

## SOUTHERN NEVADA REGIONAL HOUSING AUTHORITY NON-FEDERAL PROCUREMENT POLICY

This Non-Federally Funded Procurement Policy (“Non-Federal Policy”) is established for the Southern Nevada Regional Housing Authority, Nevada (“SNRHA”), by action of the SNRHA Board of Commissioners (“Board”) on November 12, 2009. This Non-Federal Policy applies to SNRHA’s Non-Federally funded procurements, purchases, and contracts and complies with federal, state and local laws.

### 1. GENERAL PROVISIONS.

**1.1 Purpose:** The purpose of the SNRHA Non-Federal Policy is to:

- (a) Provide for the fair and equitable treatment of all persons and firms involved in purchasing by SNRHA;
- (b) Assure that supplies, services, and construction are procured efficiently, effectively, and at the most favorable prices available to SNRHA;
- (c) Promote competition in contracting;
- (d) Provide safeguards for maintaining a procurement system of quality and integrity; and
- (e) Assure that SNRHA’s purchasing and procurement actions are in full compliance with established procedures for non-federally funded purchases.

**1.2 Application:** This Non-Federal Policy applies to all contracts for the procurement of supplies, services, and construction entered into by the SNRHA after the effective date of this Statement, for which SNRHA expends non-federal funds (“Non-Federally funded Procurement”). The term “procurement,” as used herein, includes both contracts and modifications (including change orders) for construction or services, as well as the purchase, lease, or rental of supplies and equipment.

**1.3 Public Access to Procurement Information:** Procurement information shall be a matter of public record to the extent required by any applicable federal, state, or local laws and shall be available to the public as required thereby.

### 2. PROCUREMENT AUTHORITY, ADMINISTRATION, AND APPROVAL.

**2.1 Authority:** All procurement transactions shall be administered by the Contracting Officer (“CO”), who shall be the Executive Director (“ED”) or other SNRHA employee whom the ED has authorized in writing (“Designee”). The ED shall issue operational procedures (“Operational Procedures”) to implement this Non-Federal Policy. The ED shall also establish a system of sanctions for violations of the ethical standards described in Section IX below, consistent with state law.

**2.2 Administration:** The CO shall ensure that:

- (a) Procurement requirements are subject to an annual planning process to assure efficient and economical purchasing;
- (b) 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 as a minimum the method of procurement chosen, the selection of the contract type, the rationale for selecting or rejecting offers, the basis for the contract price; and, all contracts and modifications;
- (c) Solicitations are provided to the public in a timely manner as required by the Operational Procedures;
- (d) Solicitations are conducted in full compliance with the Non-Federal Policy and the Operational Procedures.
- (e) Contracts award is made to the bidder, offeror, or contractor who most benefits SNRHA pursuant to this Non-Federal Policy and the Operational Procedures;
- (f) Unsuccessful firms are notified within a timely manner as required by the Operational Procedures;
- (g) The Indefinite Quantity Contract type is not used unless a minimum and maximum quantity is clearly stated therein;
- (h) There are sufficient unencumbered funds available to cover the anticipated cost of each procurement before contract award or modification (including change orders);
- (i) The contractor's work is inspected before SNRHA pays the contractor; and
- (j) Payment is made promptly for contract work which has been performed and accepted pursuant to the Operational Procedures.

**2.3 Approval:** This Non-Federal Policy and any later changes shall be submitted to the Board for approval. The Board is responsible for adopting appropriate procurement policies for SNRHA and by adopting this Non-Federal Policy; the Board appoints and delegates Non-Federal Procurement authority to the ED. However, the Board must give prior approval to all Non-Federal Procurements over \$100,000.

- (a) The Board authorizes the ED to approve purchases and/or contracts of \$100,000 or less (either as a single contract or in the aggregate) which the ED deems are in the best operating interests of SNRHA.
- (b) The Board further authorizes the ED to approve time extensions which are in the best operating interest of the SNRHA.

(c) The Board further authorizes the ED to approve change orders and contract amendments/modifications up to \$100,000, either as a single action or in the aggregate. The ED must seek prior approval from the Board for all changes/modifications exceeding this limit.

(d) The Board further authorizes the ED to increase the amount spent on any procurement by 10% without seeking board approval, unless that amount exceeds \$100,000 in case Board approval shall be required.

### 3. PROCUREMENT METHODS

**3.1 General:** SNRHA's policy is that SNRHA conduct its Non-Federally funded Procurements in a manner using sound business principles which are consistent with the customary and acceptable business practices as found in Nevada and as allowed by federal, state, and local law.

(a) The CO must review each procurement action and determine the most appropriate procurement method SNRHA should use to obtain the required goods or services.

(b) Evaluation. Before making the award, the CO must determine that the proposed price is fair and reasonable.

**3.2 Procurement Methods:** Nothing in this Non-Federal Policy shall be interpreted to prohibit SNRHA from making Non-Federally funded procurements by using any of the procurement methods listed in SNRHA's Federal Procurement Policy, or a variation thereof, provided that the CO conducts the procurement using sound business principles which are consistent with the customary and acceptable business practices as found in Nevada and as allowed by federal, state, and local law. The procurement methods which SNRHA may use for Non-Federal procurements include but are not limited to small purchases, micro purchases, sealed bidding, competitive proposals, noncompetitive proposals, and cooperative purchasing, or any variation thereof.

**3.3 Board Approval:** The Board must give prior approval of all Non-Federally funded Procurements greater than \$100,000.00.

### 4. CONTRACTOR QUALIFICATIONS AND DUTIES

**4.1 Contractor Responsibility:** Procurement 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. Before awarding a contract, the SNRHA shall review the 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 Non-procurement Programs published by the U.S. General Services Administration), compliance with public policy, record of past performance (including contacting previous clients of the contractor, such as other housing authorities), and financial and technical resources. If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the contract file, and the prospective contractor shall be advised of the reasons for the determination.

**4.2 Suspension and Debarment:** Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined ineligible by HUD in accordance with HUD regulations (24 CFR Part 24) when necessary to protect the SNRHA in its business dealings.

**4.3 Qualified Bidder's List:** Interested businesses shall be given an opportunity to be included on qualified bidder's lists. Any pre-qualified lists of persons, firms, or products, which are used in the procurement of supplies and services, shall be kept current and shall include enough qualified sources to ensure competition. Firms shall not be precluded from qualifying during the solicitation period. Solicitation mailing lists of potential contractors shall include, but not be limited to, such pre-qualified suppliers.

## 5. TYPES OF CONTRACTS, CLAUSES, AND CONTRACT ADMINISTRATION

**5.1 General:** All procurements shall include the clauses and provisions necessary to define the rights and responsibilities of the parties.

**5.2 Contract Types:** SNRHA may use any type of contract which is appropriate to the procurement and which will promote SNRHA's best interests, with the exception that the cost-plus-a-percentage-of-cost and percentage of construction cost methods are prohibited.

**(a) Cost Reimbursement Contracts:** A cost reimbursement contract shall not be used unless it is likely to be less costly or it is impracticable to satisfy the SNRHA's needs otherwise, and the proposed contractor's accounting system is adequate to allocate costs in accordance with applicable cost principles (for commercial firms Subpart 31.2 of the Federal Acquisition Regulation (FAR), found in 48 CFR Chapter 1).

**(b) Time and Material Contracts:** A time and material contract may be used only if a written determination is made that no other contract type is suitable, and the contract includes a ceiling price that the contractor exceeds at its own risk.

**(c) Option Contracts:** Option contracts for additional quantities or performance periods may be included in contracts, provided that:

- (i)** The option is contained in the solicitation;
- (ii)** The option is a unilateral right of the SNRHA;
- (iii)** The contract states a limit on the additional quantities and the overall term of the contract;
- (iv)** The options are evaluated as part of the initial competition;
- (v)** The contract states the period within which the options may be exercised;
- (vi)** The options may be exercised only at the price specified in or reasonably determinable from the contract; and

(vii) The options may be exercised only if determined to be more advantageous to the SNRHA than conducting a new procurement.

**5.3 Contract Administration:** A contract administration system designed to ensure that contractors perform in accordance with their contracts shall be maintained. The Operational Procedures shall contain guidelines for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on construction contracts and similar matters. For cost reimbursement contracts with commercial firms, costs are allowable only to the extent that they are consistent with the cost principles in FAR Subpart 31.2.

## 6. SPECIFICATIONS

**6.1 General:** All specifications shall be drafted according to the Operational Procedures so as to promote overall economy for the purposes intended and to encourage competition in satisfying the SNRHA's needs.

**6.2 Limitation:** Nothing in this Non-Federal Policy shall preempt any state licensing laws. Specifications shall be scrutinized to ensure that organizational conflicts of interest do not occur (for example, having a consultant perform a study of the SNRHA's computer needs and then allowing that consultant to compete for the subsequent contract for the computers).

**7. CONTRACT PRICING:** The SNRHA shall perform some form of cost/price analysis for every Non-Federal procurement action over \$2,000, including modifications, amendments or change orders. The degree of analysis will be in the CO's sole discretion, provided that it is reasonable and consistent with sound and acceptable business practices as found in Nevada, and in SNRHA's best interest.

**8. REJECTION OF BIDS:** It is SNRHA's policy that SNRHA, in its sole discretion, may reject any bid when it is in SNRHA's best interest. Rejection of any bid during the evaluation process shall be made in accordance with SNRHA's Operational Procedures.

## 9. CONTRACT AWARD

**9.1 General:** It is SNRHA's policy to award the contract to the responsive and responsible bidder whose bid will best serve SNRHA's interests. Contract award will be conducted in a manner which is consistent with the sound and acceptable business practices as found in Nevada and as allowed by federal, state, and local law.

### 9.2 Award Not Required:

(a) SNRHA may cancel a Non-Federally funded Procurement at any time before award, if SNRHA determines it is in SNRHA's best interest to do so.

(b) If after review of the bids SNRHA determines that none of the bids will adequately serve SNRHA's best interests then SNRHA may reject all of the bids.

## 10. APPEALS AND REMEDIES

**10.1 General:** It is the SNRHA's policy to resolve all contractual issues informally at the Housing Authority level, without litigation. When appropriate, SNRHA may consider the use of informal discussions between the parties by individuals who did not participate substantially in the matter in dispute, to help resolve the differences.

**10.2 Must Exhaust Administrative Remedies:** Neither the Contractor nor SNRHA shall file complaints with the Court until the aggrieved party exhausts all available administrative remedies as provided in the Operational Procedures.

**10.3 Bid Protests:** Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Non-Federal Policy. The protest must be served upon the CO in writing within 10 days after SNRHA has provided notice of award or rejection and the notice must include the factual and legal reasons as to why the protestor believes the protest should be granted. Failure to comply with the bid protest procedures will result in the protest being denied as improper. SNRHA will handle a bid protest in accordance with the Operational Procedures.

**10.4 Contract Claims:** All claims by a contractor relating to performance of a contract shall be submitted in writing to the CO or Designee for a written decision. The contractor may request a conference on the claim. The CO's written decision shall inform the contractor of its appeal rights to a higher level in the SNRHA, as permitted under the Operational Procedures.

## 11. ASSISTANCE TO SMALL AND OTHER BUSINESS

### 11.1 Definitions:

(a) A "Small Business" is defined as a business, which is: independently owned; not dominant in its field of operation; and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in 13 CFR 121 shall be used, unless the SNRHA determines that their use is inappropriate.

(b) A "Minority-owned Business" is defined as a business which is at least 51% owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans and Asian Indian Americans, and Hasidic Jewish Americans.

(c) A "Women's Business Enterprise" is defined as a business that is at least 51% owned by a woman or women who are U. S. citizens and who also control or operate the business.

(d) "Labor Surplus Area Business" is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or under-employment, as defined by the U.S. Department of Labor in

20 CFR 654, Subpart A, and in lists of labor surplus areas published by the Employment and Training Administration.

(e) A business concern located in the area of the project (“Business Concern”) is defined as an individual or firm located within the relevant Section 3 covered project area, as determined pursuant to 24 CFR 135.15, listed on HUD's registry of eligible business concerns, and meeting the definition of small business above. A business concern owned in substantial part by persons residing in the area of the project is defined as a business concern which is 51% or more owned by persons residing within the Section 3 covered project, owned by persons considered by the U.S. Small Business Administration to be socially or economically disadvantaged, listed on HUD's registry of eligible business concerns, and meeting the definition of small business above.

**11.2 Required Efforts:** SNRHA’s policy is to encourage the use of the qualified and responsible sources defined in Paragraph 11.1 above when such sources are available.

**11.3 Limitation:** None of the policies mention in Section 11 herein shall prevent SNRHA from using Non-Federal funds to procure the contract that is in SNRHA’s best interests.

## 12. ETHICS IN PUBLIC CONTRACTING

**12.1 General:** SNRHA shall adhere to the following code of conduct, consistent with applicable State or local law.

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

(a) An employee, officer or agent involved in making the award;

(b) 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, brother-in-law, sister-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, step-brother, step-sister, half brother, or half sister);

(c) His/her partner; or,

(d) An organization which employs, is negotiation to employ, or has an arrangement concerning prospective employment of any of the above.

**12.3 Gratuities, Kickbacks, and Use of Confidential Information:** SNRHA officers, employees or agents shall not solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts, and shall not knowingly use confidential information for actual or anticipated personal gain.

**12.4 Prohibition Against Contingent Fees:** Contractors shall not retain a person to solicit or secure an SNRHA contract or a commission, percentage, brokerage, or contingent fee, except for bona fide employees or bona fide established commercial selling agencies.