterprises in accordance with RCW 39.19.030.
  - Direct Contract. If a prospective contractor responds to a project notice with the specified time period and is a qualified contractor, as defined above, then Housing Kitsap will enter into a contract with the prospective contractor based on the terms of the project notice. If the prospective

contractor does not agree to the terms of the project notice, then Housing Kitsap will use best efforts to negotiate with the qualified contractor to reach agreed upon terms.

- **Failure to Reach an Agreed Upon Terms.** If Housing Kitsap and the selected contractor are unable to reach agreed upon terms, the Director of Procurement will send notice to the contractor that the “negotiation process” is terminated and provide two (2) business days (protest period) before contacting the next rotated contractor from the project-specific roster. The Director of Procurement will document the rationale for terminating the negotiation in the project file. Rationale for terminating negotiation can include failure to reach agreement on scope of work, project schedule, project budget, or contract terms or another sound documented reason.
3. **Contract Reporting.** On an annual basis, Housing Kitsap must publish a list of small works contracts awarded and contractors contacted for direct negotiation pursuant to RCW 39.04.200.

## **5.6 General Purchased Services**

- 5.6.1** General Purchased Services are all service work that is not considered a public work or a professional service. These services are usually repetitive, routine, or mechanical in nature, support Housing Kitsap’s day-to-day operations, involve the completion of specific tasks or projects, and involve minimal decision-making. These services may include elevator inspection, delivery/courier services, automotive services, and instructors.
- 5.6.2 Contracts Above \$75,000 – Competitive Proposal.** For contracts totaling more than \$75,000 Housing Kitsap must use the competitive proposal process (RFP or RFQ) consistent with Section 9 of this policy.
- 5.6.3 Services Totaling \$10,000.01 to \$75,000 – Price Quotations.** Housing Kitsap must solicit at least three (3) price quotes from qualified providers for services totaling \$10,000.01 to \$75,000. Whenever possible quotes must be solicited from the Consultant Roster. Quotes must be in writing and may be solicited through fax, email, E-Procurement, or by other reasonable method. The contract will be awarded to the qualified provider whose proposal is most advantageous to Housing Kitsap with price and other factors considered. Records of quotations obtained shall be maintained and open to public inspection. Records regarding all quotes will be retained in accordance with Section 21 of this policy.
- 5.6.4 Services Totaling \$10,000 and Under – Price Quotation.** Housing Kitsap must solicit one (1) or more price quotes for services totaling \$10,000 and under to ensure that the price for the services is reasonable in the industry and that the provider is qualified. Whenever possible quotes must be solicited from the Consultant Roster. Quotes must be in writing and may be solicited through fax, email, E-Procurement, or by other reasonable method. The contract will be awarded to the qualified provider whose proposal is most advantageous to Housing Kitsap with price and other factors considered. Purchases shall be distributed equitably among qualified suppliers. 2 CFR §200.320(a); 41 USC §1902.

Records regarding all quotes will be retained in accordance with Section 21 of this policy.

## **5.6 Computer Services**

- 5.6.1** Computer Services means electronic data processing or telecommunication equipment, software, or services. RCW 39.04.270. This does not include “off-the-shelf” equipment and software, which requires no Housing Kitsap customization and is offered to all consumers on an as-is basis.
- 5.6.2** Off-the-shelf equipment and software will be procured consistent with Section 5.3 of this policy or consistent with this section.
- 5.6.3** Regardless of cost, all Computer Services contracts will be procured using the competitive proposal process (RFP) consistent with Section 9 of this policy. RCW 39.04.270. The award shall be made to the qualified bidder whose proposal is most advantageous to Housing Kitsap with price and other factors considered. Housing Kitsap may reject any and all proposals for good cause and request new proposals. RCW 39.04.270.

## **5.8 Architectural and Engineering (A/E) Services**

- 5.8.1** A/E services means professional services rendered by any person, other than as an employee of Housing Kitsap, contracting to perform activities within the scope of the general definition of Architects (chapter 18.08 RCW), Engineers and Land Surveyors (chapter 18.43 RCW), and Landscape Architects (Chapter 18.96 RCW).
- 5.8.2** A/E services will be procured consistent with the requirements of chapter 39.80 RCW.
  - A. Request for Qualifications.** Housing Kitsap will publish in advance the requirement for A&E Services. RCW 39.80.030. The announcement will state concisely the general scope and nature of the project or work for which the services are required and Housing Kitsap’s contact information to obtain further details. Housing Kitsap can comply with this requirement by:
    - Publishing an announcement on each occasion when professional services provided by a consultant are required by Housing Kitsap; or
    - Announcing generally to the public its projected requirements for any category or type of A&E Services. RCW 39.80.030
  - B. Annual Submissions of Qualifications.** In the procurement of architectural and engineering services, Housing Kitsap shall encourage firms engaged in the lawful practice of their profession, including minority and women-owned firms and veteran-owned firms, to submit annually a statement of qualifications and performance data. RCW 39.80.040
  - C. Evaluation.** In selecting a firm for a project, Housing Kitsap will:
    - Evaluate current statements of qualifications and performance data on file with the County and those submitted by other firms regarding the proposed project;
    - Conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services;

- Evaluate the applicable firms based upon criteria established by Housing Kitsap; and
- Award the contract to the firm deemed to be the most highly qualified to provide the services. RCW 39.80.040.

D. **Contract Negotiation.** After selecting a firm, Housing Kitsap will negotiate a contract at a price which Housing Kitsap determines is fair and reasonable taking into account the estimated value of the services to be rendered as well as the scope, complexity, and professional nature thereof. RCW 39.80.050

If Housing Kitsap is unable to negotiate a satisfactory contract at a price Housing Kitsap determines to be fair and reasonable, negotiations with that firm shall be formally terminated and Housing Kitsap will select other firms in accordance with RCW 39.80.040 and RCW 39.80.050 until an agreement is reached or the process is terminated. RCW 39.80.050.

## 5.9 Noncompetitive Procurement.

**5.9.1 Cooperative Purchasing/Intergovernmental Agreements.** To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, Housing Kitsap is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements. 2 CFR §200.318.

**5.9.2 Interlocal Cooperation Act.** Under the Interlocal Cooperation Act, chapter 39.34 RCW, Housing Kitsap may purchase materials, services, and public work from an already existing contract between another public agency and a vendor. This process is referred to as “piggybacking”.

A. **Piggybacking Process.** To use the piggybacking process, the scope of work in the awarding public agency’s contract must be essentially the same as the scope of work for Housing Kitsap’s anticipated project. Additionally, the awarding public agency must:

1. Comply with its own procurement/bid requirements;
2. Advertise in accordance with its own statutory requirements. If these requirements are satisfied, the advertising requirements for Housing Kitsap are also satisfied even if they differ from the Housing Kitsap’s advertising requirements;
3. Post the bid or solicitation notice on its website or provide an access link on the state’s web portal to the notice; and,
4. Ensure that its request for bids and final contract allows for the contract to be used by more other public agencies. RCW 39.34.030(5)(b).

To use the piggybacking process Housing Kitsap will review and document that the awarding agency has met its obligations under RCW 39.34.030(5)(b).

- B. **Interlocal Purchasing Agreement.** Prior to entering into a piggybacking agreement with a vendor, Housing Kitsap must enter into an interlocal purchasing agreement with the public agency that awarded the contract. RCW 39.34.030(2). The interlocal purchasing agreement must meet the contracting requirements in RCW 39.34.030(3 & 4).
- C. **Architectural and Engineering Services (A&E).** For A&E Services, a form of piggybacking may be used. RCW 39.34.030(6). In order to piggyback off another agency's A&E contract, Housing Kitsap and the other agency must enter into an interlocal purchasing agreement that specifies the scope of the A&E Services, and the interlocal purchasing agreement must be entered into *prior* to the other agency soliciting the A&E services. RCW 39.34.030(6)(b).

**5.9.3 Purchases From Federal Contracts.** Housing Kitsap may purchase supplies, materials, electronic data processing and telecommunication equipment, software, services, and/or equipment from or through the United States government without calling for bids, notwithstanding any law or charter provision to the contrary. RCW 39.32.090.

**5.9.4 Surplus Property.** Housing Kitsap may use Federal or State excess and surplus property instead of purchasing new equipment and property if feasible and if it will result in a reduction of project costs. 2 CFR §200.318. The goods and services obtained under a cooperative purchasing agreement must have been procured in accordance with 2 CFR §200.

**5.9.5 Conditions for Use.** Noncompetitive procurements can only be awarded in accordance with § 200.320(c). 2 CFR §200.319. Procurement by noncompetitive proposals may be used only when the award of a contract is not feasible using purchase procedures, sealed complete bidding, cooperative purchasing, or competitive proposals, and if one of the following applies:

- The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold and the project is not a public work;
- The item is available only from a single source, based on a good faith review of available sources;
- The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation. "Emergency" means unforeseen circumstances beyond the control of Housing Kitsap that either: (a) present a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken. RCW 39.04.280
- HUD authorizes the use of noncompetitive proposals, and it is not a public works contract; or
- After solicitation of a number of sources, competition is determined inadequate.

2 CFR §200.320.

**5.9.6 Purchase Contracts and Public Works Contracts – State Funding.** For purchase contracts and public works contracts using state funding competitive bidding requirements may be waived for purchases which are single source, involve special facilities or market conditions, in the event of an emergency, or for insurance bonds or for public works in the event of an emergency. RCW 39.04.280. "Emergency" means unforeseen circumstances beyond the control of Housing Kitsap that either: (a) present a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken. RCW 39.04.280

**5.9.7 Justification.** Each purchase using noncompetitive procurement shall be supported by written justification and approved in writing by the responsible Contracting Officer. Poor planning or lack of planning is not justification for emergency or single-source procurements. The justification, to be included in the procurement file, should include the following information:

- A. Description of the requirement;
- B. For single-source purchases, the history of prior purchases and their nature (competitive vs. noncompetitive);
- C. The specific federal or state statutory exception;
- D. Statement as to the unique circumstances that require award by noncompetitive procurement;
- E. Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);
- F. Signature by the Contracting Officer's supervisor (or someone above the level of the Contracting Officer); and
- G. Price Reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing an analysis, as described in this Policy.

## **SECTION 6. INDEPENDENT COST ESTIMATE (ICE)**

**6.1 General.** For all purchases using federal funds, Housing Kitsap shall prepare an ICE prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item to be purchased.

## **SECTION 7. CONTRACT COST AND PRICE**

**7.1 Cost or Price Analysis.** Housing Kitsap must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, Housing Kitsap must make independent estimates before receiving bids or proposals. 2 CFR §200.324(a).

- 7.2 Costs.** Costs or prices based on estimated costs for contracts using federal funds are allowable only to the extent that costs incurred, or cost estimates included in negotiated prices would be allowable for the non-federal entity under 2 CFR §200, Subpart E—Cost Principles. 2 CFR §200.324(b).
- 7.3 Method of Contracting.** The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used. 2 CFR §200.324(c).
- 7.4 Contract Modifications.** A cost analysis, consistent with federal guidelines, shall be conducted for all contract modifications for projects that were procured through sealed competitive bidding, competitive proposals, or non-competitive proposals, or for projects originally procured through soliciting quotations and the amount of the contract modification will result in a total contract price in excess of the Simplified Acquisition Threshold.

## **SECTION 8. SEALED COMPETITIVE BIDDING**

- 8.1 Sealed Competitive Bidding.** Under sealed bids, Housing Kitsap will publicly solicit bids and award a firm fixed-price contract (lump sum or unit price) to the responsive and responsible bidder whose bid, conforming with all the material terms and conditions of the solicitation, is the lowest in price. Sealed bidding is the preferred method for procuring construction, supply, and non-complex service contracts that are expected to exceed Simplified Acquisition Threshold. 2 CFR §200.320(b).
- 8.2 Conditions for Using Sealed Bids.**
- 8.2.1 Federal Funding.** For public work projects involving federal funding Housing Kitsap shall use sealed bidding if the following conditions are present: 1) a complete, adequate, and realistic statement of work, specification, or purchase description is available; 2) two or more responsible bidders are willing and able to compete effectively for the work; and 3) the procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price. 2 CFR §200.320(b)(1).
- 8.2.2 State Funding.** For public works projects involving state funding Housing Kitsap shall use sealed bidding for the Public Works projects \$150,000 or more. RCW 39.04.152.
- 8.3 Solicitation Format.**
- 8.3.1 Solicitation Format.** A solicitation will include the specifications and all contractual terms and conditions applicable to the procurement, and a statement that award will be made to the lowest responsive and responsive bidder whose bid meets the requirements of the solicitation. 2 CFR §200.320(b). In addition, the solicitation will include the following:
- A. **Time Period for Submission of Bids.** The solicitation will clearly state the date and time bids are due. In determining the bid due date, Housing Kitsap will consider the scope and complexity of the project and allow for a reasonable amount of time for contractors to prepare and submit sealed bids.
- B. **Supplemental Bidder Criteria.** As addressed in Section 12 of this Policy, the

solicitation will include any supplemental bidder criteria determined necessary based on the project type and scope. RCW 39.04.350.

- C. **Bonding and Retainage Requirement.** As addressed in Section 11 of this Policy, the solicitation will include any applicable bonding and retainage requirements. RCW 39.04.152(5).

**8.4 Solicitation Advertisement.** Solicitation must be done publicly.

**8.4.1 Time Frame.** Advertisements shall be published not less than once each week at least fourteen (14) days prior to the last date upon which bids will be received.

**8.4.2 Advertising Method.** Housing Kitsap will use the following solicitation method.

- **Print Medium.** Housing Kitsap must advertise in newspapers or other print mediums of local or general circulations. Housing Kitsap may also advertise in various trade journals or publications (for construction).
- **E-Procurement.** Housing Kitsap may conduct its public procurements through the Internet using e-procurement systems.
- **Website.** Housing Kitsap will advertise a solicitation on its website.

**8.3.2 Form of Advertisements.** Notices/advertisements should state, at a minimum, the date and time bids will be opened, the place, date, and time that the bids are due, the solicitation number, a contact that can provide a copy of, and information about, the solicitation, and a brief description of the needed items(s). 2 CFR §200.320(b). For public works projects the advertisement will include the character of the work to be done, the materials and equipment to be furnished.

**8.4 Receipt of Bids.** All bids received will be date and time-stamped and stored unopened in a secure place until the public bid opening.

**8.5 Withdrawal of Bid.** A bidder may withdraw its bid, either personally or by written request, at any time prior to the time set for the bid submittal deadline. If a previously submitted bid is withdrawn before the bid due date and time, the bidder may submit another bid at any time up to the bid closing date and time. After the bid closing date and time, all submitted bids shall be irrevocable until contract award.

**8.6 Cancellation of Bid Solicitations.** Housing Kitsap will follow the cancellation procedures in Section 10.

**8.7 Bid Opening and Award.** Bids shall be opened publicly at the time and place stated in the solicitation. 2 CFR §200.320(b). All bids received shall be recorded on an abstract (tabulation) of bids, which shall then be made available for public inspection. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder as addressed in Section 12. 2 CFR §200.320(b). If equal low bids are received from responsible bidders, selection may be made by drawing lots or other similar random method. The method for doing this shall be stated



in the solicitation. Where specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs must be considered in determining which bid is lowest. 2 CFR §200.320(b).

- 8.8 Mistakes in Bids.** After bid opening, corrections in bids may be permitted only if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document, but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made. All decisions to allow correction or withdrawal of a bid shall be supported by a written determination signed by the Contracting Officer. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of Housing Kitsap or fair competition shall not be permitted.

## **SECTION 9. COMPETITIVE PROPOSALS**

- 9.1** Unlike competitive sealed bidding, the competitive proposal method, also known as RFP or RFQ, permits consideration of technical factors other than price; discussion with offerors concerning offers submitted; negotiation of contract price or estimated cost and other contract terms and conditions; revision of proposals before the final contractor selection; and the withdrawal of an offer at any time up until the point of award. Award is normally made on the basis of the proposal that represents the best overall value to Housing Kitsap, considering price and other factors, e.g., technical expertise, past experience, quality of proposed staffing, etc., set forth in the solicitation and not solely the lowest price.
- 9.2 Conditions for Use.** For contracts using federal funds, where conditions are not appropriate for the use of sealed bidding, competitive proposals may be used. Competitive proposals are the preferred method for procuring professional services that exceed the small purchase threshold or for data processing and telecommunications systems. The competitive proposal process cannot be used for public works contracts utilizing state and local funds.
- 9.2.1 Conditions for Use with Construction Contracts.** Only under limited circumstances, as allowed by state law would construction services be procured by competitive proposals; accordingly, construction services will most typically be procured utilizing the sealed bidding process (IFB) or obtaining quotes.
- 9.3 Solicitation Format.** Other than A/E services, competitive proposals shall be solicited through the issuance of an RFP or RFQ. The RFP/RFQ shall clearly identify any evaluation factors specifying the importance and relative value of each factor as well as any subfactors and price. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued.
- 9.3.1 Time Period for Submission of Proposals.** The solicitation will clearly state the date and time proposals are due. In determining the proposal date, Housing Kitsap will consider the scope and complexity of the project and allow for a reasonable amount of time for contractors to prepare and submit proposals.
- 9.4 Solicitation Advertisement.** Solicitation must be done publicly.

- 9.4.1 Time Frame.** Advertisements shall be published at least once at least fourteen (14) days prior to the last date upon which proposals will be received.
- 9.4.2 Advertising Method.** Housing Kitsap will use the following solicitation methods.
- **Print Medium.** Housing Kitsap must advertise in newspapers or other print mediums of local or general circulations and may advertise in various trade journals or publications (for construction).
  - **E-Procurement.** Housing Kitsap may conduct its public procurements through the Internet using e-procurement systems. However, all e-procurements must otherwise be in compliance with 2 CFR §200.317 through §200.326, State and local requirements, and Housing Kitsap's procurement policy.
  - **Website.** Housing Kitsap will advertise a solicitation on its website.
- 9.4.3 Form of Advertisements.** Notices/advertisements should state, at a minimum, the place, date, and time that the proposals are due, the solicitation number, a contact that can provide a copy of, and information about, the solicitation, and a brief description of the needed items(s).
- 9.5 Receipt of Proposals.** All solicitations received will be date and time-stamped and stored unopened in a secure place until the close date.
- 9.6 Withdrawal or Modification of Proposal.** A proposer may modify or withdraw a submitted proposal prior to the proposal due date and time. A request to modify or withdraw a proposal must be in writing, signed by an authorized representative of proposer and submitted to the Director of Procurement. Faxed withdrawals will not be accepted. A withdrawn proposal may be re-submitted prior to the proposal due date and time.
- 9.7 Cancellation of Solicitations.** Housing Kitsap will follow the cancellation procedures in Section 10.
- 9.8 Evaluation.** Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of proposals until after an award. Housing Kitsap may assign price a specific weight in the evaluation factors, or Housing Kitsap may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP/RFQ. The proposals shall be evaluated only on the factors stated in the RFP/RFQ. Where not apparent from the evaluation factors, Housing Kitsap shall establish an Evaluation Plan for each RFP/RFQ. Generally, all RFP/RFQs shall be evaluated by an appropriately appointed Evaluation Committee. The Evaluation Committee shall be required to disclose any potential conflicts of interest and to sign a Non-Disclosure statement. An Evaluation Report, summarizing the results of the evaluation, shall be prepared prior to award of a contract.
- 9.9 Negotiations Prior to Award.**
- 9.9.1** Negotiations shall be conducted with all offerors who submit a proposal determined to

have a reasonable chance of being selected for award, unless it is determined that negotiations are not needed with any of the offerors. This determination is based on the relative score of the proposals as they are evaluated and rated in accordance with the technical and price factors specified in the RFP. These offerors shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their proposals. No offeror shall be given any information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal.

**9.9.2 Establishment of Deadlines.** A common deadline shall be established for receipt of proposal revisions based on negotiations. Negotiations are exchanges (in either competitive or sole source environment) between Housing Kitsap and offerors that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract or other terms of a proposed contract.

**9.9.3 Discussions.** When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions. Discussions are tailored to each offeror's proposal and shall be conducted by the contracting officer with each offeror within the competitive range. The primary object of discussions is to maximize Housing Kitsap's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. The Contracting Officer shall indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as technical approach, past performance, and terms and conditions) that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposer's potential for award.

**9.9.4 Price Negotiations and Auctioning.** The scope and extent of discussions are a matter of the contracting officer's judgment, but proposals shall be considered to the maximum extent practical. The Contracting Officer may inform an offeror that its price is considered by Housing Kitsap to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible to indicate to all offerors the cost or price that Housing Kitsap's price analysis, market research, and other reviews have identified as reasonable. "Auctioning" (revealing one offeror's price in an attempt to get another offeror to lower their price) is prohibited.

**9.10 Contract Award.** After evaluation of the revised proposals, if any, the contract shall be awarded to the responsible firm whose technical approach to the project, qualifications, price and/or any other factors considered, are most advantageous to Housing Kitsap provided that the price is within the maximum total project budgeted amount established for the specific property or activity.

## **SECTION 10. CANCELLATIONS OF SOLICITATIONS**

**10.1 Cancellation Before Bids/Proposals Received.** An IFB, RFP, or other solicitation may be cancelled before bids/offers are due if:

- The supplies, services, or construction is no longer required;

- The funds are no longer available;
- Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best; or
- For good cause of a similar nature when it is in the best interest of Housing Kitsap.

**10.2 Cancellation After Bids/Proposals Received.** Any or all bids may be rejected if there is sound documented reason. 2 CFR §200.320(b). Sound documented reasons may include:

- The supplies or services (including construction) are no longer required;
- Ambiguous or otherwise inadequate specifications were part of the solicitation;
- All factors of significance to Housing Kitsap were not considered;
- Prices exceed available funds, and it would not be appropriate to adjust quantities to come within available funds;
- There is reason to believe that bids or proposals may not have been independently determined in open competition, may have been collusive, or may have been submitted in bad faith; or
- For good cause of a similar nature when it is in the best interest of Housing Kitsap.

**10.3 Documentation.** The reasons for cancellation shall be documented in the procurement file.

**10.4 Advertisement and Notice.** If a solicitation is cancelled, Housing Kitsap will cease advertising and a notice of cancellation shall be posted on Housing Kitsap's website. A notice of cancellation will be sent to all persons who submitted bids or proposals.

**10.5 Problems with Specifications.** If problems are found with the specifications, Housing Kitsap should cancel the solicitation, revise the specifications and re-solicit using an IFB.

## **SECTION 11. BONDING AND RETAINAGE REQUIREMENTS**

**11.1 Bid Bond.** For public works contracts each bidder may be required to submit a bid guarantee equivalent to five percent (5%) of the bid price. For projects using federal funds, a 5% bid bond is required for contracts exceeding \$250,000. The solicitation will indicate whether a bid bond is required. The bid deposit of all unsuccessful bidders shall be returned after the contract is awarded and the required contractor's bond given by the successful bidder is accepted by Housing Kitsap.

**11.2 Contractor's Bond (Performance & Payment).** A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract. 2 CFR §200.326. 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 provided for in the contract. 2 CFR §200.326. For public works contract costing \$5,000 and higher, a contractor will provide a contractor's bond for one hundred percent (100%) of the contract price. RCW 39.08.010. For projects using federal funds, a performance and payment bond is required for contracts exceeding \$250,000. 2 CFR §200.326.

**11.3 Bond Requirements.** Bonds must be obtained from guarantee or surety company authorized to do business in the State of Washington, and when using federal funds from a company acceptable

to the U.S. Government. Individual sureties shall not be considered. U.S. Treasury Circular Number 570 lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies on this circular is mandatory.

- 11.4 Retainage.** For public works contracts, the contract retainage requirements of chapter 60.28 RCW shall apply. For contract exceeding \$35,000, Housing Kitsap will reserve a contract retainage of five percent (5%) in accordance with RCW 60.28.011. For small public works contracts awarded through a bid solicitation, notice of any retainage reduction or waiver must be provided in bid solicitations. RCW 39.04.152(5).

## **SECTION 12. CONTRACTOR QUALIFICATIONS AND DUTIES**

### **12.1 Contractor Responsibility**

**12.1.1 Determination of Responsibility.** Housing Kitsap shall not award any contract until the prospective contractor, i.e., low responsive bidder, or successful offeror, has been determined to be responsible.

**12.1.2 Public Works Projects.** To be considered a responsible bidder and qualified to be awarded a public works project, a bidder must meet:

A. **Responsibility Criteria.** A bidder must meet the responsibility criteria stated in RCW 39.04.350. A bidder must:

1. Have a current certificate of registration in compliance with Chapter 18.27 RCW, Chapter 18.106 RCW, Chapter 70.87 RCW, or Chapter 19.28 RCW.
2. Have a current Washington Unified Business Identifier (UBI) number.
3. If applicable:
  - Have Industrial Insurance (workers' compensation) coverage for the bidder's employees working in Washington, as required in Title 51 RCW;
  - Have a Washington Employment Security Department number, as required in Title 50 RCW;
  - Have a Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW.
4. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).
5. For public works project subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of this Invitation for Bid.

6. Per RCW 39.04.350 and RCW 39.06.020, unless exempt, must have received training on requirements related to public work and prevailing wage from the Department of Labor and Industries (L&I).
  7. Within the three-year period immediately preceding the date of this Invitation for Bid, not have been determined by a final and binding citation and notice of assessment issued by L&I or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW.
- B. **Subcontractor Verification.** A bidder must verify responsibility criteria for each first-tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in RCW 39.04.350(1) and possesses all licenses required by law. RCW 39.06.020.
- C. **Supplemental Responsibility Criteria.** Housing Kitsap may establish additional relevant supplemental bidder responsibility criteria. Any supplemental bidder responsibility criteria must be included in the solicitation (invitation for bid or bidding documents). RCW 39.04.350(3). Supplemental bidder responsibility criteria for public works projects may include the following:
1. Bidder Experience. Experience as a contractor in the project field of work with satisfactory completion of projects of a similar nature in the recent past.
  2. Bidder Standing. A bidder will be in good standing and will not have had any public works contract terminated for cause or default by a government agency during a specified time period immediately preceding the bid submittal deadline, unless there are extenuating circumstances, and such circumstances are deemed acceptable to Housing Kitsap.
  3. Disbarment. A bidder must not be disbarred/excluded from Federal procurement and non-procurement programs throughout the U.S. Government (unless otherwise noted) and from receiving Federal contracts or certain subcontracts.
  4. Delinquent Taxes. A bidder will not be delinquent on paying state or federal taxes.
  5. Crimes Involving Bidding. A bidder will not have been convicted of a crime involving bidding during a specified time period immediately preceding a bid submittal deadline.
  6. Judgements Against Bidder. A bidder will not have any adverse judgements during a specified time period immediately preceding a bid submittal deadline.
  7. Subcontractor Verification. A bidder must verify supplemental responsibility criteria for each first-tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify supplemental responsibility criteria for each of

its subcontractors.

8. References. References from government entities for which bidder has or is providing the same or similar goods and/or services as Housing Kitsap's project.
9. Other. Other relevant criteria based on the project type, scope of work, budget, or significant factors.

C. **Modification to Supplemental Responsibility Criteria – Sealed Bidding.** A potential bidder may request that Housing Kitsap modify the supplemental responsibility criteria. Such requests shall be in writing, describe the nature of the concerns, and propose specific modifications to the criteria that will make the criteria more relevant and/or less restrictive of competition. A potential bidder should submit such requests no later than five (5) business days before the bid due date identified in the invitation for bid. Housing Kitsap will evaluate the information submitted by the potential bidder and respond before the bid due date. If the evaluation results in a change of the criteria, the County will issue an addendum to the solicitation identifying the new criteria. RCW 39.04.350(3)(b).

D. **Failure to Meet Supplemental Bidder Responsibility Criteria – Sealed Bidding.** If Housing Kitsap determines a bidder does not meet the Supplemental Bidder Responsibility Criteria, and is therefore not a responsible bidder, Housing Kitsap shall notify the bidder in writing via email with the reasons for its determination. If the bidder disagrees with this determination, it may appeal the determination by presenting additional information within two (2) full business days of the notice of the determination being sent. Housing Kitsap will consider the additional information before issuing its final determination. If the final determination affirms that the bidder is not responsible, Housing Kitsap will not execute a contract with any other bidder until two (2) full business days after the bidder determined to be not responsible has received the final determination. RCW 39.04.350(3)(d).

**12.1.3 Materials, Equipment, and Supplies.** To be considered a responsible bidder and qualified to be awarded a contract for materials, equipment, or supplies will meet the bidder responsibility criteria as stated below. The solicitation documents must clearly set forth the requirements and criteria that Housing Kitsap will apply in evaluating bid submissions.

- A. **Responsibility Criteria.** In determining whether the bidder is a responsible bidder, Housing Kitsap must consider the following elements as stated in RCW 39.26.160(2):
1. The ability, capacity, and skill of the bidder to perform the contract or provide the service required;
  2. The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
  3. Whether the bidder can perform the contract within the time specified;
  4. The quality of performance of previous contracts or services;
  5. The previous and existing compliance by the bidder with laws relating to the contract or services;
  6. Whether, within the three-year period immediately preceding the date of the bid solicitation, the bidder has been determined by a final and binding citation and

notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW [49.48.082](#), any provision of chapter [49.46](#), 49.48, or [49.52](#) RCW; and

7. Such other information as may be secured having a bearing on the decision to award the contract.

- B. **Lowest Responsive and Responsible Bidder.** In determining whether a bidder is the lowest responsive and responsible bidder, Housing Kitsap may consider best value criteria, including but not limited to:

1. Whether the bid satisfies the needs of the state as specified in the solicitation documents;
2. Whether the bid encourages diverse contractor participation;
3. Whether the bid provides competitive pricing, economies, and efficiencies;
4. Whether the bid considers human health and environmental impacts;
5. Whether the bid appropriately weighs cost and non-cost considerations; and
6. Life-cycle cost.

RCW 39.26.160(3).

- C. **Supplemental Bidder Responsibility Criteria.** Any supplemental bidder responsibility criteria established by Housing Kitsap in this policy or in competitive solicitation. All additional bidder responsibility criteria must be included in the solicitation or bidding documents. Supplemental bidder criteria will be relevant to the project type, scope of work, budget, or other significant factors.

- 12.2 Suspension and Debarment.** Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined to be ineligible by HUD in accordance with federal regulations (2 CFR §200) or by other federal agencies, e.g., Dept of Labor for violation of labor regulations, when necessary to protect housing authorities in their business dealings. Prior to issuance of a contract, Housing Kitsap staff shall conduct any required searches within the HUD Limited Denial of Participation (LDP) system and the U.S. General Services Administration System for Award Management (SAM) and place a copy of the search results within the applicable contract file. Housing Kitsap shall not award any contract to a contractor on the debarred contractor list created by the Washington State Department of Labor & Industries.

- 12.3 Prequalified Vendor Lists.** All interested businesses shall be given the opportunity to be included on vendor mailing lists. Any lists of persons, firms, or products which are used in the purchase of supplies and services (including construction) shall be kept current and include enough sources to ensure competition.

- 12.4 Exclusion of Contractors Involved in Drafting Specifications.** Contractors that assist Housing Kitsap in developing or drafting specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. 2 CFR §200.319.

## **SECTION 13. CONTRACT PRICING ARRANGEMENTS**

### **13.1 Contract Types**



**13.1.1 Cost plus a percentage of cost contract.** Any type of contract which is appropriate to the procurement, and which will promote the best interests of Housing Kitsap may be used, provided the cost-plus-a-percentage-of-cost and percentage-of-construction-cost methods are not used. All solicitations and contracts shall include the clauses and provisions necessary to define the rights and responsibilities of both the contractor and Housing Kitsap. For all cost reimbursement contracts, Housing Kitsap must include a written determination as to why no other contract type is suitable. Further, the contract must include a ceiling price that the contractor exceeds at its own risk.

**13.1.2 Time and materials contracts.** Housing Kitsap may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. 2 CFR §200.318. Time and materials type contract means a contract whose cost to Housing Kitsap is the sum of:

1. The actual cost of materials; and
2. Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Housing Kitsap must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

**13.2 Options.** Options for additional quantities or performance periods may be included in contracts, provided that:

- A. The option is contained in the solicitation;
- B. The option is a unilateral right of Housing Kitsap;
- C. The contract states a limit on the additional quantities and the overall term of the contract;
- D. The options are evaluated as part of the initial competition;
- E. The contract states the period within which the options may be exercised;
- F. The options may be exercised only at the price specified in or reasonably determinable from the contract; and
- G. The options may be exercised only if determined to be more advantageous to Housing Kitsap than conducting a new procurement.

## **SECTION 14. CONTRACT CLAUSES**

**14.1 Contract Pricing Arrangements.** All contracts shall identify the contract pricing arrangement as well as other pertinent terms and conditions, as determined by Housing Kitsap.

**14.2 Federal Required Contract Clauses.** Each contract that uses federal funds must contain the required contract clauses detailed within 2 CFR §85 and 2 CFR §200 and Appendix II.

**14.3 State Required Contract Clauses.** Each contract for public works estimated to exceed \$1,000,000 must include the required contract clauses detailed in RCW 39.04.370.

- 14.4 Leases.** Lease agreements must address the following:
- A. Term of the Lease – including starting and ending dates and renewal options;
  - B. Termination – including early termination procedures;
  - C. Costs and Expenses – including any discounts, deposits, and fees;
  - D. Maintenance; and
  - E. Notice.

## **SECTION 15. CONTRACT ADMINISTRATION**

- 15.1 General.** Housing Kitsap shall maintain a system of contract administration designed to ensure that Contractors perform in accordance with their contracts. These systems shall provide for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on major projects including construction contracts, and similar matters. For cost-reimbursement contracts, costs are allowable only to the extent that they are consistent with the federal cost principle requirements and the requirements in Section 7 above.

## **SECTION 16. SPECIFICATIONS**

- 16.1 General.** All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying Housing Kitsap's needs. Specifications shall be reviewed prior to issuing any solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. 2 CFR §200.318. Function or performance specifications are preferred. Detailed product specifications shall be avoided whenever possible. 2 CFR §200.319. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.
- 16.2 Limitations on Specifications.** The following types of specifications shall be avoided:
- 16.2.1 Brand Names.** Brand name specifications (unless the specifications list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use). 2 CFR §200.319(b).
  - 16.2.2 Conflicts.** Specifications shall be reviewed to ensure that organizational conflicts of interest do not occur. 2 CFR §200.319(b).

## **SECTION 17. APPEALS, PROTESTS, AND REMEDIES**

- 17.1 General.** It is Housing Kitsap intent to resolve all contractual issues informally and without litigation using the procedures outlined in sections 17.2 and 17.3 below. Disputes will not be referred to HUD unless all administrative remedies have been exhausted.
- 17.2 Informal Appeals Procedure.** For informal bid protests and appeals for non-public works contracts at or below the Simplified Acquisition Threshold the bidder/contractor may request to meet with the appropriate Contract Officer and/or Executive Director to attempt to resolve the issue.
- 17.3 Protests.** For purposes of this section, the term "Solicitation" includes: an invitation for bid,

competitive solicitation, request for proposal, request for qualifications, or another form of solicitation used by Housing Kitsap to procure materials or services.

#### **17.3.1 Pre-Award Protests.**

- A. Prior to the closing date for a Solicitation any prospective bidder or proposer may file a Pre-Award Protest regarding the terms, conditions, or requirements in the Solicitation.
- B. Pre-Award Protests must be submitted in writing via email ([Procurement@housingkitsap.org](mailto:Procurement@housingkitsap.org)) to Housing Kitsap - Director of Procurement.
- C. The Pre-Award Protest will include the following information:
  - Name, address, and phone number of Protester.
  - Name and number of the Solicitation.
  - A detailed description of Pre-Award Protest issue and any supporting documentation. It is the responsibility of the Protester to supplement his/her Pre-Award Protest with any subsequently discovered documents prior to a decision by Housing Kitsap.
  - Specific relief requested.
- D. Pre-Award Protests must be received by Housing Kitsap no later than 4:30 p.m. seven (7) business days prior to the close date established by the Solicitation. If the seventh (7th) business day is a Housing Kitsap holiday, the Pre-Award Protest must be received by 4:30 p.m. the following business day. The Pre-Award Protest shall be deemed received based on the email receipt date and time in Housing Kitsap's email system.
- E. Pre-Award Protests which do not contain the required information or are not submitted by 4:30 p.m. seven (7) business days prior to the closing date established by the Solicitation will not be considered.
- F. Upon receipt of a timely written Pre-Award Protest, the Director of Procurement, in consultation with the Executive Director, will review the issues presented in the Pre-Award Protest and respond in writing prior to the closing date established by the Solicitation.
- G. If Housing Kitsap's review results in a change to the terms, conditions, or requirements in the Solicitation Housing Kitsap will either issue an addendum identifying the change or withdraw the Solicitation.

#### **17.3.2 Post-Award Protests.**

- A. A bidder or proposer may file a written protest to an award by Housing Kitsap.
- B. The Post-Award Protest must be submitted in writing via email ([Procurement@housingkitsap.org](mailto:Procurement@housingkitsap.org)) to Housing Kitsap - Director of Procurement.

- C. The Post-Award Protest will include the following information:
  - Name, address, and phone number of Protester.
  - Name and number of the Solicitation.
  - A detailed description of Protest issue and any supporting documentation. It is the responsibility of the Protester to supplement his/her Protest with any subsequently discovered documents prior to a decision by Housing Kitsap.
  - Specific relief requested.
- D. The Post-Award Protest must be filed within:
  - Two (2) full business days following the bid opening, if no bidder or proposer requested copies of the bids/proposals received for the project, or
  - Two (2) full business days following when Housing Kitsap provided copies of the bids/proposals to those bidders or proposers requesting bids/proposals.
  - Intermediate Saturdays, Sundays, and legal holidays are not counted. If a business day is a Housing Kitsap holiday, the Protest must be received by 4:30 p.m. the following business day.  
RCW 39.04.105.
- E. Post-Award Protests that do not contain the required information or are not submitted within required timelines will not be considered.
- F. If Housing Kitsap receives a written Post-Award Protest from a bidder or proposer the Director of Procurement, in consultation with the Executive Director, will review the issues presented and respond in writing to the Protester prior to contract execution. The decision shall be final.
- G. Housing Kitsap will not execute a contract for the project with anyone other than the protesting bidder or proposer without first providing at least two (2) full business days' written notice of Housing Kitsap's intent to execute a contract for the project.  
RCW 39.04.105.

## **SECTION 18. ASSISTANCE TO SMALL AND OTHER BUSINESSES**

- 18.1 Required Efforts.** When possible, Housing Kitsap should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms are considered as set forth below. 2 CFR §200.321. Such consideration means:
1. These business types are included on solicitation lists;
  2. These business types are solicited whenever they are deemed eligible as potential sources;
  3. Dividing procurement transactions into separate procurements to permit maximum participation by these business types;
  4. Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types;
  5. Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
  6. Requiring a contractor under a Federal award to apply this section to subcontracts.
- 2 CFR §200.321.

- 18.2 Section 3 Required Efforts.** Consistent with existing Federal, state, and local laws and regulations, Housing Kitsap and its contractors and subcontractors, must make best efforts to award contracts and subcontracts to business concerns that provide economic opportunities to Section 3 workers. 24 CFR §75.9(b). Housing Kitsap must make their best efforts described below in the following order of priority:
- To Section 3 business concerns that provide economic opportunities for residents of the public housing projects for which the assistance is provided;
  - To Section 3 business concerns that provide economic opportunities for residents of other public housing projects or Section-8 assisted housing managed by the PHA that is providing the assistance;
  - To YouthBuild programs; and
  - To Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the assistance is provided.
- 18.3 Goals.** Goals shall be established periodically for participation by small businesses, minority-owned businesses, women-owned business enterprises, veteran-owned business, and labor surplus area businesses, and Section 3 business concerns in Housing Kitsap prime contracts and subcontracting opportunities.
- 18.4 Definitions.** For purposes of this section the following definitions apply:
- A. “Labor Surplus Area business” means a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the DOL in 20 CFR §654, Subpart A, and in the list of labor surplus areas published by the Employment and Training Administration.
  - B. “Minority-owned Business” means a business which is at least 51% owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans. 12 CFR §4.62.
  - C. “Section 3 business concern” means a business concern meeting at least one of the following criteria, documented within the last six-month period: i) It is at least 51 percent owned and controlled by low- or very low-income persons; ii) Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or iii) At is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing. 24 CFR §75.5.
  - D. “Section 3 projects” means housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of \$200,000. The threshold is \$100,000 where the assistance is from the Lead Hazard Control and Healthy Homes programs, as authorized by Sections 501 or 502 of the

Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–1 or 1701z–2), the Lead–Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.); and the Residential Lead–Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 et seq.). The project is the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing.

- E. “Small Business” means a business that is: independently owned; not dominant in its field of operation; and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in 13 CFR §121 should be used to determine business size. 12 CFR §4.62.
- C. “Veteran” means a person who served in the active military, naval, air, or space service, and who was discharged or released therefrom under conditions other than dishonorable. 38 USC §101(2).
- D. “Veteran-owned Business” means a small business concern—not less than 51% of which is owned by one or more veterans or, in the case of any publicly owned business, not less than 51% of the stock of which is owned by one or more veterans; and the management and daily business operations of which are controlled by one or more veterans. 15 USC §632(q).
- F. “Women-owned Business” means a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business. 12 CFR §4.62.

## **SECTION 19. BOARD APPROVAL OF PROCUREMENT ACTIONS**

- 19.1 Purchasing Authority.** The Board appoints and delegates the necessary procurement authority to the Executive Director for all routine purchases and contracts included in Housing Kitsap’s adopted budgeted, to make purchases and execute contracts in emergency situations where health and safety are of immediate concern, and as otherwise pre-approved by the Board.
- 19.2 Limitations.** All procurement actions exceeding \$250,000 which are not included in Housing Kitsap’s adopted budget and not otherwise pre-approved by the Board must have approval from the Board prior to award, purchase, and/or contract execution. Furthermore, any real-estate transactions and purchases which do or may cause Housing Kitsap to incur new debt must have Board approval.

## **SECTION 20. DELEGATION OF CONTRACTING AUTHORITY**

- 20.1 Delegation.** The Executive Director may delegate in writing all procurement authority as is necessary and appropriate to conduct the business of Housing Kitsap.
- 20.2 Procedures.** The Executive Director shall, where necessary, establish operational procedures (such as a procurement manual or standard operating procedures) to implement this Policy. The Executive Director shall also establish a system of sanctions for violations of the ethical standards described in Section 3.0 herein, consistent with federal, state, or local law.

## **SECTION 21. RECORDS**

- 21.1 Required Records.** Housing Kitsap must maintain records sufficient to detail the significant history

of each procurement action. 2 CFR §200.318. These records shall include, but shall not necessarily be limited to, the following:

- Date, time, vendor contact name, phone number, email (if applicable), and price quoted;
- Rationale for the method of procurement (if not self-evident);
- Rationale of contract pricing arrangement (also if not self-evident);
- Reason for accepting or rejecting the bids or offers;
- Verification of proper licensing, appropriate insurance, suspension and debarment checks as described under section 12 above;
- Basis for the contract price (as prescribed in this handbook);
- A copy of the contract documents awarded or issued and signed by the Contracting Officer;
- Basis for contract modifications; and
- Related contract administration actions.

**21.2 Level of Documentation.** The level of documentation should be commensurate with the value of the procurement.

**21.3 Record Retention and Format.** Records will be retained consistent with the records retention requirements and schedules established by the Office of the Washington Secretary of State (SOS) or 2 CFR §200.334, when federal funds are utilized, whichever is stricter. Hardcopy originals may not be replaced with scanned images unless they: 1) are designated as “Non-Archival” by the SOS, 2) have been reviewed and approved for destruction by Housing Kitsap’s Records Officer, and 3) are replaced by images meeting SOS requirements.

**21.4 Public Access to Procurement Records.** Procurement records will be available for inspection and copying unless exempt under the Public Records Act (PRA), chapter 42.56 RCW or applicable federal law.

## **SECTION 22. FUNDING AVAILABILITY**

**22.1 General.** Before initiating any contract, Housing Kitsap shall ensure that there are sufficient funds available to cover the anticipated cost of the contract or modification.

## **SECTION 23. HOUSING KITSAP’S INTENT TO COMPLY**

**23.1 General.** Housing Kitsap has established this Procurement Policy and maintains a procurement system and supporting policies and procedures with the intent to comply with all applicable federal regulations and, as such Housing Kitsap is exempt from prior HUD review and approval of individual procurement action.

## **SECTION 24. ALTERNATIVE PUBLIC WORKS CONTRACTING PROCEDURES (See Chapter 39.10 RCW)**

**24.1** When appropriate Housing Kitsap may use alternative public works contracting procedures consistent with the requirements in chapter 39.10 RCW.

**24.2 General Contractor/Construction Manager Procedure (Chapter 39.10 RCW).** When appropriate, Housing Kitsap may use general contractor/construction manager procedures for public works projects consistent with the requirements of chapter 39.10 RCW and any applicable federal requirements.