

## **BOSTON HOUSING AUTHORITY PROCUREMENT POLICY**

### **I. PURPOSE AND APPLICATION OF PROCUREMENT POLICY**

**A. Purpose.** The purpose of this Procurement Policy is to: provide for the fair and equitable treatment of all persons or firms involved in purchasing by the Boston Housing Authority (BHA or Authority); assure that supplies, services and construction are procured efficiently and effectively; prioritize actions to affirmatively expand efforts to include Minority / Women Business Enterprise (M/WBE) participation in BHA contracts and ensure that M/WBEs and Section 3 Business Concerns are afforded fair and equitable opportunities to compete for BHA contracts, and to address disparities in access to opportunity; promote competition in contracting; provide safeguards for maintaining a procurement system of quality and integrity; advance sustainability goals; and assure that BHA purchasing actions are in full compliance with federal standards, U.S. Housing and Urban Development (HUD) regulations, state, and local laws.

All BHA employees and agents involved in the BHA procurement function are expected to exercise personal initiative and sound business judgment in promoting the stated purposes of this Policy. Consistent with the stated purposes, all BHA employees and agents involved in the BHA procurement function are encouraged and expected to seek advice whenever they have questions, concerns or suggestions regarding BHA's procurement program and/or the terms of this Policy.

**B. Application.** This Procurement Policy applies to all contracts for the procurement of supplies, services and construction entered into by the BHA. For purposes of this Policy, the term "contracts", means and includes Purchase Orders and Check Requisitions as well as contracts and modifications (including change orders) to buy, purchase, rent, lease or otherwise acquire supplies or services.

**C. Public Access to Procurement Information.** Procurement information shall be a matter of public record to the extent provided in the Massachusetts Public Records Law, and related laws and regulations and shall be available to the public as provided in these statutes.

### **II. GOVERNING STATUTES**

Procurement and contracting activities of the BHA shall be conducted in strict accordance with all applicable state and federal laws and regulations which include but are not limited to the following: M.G.L. Chapter 30B, et seq.; M.G. L. Chapter 30, § 39M; M.G.L. Chapter 149, §§ 44A-J; M.G.L. Chapter 149A, et seq.; 2 CFR 200 ("the Uniform Guidance") and applicable Rules, Regulations, and Executive Orders promulgated by the City of Boston. All applicable laws and regulations are expressly incorporated into this Policy. 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 Procurement Policy, automatically supersede this Policy including the availability of higher procurement thresholds upon enactment.

The Authority through this revision of the Procurement Policy specifically authorizes and adopts the HUD Micro Purchase threshold of \$10,000. For purposes of applicable state law, the HUD Micro Purchase procurement procedures described in this Policy shall constitute sound business practices.

### **III. ADMINISTRATION**

**A. Designation of the Chief Procurement Officer:** Upon adoption of this Procurement Policy the BHA Administrator, in accordance with applicable state and federal procurement laws and regulations, appoints the individual occupying the position of Chief Administrative Officer of the BHA as both the BHA's Contracting Officer and Chief Procurement Officer (jointly, the "CPO"), provided that in the absence of appointment of a Chief Administrative Officer, the Administrator shall make an alternate appointment. The CPO is delegated with the primary responsibility and authority for BHA procurement activities and functions which shall include the authority to delegate certain powers and duties of the CPO to Authority staff at his/her discretion. Any person delegated by the CPO with procurement powers and duties shall be referred in this Policy as a Contracting Officer. Any and all delegations must be in writing and on file with the Office of the Inspector General and the BHA Legal Department, General Counsel. The delegation must include the signature of the CPO, the activity or function authorized and any limitations. The CPO or his/her designee shall ensure that all procurement activities and functions of the Authority are carried out in accordance with governing federal and state laws and regulations and this Policy.

**B. Procurement Policy Violations.** It is a violation of the BHA Procurement Policy for any BHA employee to procure any goods or services without first obtaining a BHA approved purchase order or contract with the exception of situations wherein an emergency situation exists (as defined in Section IV (F) below) and approval cannot be obtained because the BHA Main Office is closed.

For purposes of this Policy, the term "procure" shall mean and include any and all acts that lead to or result in the acquisition or acceptance of goods, supplies and/or services by purchase, rent, lease, exchange or otherwise. For purposes of this Policy, the term "procure" shall also mean and include any and all acts that purport to create an obligation, legal, financial or otherwise, to procure any good, supply or service. For purposes of this Policy, the phrase "a BHA approved purchase order or contract" without exception shall mean a purchase order or a contract that has been pre-approved in writing by either the BHA Administrator or his/her designee, as documented in this Policy or a separate writing.

Any violation of this section or any part of this Procurement Policy may subject the violator to disciplinary action, up to and including termination of employment, as well as sanctions and penalties provided in the governing statutes enumerated in Section II - Governing Statutes.

### **IV. PROCUREMENT METHODS AND PROCEDURES BY CATEGORY AND VALUE**

The BHA will purchase required supplies and services using procurement methods based on the nature and anticipated dollar value of the procurement. Except as otherwise specified herein, or as mandated by applicable statute, competitive procurements shall be awarded to the offeror providing the lowest acceptable quotation. In the case of tie bids, preference shall be given in the following descending order: 1. Supplier Diversity Office (SDO)

Formerly known as “SOMBWA” or [City of Boston MWBE certified firm](#) over a non-certified firm;  
2. A [Section 3 business](#) concern or other business which can demonstrate active and current compliance with BHA’s Section 3 Program as set forth in the BHA’s Resident Employment Provision. In the event that no offeror is either SDO or City of Boston MWBE certified or a Section 3 business concern, the tie will be broken via a random selection.

All procurements must be based on a **written purchase description**, the words used in a solicitation to describe the supplies or services to be purchased. The purchase description must describe the supplies or services to be procured in sufficient detail to ensure that the received bids or proposals can be evaluated in a fair and equal manner. A purchase description typically includes detailed specification of supplies, including any drawings, scope of services, or both. It also includes estimated quantities, a schedule for performance, and delivery terms. The description must be sufficiently detailed to ensure successful procurement of the required supplies or services, however, the description must not be defined so as to unnecessarily restrict competition.

The purchase descriptions must be written prior to soliciting quotes. It may be read over the telephone, but each vendor must be given the same description. The written purchase description must be included in the documentation supporting each procurement.

An explanation of selection procedures follows below. Appendix A illustrates the breakdown of procurements by purchase category, value, procurement method, and selection procedures.

The utilization of Cooperative Purchasing Agreements is encouraged. The Massachusetts Operational Services Division (OSD) conducts procurements for so-called statewide contracts for many commodities and services that are utilized by the BHA. The Authority is also a registered member of the several other cooperative purchasing agreements including The Massachusetts Higher Education Consortium (MHEC.net), U.S. Communities, and others. Utilization of these cooperative purchasing agreements permits compliance with HUD and state regulations without having to follow many of the steps specified in the procurement methods that follow. Users of these cooperative purchasing agreements must follow the rules of usage for each agreement or contract in order to maintain compliance. The procurement of goods are greatly simplified using these agreements. Utilization of the agreements for construction-related services is limited under these agreements<sup>1</sup>. Consult the BHA Procurement Department before construction-related services are procured using these procurement vehicles.

**A. Small Purchase Procurements.** Any contract up to \$49,999 may be made in accordance with Small Purchase procedures authorized in this section. For purposes of this section, the term “Small Purchase Procurement” shall mean any procurement for supplies and services, not including design services, which cost \$49,999 or less.

- (1) *Supplies and Services Not Related to Construction (\$0 up to \$9,999.99).* For supplies and services below \$3,000, also known as Micro Purchases, only one quotation need be solicited if the quote received is known to be fair and reasonable based on prior purchases of a similar nature or other sources of information, (e.g., based on recent research, experience, or purchases). This \$3,000 limit may be increased to \$9,999.99 with the prior approval of the CPO in exigent circumstances or to promote greater participation of MBE, WBE, or

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<sup>1</sup> Certain OSD statewide contracts may be used for construction-related services for work valued less than \$50,000.

Section 3 business concerns. To the extent practicable, such purchases must be distributed equitably among qualified sources. Such distribution is waived if such waiver will promote greater participation of MBE, WBE, or Section 3 business concerns.

- a. Disposition and Salvage: Tangible supplies valued below \$10,000 may be disposed, via written quote or state contract, to a scrapyard, recycling or comparable facility, offered via sealed bid, donated or sold to a charitable organization, or, if the item's value is estimated at zero and no alternative is available, disposed of in the least cost manner feasible. An item declared surplus and valued below the BHA's fixed asset threshold may be sold via sound business practices at the item's depreciated market value. Any items valued at \$10,000 or more must be offered via competitive sealed bid, public auction or established market unless donated to a charitable organization.

(2) *Supplies and Services Not Related to Construction (\$10,000 up to \$49,999).* For supplies and services between \$10,000 and \$49,999.99, no less than three offerors shall be solicited to submit price quotations, which may be obtained orally, by telephone, electronically, or in writing. (Quotation must be in writing if \$5,000 or more). Quotation must be based on a purchase description as discussed in Section VI above. The following requirement applies to this category:

- a. Written Contract Requirement (\$10,000 and above). Invitations for bids or requests for proposal for supplies or services that cost \$10,000 or more must be issued in written form and must include a standard BHA contract form. A written contract shall be required for all supplies and/or services procurements in the amount of \$10,000 or more.

(3) *Supplies and Services Not Related to Construction, City of Boston or SDO-Certified MWBE Vendors (\$10,000 up to \$250,000).*<sup>2</sup> For supplies and services between \$10,000 and \$250,000, no less than three certified MBE, WBE or MWBE offerors shall be solicited to submit price quotations, which must be obtained in writing or electronically. Quotation must be based on a purchase description as discussed in Section VI above. The following requirement applies to this category:

- a. Written Contract Requirement (\$10,000 and above). Invitations for bids or requests for proposal for supplies or services that cost \$10,000 or more must be issued in written form and must include a standard BHA contract form. A written contract shall be required for all supplies and/or services procurements in the amount of \$10,000 or more.
- b. Certified vendor: An offeror must hold current Minority or Women Business Enterprise certification with the City of Boston or Commonwealth of Massachusetts.

(4) *Construction Related Services including Building related Renovation and Repairs and Site related Work (\$0 up to \$10,000).* For construction, repair and site work between \$1 and \$10,000.00, no less than three offerors shall be solicited to submit

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<sup>2</sup> See Chapter 334 of the Acts of 2022: <https://malegislature.gov/Laws/SessionLaws/Acts/2022/Chapter334>. The estimated cost must not exceed (1) the small purchase threshold established by OSD or (2) the federal small purchase / simplified acquisition threshold.

written price quotations. Quotation must be based on a purchase description as discussed in Section IV above. A procurement of \$10,000 or more must be procured with public notification of the procurement (see Section IV (B) below). The following requirements apply to this category:

- a. **Written Contract Requirement (\$10,000 and above).** Invitations for bids, requests for proposal or solicitations for services that cost \$10,000 or more must be issued in written form and must include a standard BHA contract form. A written contract shall be required for all supplies and/or services procurements in the amount of \$10,000 or more.
- b. **Applicability of Prevailing Wage.** **Federal funded projects:** Contractors shall be required to pay prevailing wages on all contracts that exceed \$2,000. **State funded projects:** Contractors shall be required to pay prevailing wages on all contracts regardless of contract price.
- c. **Licensure Requirements.** Depending on the nature of the work, the Contracting Officer is required to determine that the proposed contractor is properly licensed. License requirements can be checked and confirmed online at the Consumer Affairs and Business Regulation web-site (<http://www.mass.gov/>).
- d. **Insurance Requirements.** Before commencing work, the Contracting Officer shall require the contractor and, if applicable, each subcontractor, to provide written certificates of insurance showing the following insurance is in force and will insure all aspects of the work: (i) workers' compensation (statutory limits); (ii) commercial general liability; (iii) automobile liability; and (iv) builder's risk. The Contracting Officer will confer with the CPO in order to determine job specific coverage amounts and limits.

#### Quotation Evaluation for Small Purchase Procurements

**Price Reasonableness.** Before making an award, the Contracting Officer must determine that the proposed price is fair and reasonable. For most small purchases, price analysis is sufficient to make that determination. In cases where purchases of services or items of a non-commercial nature (e.g., a special training course designed for the BHA's employees), submission of cost details and a cost analysis may be needed (see Section VI).

1. **Micro-Purchases.** Price analysis normally consists of comparing the quoted price to prices recently paid for the same or similar items, price lists, or catalog prices. The signature of the Contracting Officer on the Purchase Order or contract signifies the Contracting Officer's determination that the price is reasonable, based on prior purchases of a similar nature or other sources of information.
2. **Other Small Purchase Procurements above the Micro Purchase Level.** Generally, price analysis will consist of a comparison of quotations or bids to each other and to other sources of pricing information (e.g., past prices paid, catalog

prices, etc.). If only one response is received, the Contracting Officer is required to include a statement of reasonableness in the contract file. This statement may be based on market research, comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, or advertisements, a comparison with similar items in a related industry, the Contracting Officer's personal knowledge at the time of purchase, comparison to an independent cost estimate, or any other reasonable basis. Only in rare cases, the Contracting Officer will conduct a cost analysis (a non-commercial type purchase unique to the BHA's needs, such as a training course specifically designed for BHA accounting personnel on its own customized systems or in the case of a non-competitive or sole source procurement).

**B. Publicly Advertised Procurements.** All procurements of \$50,000 or more (\$10,000 or more for Construction Related Services) shall be conducted in accordance with the appropriate publicly advertised procurement method depending on the category of purchase as identified in this section, provided that, procurements made pursuant to Chapter 334 of the Acts of 2022 or other special statute may be made without public advertisement in accordance with the applicable statute. The CPO or his/her designee shall be responsible for ensuring that the procurement method used is appropriate to the required supply or service and that the procurement is conducted in full accordance with applicable statutes and/or regulations.

The following selection procedures apply to procurements totaling \$50,000 and above (\$10,000 and above for Construction Related Services):

- (1) *Non-Construction Related Supplies and Services (\$50,000 and above).* For non-Construction Related Supplies and Services of \$50,000 or more, Competitive Sealed Bids or Competitive Sealed Proposals are required in accordance with M.G.L. Chapter 30B.
- (2) *Construction Related Supplies (\$50,000 and above).* The procurement of Construction Related Supplies in excess of \$50,000 requires a Competitive Sealed Bid in accordance with M.G.L. Chapter 30 Section 39M or M.G.L. Chapter 30B.
- (3) *Public Works Related Construction, a.k.a. "Horizontal" Construction (\$10,000 and above).* In order to procure Public Works Related Construction estimated to cost more than \$10,000, a Competitive Sealed Bid is required. Procurements of this type must be made in accordance with M.G.L. Chapter 30 Section 39M.
- (4) *Public Building Related Services including Renovation and Repairs (\$10,000 up to \$50,000).* For construction and repair estimated to cost between \$10,000 and \$49,999.99, public notification of the procurement shall be conducted in accordance with M.G.L. Chapter 149 §44A (B)<sup>3</sup>.

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<sup>3</sup> The Contracting Officer shall seek written responses from persons who customarily perform such work. Public notification shall include a scope of work statement that defines the work to be performed and provides potential responders with sufficient information regarding the objectives and requirements of the BHA and the time period within which the work is to be completed. Public notification shall include, but not necessarily be limited to, posting, no less than 2 weeks before the time specified in the notification for the receipt of responses, the contract and scope of work statement on the BHA's website, on the COMMBUYS system, so-called, or in the central register, and in a conspicuous place in the Procurement Department.

- (5) *Public Building Related Construction (\$50,000 up to \$150,000).* For Public Building Related Construction estimated to cost between \$25,000 and \$150,000, a Competitive Sealed Bid is required. Procurements of this type must be made in accordance with M.G.L. Chapter 30, § 39M.
- (6) *Public Building Related Construction (\$150,000 up to \$10M).* For Public Building Related Construction estimated to cost between \$150,000 and \$10M, a Competitive Sealed Bid is required. Procurements of this type must be made in accordance with M.G.L. Chapter 149, § 44 A-J.
  - a. *Owner's Project Manager (\$1.5M and above).* An Owner's Project Manager shall be assigned or procured for all Public Building Related Construction projects estimated to cost more than \$1.5M.
- (7) *Public Building Related Construction (\$10M and above)* For Public Building Related Construction estimated to cost \$10M and above, a pre-qualification process shall be required in accordance with M.G.L. Chapter 149, §§ 44D1/2 and 44D3/4.
  - a. *Owner's Project Manager (\$1.5M and above).* An Owner's Project Manager shall be assigned or procured for all Public Building Related Construction projects estimated to cost more than \$1.5M.

Notices for all Publicly Advertised Bids and Publicly Advertised Proposals must be published and awarded in accordance with M.G.L. 30B and 2 CFR 200. All advertising efforts must be documented. Any bid or proposal under the guidelines of M.G.L. Chapter 30B and in excess of \$100,000 must be published in the [Goods and Services Bulletin](#). Bids and proposals made in accordance with either M.G. L. Chapter 149 or M.G.L. Chapter 30, § 39M or M.G.L. c. 30B (non-building construction) must be published in the [Central Register](#).

**C. Architect/Engineer Services.** In accordance with applicable state law and BHA practice, as a minimum requirement, a registered architect shall be procured to provide plans and specifications and supervise the construction, enlargement or alteration of a building that contains at least 35,000 cubic feet of enclosed space (approximately 3,500 square feet). There are no similar minimum limits with respect to the practice of engineering, land surveyors or landscape architects and, for purposes of this Policy, the term "A/E" shall include and refer to services provided by architects, engineers, land surveyors and landscape architects. State Funded Projects: The BHA procures A/E services for its state-funded projects in accordance with selection and contracting procedures established by the Department of Housing and Community Development. Federal Funded Projects: A/E services for federal-funded projects shall be procured in accordance with the following procedures:

- (1) *Type I A/E Services (\$1 up to \$9,999.99).* For A/E services estimated between \$1 and \$9,999.99, no less than three offerors shall be solicited to submit price quotations, which may be obtained orally, by telephone, electronically, or in writing. Quotation must be based on a purchase description as discussed in Section VI above. To the extent practicable, such purchases must be distributed equitably among qualified sources. The following requirement applies to this category:
  - a. **Written RFP Requirement.** Request for Proposals shall be issued in written form and must include all contract provisions required by applicable federal law. The



contract form shall be in the form of an approved purchase order.

- b. **Licensure Requirement.** As a condition of contract award, the contract administrator shall require the contractor and, if applicable, each subcontractor or subconsultant, to provide documentary evidence that it is properly licensed and registered. License requirements can be checked and confirmed on-line at the Commonwealth's Division of Professional Licensure web-site (<http://www.mass.gov/dpl>).
- c. **Insurance Requirements.** As a condition of contract award, the contract administrator shall require the contractor and, if applicable, each subcontractor or subconsultant, to provide written certificates of insurance showing the following insurance is in force and will insure all aspects of the work: (i) workers' compensation (statutory limits); (ii) commercial general liability; (iii) automobile liability; (iv) professional liability (errors and omissions); and (v) valuable papers coverage. The contract administrator shall confer with the CPO in order to determine job specific coverage amounts and limits.
  - b. *Type II A/E Services (\$10,000.00 up to \$49,999.99).* For A/E services estimated between \$10,000.00 and \$49,999.99, no less than three offerors shall be solicited to submit written price quotations. Solicitations must be issued in written form and be based on a purchase description as discussed in Section VI above. To the extent practicable, such purchases must be distributed equitably among qualified sources. The following requirement applies to this category:
    - a. **Written RFP and Contract Requirement.** RFPs shall be issued in written form and must include a standard BHA Design Services Contract form.
    - b. **Licensure Requirement.** As a condition of contract award, the contract administrator shall require the contractor and, if applicable, each subcontractor or subconsultant, to provide documentary evidence that it is properly licensed and registered. License requirements can be checked and confirmed on-line at the Commonwealth's Division of Professional Licensure web-site (<http://www.mass.gov/dpl>).
    - c. **Insurance Requirements.** As a condition of contract award, the contract administrator shall require the contractor and, if applicable, each subcontractor or subconsultant, to provide written certificates of insurance showing the following insurance is in force and will insure all aspects of the work: (i) workers' compensation (statutory limits); (ii) commercial general liability; (iii) automobile liability; (iv) professional liability (errors and omissions) and (v) valuable papers coverage. The coverage amounts and limits shall be as stated in the standard contract form.
- c. *Type III A/E Services (\$50,000.00 and above).* For A/E services estimated to cost \$50,000.00 and above shall be procured pursuant to a



publicly advertised RFP<sup>4</sup>. The RFP shall, among other requirements, require the submission of non-fee and fee proposals. The following requirements apply to this category:

- a. **Written RFP and Contract Requirement.** Request for Proposals shall be issued in written form and must include a standard BHA Design Services Contract form.
- b. **Licensure Requirements.** As a condition of contract award, the contract administrator shall require the contractor and, if applicable, each subcontractor or subconsultant, to provide documentary evidence that it is properly licensed and registered. License requirements can be checked and confirmed on-line at the Commonwealth's Division of Professional Licensure web-site (<http://www.mass.gov/dpl>).
- c. **Insurance Requirements.** As a condition of contract award, the contract administrator shall require the contractor and, if applicable, each subcontractor or subconsultant, to provide written certificates of insurance showing the following insurance is in force and will insure all aspects of the work: (i) workers' compensation (statutory limits); (ii) commercial general liability; (iii) automobile liability; (iv) professional liability (errors and omissions) and (v) valuable papers coverage. The coverage amounts and limits shall be as stated in the standard contract form.

**Table 1.4 Design Service Procurements**

VALUE OF PURCHASE	CONTRACT FORM	PROCUREMENT METHOD AND SELECTION PROCEDURE	AUTHORIZATION REQUIRED
\$1 to \$9,999	<i>Purchase Order with Written RFP</i>	<b>Most advantageous proposer</b> based on <b>written or oral</b> quotations solicited from no fewer than three registered contractors who customarily provide the required service.	CPO Department Director
\$10,000 to \$49,999	<i>A/E Contract with Written RFP</i>	<b>Most advantageous proposer</b> based on <b>written</b> quotations solicited from no fewer than three registered contractors who customarily provide the required service.	CPO Department Director Executive Committee Administrator
\$50,000 and	<i>A/E Contract with</i>	<b>Most advantageous proposer</b> based on timely and responsive	CPO Department Director

<sup>4</sup> This limit may be increased up to the HUD Small Purchase Limit of \$250,000 by the BHA Administrator in exigent circumstances.

<b>above</b>	<b><i>Written RFP</i></b>	submission to a publicly advertised RFP.	Executive Committee Administrator
<b>Emergency</b>	<b><i>Purchase Order</i></b>	<b>Most advantageous proposer</b> based on <b>written or oral</b> quotations solicited from as many registered contractors who customarily provide the required service as feasible in view of the emergency.	CPO Department Director

**D. Sole Source Procurements.** A sole-source procurement may be made without advertising or competition only within the limits defined by Chapter 30B and, in the case of federal funded procurements, in accordance with the limits defined by the Uniform Guidance. The CPO shall be the only BHA employee authorized to determine whether any good, service or supply may be procured or acquired pursuant to a sole-source or non-competitive procurement process. Subject to the Uniform Guidance, if applicable, the following two exceptions to competitive procurements shall be observed:

- (1) *Contracts under \$50,000.* Procurements under \$50,000 may be made without competition when a reasonable investigation shows that there is only one source for the required supply or service.
- (2) *Contracts above \$50,000.* If only one source exists for the procurement of water, sewer, gas, electricity, or telephone services, these services may be procured from a public utility company without competition. [M.G.L. Chapter 30B section 7(c)] If only one source exists for the procurement of software maintenance or educational materials, these items may be procured without competition. There is no provision under Chapter 30B for sole source procurements above \$50,000 for any other goods or services. All such procurements must be publicly advertised.

Records must be submitted with each procurement and maintained in the procurement file showing each contractor's name, the amount and type of contract and the basis for determining that there was only one potential source for the supply or service purchased. [M.G.L. Chapter 30B Section 7(b)]. In order to determine price reasonableness, a cost analysis shall be conducted for all sole-source and non-competitive procurements (see Section VI below).

The receipt of only one bid or offer is not, under 30B, a sole-source procurement. If other vendors could have responded but elected not to, the procurement may proceed; however, two cautionary items must be observed:

- (1) *Purchase Description Re-examination.* The purchase description must be re-examined to determine if specifications were unduly restrictive. Purchase descriptions must not be written to restrict the procurement to a sole-source unless no other manner of description suffices [M.G.L. c. 30B, Section 14].
- (2) *Investigation of "would-be providers."* The reason why no other would-be

providers responded must be investigated. A change in specifications or simply trying again at a later time may foster more competition and result in a better price. If this is the case, the bid or proposal shall be rejected and the process repeated.

**E. Emergency Procurements.** When the time required to comply with the policy and procedures required by applicable law and/or as outlined in this Policy would endanger the health or safety of persons or property, the CPO or the Administrator or his/her designee may initiate a procurement without following the policies and procedures in full. An emergency procurement shall be limited to the essential supplies or services necessary to meet the emergency<sup>5</sup>, and shall conform to applicable law and this Policy to the fullest extent practicable. A true emergency occurs when the emergency condition could not have been foreseen in advance or in sufficient time to avoid the resulting damage to health, safety or property. Conditions which occur as a result of deferred maintenance or poor planning are not emergencies and may not be addressed by emergency procurements. BHA employees are required to contact and consult with the CPO and the General Counsel prior to initiating an emergency procurement. All required requests for emergency procurement waivers to the Department of Capital Asset Management and Maintenance ("DCAMM ") or any other governmental oversight agency shall be issued either by the CPO or the General Counsel or their designee.

Under M.G.L. Chapter 30, § 39M (public works in excess of \$50,000) contracts may be awarded without competitive bids:

- (1) In cases of extreme emergency caused by enemy attack, sabotage, or other such hostile actions, or resulting from imminent security threat, explosion, fire, flood, earthquake, hurricane, tornado or other such catastrophe; and
- (2) As necessary for temporary repair and restoration to service; and
- (3) To protect the health and safety of persons and property; and
- (4) So long as permanent reconstruction and repair isn't undertaken.

The BHA is required to secure a waiver of the public advertisement of a MGL c. 30 § 39M procurement from DCAMM prior to awarding a contract to address an extreme emergency condition.

In order to contract for goods and services under M.G.L. Chapter 30B (procurements, including those involving public works under \$50,000), without complying with statutory advertising requirements, the BHA must keep records specifying the contractor's name, the amount and type of procurement contract, a listing of the supply or service provided, and the basis for determining the need for an emergency procurement. In addition, the record of an emergency procurement must also be submitted to the Goods and Services Bulletin for publication.

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<sup>5</sup> Only work necessary to protect health and safety is permitted under the emergency provisions. For example, if living units require repairs resulting from a storm to insure protection from the elements, they may be made, i.e. windows replaced, walls and roofs repaired, etc. However, the units may not be re-painted and re-carpeted, since that work isn't necessary to protect the health and safety of residents. The painting and carpeting work would have to be put out to bid.

If a procurement for services or supply is required to address an emergency is estimated to exceed \$50,000, and/or would be subject to public bidding in accordance with M.G.L. Chapter 149 §§ 44A-J, a waiver of these requirements must be obtained from DCAMM of the Commonwealth of Massachusetts. In addition, HUD approval shall be obtained prior to the award of an emergency procurement exceeding \$250,000 which is funded in whole or in part from Federal sources.

Due either to the nature of the emergency or to the unavailability of DCAMM staff, the BHA may contract for necessary work without DCAMM approval, provided that: DCAMM approval is sought at the earliest possible time afterward, and if DCAMM does not approve the emergency determination, all work is promptly discontinued.

**F. Special Measures to Address Contracting Disparities (Sheltered Market Program):**

In recognition of the historic and present disparities<sup>6</sup> in access to contracting opportunities facing disadvantaged vendors, the BHA may establish a sheltered market program, as defined in G.L. c.30B §18. The Chief Procurement Officer may establish such program for certain contracts and one or more classes of disadvantaged vendors when authorized by Administrator of the BHA<sup>7</sup> and when, to the extent constitutionally required, such program can be based on findings that the program would serve as remedy for present effects of past discrimination.

Where certain contracts have not been explicitly designated by the Administrator of the BHA as part of a sheltered market program, such contracts may be designated for a sheltered market program when the Chief Procurement Officer determines, based on reasonable evidence which may be internal or external data concerning contracting patterns of the BHA, vendors providing such services, barriers to contracting, and other such relevant data, and submits such finding for administrative review by the Executive Committee of the Boston Housing Authority.

For the purposes of a sheltered market program, the BHA shall accept certification of a disadvantaged business certified by the City of Boston or the Massachusetts Supplier Diversity Office (SDO), and may at its sole discretion accept certification by another municipal, country, state, federal or tribal entity upon submission of proof of such certification.

The Chief Procurement Officer shall ensure for effective competition amongst disadvantaged vendors for contracts within the sheltered market program.

*Requirements for Advertisement and Solicitation*

- a. Prior to the award of a sheltered market program contract for the procurement of supplies and services in the amount of one thousand dollars but less than ten thousand dollars, the BHA shall solicit and receive written or oral quotations from no fewer than three certified disadvantaged vendors customarily providing such supply or service.
- b. Prior to the award of a sheltered market program contract for the procurement of a supply or service in the amount of ten thousand dollars or more, the BHA shall solicit and receive responsive bids or proposals from no fewer than three certified disadvantaged vendors.
- c. Prior to the award of a sheltered market program contract for the procurement of a supply or service in the amount of fifty thousand dollars or

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<sup>6</sup> Appendices B and C acknowledge and codify the BHA's efforts to address contracting disparities

<sup>7</sup> The Administrator's authorities are established in Chapter 88 of the Acts of 1989.

greater, the BHA shall, in addition to any other advertisement or notice required by law, advertise such contract in 1 or more print or online media outlets serving disadvantaged communities.

d. Any advertisement or solicitation for a sheltered market program contract shall state that the contract will be awarded under a sheltered market program and specifies the class or classes of disadvantaged vendors to which competition for the contract is limited.

e. In no event shall a contract designated for inclusion in a sheltered market program be awarded on a sole source basis or where inadequate certified and responsive submissions have been received.

### *Review and Assessment*

a. The BHA shall review any sheltered market program in effect on an annual basis. Such review may be conducted by the Chief Procurement Officer, the Director of Procurement, or another designee of the Chief Procurement Officer.

b. Each review shall result in the production of a written report, which shall include the number and dollar value of contracts awarded to disadvantaged vendors under the sheltered market program, and the total number, the percentage, the total dollar value, and the percentage dollar value of contracts awarded by the governmental body to disadvantaged vendors eligible for participation in the sheltered market program. The report shall also include a description of other efforts undertaken by the BHA to increase its contracting with disadvantaged vendors, and recommendations for continuing, modifying, or terminating the program.

**G. Petty Cash.** Procurements in any amount up to \$50 may be made through a petty cash fund established for this purpose. When supported by the appropriate receiving documentation, invoices may be paid by check without an accompanying Purchase Order. The Fiscal Department shall be responsible for maintaining the petty cash fund and for developing procedures and requirements for its use.

**H. Prohibited Contract Types.** The following contract types are prohibited by the Common Rule : 1. Cost plus a percentage of cost. This type of contract is prohibited, because it would bind the BHA to pay costs to be incurred in the future but undetermined at the time the contract is awarded, plus a commission based on the percentage of such future costs. In such a contract, the contractor's profit increases in proportion to its costs incurred in the performance of the contract, which provides no incentive for controlling costs. 2. Percentage of construction cost. Under this method, cost for individual construction related services is determined by applying a percentage of actual construction costs as a fee, such as A/E contract in which the fee is determined based on the total construction cost. Such an arrangement encourages the contractor to design an overly expensive construction job. 3. Time and material contracts or "T & M". This type of contract provides for the procurement of supplies or services on the basis of direct labor hours at specified fixed hourly rates and material at cost. The BHA will not enter into time and material contracts unless the following conditions are satisfied: (i) the CPO determines in writing that no other contract type is suitable; (ii) the contract includes a ceiling price that the contractor exceeds at its own risk; and (iii) the contract work is appropriately supervised by BHA's Contracting Officer or his/her competent designee.

## **V. DIVERSITY, EQUITY AND INCLUSION**

The BHA shall prioritize efforts to use small, minority and woman-owned businesses as sources for supplies and services in its procurement and contracting activities. Such efforts shall include developing and utilizing mailing lists for these sources and soliciting and encouraging such businesses to compete for contracts. The BHA encourages the participation of minority and women workers, and the participation of Minority and Women owned firms, in its publicly bid contracts under the BHA's Minority and Women Participation Provision ("MWPP") to the fullest extent allowable under applicable state and federal laws.

The BHA shall enforce compliance with Section 3 of the Housing and Urban Development Act of 1968, as amended, and 24 CFR part 135 ("Section 3") by requiring contractors to provide employment, training and other economic contracting opportunities to BHA residents and BHA resident owned businesses as a condition of an award of any federally-funded contract. BHA's Resident Employment Provision incorporates the requirements of Section 3 and applies to all BHA administered federally-funded contracts as required by the HUD Section 3 Final Rule.

The BHA shall utilize aspirational goals in contracting and workforce hiring opportunities in furtherance of its commitment to maximize the participation of minority, woman, and resident-owned businesses, and minority, women, and resident workers in BHA-funded contract opportunities. Such goals may be revised from time to time as a means of meeting the overall goals. The goals will be promulgated through the BHA's MWPP and Section 3 Contracting Procedure – Appendix B. To support the continued growth of competitive enterprise and the development of capacity amongst small businesses to participate in prime- and sub-contracts, the BHA may further establish contract-specific subcontracting goals within an individual solicitation.

In order to address documented and historic underutilization of M/WBE firms and to improve economic opportunities for Section 3 Residents and Businesses, the BHA may, in determining whether a bid or proposal is responsive to a solicitation by the BHA, consider good faith efforts by a respondent to promote the participation of M/WBE contractors amongst its business or partnership, workforce and subcontractors. Good faith efforts may include: M/WBE certification, a narrative description of efforts to include M/WBE efforts in a proposal, documentation of efforts to contact or contract with M/WBE subcontractors, submission of the forms relevant to the BHA's MWPP, utilization of joint partnership or business arrangements that facilitate the participation of M/WBE businesses, and other efforts identified by the BHA.

## **VI. COST / PRICE ANALYSIS**

A cost or price analysis shall be performed for all procurements above the Small Purchase Procurement thresholds, including contract modifications. (see Section IV. A. for Small Purchase Procurements Quotation Evaluation requirements for procurements below the Small Purchase Procurement thresholds). The method and degree of analysis shall depend on the facts surrounding the procurement. In order to perform a cost/price analysis, an independent cost/price estimate must be performed before bids or proposals are solicited.

**A. Independent Cost/Price Estimate.** The procurement method to be used, and the procurement statute that applies, will be depended on the expected dollar value of the procurement. Furthermore, in order to determine that bid or quoted prices received are reasonable, a benchmark is needed for comparison purposes. Thus, an independent cost/price

estimate shall be performed prior to procuring goods or services. Large contracts may require a written analysis of labor, material, and overhead costs to perform the work.

**B. Submission of Cost or Pricing Information.** If the procurement is based on sole-source, noncompetitive bids or proposals, or when only one bid or offer is received, or for other procurements as deemed necessary by the BHA (e.g., when contracting for professional, consulting, or architect/engineer services), or in cases without price competition (e.g., evaluation of contract modifications and change orders), the bidder, offeror or contractor shall be required to submit:

- (1) cost breakdown of projected costs and profit
- (2) commercial pricing and sales information, sufficient to enable the BHA to verify the reasonableness of the proposed price as a catalog or market price of a commercial product sold in substantial quantities to the general public, or
- (3) documentation showing that the offered price is set by law or regulation

**C. Cost Analysis.** Cost analysis shall be performed if an offeror/bidder/contractor is required to submit a cost breakdown as part of its proposal or bid. When a cost breakdown is submitted a cost analysis shall be performed of the individual cost elements. The BHA shall have a right to audit the contractor's books and records pertinent to such costs and profit shall be analyzed separately. Costs shall be allowable only to the extent that they are consistent with applicable Federal cost principles (for commercial firms, Sub part 31.2 of the Federal Acquisition Regulation, 48 CFR Chapter 1).

In establishing profit, the BHA shall consider factors such as the complexity and risk of the work involved, the contractor's investment and productivity, the amount of subcontracting, the quality of past performance, and industry profit rates in the area for similar work.

**D. Price Analysis.** A comparison of prices shall be used in all cases other than those described in Section VI part C above. Prices received are compared to the independent price estimate.

## **VII. CONTRACTOR QUALIFICATIONS / REQUIREMENTS**

Procurements shall be conducted only with responsible contractors, i.e., those who have the technical and financial competence to perform and who have a satisfactory record of integrity. The BHA employee designated to administer the procurement shall, in consultation with the CPO, review each proposed contractor's ability to perform the contract successfully, considering factors such as the contractor's integrity (including a review of the List of Parties Excluded from Federal Procurement and Nonprocurement Programs ([Excluded Parties List](#)), [Contractors Debarred or Suspended by DCAMM](#), and the Massachusetts Office of the Attorney General Fair Labor and Business Practices Division Debarment List<sup>8</sup>), compliance with public policy, record of past performance (including BHA internal references and contacting previous clients of the contractor, such as other Public Housing Authorities), and financial and technical

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<sup>8</sup> Such debarred vendors are listed in the Secretary of State's Central Register. You may also call the Attorney General's Fair Labor and Business Practices Division at (617) 727-3465.



resources. Contracts shall not be awarded to debarred, suspended, ineligible contractors or to unlicensed contractors (in cases where possession of required licenses. The BHA employee conducting an evaluation of a contractor or a proposer's qualifications shall document the evaluation process on BHA's standard bidder or proposal evaluation forms. In all cases, the Contracting Officer and CPO shall consult with the General Counsel before rejecting a bid or proposal on the grounds that the proposed contractor is not responsible.

## **VIII. PUBLIC RECORDS REQUESTS**

In accordance with applicable state and federal freedom of information laws, the BHA is required to allow contractors, agencies and private citizens access to public records upon written request. With certain exceptions, the contents of BHA's procurement files are public records subject to disclosure. All requests for public records from contractors, agencies or private citizens must be submitted in writing, date stamped and forwarded to the Legal Department, Attn: Keeper of the Records for processing at the earliest opportunity. BHA personnel are directed not to release public records without the prior approval of either the CPO or the General Counsel.

## **IX. DEMAND FOR DIRECT PAYMENTS**

In certain cases, construction subcontractors may seek direct payment from the BHA rather than the general contractor. Upon receipt of such demands, BHA personnel are directed to affix the date of receipt and immediately forward the demand and all related correspondence regarding the payment demand to the Legal Department, Attn: General Counsel.

## **X. BID PROTESTS/DISPUTES**

The BHA has an affirmative obligation to respond to bid protests or complaints regarding BHA's procurement program in a timely fashion. In addition, the BHA is required to zealously enforce the terms of its procurement contracts and purchase orders. Any and all bid disputes or disputes regarding payment, performance or the terms of any procurement are to be recorded in writing, date stamped and immediately forwarded to the CPO and to the Legal Department, Attn.: General Counsel.

## **XI. ETHICS IN PUBLIC PROCUREMENT**

Public employment is a public trust, and employees of the BHA have an obligation to respect the laws, promote the public well-being, and set a positive example of good citizenship by scrupulously observing the letter and spirit of all laws and administrative rules. Public confidence in the BHA is eroded by irresponsible or improper conduct by its employees. All employees must avoid all impropriety and appearance of impropriety. Each employee must expect to be the subject of constant public scrutiny and act accordingly. The conduct of BHA employees is governed by the Boston Housing Authority's Code of Conduct. The Code of Conduct is attached hereto and made part of the BHA Procurement Policy. Additionally, Housing Authority employees' conduct is governed by the Massachusetts Conflict of Interest Law – [M.G.L. 268A](#). An introduction to this law may be found at [http://www.mass.gov/ethics/public\\_sector.html](http://www.mass.gov/ethics/public_sector.html).

## **XII. RECORDS RETENTION**

All procurement records must be retained for a period of not less than seven years from the date of final payment, or three years from the date of program grant closure, whichever is greater.

## **XIII. SELF-CERTIFICATION PURSUANT TO 2 CFR 200.324(C)(2)**

The BHA self-certifies that this Procurement Policy, and the BHA's procurement system, complies in all material respects with all applicable Federal regulations.

**APPENDIX A**  
**Procurement Method, Selection and Authorization**

**Table 1.1A Small Purchase Procedures – Purchase Requisition Procedure**

<b>VALUE OF PURCHASE</b>	<b>CATEGORY OF PURCHASE</b>	<b>PROCUREMENT METHOD AND SELECTION PROCEDURE</b>	<b>AUTHORIZATION REQUIRED</b>
<b><i>\$0 up to \$3,000</i></b>	<b><i>Supplies and all Services</i></b>	MICRO PURCHASE; Standard business practice (fair and reasonable price)	Budget Department Procurement Department
<b><i>\$3,000 up to \$5,000</i></b>	<b><i>Supplies and all Services</i></b>	SMALL PURCHASE; Written or oral quotations solicited from no fewer than three persons who customarily provide the required supply or service.	Budget Department Procurement Department
<b><i>\$5,000 up to \$50,000</i></b>	<b><i>Supplies and all Services not related to construction or building repair</i></b>	SMALL PURCHASE; <b>Written</b> quotations solicited from no fewer than three persons who customarily provide the required supply or service.	Budget Department Procurement Department
<b><i>\$10,000 up to \$250,000</i></b>  <b><i>(Certified vendor)</i></b>	<b><i>Supplies and all Services not related to construction or building repair</i></b>	SMALL PURCHASE; <b>Written</b> quotations solicited from no fewer than three M/WBE certified persons who customarily provide the required supply or service.	Budget Department Procurement Department
<b><i>\$0 up to \$10,000</i></b>	<b><i>Services related to construction or building repair</i></b>	SMALL PURCHASE; <b>Written</b> quotations solicited from no fewer than three persons who customarily provide the required supply or service.	Budget Department Procurement Department
<b><i>Varies</i></b>	<b><i>Supplies and all Services</i></b>	OSD Statewide Contract: solicitation of quotations in accordance with each contract's rules.	Budget Department Procurement Department
<b><i>Any \$ Amount</i></b>	<b><i>Supplies Only not related to construction or building repair</i></b>	Non- MA/OSD COOPERATIVE PURCHASING AGREEMENT: solicitation of quotations in accordance with each contract's rules.	Budget Department Procurement Department
<b><i>Any \$ Amount</i></b>	<b><i>Vehicle Purchase</i></b>	SMALL PURCHASE; <b>Written</b> quotations solicited from no fewer than three persons who customarily provide the required supply or service.	Budget Department Procurement Department CPO

**Table 1.1B Small Purchase Procedures – Site Based Purchasing**

<b>VALUE OF PURCHASE</b>	<b>CATEGORY OF PURCHASE</b>	<b>PROCUREMENT METHOD AND SELECTION PROCEDURE</b>	<b>AUTHORIZATION REQUIRED</b>
<b><i>\$0 up to \$500</i></b>	<b><i>Supplies and all Services</i></b>	MICRO PURCHASE; Standard business practice (fair and reasonable price)	Development Manager*
<b><i>\$500 up to \$3,000</i></b>	<b><i>Supplies and all Services</i></b>	MICRO PURCHASE; Standard business practice (fair and reasonable price)	Development Manager* Regional Property Manager**
<b><i>\$3,000 up to \$5,000</i></b>	<b><i>Supplies and all Services</i></b>	SMALL PURCHASE; <b>Written or oral</b> quotations solicited from no fewer than three persons who customarily provide the required supply or service.	Development Manager* Regional Property Manager**
<b><i>\$5,000 up to \$50,000</i></b>	<b><i>Supplies and all Services not related to construction or building repair</i></b>	SMALL PURCHASE; <b>Written</b> quotations solicited from no fewer than three persons who customarily provide the required supply or service.	Development Manager* Regional Property Manager**
<b><i>\$0 up to \$10,000</i></b>	<b><i>Services related to construction or building repair</i></b>	SMALL PURCHASE; <b>Written</b> quotations solicited from no fewer than three persons who customarily provide the required supply or service.	Development Manager* Regional Property Manager**
<b>Varies</b>	<b><i>Supplies and all Services***</i></b>	OSD Statewide Contract: solicitation of quotations in accordance with each contract's rules.	Development Manager* Regional Property Manager** Procurement Department***

\*For BHA headquarters, Development Manager shall mean the Director of Central Office Operations

\*\*For BHA headquarters and any admissions-related offices, Regional Property Manager shall mean the Chief of Admissions.

\*\*\*Staff should consult Procurement Department for purchases above \$25,000 and to confirm compliance with contract rules. Certain OSD contracts may be used for construction services under \$50,000.

**Table 1.2 Publicly Advertised Bids and Publicly Advertised Proposals**

<b>VALUE OF PURCHASE</b>	<b>CATEGORY OF PURCHASE</b>	<b>PROCUREMENT METHOD AND SELECTION PROCEDURE</b>	<b>AUTHORIZATION REQUIRED</b>
<b>\$50,000 and above</b>	<b><i>Non-Construction Related Supplies and Services</i></b>	COMPETITIVE SEALED BID OR COMPETITIVE SEALED PROPOSAL: In accordance with Chapter 30B.	Budget Department CPO Executive Committee Administrator
<b>\$50,000 and above</b>	<b><i>Construction Related Supplies</i></b>	COMPETITIVE SEALED BID: In accordance with Chapter 30B or Chapter 30 § 39M.	Budget Department Contract Department Executive Committee Administrator
<b>\$10,000 up to \$50,000</b>	<b><i>Public Building Related Construction Services</i></b>	COMPETITIVE QUOTES: In accordance with Chapter 149 44A (B) (See Section IV B (4) of Policy)	Budget Department Contract Department
<b>\$50,000 up to \$150,000</b>	<b><i>Public Building Related Construction Services</i></b>	COMPETITIVE SEALED BID: In accordance 30 § 39M.	Budget Department Contract Department Executive Committee Administrator
<b>\$150,000 up to \$10M</b>	<b><i>Public Building Related Construction Services</i></b>	COMPETITIVE SEALED BID: In accordance with Chapter 149 § 44A-J.	Budget Department Contract Department Executive Committee Administrator
<b>\$10M and above</b>	<b><i>Public Building Related Construction Services</i></b>	PRE-QUALIFICATION and COMPETITIVE SEALED BID: In accordance with Chapter 149 §§ 44D1/2 and 44D3/4.	Budget Department Contract Department Executive Committee Administrator

**Table 1.2 Publicly Advertised Bids and Publicly Advertised Proposals**  
(continued)

<b>\$0 up to \$10,000</b>	<b><i>Public Works Related Construction Services</i></b>	Three quotes: In accordance with Chapter 30 § 39M.	Budget Department Contract Department Executive Committee Administrator
<b>\$10,000 up to \$50,000</b>	<b><i>Public Works Related Construction Services</i></b>	COMPETITIVE SEALED BID: In accordance with Chapter 30 § 39M or Chapter 30B § 5.	Budget Department Contract Department Executive Committee Administrator
<b>\$10,000 and above</b>	<b><i>Public Works Related Construction Services</i></b>	COMPETITIVE SEALED BID: In accordance with Chapter 30 § 39M.	Budget Department Contract Department Executive Committee Administrator

**Table 1.3      Emergency Procurements**

<b>VALUE OF PURCHASE</b>	<b>CATEGORY OF PURCHASE</b>	<b>PROCUREMENT METHOD AND SELECTION PROCEDURE</b>	<b>AUTHORIZATION REQUIRED</b>
<b>\$0 and above</b>	<b><i>All Goods and Non-Construction Related Services</i></b>	EMERGENCY PROCUREMENT: In accordance with Chapter 30B	CPO
<b>\$0 to \$50,000</b>	<b><i>Public Works and Public Building Related Construction Services</i></b>	EMERGENCY PROCUREMENT: In accordance with Chapter 30B	CPO
<b>\$50,000 and above</b>	<b><i>Public Works Related Construction Services</i></b>	EMERGENCY PROCUREMENT: In accordance with Chapter 30 § 39M	CPO Senior Contract Attorney Executive Committee Administrator
<b>\$50,000 and above</b>	<b><i>Public Building Related Construction Services</i></b>	EMERGENCY PROCUREMENT: In accordance with Chapter 149 §§ 44A-44J	CPO Senior Contract Attorney Executive Committee Administrator
<b>\$250,000 and above</b>	<b><i>All Federal funded contracts</i></b>	EMERGENCY PROCUREMENT: In accordance with Chapter 149 §§ 44A-44J or Chapter 30B, et seq. and the Common Rule	CPO Senior Contract Attorney Executive Committee Administrator HUD



## APPENDIX B

### MWPP and Section 3 Contracting Goals – Appendix B

The BHA has established the following goals in furtherance of its commitment to maximize the participation of minority and women-owned businesses and minority and women workers in BHA-funded contract opportunities based on demonstrated and significant historical underutilization of M/WBE firms. The BHA also commits itself to implement Section 3 of the Housing and Urban Development Act of 1968 (Section 3) to support and transform the lives of BHA residents, BHA leased housing residents, youth build participants, and low and very-low-income persons in the Boston area.

**Overall Agency Goal: 35% MWBE utilization, with 20% MBE and 15% WBE.**

**Construction Contracts: 40% MWBE utilization, with 25% MBE and 15% WBE, and as further expressed in the below table.**

	Construction	Non-Construction
<b>Minority Businesses</b>	25% of contract price	20% of contract price
<b>Minority Workers</b>	40% of person hours	40% of person hours
<b>Women Businesses</b>	15% of contract price	15% of contract price
<b>Women Workers</b>	40% of person hours	40% of person hours
<b>Section 3 Workers*</b>	25% of person hours	25% of person hours
<b>Targeted Section 3 Worker</b>	5% of person hours	5% of person hours

\* Section 3 labor hours can also be satisfied by subcontracting a Section 3 Business Concern.

To effectively meet such goals, proposers, bidders, and contractors must take affirmative action to employ, train, and contract based on the above-listed percentage goals.

The BHA may, at its discretion and in recognition of historic underutilization of M/WBE firms, establish contract-specific M/WBE utilization goals for prime contracting and/or subcontracting.

## Appendix C

### Resolution Regarding Contracting Disparities

Whereas, the Boston Housing Authority acknowledges the importance of addressing any historic and structural barriers that may contribute to inequitable economic investment in businesses across the city, region and nation, and within any market in which the BHA operates; and that such barriers may limit the actualization of the economic and civic potential, especially as it impacts minority- and women-owned businesses; and

Whereas, the BHA participated in a disparity study, conducted by BBC Research & Consulting and published in May 2021, to understand and analyze the participation and availability of minority- and women-owned business and to support the removal of barriers to equitable contracting; and

Whereas, the Boston Housing Authority has taken measures to promote the participation of minority-owned, women-owned, and Section 3 entities through adoption of goals, reporting measures and policies, consistent with local, state and federal law, that affirmatively encourage disadvantaged entities and corporations employing public housing residents or voucher holders to do business with the BHA; and

Whereas, the BHA has continued its response to contracting disparity through recent measures to, including the adjustment of evaluative criteria in request for proposals to prioritize the inclusion of minority- and women-owned business, joint ventures, and contractors who subcontract with minority- and women-owned businesses; and

Whereas, notwithstanding the impact of race- and gender-neutral efforts to promote participation, additional efforts are needed by the BHA and its partners to address the discriminatory effect of contracting inequities;

NOW, THEREFORE, pursuant to the authority vested in me as Administrator and Chief Executive Officer of the Boston Housing Authority, I hereby acknowledge the following findings:

- A. The disparity study, completed in May 2021, provided statistical and anecdotal information about the availability and utilization of minority- and women-owned businesses in BHA contracting; conditions in the marketplace for minorities, women, and minority- and women-owned businesses; the BHA's processes and programs; and other key areas. The disparity study found that minority- and women-owned business enterprises considered together are available for 21.1% of BHA contract and procurement dollars.
- B. Taken separately, women-owned business enterprises are available for 12.5% of BHA contract and procurement dollars, and minority-owned business enterprises are available for 8.6% of BHA contract and procurement dollars. During the same period, the disparity study found that minority- and women-owned business enterprises taken together were awarded 17.3% of the BHA's contract and procurement dollars (minority-owned was 4.3% and women-owned was 12.9%). Among women-owned enterprises, utilization was markedly different by contract role, with utilization of WBE subcontractors at a much higher than WBE prime contractors.
- C. Furthermore, the disparity study, completed February 2021, found availability rates for minority- and women-owned business enterprises by industry type as follows:

	Construction	Construction Design	Other Professional Services	Support Services	Goods and Supplies
Non-Hispanic white woman-owned	10.30%	7.90%	22.80%	17.80%	13.80%
Asian American-owned	1.6	2	2.5	1.9	0.5
Black American-owned	4.9	4.8	7.4	0.5	5
Hispanic American-owned	3.6	0.4	0	2.2	0.1
Native American-owned	0.3	0	0.7	0	1.7
Total minority-owned	10.40%	7.20%	10.60%	4.60%	7.30%
<b>Total minority- and woman-owned</b>	<b>20.70%</b>	<b>15.20%</b>	<b>33.50%</b>	<b>22.50%</b>	<b>21.00%</b>

- D. During and after the period of the BHA's disparity study, public entities active in the same economic markets and regions, including the City of Boston and Commonwealth of Massachusetts, have taken measures to increase the availability of M/WBE contractors, through training, certification, economic investment and other methods. These efforts also serve to counter effects of historic discrimination which may discourage disadvantaged contractors in self-identifying as available and interested in bidding on public contracts, and in so doing artificially constrain the apparent availability of diverse vendors.

The findings of the BHA's disparity study, coupled with the ongoing investments to increase the availability of M/WBE contractors, combat lack of access to capital, and address an inadequate established history of work in certain sectors by M/WBE firms, including construction, which is often a necessary pre-condition for eligibility to bid on public construction projects, support the adoption of aspirational goals that focus, direct and affirm BHA's intent to address contracting disparities.

**NOW, THEREFORE, BE IT FURTHER RESOLVED:**

The BHA accepts the findings of the disparity study and sets the following goals for utilization of disadvantaged vendors:

- Overall Agency Goal: 35% MWBE utilization, with 20% MBE and 15% WBE
- Construction Goals: 25% MBE utilization and 15% WBE utilization

In furtherance of the BHA's efforts to combat present and historic disparities, I approve these goals.



**Kathryn Bennett**  
Administrator and CEO  
Boston Housing Authority

10-13-22  
DATE

Boston Housing Authority  
Code of Conduct

*A d o p t e d*  
*September 25, 1996*

B O S T O N   H O U S I N G  
AUTHORITY

Equal Opportunity Housing / Equal Opportunity Employer

## **BOSTON HOUSING AUTHORITY**

### **CODE OF CONDUCT**

The BHA hereby establishes this Code of Conduct regarding procurement issues and actions and shall implement a system of sanctions for violations. This Code intentionally incorporates the most stringent requirements of all applicable state, federal and local laws, regulations, rules, and best practices. For purposes of this Code, the terms “BHA employee” and/or “you” shall refer to and include any and all persons, employees, administrators, officers, members, or agents employed by or affiliated with the BHA

#### **I. CONFLICTS OF INTEREST**

During his/her tenure or one year thereafter, no BHA employee shall participate directly or indirectly in the solicitation, selection, award, or administration of any procurement or contract if a conflict of interest, either real or apparent, is or may be involved. For purposes of this Code, an impermissible conflict exists whenever a BHA employee involves him/herself in or is involved in any aspect of a BHA procurement, contract opportunity, contract or purchase order and knows, has reason to know or should know that any of the individuals and entities described below has or will have a financial or any other type of interest in that BHA procurement, contract opportunity, contract and/or purchase order:

- A. 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); or
- B. His/her partner; or
- C. An organization which employs or is negotiating to employ, or has an arrangement concerning prospective employment of the BHA employee or any of the individuals described above.

#### **II. USE OF CONFIDENTIAL INFORMATION.**

Disclosure of confidential information to any person not authorized by the CPO to receive such information shall be a breach of this Code. For purposes of this section, confidential information includes but is not necessarily limited to: the contents of a bid (prior to bid opening) or proposal (prior to contract award using competitive proposals); BHA-generated information related to a procurement (including internal communications, solicitation document drafts, cost estimates, contractor selection and evaluation plans, specifications [before solicitation is issued]); and any other information the disclosure of which would have a direct bearing upon the contractor selection process or BHA’s handling of a bid or proposal dispute. It is a breach of this Code for any current or former BHA employee to use confidential information as described in this section for actual or anticipated personal gain or for actual or anticipated personal gain of any other person.

### III. GIFTS AND GRATUITIES

#### A. GENERAL RESTRICTIONS

You may not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or other item of monetary value from a person, public agency, or private entity you know or have reason to know:

1. Has had, has, or is seeking to obtain contractual or other business or financial relations with us;
2. Conducts or is seeking to conduct business or other activities that are regulated or monitored by us; or
3. Has interests that may be or may give the reasonable impression of being substantially affected by the performance or nonperformance of your official duties.

*Example: You may not accept a restaurant lunch from a consultant employed by a firm under contract to us;*

*Example: You may not accept a Christmas gift from a vendor seeking business with us;*

*Example: You may not accept a ticket to a sporting event from an individual whose business we regulate.*

#### B. EXCEPTIONS

1. You may accept gifts in cases involving a family or personal relationship when the circumstances make clear that the relationship is the motivation for the gift.
2. You may accept nonalcoholic beverages, such as coffee or tea, from public or private entities.
3. You may attend and accept food and beverages at seasonal or celebratory functions, such as Christmas, birthdays, or retirement parties, hosted by public entities.
4. You may accept food and beverages in connection with attendance at working meetings held in the office of a public entity.
5. You may accept food and beverages in connection with attendance at widely attended meetings or gatherings held by a private trade or professional association in an office or other business setting when you are attending the meeting or gathering in your official capacity for informational, educational, or other similar purposes.

*Example: You may accept a modest meal served in a restaurant function room in*



*conjunction with an informational, widely attended meeting hosted by a professional association;*

*Example: You may not accept food and beverages at a hospitality suite hosted by one or more private firms.*

6. You may accept loans from banks or other financial institutions to finance proper and usual customer activities, such as home mortgage loans and automobile loans. If the bank or financial institution is an entity with which you have or might reasonably expect to have dealings in your official capacity, you must be able to demonstrate that the loan has been granted on current customary terms. You must also provide written disclosure of the loan to your supervisor. The previous sentence does not apply if your duties or anticipated duties with respect to the bank are limited to obtaining third-party records.

7.

*Example: You may accept an unsolicited, inexpensive promotional pen or calendar.*

*Example: You may not accept a leather portfolio.*

#### **IV. REIMBURSEMENT OF TRAVEL EXPENSES**

##### **A. GENERAL RESTRICTIONS**

You may not accept reimbursement for travel expenses from a person or entity who falls within the scope of Section III,A, above.

##### **B. EXCEPTIONS**

1. If you deliver a speech or participate in a conference, we may elect to accept reimbursement from the sponsor of the speech or conference for your actual and necessary travel expenses. In this case, we . . . not the sponsor . . . will pay or reimburse you in accordance with our travel policy, and bill the sponsor for the appropriate amount.

2. If we determine that employee travel is a necessary component of a vendor evaluation process, we may elect to require competing vendors to reimburse us for actual and necessary travel expenses incurred in connection with the evaluation. In this case, we --- not the vendors --- will pay or reimburse you in accordance with our travel policy. The publicly advertised request for proposals or bids must set forth our procedures for calculating and billing all competing vendors for the appropriate amounts.

## **V. HONORARIA**

### **A. GENERAL RESTRICTIONS**

You may not accept honoraria or other monetary compensation from an outside source in return for a public appearance, speech, lecture, publication, or discussion unless all of the following conditions are met:

1. Preparation or delivery of the public appearance, speech, lecture, publication, or discussion is not part of your official duties;
2. Neither the sponsor nor the source, if different, of the honorarium is a person or entity who falls within the scope of Section III, A above;
3. You do not use office supplies or facilities not available to the general public in the preparation or delivery of the public appearance, speech, lecture, publication, or discussion: and
4. You do not take office time for the preparation or delivery of the public appearance, speech, lecture publication, or discussion.

*Example: You may accept an honorarium for a magazine article prepared outside working hours.*

*Example: You may not accept an honorarium for delivering a speech in your official capacity.*

### **B. EXCEPTIONS**

1. You may accept awards, certificates, or other items of nominal value given for a speech, participation in a conference, or a public contribution or achievement.

*Example: You may accept a framed certificate of appreciation.*

*Example: You may not accept an engraved pewter bowl.*

## **VI. TESTIMONIAL AND RETIREMENT FUNCTIONS A.**

### **GENERAL RESTRICTIONS<sup>9</sup>**

1. You may not solicit contributions, sell tickets, or otherwise seek or accept payment for a testimonial or retirement function, or any function having a similar purpose, held for yourself or any other employee, if the contributor is a person or entity who falls within the scope of Section III, A. above, and the admission price or payment exceeds the actual per-person cost of food and beverages served at the function.

*Example: You may not offer or sell tickets to a testimonial dinner to contractors doing business with us if the ticket price includes a contribution toward a gift.*

2. You may not accept food, beverages, or gifts at any testimonial or retirement function, or any function having a similar purpose, if such food, beverages, or gifts are paid for or subsidized by a person or entity who falls within the scope of Section III, A. above.

*Example: You may not accept a free admission to a retirement luncheon if the cost of your admission is paid, directly or indirectly, by one or more contractors doing business with us.*

*Example: You may not accept a retirement gift if the gift was paid for with the proceeds of tickets purchased by contractors doing business with us.*

### **B. EXCEPTIONS**

None.

## **VII. GROUNDBREAKING AND DEDICATION CEREMONIES**

### **A. GENERAL RESTRICTIONS**

1. You may not request or require any person or entity who falls within the scope of Section IIIA. above, to sponsor or contribute to any groundbreaking ceremony, dedication ceremony, or similar occasion involving a public works project. If we determine that a groundbreaking or dedication ceremony for a public works project serves a legitimate public purpose, we may elect to fund such a ceremony. We may plan and pay for the ceremony. Alternatively, we may include the ceremony-related services in the construction bid specifications for the public works project.

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<sup>9</sup> M.G.L. c.268, §9A prohibits anyone from selling, offering for sale, or accepting payment for tickets to, or soliciting or accepting contributions for, testimonial dinners or functions held on behalf of anyone employed by a law enforcement, regulatory, or investigatory agency of the Commonwealth or any political subdivision of the Commonwealth. The law carries a maximum fine of \$500.

2. You may not accept food, beverages, or gifts at any groundbreaking ceremony, dedication ceremony, or similar occasion involving a public works project if the food, beverages, or gifts are paid for or subsidized by a person or entity who falls within the scope of Section 1A. above.

#### **B. EXCEPTIONS**

None.