

The North Andover Housing Authority

**Procurement Policy
April 2016**

Staff Position Responsible for Implementation, Maintenance and Reporting:

Executive Director, Procurement Officer

Maintenance Supervisor

Bookkeeper

**SECTION 1
GENERAL POLICY STATEMENT**

**SECTION 1
GENERAL POLICY STATEMENT**

1.01	Policy	4
1.02	Scope.....	4
1.03	Compliance With Laws And Regulations	5
1.04	Delegation Of Procurement Authority.....	6
1.05	Implementation Of This Policy.....	7
1.06	Internal Controls	7

**SECTION II
RECORD MAINTENANCE AND PUBLIC ACCESS TO PROCUREMENT INFORMATION**

2.01	Authority And Responsibility.....	8
2.02	Public Records.....	8

**SECTION III
ETHICAL STANDARDS**

3.01	Authority And Responsibility	10
3.02	Board Of Commissioners And Employee Defined	10
3.03	Disciplinary Actions	10
3.04	Conflict Of Interest.....	10
3.05	Gifts And Gratuities	11
3.06	Contracting With Former CHA Employees.....	11

**SECTION IV
PROCUREMENT AUTHORITY AND ADMINISTRATION**

4.01	Authority And Responsibility.....	12
------	-----------------------------------	----

**SECTION V
ELIGIBILITY TO CONTRACT WITH NAHA**

5.01	Authority And Responsibility	13
5.02	Determination Of Responsibility Of Prospective Contractor	13
5.03	Debarment Status Review.....	13
5.04	Bidders And Sub-Bidders Qualifications	13
5.05	Compliance With Irs Regulations	14
5.06	Performance Evaluation Program	14

**SECTION VI
METHOD OF PROCUREMENT**

6.01	Authority And Responsibility	15
6.02	Purchases And Contracts.....	15
6.03	Competitive Exceptions - Direct Payments List.....	19
6.03	Competitive Exceptions - Cooperative Intergovernmental Agreements.....	21
6.04	Concessions	21

**SECTION VII
DISPOSAL OF SURPLUS PROPERTY**

7.01	Authority And Responsibility.....	23
------	-----------------------------------	----

**SECTION VIII
CONTRACT TYPES**

8.01	Authority And Responsibility	24
8.02	Contract Types	24

**SECTION 1
GENERAL POLICY STATEMENT**

SECTION IX

ENSURING REASONABLE COSTS

9.01	Authority And Responsibility	27
9.02	Definitions	27
9.03	Thresholds For Application	27
9.03	Independent Cost Estimates	28
9.04	Price Analysis	28
9.05	Cost Analysis	28
9.06	Non-Competitive Procurements	29
9.07	Permissible Non-Competitive Procurements.....	30
9.08	Justifications	30

SECTION X

DIVERSITY IN CONTRACTING

10.01	Authority And Responsibility	30
-------	------------------------------------	----

SECTION XI

DISPUTES, PROTESTS, AND APPEALS

11.01	Authority And Responsibility	31
11.02	Protests.....	31
11.03	Massachusetts Office Of The Inspector General	31
11.04	Waiver Of Informalities	32
11.05	Cancellation Rejection Of Invitation For Bids, Request For Proposals, Or Other Solicitation	32
11.06	Legal Action	32
11.07	Alternative Dispute Resolution	33

SECTION XII

THE AMERICAN RECOVERY & REINVESTMENT ACT - CAPITAL FUND GRANT

12.01	Purpose	34
12.02	Background	34
12.03	Specific Revision	34

SECTION 1 GENERAL POLICY STATEMENT

1.01 POLICY

- A.) It is the policy of the North Andover Housing Authority (NAHA) that all procurement for services and/or materials shall be in accordance with applicable Federal and Commonwealth of Massachusetts (“state”) laws, codes and regulations. Procurement must be administered by a Certified Public Purchasing Officer. If the administrator responsible for overseeing procurement is not certified, he or she must submit a plan to become certified within the next twelve (12) months or apply for a waiver from the Board of Commissioners. This policy establishes a broad framework of policies to ensure that NAHA’s purchasing and contracting functions promote administrative flexibility and efficiency, while at the same time maintaining prudent internal controls and compliance with applicable statutes and regulations. Specific purposes of this policy include, but are not limited to, the following:
- 1.) Fairness and objectivity: providing a fair, objective, and equitable selection and contracting environment for all individuals and firms seeking to do business or contracting with NAHA.
 - 2.) Ensuring reasonable costs: promoting competition, and negotiating (where applicable) to ensure that NAHA receives the most favorable prices and terms in its contracts.
 - 3.) Efficiency: ensuring that supplies and services (consultant, construction, social services, etc.) are obtained efficiently and effectively.
 - 4.) Accountability: promoting accountability of contracting actions by NAHA employees and encouraging employees to protect NAHA’s financial and other interests.
 - 5.) Value-added procurement: facilitating a procurement process that provides service and value to NAHA in obtaining goods and services.
 - 6.) Ethical standards: ensuring that NAHA’s procurement activities are implemented with the highest regard for integrity, avoidance of conflicts of interest, and consistent with applicable ethical standards.
 - 7.) Legal considerations: complying with all applicable federal, state and local statutes and regulations.

1.02 SCOPE

- A.) Funding sources: NAHA receives funds from federal, state, non-federal and private funding sources. As such, in its procurement activities, NAHA shall develop procedures designed to ensure compliance with applicable laws and regulations without necessarily imposing a higher standard than is necessary to ensure compliance.
- B.) Where a requirement in these policies is based only on federal requirements, NAHA’s Executive Director may, on a case-by-case basis for non-federally funded contracts, apply a more or less stringent standard than that outlined in the federal requirements, provided, however, that it is otherwise consistent with applicable policies and that all state or other legal requirements are met.
- C.) Nothing in this policy will prevent NAHA from complying with the terms and conditions of any grant, contract, gift, or bequest that is otherwise consistent with law.

SECTION 1
GENERAL POLICY STATEMENT

D.) The following shall be governed by this policy:

- 1.) Procuring, Purchasing, Leasing, Or Renting:
 - i.) Goods, Supplies, Equipment, Materials and Services
 - ii.) Construction and Maintenance
 - iii.) Consultant Services
 - iv.) Architectural and Engineering (A & E) Design Services
 - v.) Social Services
 - vi.) Other Services
- 2.) Selling
 - i.) Concessions
 - ii.) Disposal of Surplus Material and Equipment

E.) Excluded from scope: the following shall not be governed by this policy:

- 1.) Real estate purchase and sale transactions. (Surveys, appraisals, environmental site assessments, and financing analysis are considered consultant services and governed by this policy.)
- 2.) Loan transactions and documents.
- 3.) Sub-recipient or sub-grantee agreements and related change orders.
- 4.) Employment contracts.
- 5.) Limited partnership agreements.
- 6.) Award of housing or other vouchers to non-profit agencies.
- 7.) Housing Assistance Payment (HAP) Contracts.

1.03 COMPLIANCE WITH LAWS AND REGULATIONS

A.) Applicable laws and regulations: in adopting this policy, the NAHA Board of Commissioners and Executive Director, as the NAHA's contracting officer, each affirm that the policies are in compliance with all applicable federal, state and local laws and regulations, which may include, but not be limited to, the following:¹

- 1.) Compliance with Federal Laws and Regulations
- 2.) 24 CFR 85.36 (HUD Procurement Regulations)
- 3.) 24 CFR 941 Subpart F (HUD Capital Fund Regulations)
- 4.) 29 CFR Part 1, Procedures for Predetermination of Wage Rates

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

SECTION 1
GENERAL POLICY STATEMENT

- 5.) 29 CFR Part 3, Payment and Reporting of Wages Applicable to Federally Financed and Assisted Construction Contracts
 - 6.) 29 CFR Part 5, Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction
 - 7.) 29 CFR Part 7, Practice Before the Wage Appeals Board
 - 8.) ACC (Consolidated Annual Contributions Contract Between NAHA and HUD), Form HUD-53012A
 - 9.) USC § 666. Theft or Bribery Concerning Programs Receiving Federal Funds
 - 10.) Federal Energy Policy Act efficiency requirements, including The U.S. Housing Act of 1937, paragraph 9(d)(1)(c); the Energy Policy Act of 2005, Section 152; 24 CFR 905.10(k)(1)(iii); HUD Office of Public and Indian Housing (PIH) Notice PIH 2009-12; 24 CFR 965.306; and Notice PIH 2009-25: in general, when purchasing energy-consuming products, the CHA must purchase Federal Energy Star or Federal Energy Policy Act designated products, unless the purchase is not cost effective.
- B.) Compliance with State Laws and Regulations
- 1.) Massachusetts General Laws (“MGL”) Chapter 30B
 - 2.) MGL C. 39m Public Works (Non-Building) Construction
 - 3.) MGL C. 39M Proprietary Specifications In Public Construction Projects
 - 4.) MGL C.30b Procurement of Supplies and Services
 - 5.) MGL Chapter 7, Executive office For Administration and Finance
 - 6.) MGL Chapter 149, Labor and Industries
 - 7.) MGL C. 149 Building Construction Contracts
 - 8.) MGL C. 149, 44A1/2 Owner’s Project Manager (OPM)
 - 9.) Design Services: Housing authorities must follow The Procedures Established by the Massachusetts Department of Housing and Community Development (DHCD) for Design of State-Funded Housing. For design of Federally Funded Housing, Housing Authorities Are Required by the U.S. Department of Housing and Urban Development (HUD) rules to select designers pursuant to Chapter 7, section 38A.
- C.) Conflicts between these policies and other laws or regulations: in the event of a conflict between this policy and any applicable law or regulation, the law or regulation shall prevail.
- D.) 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 this policy, automatically supersede this policy, and the Executive Director or designee shall make appropriate modifications to the inconsistent policies and procedures.

**SECTION 1
GENERAL POLICY STATEMENT**

1.04 DELEGATION OF PROCUREMENT AUTHORITY

The Executive Director is hereby delegated the Chief Procurement Officer, with the authority to re-delegate as the Executive Director sees fit, to implement and manage this policy per the Chart in Section XIII.

Exempt from Delegation are the procurement of Legal Services, Fee Accountant, and Auditor which shall be conducted by the Executive Director in conjunction with the Board for review, ranking and interview of potential candidates. Contractual negotiations will be conducted by the Executive Director.

1.05 IMPLEMENTATION OF THIS POLICY

- A.) The Executive Director shall develop and implement operating procedures within ninety (90) days of the approval by the Board for this Policy. These policies shall be listed and available for review on the NAHA's Web-based Internet site.
- B.) In an effort to advertise bids as broadly as possible, updated lists of qualified bidders will routinely be sought from HUD and DHCD.

1.06 INTERNAL CONTROLS

- A.) The NAHA shall maintain a system of internal controls which shall include:
 - 1.) Delegation of procurement authority to employees that possess the necessary qualifications.
 - 2.) Segregation of duties
- B.) Receipt of goods and services
- C.) Custody and safeguarding of the assets
- D.) Recording transactions
- E.) Recordkeeping
- F.) List of Vendors and Trade Groups solicited in procurement processes.

SECTION II

RECORD MAINTENANCE AND PUBLIC ACCESS TO PROCUREMENT INFORMATION

2.01 AUTHORITY AND RESPONSIBILITY

- A.) The Executive Director shall maintain records sufficient to detail the significant history of each procurement. These records will include, but are not necessarily limited to, the following: rationale for the method of procurement; selection of contract type; contractor selection or rejection; and the basis for the contract price.² All procurement records shall be maintained and disposed of in accordance with the NAHA records retention and disposal policy and procedure.
- B.) Procurement information shall be a matter of public record to the extent provided in applicable state law and shall be available to the public in accordance with such statutes.
- C.) Reports on procurement activities shall be submitted to the board for review based on the criteria described in section 2.02 (A).

2.02 PUBLIC RECORDS

- A.) Applicable law: NAHA procurement information shall be a matter of public record to the extent provided for in MGL chapter 66 et seq. Title X. Public Records and will be made available upon request as provided by such statute.
- B.) Photocopying and other charges: pursuant to such statute, the NAHA may charge a minimum of twenty-five cents per page for each photocopy of public records requested, with additional fees for staff time to make copies and fees assessed for the production of records from electronic media and for shipping/postage. The NAHA will assess and collect such charges.
- C.) Disclosing and obtaining contractor bid or proposal information source selection information: a present or former board member, employee of, or person acting on behalf of or advising the NAHA on a procurement, who has or had access to such information, shall not disclose same before the award of the contract to which the information relates.
- D.) Contractor bid or proposal information means information not made available to the public and includes:
 - 1.) Cost or pricing data;
 - 2.) Indirect costs and direct labor rates;
 - 3.) Proprietary information about processes, operations or techniques; and
 - 4.) Information marked by the contractor as “contractor bid or proposal information.”
- E.) Source selection information means information not made available to the public and includes:
 - 1.) Bid prices;
 - 2.) Proposed costs or prices from bidders;
 - 3.) Source selection and technical evaluation plans;

² 24 CFR 85.36(b)(9)

SECTION II

RECORD MAINTENANCE AND PUBLIC ACCESS TO PROCUREMENT INFORMATION

- 4.) Technical evaluations, cost or price evaluations, competitive range determinations, rankings of bids, reports of source selection panels; and
 - 5.) Other information marked as "source selection" based on a determination that its disclosure would jeopardize the procurement.
- F.) Contractor payroll reports: payroll reports received by the NAHA from contractors and subcontractors on construction projects, for the purpose of monitoring prevailing wage requirements, shall not be released to outside parties unless the employees' personal identifiers (e.g., name, address, social security number) are redacted. Requests for such information shall be forwarded to the HUD regional labor relations office for review and response.

SECTION III ETHICAL STANDARDS

3.01 AUTHORITY AND RESPONSIBILITY

- A.) In the conduct of NAHA's procurement system, the NAHA Board and NAHA employees shall be aware of, and comply with, the following non-exclusive list of laws, regulations, and advice, which are hereby incorporated by reference as part of these policies:
- 1.) MGL 268A, Conflict of Interest Law
 - 2.) MGL C.121B – Massachusetts Public Housing Authorities Law
 - 3.) CHA Code of Ethics
 - 4.) 24 CFR 85.36(B)(3) - HUD Procurement Regulations
 - 5.) Terms and Conditions, Constituting Part A of the Consolidated Annual Contributions Contract Between Housing Authority and the United States of America, Section 19 – Conflict of Interest.
 - 6.) USC § 666. Theft or Bribery Concerning Programs Receiving Federal Funds
- B.) Contracts not funded with federal funds shall not be bound by any of the federal requirements noted above in 4 and 5.

3.02 BOARD OF COMMISSIONERS AND EMPLOYEE DEFINED

- A.) As used in this chapter, the terms "Board," "Commissioner," and "employee" shall include: a member of the NAHA Board of Commissioners; an NAHA employee; an agent of NAHA; any member of the respective immediate family of a NAHA Commissioner, employee or agent; a partner of NAHA; an organization which employs, or is about to employ, any of the above³; and an appointee to any decision-making body for NAHA.

3.03 DISCIPLINARY ACTIONS

- A.) Breaches of the ethical standards of this chapter of the procurement policies may result in an NAHA employee being subject to disciplinary actions up to and including termination, consistent with NAHA policies and procedures.⁴

3.04 CONFLICT OF INTEREST

- A.) No NAHA employee shall:
- 1.) Contract selection, award, and administration: participate in the selection, award, or administration of a contract if a conflict of interest (direct or indirect financial interest, personal involvement, or other interest), real or apparent, would be involved.⁵

³ 24 CFR 85.36(b)(3)(i-iv)

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

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

SECTION III ETHICAL STANDARDS

Participation shall include, but not be limited to: preparing the procurement document itself, serving on an evaluation panel to select a firm; reviewing, endorsing, or recommending an award or selection; approving or rejecting an award of a contract or purchase order.

- 2.) Ownership and business interests: own or hold an interest in any contract or property or engage in any business, transaction, or professional or personal activity that would:
 - i.) Be, or appear to be, in conflict with the employee's official duties, or
 - ii.) Secure, or appear to secure, an unwarranted privilege or advantage for the employee, or
 - iii.) Prejudice, or appear to prejudice, the employee's independence of judgment in the exercise of his or her official duties relating to NAHA.
- 3.) Confidential information: knowingly use confidential information for the employee's or another's actual or anticipated personal gain.

3.05 GIFTS AND GRATUITIES

- A.) Prohibition: an employee may not solicit or accept gifts, entertainment, gratuities, favors, or anything of monetary value from contractors or subcontractors, or potential contractors or subcontractors that could influence, or be perceived to influence, contracting or purchasing decisions.⁶
- B.) Exception: in general, a nominal gift of less than \$50.00 in value that was not solicited by an employee, and which can be and is shared with all employees and/or the public, may be considered acceptable. Employees are expected to exercise good judgment before accepting any gift, and to check with the Executive Director if in doubt.

3.06 CONTRACTING WITH FORMER NAHA EMPLOYEES

- A.) The following shall apply to contracts financed in whole or in part with federal funds:
 - 1.) One year prohibition: in accordance with HUD regulation, and subject to the Waiver provisions of Paragraph 2 as follows herein, within one year after an employee leaves NAHA, NAHA shall not contract with such employee if the employee was responsible for formulating policy or influencing decisions with respect to the project(s) being contracted for.⁷
 - 2.) Waiver: for good cause, and upon written request by the NAHA, HUD may waive the one-year prohibition requirement.⁸

⁶ 24 CFR 85.36(b)(3)

⁷ Section 19 (A) (1) (ii) – Conflict of Interest. Terms and Conditions, Constituting Part A of a Consolidated Annual Contributions Contract Between Housing Authority and the United States of America.

⁸ Section 19 (A) (4) – Conflict of Interest. Terms and Conditions, Constituting Part A of a Consolidated Annual Contributions Contract Between Housing Authority and the United States of America.

**SECTION IV
PROCUREMENT AUTHORITY AND ADMINISTRATION**

4.01 AUTHORITY AND RESPONSIBILITY

- A.) All procurement transactions shall be administered by the contracting officer, who shall be the Executive Director, or by another NAHA employee whom the Executive Director has designated, delegated, or authorized in writing.
- B.) The duties of the contracting officer shall be to ensure the following:
- 3.) That each proposed procurement is reviewed by the NAHA employee responsible for originating the procurement with the goal of avoiding purchase of unnecessary or duplicative items; that consideration be given to the consolidation or separation of procurement in order to obtain a more economical purchase; and that an analysis of lease options versus purchase alternatives be considered in order to ensure the most economical approach;
 - 4.) That contracts and modifications are in writing, clearly specifying the desired supplies, services, or construction, and are supported by sufficient documentation regarding the history of the procurement, including the method of procurement chosen, the selection of the contract type, the rationale for selecting or rejecting offers, and the basis for the contract price;
 - 5.) That solicitation procedures are conducted in compliance with 24 CFR 85.36 or in compliance with state and local laws which are more stringent than, yet consistent with 24 CFR 85.36.
 - 6.) That an independent cost estimate is prepared in advance of each solicitation and/or contract modification and is appropriately secured for each procurement above the small purchase limitation; that such information remains confidential and is not disclosed outside of the authority; and that a cost or price analysis is conducted of the responses received for all procurements;
 - 7.) That the contract award is made to the responsive and responsible bidder offering the lowest price (in the context of competitive sealed bidding) or to whose proposal offers the greatest value to the authority, considering price, technical, and other factors as specified in the request for proposal (in the context of competitive negotiation);
 - 8.) That contracts are only awarded to responsible bidders who possess the ability to perform successfully under the terms and conditions of the proposed contract; that factors to be considered in making such a determination include contractor integrity, compliance with public policy, record of past performance, and financial and technical resources; that any determination of non-responsibility is fully documented and copies of such documents are placed in the contract file; that bidders and offerors who are found to be non-responsible are informed of the reasons for such a finding;
- B.) That each contract indicates the schedule of payments to be made to the contractor, and that payment is promptly made for contract work performed and accepted.

**SECTION V
ELIGIBILITY TO CONTRACT WITH CHA**

5.01 AUTHORITY AND RESPONSIBILITY

A.) The Executive Director or his/her designee shall take all actions necessary to assure that the NAHA award contracts only to eligible, responsible prospective contractors who have the ability to perform successfully under the terms and conditions of the proposed contract.

5.02 DETERMINATION OF RESPONSIBILITY OF PROSPECTIVE CONTRACTOR

A.) In determining the responsibility of a bidder, the NAHA shall consider such matters as the bidder's:

- 1.) Integrity;
- 2.) Compliance with public policy;
- 3.) Record of past performance; and
- 4.) Financial and technical resources (including construction and technical equipment).

B.) Before a bid is considered for award, the bidder may be requested by the NAHA to submit a statement or other documentation regarding any of the items in paragraph (A) above. Failure by the bidder to provide such additional information shall render the bidder nonresponsive, nonresponsible and ineligible for award.

5.03 DEBARMENT STATUS REVIEW

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

- 1.) U.S. General Services Administration's "List of Parties Excluded From Federal Procurement and Non-Procurement Programs"
- 2.) U.S. Department of Housing and Urban Development's "Limited Denial of Participation" List
- 3.) Lists of Suspended or Debarred Contractors Maintained by the Commonwealth of Massachusetts office of the Attorney General and the Division of Capital Asset Management.

5.04 BIDDERS AND SUB-BIDDERS QUALIFICATIONS

A.) If required by the applicable procurement, each bidder and sub-bidder must provide, at the time of bid submission, an updated certification issued by the Division of Capital Asset Management and Maintenance ("DCAM"), pursuant to MGL Chapter 149, Section 44D Submission of Bid or offer; Application for Certification.

B.) The Executive Director or his/her designee may develop, as part of bidding documents, specific and objective qualification requirements for the bidder or sub bidder beyond the

**SECTION V
ELIGIBILITY TO CONTRACT WITH CHA**

DCAM Certification Requirements that may be used in evaluating whether a bidder or sub bidder is responsible and capable of performing the proposed work.

5.05 COMPLIANCE WITH IRS REGULATIONS

- A.) Prior to making payment to a business, the Executive Director or his/her designee shall ensure that NAHA receives from the business (if not already on file), a W-9 or W-9 substitute form.

5.06 PERFORMANCE EVALUATION PROGRAM

- A.) The Executive Director or his/her designee shall develop and implement a performance evaluation system to evaluate the performance of contractors, consultants, and/or vendors doing business with the NAHA. Ratings on previous contracts from such a performance evaluation program may be used in evaluating when a business is responsible and capable of performing proposed work, and may also provide a local mechanism for debaring businesses from contracting with NAHA.
- B.) Submission of standard contractor evaluation forms. In accordance with 810 CMR 8.02: Submission of Standard Contractor Evaluation Forms by Awarding Authorities, the NAHA shall submit to DCAM a properly completed standard contractor evaluation form within 70 calendar days of use and/or occupancy, or upon issuance of a certificate of use and/or occupancy, or termination of a project, whichever is earlier, on all projects bid under MGL C. 149A and 149 § 44 (A-J). Any awarding authority that fails to complete and submit the standard contractor evaluation form, together with any written response by any contractor, to DCAM within 70 days of the completion of a project shall be ineligible for the receipt of any public funds disbursed by the Commonwealth of Massachusetts for the purposes of any public buildings or public works projects.

**SECTION VI
METHOD OF PROCUREMENT**

6.01 AUTHORITY AND RESPONSIBILITY

A.) This Policy grants the Executive Director and/or his/her designee the authority and responsibility for the use of the methods of procurement and selection of contract types as defined in this Section.

6.02 PURCHASES AND CONTRACTS

A.) The Executive Director, or a representative designated by the Executive Director in writing shall develop and implement procedures that assures compliance with the following:

1.) Design Solicitation

Design of State-Funded Housing. Housing authorities must follow the procedures established by the Massachusetts Department of Housing and Community Development (DHCD) For Design of State-Funded Housing. The DHCD's procedures follow M.G.L. c. 7 processes and are approved by the Design Selection Board (DSB). The DHCD procedures prescribe the role of DHCD and of the local housing authority in the selection process. For design of federally funded housing, housing authorities must comply with U.S. Department of Housing and Urban Development (HUD) rules for designer service procurement, per 24 CFR 85.36(d)(3)(v), and the HUD Procurement Handbook.

**SECTION VI
METHOD OF PROCUREMENT**

Design of Federally-Funded Housing

Requirements	Estimated Construction Cost For Design Fee ⁹	
	Under \$100,000	Over \$100,000
Procurement Procedure - Method of Procurement ¹⁰ .	Choice of using small purchase, competitive proposals, or qualifications-based selection (QBS) procedures in contracting for A/E services.	HUD prefers best and final/competitive range method per Handbook 7.2.N. Qualifications-based selection process also acceptable. Negotiate the fee with the top-ranked designer within the fee limit. Under QBS: <ul style="list-style-type: none"> ▪ Request technical qualifications statements from prospective contractors ▪ Rank technically 1,2,3 ▪ Interview 3 top-ranked firms ▪ Hold negotiations with the top-rated firm to reach agreement on a fair and reasonable price. ▪ If agreement cannot be reached, negotiate with the next highest rated firm, and so on until a fair and reasonable price is obtained
Prohibition	It is prohibited for the purchase of other types of services through A/E firms under the QBS method.	It is prohibited for the purchase of other types of services through A/E firms under the QBS method.
Advertising	No	Advertise once in the Central Register and your local newspaper at least two weeks before the deadline for filing applications.
Selection Committee	No	Three-member: Director of Modernization; Director of Maintenance; Clerk of Works. Alternate: Maintenance Supervisor. Make recommendation to the Board.
Registration	No	Yes, by Board of Registration in the appropriate discipline.
Insurance	No	10% of the total cost of the project or \$1 million, whichever is less.
Prevailing Wage	Yes	Yes

⁹ Design Fee: The Designer Selection Board recommends that when there is no estimated cost of construction, the designer selection procedures should be followed if the design fee is \$10,000 or more. For practical purposes, the design fee should usually not exceed 10% of the estimated cost of construction on jobs; or 11% on complex engineering jobs.

¹⁰ 24 CFR 85.36(d)(3)(v)

**SECTION VI
METHOD OF PROCUREMENT**

Building Construction Contracts M.G.L. C. 149

Requirements	Estimated Contract Amount			
	Under \$10,000	\$10,000 to \$24,999	\$25,000 to \$100,000	Over \$100,000
Procurement Procedure	Solicit three written price quotes.	Solicit written price quotes.	Sealed Bids (Using M.G.L. C.30, §39M Procedure).	Sealed Bids.
Advertising Requirements	No.	Advertise once in Central Register.	Advertise once in the Central Register and newspaper at least two weeks before bids are due, and post on jurisdiction's bulletin board or website for one week before bids are due.	Advertise once in the Central Register and post on jurisdiction's bulletin board or website for two weeks before bids are due.
DCAM Certification	No	No	No	Required For General Bidders and Filed Sub-Bidders.
OSHA Training	No	Yes	Yes	Yes
Agency Prequalification	No	No	No	Optional
Filed Sub-Bids	No	No	No	Yes (\$20,000 and Over).
Bid Deposit	No	No	5% of the value of the total bid.	5% of the value of the total bid, or sub-bid.
Payment Bond	50% payment bond, if project cost is more than \$2,000.	50% payment bond.	50% payment bond.	100% payment bond.
Performance Bond	No	No	No	100% Performance Bond.
Prevailing Wage (Davis-Bacon)	Yes, if over \$2,000	Yes	Yes	Yes
MBE/WBE/ and Section 3	Yes	Yes	Yes	Yes
Contractor Evaluation	No	No	No	Yes

**SECTION VI
METHOD OF PROCUREMENT**

Procurement of Supplies and Services M.G.L. C.30B

Requirements	Estimated Contract Amount		
	Under \$2,000	\$2,000 to \$35,000.00	\$35,000 and Over
Use Statewide Contracts	The Operational Services Division awards a variety of contracts that may be used without conducting a separate Chapter 30B procurement process.	The Operational Services Division awards a variety of contracts that may be used without conducting a separate Chapter 30B procurement process	The Operational Services Division awards a variety of contracts that may be used without conducting a separate Chapter 30B procurement process.
Procurement Procedure	Sound business practices. ¹¹	Solicit three written or oral quotes.	Sealed bids or proposals ¹² .
Advertising Requirements	No	No	Advertise once in a newspaper of general circulation at least two weeks before bids or proposals are due, and post a notice on your jurisdiction's bulletin board or website for two weeks before bids or proposals are due. If \$100,000 or more, advertise once in the goods and services bulletin.
Award Contract To:	Responsible ¹³ person offering a competitive price.	Responsible person offering the lowest price.	Under §5, the responsive ¹⁴ and responsible bidder offering the lowest price. Under §6, the most advantageous proposal from a responsive and responsible proposer taking into consideration price and evaluation criteria. Under §6, an Evaluation Committee is formed to review and score proposals. Evaluation Committee consists of Deputy Director, Procurement Officer and relevant Department Head. Follow §6 requirements as to sealed price proposals and non-numeral rankings (highly advantageous, etc.)

¹¹ The OIG (Commonwealth of Massachusetts) interprets sound business practices to mean periodically checking price lists or seeking price quotes to ensure that you are receiving a competitive price for the supply or service.

¹² M.G.L. c.30B, §§5 or 6

¹³ M.G.L. c.30B, §2 defines a responsible bidder or offeror as "a person who has the capability to perform fully the contract requirements, and the integrity and reliability which assures good faith performance." 24 CFR § 85.36 (8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

¹⁴ M.G.L. c.30B, §2 defines a responsive bidder or offeror as "a person who has submitted a bid or proposal which conforms in all respects to the invitation for bids or request for proposals."

**SECTION VI
METHOD OF PROCUREMENT**

Written Contract ¹⁵	No	Yes	Yes
Maximum Contract Term ¹⁶	Three years, unless majority vote authorizes longer.	Three years, unless majority vote authorizes longer.	Three years, unless majority vote authorizes longer.

Owner’s Project Manager

- 2.) M.G.L. C 149, § 44A½ , requires public awarding authorities to engage the services on an owner’s project manager¹⁷ on all building projects estimated to cost \$1.5 million or more. The NAHA shall, prior to contracting for design services where the project is estimated to cost \$1.5 million or more, procure the services of project manager. At the Executive Director’s discretion, an NAHA employee may be selected and serve as the Owner’s Project Manager, providing he or she meets the required minimum qualifications under the M.G. L. C 149.

6.03 COMPETITIVE EXCEPTIONS - DIRECT PAYMENTS LIST

- B.) Definition: the direct payments list (also known as competitive exceptions) is a list of transactions, which, by the nature of the transaction, are impractical or impossible to competitively bid because of market or other conditions, and are thus exempt from competitive bidding requirements. These transactions do not have to be justified as a non-competitive procurement but may be obtained directly by an employee with adequate *expenditure authority*. Depending on the item, there may or may not be a contract or purchase order outlining the terms and conditions.
- C.) Modifications to the direct payments list:
 - 1.) The Executive Director administratively may make modifications to the direct payments list without seeking approval of the Board of Commissioners, provided that the changes are consistent with applicable statutory and regulatory requirements and that the current list is made readily available to the Board and NAHA employees.
- C.) Interpretation of direct payments list:
 - 1.) In the event of ambiguity or uncertainty as to whether an item is or is not subject to competition and whether it should be included on the direct payments list, the Executive Director or designee shall review the matter and make the final decision.
 - 2.) The following items are on the direct payments list:
 - i.) Utility expenditures (water, sewer, electricity, natural gas, and other regulated utility expenses)
 - ii.) Postage and other purchases from the U.S. Postal Service

¹⁵ M.G.L. c.30B, §17(a) states: “All contracts in the amount of [\$5,000] or more shall be in writing, and the governmental body shall make no payment for a supply or service rendered prior to the execution of such contract.”

¹⁶ M.G.L. c.30B, §12(b) states: “Unless authorized by majority vote, a procurement officer shall not award a contract for a term exceeding three years, including any renewal, extension, or option.”

¹⁷ Under the new law, an “owner’s project manager” is defined as “an individual, corporation, partnership, sole proprietorship, joint stock company, joint venture, or other entity engaged in the practice of providing project management services for the construction and supervision of construction of buildings.”

**SECTION VI
METHOD OF PROCUREMENT**

- iii.) Licenses, permits, and fees from governmental or regulatory entities at the federal, state, or local level.
- iv.) Purchases from other governmental entities (federal, state, city, local, port districts, public development authorities [PDAS], housing authorities, state colleges and universities, state hospitals, etc.), where the governmental entity provides goods or services not available from the private sector.
- v.) Emergency housing for NAHA residents at motels/hotels with which NAHA has executed an emergency housing agreement, or as otherwise authorized by the Executive Director or a buyer.
- vi.) Service or use fees paid to governmental cooperative purchasing organizations.
- vii.) Gas card charges for gasoline and diesel.
- viii.) Charges for official NAHA business on personal credit card while on NAHA travel status.
- ix.) Legal services such as arbitration fees, litigation fees, witness fees, court costs, and related expenses (but not the cost of outside counsel, investigations, or related matters), when approved by the Board of Commissioners.
- x.) Legal settlements of disputed matters, and judgment claims against NAHA (for use only with approval by the Board of Commissioners).
- xi.) Payments for annual maintenance, service, or support agreements for computer and telecommunication-related services. Payments for existing software license agreements. These require the approval of the Executive Director or designee.
- xii.) Traffic control (flagging) by off-duty police officers (only when required).
- xiii.) Travel expenses for NAHA employees, residents, program participants, volunteers, or members of the Board of Commissioners necessary to conduct NAHA business.
- xiv.) Training registration fees and tuition for pre-established, non-NAHA specific, off-site classes, seminars, trainings, workshops, etc. for NAHA employees, residents, program participants, volunteers, and members of the Board of Commissioners.
- xv.) Testing and travel expenses of employment applicants (including moving expenses for eligible personnel). This includes travel expenses of certain out-of-state job applicants. The Board of Commissioners must approve travel expenses of job applicants.
- xvi.) Conference and convention expenses and fees for NAHA employees, residents, program participants, volunteers, or members of the Board of Commissioners conducting NAHA business.
- xvii.) Advertisements for employment opportunities, purchasing and contracting solicitations, sale of surplus items, public announcements and outreach, etc. (all media). This exception does not include printing, design, or graphics services.

**SECTION VI
METHOD OF PROCUREMENT**

- xviii.) Freight bills, express shipping, common carriers, and delivery services.
- xix.) Honoraria and stipends.
- xx.) Entertainment such as speakers, lecturers, musicians, performing artists, but only when such expenses are permitted by the grant funding the activity.
- xxi.) Insurance deductible and/or retained losses (requires approval of the NAHA Executive Director).
- xxii.) Taxi, public transportation, and toll fares; mileage and incidental parking expenses.
- xxiii.) Publications and subscriptions (newspapers, magazines, books, pre-printed materials, reprints, publishers page charges, electronic publications, online subscription services, pre-recorded audio or video cassettes, slide presentations, tapes, cds, diskettes when purchased from the publisher or producer; etc.).
- xxiv.) Mailing lists (print or electronic).
- xxv.) Professional association membership dues, fees, licenses, accreditation, and certifications.
- xxvi.) Royalties, broadcast rights, and film rentals from the producer or protected distributors.
- xxvii.) Petty cash purchases and reimbursements less than \$50.
- xxviii.) Special items pre-approved by the Board of Commissioners, the Executive Director, or his/her designee.

6.03 COMPETITIVE EXCEPTIONS - COOPERATIVE INTERGOVERNMENTAL AGREEMENTS

- A.) Consistent with the requirements of 24 CFR 85.36(b) (5)¹⁸, and in order to promote efficiency and competition in the procurement of goods and services, NAHA may enter into agreements with other governmental agencies and state, regional or national intergovernmental purchasing networks or associations. The purpose of a cooperative intergovernmental agreement is to take advantage of a competitive selection process already conducted by another agency and thus save NAHA the time and expense of conducting its own selection process. In evaluating the use of a cooperative intergovernmental agreement, the Executive Director shall review for reasonableness the standards in the competitive selection process conducted by the other agency.

6.04 CONCESSIONS

- (A) Competitive selection process: in selecting concessionaires for various NAHA revenue-producing activities, including, but not limited to, vending and laundry machines operation, cellular and other communication antenna space leases, etc.,

¹⁸ "To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services."

SECTION VI
METHOD OF PROCUREMENT

NAHA shall generally conduct a competitive selection process similar to those outlined for RFPs.

(B) Objectives of competition: while NAHA is committed to a competitive selection process to help ensure openness in notifying concessionaires about business opportunities, NAHA's primary objective in conducting a competitive selection process shall be to ensure that NAHA's objectives of revenue generation and service delivery are met.

(C) Waiver of competition: on a case-by-case basis, the Executive Director may decide if a competitive selection process shall not be required for selecting a concessionaire. A report shall be submitted to the Board providing the rationale behind such waiver.

**SECTION VII
DISPOSAL OF SURPLUS PROPERTY**

7.01 AUTHORITY AND RESPONSIBILITY

- A.) The Executive Director shall be responsible for the disposition of surplus property (non-real property) no longer necessary for NAHA's purposes and shall establish NAHA Policy/procedures for the transfer, sale, or disposal of such property, consistent with applicable laws.

SECTION VIII CONTRACT TYPES

8.01 AUTHORITY AND RESPONSIBILITY

A.) The Executive Director is authorized by this policy to select and use the following contract types in accordance with 24 CFR 85.36 and the laws of the Commonwealth of Massachusetts.

8.02 CONTRACT TYPES

A.) The following is a summary of the major contract types (pricing arrangements) authorized for use under this Policy:

- i) **Firm fixed price.** This contract type requires the delivery of a product or services at a specified price, fixed at the time of contract award and not subject to any adjustment.
- ii) **Fixed price with economic price adjustment.** In cases where the market for a particular supply or service is especially volatile, and the NAHA needs a contract for a term greater than just an initial quantity, it is possible to use a contract type that allows for adjustment in prices based on changes in market conditions. Although the contract contains initial firm fixed prices, the prices are adjusted upward or downward during the performance period based on changes in an independent index of prices, such as the consumer price index or other commodity price indices that are not controlled by the contractor.
- iii) **Fixed price incentive.** This contract type provides incentives for efficiency in performance by offering high profit for outstanding performance, modest profit for average performance, and low profit or loss for below average performance. The contract contains a price ceiling, a target cost, a target profit, and a formula for adjusting the profit based on performance.
- iv) **Firm fixed price, level of effort.** This type of contract is useful in some cases when buying professional services. It provides a specific number of hours for a stated period of time at a fixed price. It describes the scope of work in general terms (usually study or investigation), the contractor is normally required to submit reports showing the results achieved with the level of effort, and payment is based on effort expended, not on results.
- v) **Cost reimbursement (no fee).** In this type of contract, an estimated cost ceiling is negotiated at time of award, which limits the costs that may be reimbursed. There is no fee or profit, only reimbursement of incurred costs.
- vi) **Cost sharing.** This type of contract is similar to the cost reimbursement (no fee) type, except that it provides for sharing of costs between the NAHA and the contractor, rather than full reimbursement of cost. At time of award, the parties agree to a sharing ratio.
- vii) **Cost plus fixed fee.** This is among the least preferred type of contract, because it places total responsibility for contract performance on the NAHA, however, in some cases its use is necessary, because to use any other contract type would cause the contractor to charge excessively high prices/costs due to its need to cover the uncertainties involved.
- viii) **Cost plus incentive fee.** This type of contract is appropriate when a fixed price incentive contract is not possible because of technical and cost uncertainties,

SECTION VIII CONTRACT TYPES

- performance objectives are known, confidence in achieving those objectives is high, and a formula can be negotiated that will provide for performance incentives.
- ix) **Cost plus award fee.** This contract combines elements of the cost plus fixed fee and cost plus incentive fee by providing an estimated total cost (costs are reimbursed), a minimum fee, and an award fee based on the quality of the contractor's performance. Criteria are established for measuring the contractor's performance, and performance evaluated periodically during the contract for the purpose of determining any award fee due the contractor.
 - x) **Time and materials and labor-hour.** A time and materials contract provides for payment of direct labor hours at fixed hourly rates, and material at cost (no fee or profit) the hourly rates are "burdened" or "loaded" rates, meaning that they include all indirect costs and profit. The contract contains a price ceiling that the contractor may only exceed at its own risk. HUD regulations 24 CFR 85.36(b)(10) requires the following for any time and materials contract:
 - i. A determination that no other contract is suitable
 - ii. A ceiling in the contract that the contractor exceeds at its own risk.
 - xi) **Requirements.** A requirements contract provides for the purchase of all actual needs of the HA from one contractor for specific supplies or services at fixed prices during a stated period of time. There is a realistic estimated total quantity, but no guaranteed minimum, and delivery orders are issued to obtain the needed items.
 - xii) **Indefinite quantity.** This contract type works in the same way as the requirements type contract, except that there is a guaranteed minimum that the NAHA must order (either in dollar terms or number of units). The contract also contains a ceiling on the total amount that may be ordered. The initial contract obligates funds for the minimum quantity, but thereafter funds are obligated by delivery order.
 - xiii) **Definite quantity.** This contract is similar to the requirements and indefinite quantity types, but is used when the NAHA knows the precise quantity of items needed, but there is uncertainty as to when delivery is required. Consequently, this contract provides for a specific quantity of supplies or services to be purchased, but delivery orders specify the quantities and times of delivery within the specified total. Funds are obligated for the total amount at time of award.
 - xiv) **Basic ordering agreement (BOA).** A BOA is not a contract. It is an agreement that provides terms and conditions that will apply to future contracts or orders during a specified period of time, a description of the supplies or services needed (as specific as practicable), methods of pricing and issuing delivery orders, delivery terms, and a statement as to when any subsequent order becomes a contract.
 - xv) **Letter contract.** A letter contract is a legal preliminary, negotiated contract that authorizes the contractor to start work pending negotiation of a complete contract. It states the maximum liability of the NAHA (an amount necessary to cover performance until the complete contract is finished), the contract type, and the contractor's obligation to provide a cost breakdown. It may be used only in emergencies, if an immediate binding agreement is needed so contractor performance can begin. Each letter contract must have a schedule for negotiating

**SECTION VIII
CONTRACT TYPES**

the complete contract. This period shall not exceed 90 days. A letter contract obligates no more than 50% of the total estimated contract price.

- xvi) **Design/build.** The design/build selection methodology may be used when the criteria in 24 CFR 85.36(d) (2) (i) are not applicable. MGL chapter 149a. Public construction alternative delivery methods shall apply. In such a situation, proposals may be received from contractors to both design and build the work. The evaluation criteria shall include price along with other factors relating to the contractor's experiences and ability to perform the project.

**SECTION IX
ENSURING REASONABLE COSTS**

9.01 AUTHORITY AND RESPONSIBILITY

- A.) As a public agency accountable to both public and governmental funding agencies, the NAHA is committed to ensuring that costs paid for obtaining necessary goods and services are reasonable and that the NAHA's interests are adequately protected. In doing so, the Executive Director or his/her designee will evaluate the reasonableness of costs proposed by a contractor, consultant, or vendor.

9.02 DEFINITIONS

- A.) **Independent cost estimate:** an estimate of the anticipated costs of a contract or change order prepared by NAHA staff or other authorized party to assist the NAHA in evaluating the reasonableness of costs proposed by a contractor, consultant, or vendor.
- B.) **Price analysis:** a written review and evaluation of competitive prices received by the NAHA to determine whether the proposed price of a contractor is reasonable when compared with prices provided by others in the market.
- C.) **Cost analysis:** a written review and evaluation of whether the proposed cost of a contract, purchase order, or change order, not based on competitive prices received, is reasonable.

9.03 Thresholds for Application

- A.) **Non-federally funded contracts threshold:** the requirements of this chapter for written independent cost estimates, cost analysis, or price analysis on non-federally funded contracts shall apply only if the estimated or actual dollar amount of the contract or change order equals or exceeds \$25,000. NAHA staff is nevertheless expected to exercise prudent and conservative judgment in evaluating the reasonableness of a proposed expenditure of less than \$25,000.
- B.) **Federally funded contracts threshold:** consistent with the provisions of these policies which establish \$2,000 as the threshold for obtaining price competition, the requirements for written independent cost estimates, cost analysis, or price analysis on federally funded contracts shall not be applicable to procurements or changes valued in the aggregate at less than \$2,000, but shall be to all procurements which equal or exceed such threshold.
- 1.) To prepare such a written analysis for a proposed expenditure of less than \$2,000 may require that NAHA staff spend more time and money preparing the estimate or conducting the analysis than the value of the procurement. However, NAHA staff is nevertheless expected to exercise prudent and conservative judgment in evaluating the reasonableness of all such proposed expenditures. Such evaluation may include obtaining a breakdown of the contractor's or consultant's proposed costs.
- C.) **Direct payments:** transactions defined as direct payments are exempt from the requirements of this chapter for conducting independent cost estimates, cost analysis, or price analysis.

**SECTION IX
ENSURING REASONABLE COSTS**

9.03 INDEPENDENT COST ESTIMATES

- A.) **Purpose:** the purpose of developing an independent cost estimate is to assist the NAHA in evaluating:
- 1.) The reasonableness of prices obtained through competition where price was used as a selection criterion, or
 - 2.) The reasonableness of prices proposed through a selection process where price was not used as a selection criterion.
- B.) **When required:** before soliciting bids or proposals,¹⁹ or prior to starting contract negotiations after making a selection based on a request for qualifications process, NAHA staff must develop an independent estimate of costs.
- C.) **Independence of estimate:** the independent cost estimate may be prepared by qualified NAHA staff or by an independent consultant engaged for the purpose of preparing such an estimate.

9.04 PRICE ANALYSIS

- A.) **Purpose:** the purpose of a price analysis is to ensure that the price that the NAHA will be paying is reasonable based on competition in the market.
- B.) **When required:** a price analysis is performed when NAHA staff compares prices submitted as part of a competitive selection process. When price is used as the only selection criterion and competition exists, the NAHA must, prior to award of a contract, evaluate the price proposed for acquiring goods and services against responses received from competing firms.²⁰ One of the most common uses of price analysis occurs when comparing bids received for a construction project.

9.05 COST ANALYSIS

- A.) **Purpose:** the purpose of the cost analysis is to ensure that the proposed price is reasonable, and shall include an analysis of individual components of the cost.
- B.) **When required:** when price is not used as the only selection criterion, the NAHA must, prior to award of a contract or execution of a change order, conduct a cost analysis.²¹
- 1.) The following situations require that a cost analysis be performed:
 - i.) Sole source selections
 - ii.) Emergency selections (the Executive Director may waive preparation of a cost analysis for an emergency).
 - iii.) Single response to a solicitation

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

²⁰ 24 CFR 85.36(f)(1)

²¹ 24 CFR 85.36(f)(1)

**SECTION IX
ENSURING REASONABLE COSTS**

- iv.) Contracts based on a request for qualifications (A & E contracts and development partners)
 - v.) Change orders or other modifications that change the contract amount.
 - vi.) Contracts based on requests for proposals or informal solicitations where price is one of the evaluation criteria.
- 2.) **Exceptions:** a cost analysis does not need to be conducted if the reasonableness of the price can be established based on a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation.²²
- C.) **Cost practices prohibited:** the cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

9.06 NON-COMPETITIVE PROCUREMENTS

A.) Restricting competition prohibited

- 1.) Procurement practices that restrict competition are prohibited. Examples of such practices, cited in 24 CFR 85.36(C)(1), include the following:
 - i.) **Unreasonable requirements:** “placing unreasonable requirements on firms in order for them to qualify to do business.”²³
 - ii.) **Experience and bonding:** “requiring unnecessary experience and excessive bonding.”²⁴
 - iii.) **Non-competitive pricing practices:** “noncompetitive pricing practices between firms or between affiliated companies.”²⁵
 - iv.) **Certain retainer contracts:** “noncompetitive awards to consultants that are on retainer contracts.”²⁶
 - v.) **Conflict of interest:** “organizational conflicts of interest.”²⁷
 - vi.) **Brand name specificity:** “specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement.”²⁸
 - vii.) **Arbitrary actions:** “any arbitrary action in the procurement process.”²⁹

²² 24 CFR 85.36(f)(1)

²³ 24 CFR 85.36(c)(1)(i)

²⁴ 24 CFR 85.36(c)(1)(ii)

²⁵ 24 CFR 85.36(c)(1)(iii)

²⁶ 24 CFR 85.36(c)(1)(iv)

²⁷ 24 CFR 85.36(c)(1)(v)

²⁸ 24 CFR 85.36(c)(1)(vi)

²⁹ 24 CFR 85.36(c)(1)(vii)

**SECTION IX
ENSURING REASONABLE COSTS**

9.07 PERMISSIBLE NON-COMPETITIVE PROCUREMENTS

- A.) In certain instances and situations, the procurement of goods and services without adequate competition is permissible:
- 1.) **Sole source:** the service or item “is available only from a single source,”³⁰ based on a documented good faith review of available sources.
 - 2.) **Emergency:** an emergency exists that seriously threatens the public health, welfare or safety, endangers property, or would otherwise cause serious injury to NAHA, as may arise by reason of a flood, earthquake, epidemic, fire, riot, equipment Failure, or similar event, and the needs “will not permit a delay resulting from competitive solicitation.”³¹
 - 3.) **Inadequate competition:** after solicitation from a number of sources, only a single response is received, or competition is determined to be inadequate.³²
 - 4.) **HUD Authorization:** where HUD has authorized a non-competitive process.³³

9.08 JUSTIFICATIONS

- A.) **Selection:** project managers shall submit in writing to the Executive Director a recommendation justifying the reasons why competitive selection requirements should be waived.
- B.) **Price reasonableness:** consistent with the requirements of chapter IX of these procurement policies, project managers are responsible for ensuring that a cost analysis is prepared for all non-competitive procurements in order to ensure that the proposed price is reasonable.³⁴

10.01 AUTHORITY AND RESPONSIBILITY

- A.) The Executive Director will take affirmative steps to encourage the use of women and minority-owned businesses (W/MBEs), businesses owned by economically disadvantaged persons, and small businesses as contractors, subcontractor’s consultants, and service providers. NAHA will comply with Section 3 of the Housing Act of 1968, as amended by Section 915 of the Housing and Community Development Act of 1992, regarding use of Section 3 certified businesses and Section 3 eligible individuals.³⁵ NAHA will provide a preference to Section 3 businesses in the award of contracts, regardless of funding source

³⁰ 24 CFR 85.36(d)(4)(i)(A)

³¹ 24 CFR 85.36(d)(4)(i)(B)

³² 24 CFR 85.36(d)(4)(i)(D)

³³ 24 CFR 85.36(d)(4)(i)(C)

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

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

**SECTION X
DIVERSITY IN CONTRACTING**

11.01 AUTHORITY AND RESPONSIBILITY

- A.) The Executive Director shall attempt to resolve all procurement-related (solicitation, award, and contractual) disputes, protests, and appeals internally without outside review by either the Massachusetts Office of the Inspector General (OIG), HUD or the court system.

11.02 PROTESTS

- A.) The following shall apply to protests (unless otherwise specified, this section will use the term “protest” to also include disputes and appeals):
- 1.) **Solicitations:** any protest against a solicitation issued by the NAHA must be received by the Executive Director before the bid or proposal submittal deadline, or it will not be considered.
 - 2.) **Awards:** any protest against the award of a contract based on an IFB must be received by the Executive Director no later than two full business days after the bid submittal deadline, or before award of the contract, whichever is earlier, or the protest will not be considered.
- B.) Any appeal of a decision by the NAHA to reject a bid submitted in response to an IFB must be received by the Executive Director within two business days after being notified in writing of NAHA’s decision, or the appeal will not be considered.
- C.) Any protest against the award of a contract based on an RFP or RFQ or appeal of a decision by the NAHA to reject a proposal, must be received by the Executive Director within three business days after notification to an unsuccessful proposer that they were not selected, or the protest will not be considered.
- D.) Any protest against the award of a contract based on an informal solicitation must be received by the Executive Director prior to award, or the protest will not be considered. Consistent with the nature of the informal process contemplated by 24 CFR 85.36(d) (1), it shall be the responsibility of contractors, consultants, and vendors to call the NAHA regarding the status of a contract award.

11.03 MASSACHUSETTS OFFICE OF THE INSPECTOR GENERAL

- A.) There are no statutory provisions or regulations establishing an administrative procedure for bid protests under M.G.L. c. 30b. However, in keeping with the Office's prevention agenda, the OIG has developed an informal process to help resolve disputes efficiently and ensure compliance with the law. A protest can be initiated by a phone call or letter from any individual alleging a violation of M.G.L. c. 30b. Upon receiving a bid protest or other complaint, the OIG will contact the public officials responsible for the procurement to request documents or information. M.G.L. c. 12a, §9 authorizes the OIG to request the assistance of any public official in obtaining documents and information relating to a procurement, and requires every public official to cooperate with such a request.

**SECTION XI
DISPUTES, PROTESTS, AND APPEALS**

11.04 WAIVER OF INFORMALITIES

- A.) M.G.L. C. 30B, §5(F) provides that "[t]he procurement officer shall waive minor informalities or allow the bidder to correct them." Minor informalities are defined within M.G.L. C. 30B as "minor deviations, insignificant mistakes, and matters of form rather than substance of the bid, proposal, or contract document which can be waived or corrected without prejudice to other offerors, potential offerors, or the governmental body."

11.05 CANCELLATION REJECTION OF INVITATION FOR BIDS, REQUEST FOR PROPOSALS, OR OTHER SOLICITATION

- A.) Section 9 of M.G.L. C. 30B provides that "the procurement officer may cancel an invitation for bids, a request for proposals, or other solicitation, or may reject in whole or in part any and all bids or proposals when the procurement officer determines that cancellation or rejection serves the best interests of the governmental body. The procurement officer is required to state, in writing, the reason for a cancellation or rejection.

11.06 LEGAL ACTION

- A.) A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, or who is denied withdrawal of a bid, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was arbitrary and capricious, or, in the case of denial of prequalification, that the decision to deny prequalification was not based on the criteria for denial of prequalification set forth in Chapter III.
- B.) A bidder, offeror or contractor, or potential bidder or offeror on a contract negotiated on a sole source or emergency basis whose protest of an award or decision to award is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not an honest exercise of discretion, but rather, is arbitrary or capricious or not in accordance with the Massachusetts statutes, regulations, or terms and conditions of the invitation to bid or request for proposal.
- C.) A contractor may bring an action involving a contract dispute with the NAHA in the appropriate circuit court.
- D.) A bidder, offeror, or contractor need not utilize administrative procedures, but if those procedures are invoked by the bidder, offeror, or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the NAHA agrees otherwise.
- E.) Nothing in this section shall be construed to prevent the NAHA from instituting legal action against a contractor.

**SECTION XI
DISPUTES, PROTESTS, AND APPEALS**

11.07 ALTERNATIVE DISPUTE RESOLUTION

- A.) The Executive Director is authorized to enter into agreements to submit disputes arising from contracts entered into pursuant to this policy to arbitration, mediation, and other alternative dispute resolution procedures for the Commonwealth of Massachusetts.

SECTION XII
THE AMERICAN RECOVERY & REINVESTMENT ACT – CAPITAL FUND GRANT

12.01 PURPOSE FOR ADDITIONAL POLICY LANGUAGE

The purpose of this language is to expedite and facilitate the use of the Capital Fund Stimulus Grant funds.

12.02 BACKGROUND

On February 17, 2009, the President signed the Recovery Act. This legislation includes a \$4 billion appropriation of Capital Funds to carry out capital and management activities for public housing agencies, as authorized under Section 9 of the United States Housing Act of 1937 (“the 1937 Act”). The Recovery Act requires that \$3 billion of these funds be distributed as formula funds and the remaining \$1 billion be distributed through a competitive process.

On March 18, 2009, the Department of Housing and Urban Development (HUD) issued Notice PIH 2009- 12 (HA), Subject: Information and Procedures for Processing American Recovery and Reinvestment Act Capital Fund Formula Grants. HUD has stated that HAs shall amend their procurement standards and policies as necessary in order to expedite and facilitate the use of the funds. This amended policy can be used only for procurements related to Capital Fund Stimulus Grants. This must be done in writing and consistent with PHA policies and procedures (such as Board approval) and labeled as Capital Fund Stimulus Grant Procurement Policy. Specifically, PHAs shall remove all procurement standards that are contrary to 24 CFR Part 85 or the Recovery Act. Where permitted by Part 85, PHAs may insert their own procedures provided that they are not contrary to the purposes of the Recovery Act.

12.03 SPECIFIC TO- Capital Fund Stimulus Grants

The North Andover Housing Authority (NAHA) Procurement Policy and Procedure specifically for procurements related to Capital Fund Stimulus Grant projects as follows:

1. This revised policy can be used only for procurements related to Capital Fund Stimulus Grants.
2. The Executive Director shall give priority to Capital Fund Stimulus Grant projects that can award contracts based on bids within 120 days from February 17, 2009.
3. 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. The NAHA shall instead solely follow Part 85 (i.e., 85.36, etc.) requirements.
4. The Executive Director is authorized by this policy to procure goods, services, and construction in an amount not to exceed \$100,000. Procurements exceeding \$100,000 shall be presented to the Board of Commissioners for approval prior to contract award.
5. According to 24 CFR 85.36(d) (4), if solicitation of a proposal is only from one source or if the NAHA finds that after solicitation of a number of sources, that competition is inadequate, the NAHA may award the contract noncompetitively where small purchase procedures, sealed bids, or competitive proposals are infeasible and one of the circumstances in 85.36(d) (4) (i) applies. One such circumstance is public exigency that will not permit a delay resulting from competitive solicitation (85.36(d) (4) (i) (B)). If the Executive Director finds that other competitive methods of procurement are unfeasible, HUD will support the NAHA’s use of the public exigency circumstance based on the purpose and requirements of the Recovery Act. Section 3 of the Section 3 of the

SECTION XII
THE AMERICAN RECOVERY & REINVESTMENT ACT – CAPITAL FUND GRANT

Recovery Act provides that these funds shall be managed and expended to achieve the purposes specified including commencing expenditures and activities as quickly as possible consistent with prudent management.

6. The Executive Director may use the noncompetitive proposals method, but must do so on a contract-by-contract basis and in compliance with all Part 85 requirements, including the requirement for a cost analysis and the conflict of interest requirement.
7. The Executive Director must maintain records sufficient to detail the significant history of each contract's procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price (85.36(b) (9)). No HUD pre-award review is required for noncompetitive proposals.
8. To the extent feasible, the Executive Director shall employ existing or additional force account laborers on either a permanent or a temporary basis to perform Capital Fund stimulus grant work. See 24 CFR 968.105 and 968.120. No prior HUD approval is required specifically for force account labor, but such work must be incorporated into the Capital Fund planning, budgeting, and reporting documents.
9. The Executive Director shall follow Buy American requirements of Section 1605 of the Recovery Act and use only iron, steel, and manufactured goods produced in the United States in their projects.
10. The Executive Director shall make available, upon HUD's request, this Capital Fund Stimulus Grant Procurement Policy and any documents requested related to procurement activity as stated in 24 CFR 85.36(g).

