

**SOUTHERN NEVADA REGIONAL HOUSING AUTHORITY  
CAPITAL FUND STIMULUS GRANT PROCUREMENT POLICY**

This Capital Fund Stimulus Grant Procurement Policy (the “Procurement Policy” or “Policy”) is established for the Southern Nevada Regional Housing Authority, Nevada (“SNRHA”), by action of the SNRHA Board of Commissioners (the “Board”) on November 11, 2009. This Procurement Policy complies with HUD’s Annual Contribution Contract (“ACC”), HUD Handbook 7460.8 (REV-2), “Procurement Handbook for Public Housing Agencies,” the procurement standards of 24 CFR 85.36, the American Recovery and Reinvestment Act of 2009 (“the Recovery Act”) and in accordance with the U.S. Department of Housing and Urban Development PIH Notice 2009-12. Generally, in the case of any discrepancy between any requirements contained in any of the above, SNRHA shall comply with the “most stringent” requirement.

**1. GENERAL PROVISIONS.**

**1.1 Purpose:** The purpose of this Policy is to: provide for the fair and equitable treatment of all persons or firms involved in purchasing by SNRHA; assure that supplies, services, and construction are procured efficiently, effectively, and at the most favorable prices available to SNRHA; promote competition in contracting; provide safeguards for maintaining a procurement system of quality and integrity; and assure that SNRHA’s purchasing actions are in full compliance with applicable federal laws, and HUD regulations.

**1.2 Application:** This Policy applies to all contracts for which the American Recovery and Reinvestment Act (ARRA) federal funds will be used for the procurement of supplies, services, and construction entered into by SNRHA after the effective date of this Policy. It shall apply to every expenditure of ARRA funds by SNRHA for public purchasing, with the exception of other federal and non-federal funds, including contracts which do not involve an obligation of funds (such as concession contracts); however, nothing in this statement shall prevent SNRHA from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with the law. The term "procurement," as used in this Policy, includes both contracts and modifications (including change orders) for construction or services, as well as purchase, lease, or rental of supplies and equipment.

**1.3 State and Local:** As provided for in HUD PIH Notice 2009-12 (HA) and the ARRA, any requirements relating to the procurement of goods and services arising under state and local laws and regulations shall not apply to Capital Fund Stimulus Grants. This policy follows the Part 85 requirements. If SNRHA adds Recovery Act funds to an existing procurement that is using Capital Funds, state and local procurement requirements continue to apply. If SNRHA uses both Capital Fund Formula Grants and Recovery Act Formula Grants in a new procurement, state and local procurement requirements continue to apply as well. The Procurement is only exempt from state and local procurement requirements when the procurement only involves Recovery Act funds.

#### 1.4 Definitions:

(a) American Recovery and Reinvestment Act (ARRA): This statute became effective on February 17, 2009. This legislation includes a \$4 Billion appropriation of Capital Funds to carry out capital and management activities for public housing agencies, as authorized under section 9 of the United States Housing Act of 1937. The Recovery Act requires that \$3 Billion of these funds be distributed as formula funds and the remaining \$1 Billion be distributed through a competitive process

(b) Buy American: As provided for in HUD PIH Notice 2009-12 (HA) and the ARRA , the Housing Authority will follow Buy American requirements of section 1605 of the Recovery Act and use only iron, steel and manufactured goods produced in the United States in their projects.

(c) Business Concern: A business concern located in the area of the project 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.

(d) Competitive Proposal. The Competitive Proposal (also called contract by negotiation) is a method of procurement using the solicitation, evaluation, and negotiation of proposals instead of sealed bids. The Competitive Proposal method is used for requirements exceeding SNRHA's Small Purchase Limit when conditions are not appropriate for sealed bidding.

(e) Competitive Range. The Competitive Range includes those proposals submitted in response to an RFP that, after technical evaluation by SNRHA's selection panel and considering the proposed costs/prices, have a reasonable chance of being awarded the contract. (see Chapter 7, paragraph 7.2.N for detailed guidance).

(f) Contracting Officer. The Contracting Officer is either SNRHA's Executive Director or an official authorized by the Executive Director to enter into and/or administer contracts and make related determinations and findings. For the purpose of this Policy, the term includes any SNRHA employee designated and authorized to perform the duties of a Contracting Officer.

(g) Contract Pricing Arrangements. The arrangement, as reflected in the contract, for how the vendor will be paid for services. While there are two basic contract pricing arrangements – firm fixed-price and cost-reimbursement – there are multiple variations on these models, from indefinite quantity contracts (where the exact number of deliverable items is not known at the time of contract award but where minimum and maximum quantities are stated) to

cost-plus fixed-fee (where costs are reimbursed, up to an estimated amount, plus a specified fee).

(h) Cost-Reimbursement Contract. A Cost-Reimbursement Contract is a contract when the contractor is reimbursed for his/her allowable costs of performance up to a total estimated amount specified in the contract. The contract may provide for the payment of a fee (i.e., a type of profit) in addition to costs.

(i) Force Account: As provided for in HUD PIH Notice 2009-12 (HA) and the ARRA, to the extent feasible, the SNRHA will consider employing existing or additional force account laborers on either a permanent or a temporary basis to perform Capital Fund stimulus grant work. Prior HUD approval is not required to use force account labor, but such work will be designated as force account work in the Capital Fund planning, budgeting and reporting documents.

(j) Firm Fixed Price Contract. A Firm Fixed Price Contract is a contract when the contractor is paid a firm fixed-price for all required work regardless of the contractor's actual costs of performance.

(k) Independent Cost Estimate ("ICE"). ICE is an estimate prepared by SNRHA prior to obtaining offers. The degree of analysis contained within the ICE will depend on the size and complexity of the purchase.

(l) Intergovernmental or Interagency Agreement. An Intergovernmental or Interagency Agreement is an agreement between SNRHA and a Federal, State, or local government agency (including other Housing Authorities) for the provision of supplies or services.

(m) Invitation for Bids ("IFB"). An IFB is a solicitation type used under the sealed bidding method of procurement.

(n) Labor Surplus Area Business. A 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.

(o) Micro Purchases. Micro Purchases are purchases under \$2,000.

(p) Minority Business Enterprise. A minority business enterprise 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 and Asian Indian Americans, and Hasidic Jewish Americans.

(q) Negotiation. Negotiation means discussions with offerors in the competitive range regarding technical and/or price proposals when awarding a contract using the competitive proposals method of procurement or when issuing modifications to existing contracts or other required discussion with offerors for the other methods of procurement.

(r) Non-Federal funding. Funding sources which are not from the federal government.

(s) Noncompetitive Proposals. Procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(t) Procurement. The term “procurement,” as used in this Policy, includes the procuring, purchasing, leasing, or renting of: (1) goods, supplies, equipment, and materials, (2) construction (and construction change orders) and maintenance; consultant services, (3) Architectural and Engineering (A/E) services, (4) Social Services, and (5) other services.

(u) Proposal. A Proposal is the offer submitted by a potential contractor in the competitive or noncompetitive proposals method of procurement.

(v) Qualification Based Selection (“QBS”). A QBS is a form of procurement of architect-engineering (“A/E”) or development services by competitive proposals in which price is not requested in the Request for Qualifications (“RFQ”) or used as an evaluation factor. Instead, technical qualifications only are reviewed negotiations are conducted with the best-qualified firm. Only A/E services and development partners may be procured by this method.

(w) Request for Proposals (“RFP”). An RFP is a solicitation method used under both the competitive or non-competitive methods of procurement. Proposal evaluation and contractor selection are based on the evaluation criteria and factors for award as stated in the RFP. Contract award is based on the best proposal responsive to the requirements of the statement of work resulting in the greatest benefit and best value to SNRHA, which may not necessarily be primarily determined based on price.

(x) Resident Hiring Scale for Section 3 Residents Training and Employment Opportunities. The Resident Hiring Scale for Section 3 Residents Training and Employment Opportunities is a scale method adopted by the SNRHA for residents hiring that is to be used on all contracts, service contracts and professional service contracts that contain a labor component.

(y) Responsible Bidder. A Responsible Bidder is one who: (1) is able to comply with the required or proposed delivery or performance schedule; (2) has a satisfactory performance record; (3) has a satisfactory record of integrity and business ethics; (4) has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them; (5) has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and (6) is otherwise qualified and eligible to receive an award under applicable laws and regulations, including the fact that the bidder is not suspended, debarred or under a HUD-imposed Limited Denial of Participation.

(z) Responsive Bid. A Responsive Bid is one that conforms exactly to the requirements set forth in the IFB.

(aa) Sealed Bidding. Sealed Bidding is a method of procurement inviting sealed bids. This method requires: specifications that are clear, accurate, and complete; a public bid opening; and evaluation of bids and award of the contract based on the lowest price submitted by a responsive and responsible contractor. Sealed bidding is the preferred method for construction procurements.

(bb) Small Business. 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 Part 121 shall be used, unless the SNRHA determines that their use is inappropriate.

(cc) Section 3 Business – A Business Concern Located in the Area of a Housing Authority Development. A business concern located in the area of a Housing Authority development is defined as an individual or firm located within the relevant Section 3 covered development area, as determined pursuant to 24 CFR 135.15. (HUD 7460.8 Appendix 3, Section V)

(i) Business concerns that are 51% or more owned and controlled by residents of any SNRHA housing site or whose full-time permanent workforce includes 30% of SNRHA residents of any housing site; or

(ii) HUD Youthbuild program in Clark County; or

(iii) Business concerns that are 51% or more owned and controlled by low or very low-income Southern Nevada residents or whose full-time permanent work force includes 30% low/very low-income Southern Nevada residents.

(iv) Businesses that subcontract in excess of 25% of the total amount of subcontracts to business concerns identified in the preferences above.

(dd) Section 3 Resident. A resident of an SNRHA housing site where contracted work is being done; or a resident of any SNRHA housing site; or a participant in HUD Youthbuild program in Southern Nevada; or a low or very low-income resident of Southern Nevada.

(ee) Small Purchase Limit. The Small Purchase Limit is the maximum dollar amount for SNRHA's individual small purchases. SNRHA's Small Purchase Limit is currently set at \$100,000.

(ff) Solicitation. Solicitation is the general term for SNRHA's request for offers from potential offerors. A solicitation package generally contains the proposed contract, including contract terms and conditions, instructions to potential offerors regarding the submission of an offer, and any other information needed to prepare an offer.

(gg) Statement of Work (SOW). A Statement of Work is a written description of work to be performed that establishes the standards sought for the supplies or services furnished under the contract; typically used for service contracts.

(hh) Termination for Cause. Termination for Cause is the termination of a contract on a unilateral basis when the contractor fails to perform, fails to make progress so as to endanger performance, or commits a default as specified in the contract.

(ii) Termination for Convenience. Termination for Convenience is the termination of a contract by SNRHA on a unilateral basis when the product or service is no longer needed or when SNRHA determines at its sole discretion that termination is in SNRHA's best interest.

(jj) Vendor. A Vendor is the term often used for an offeror or contractor when talking about small purchasing.

(kk) Women's Business Enterprise. 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.

**1.5 Public Access to Procurement Information:** Procurement information shall be a matter of public record to the extent required by any applicable Federal laws or codes and shall be available to the public as provided in such statutes.

**1.6 Funding Sources:** SNRHA receives funds from federal, state, and local governments as well as private funding sources. As such, in its procurement activities, the Board has adopted this Policy, the Federal Procurement Policy and the Non-Federal Procurement Policy to ensure compliance with applicable laws and regulations without necessarily imposing a higher standard than is necessary to ensure compliance with applicable laws.

**1.7 ARRA Verses Federal and/or Non-Federal Funding:** This Policy shall apply to ARRA funded contracts, while SNRHA's Federal Procurement Policy shall apply to federally-funded contracts, as well as, SNRHA's Non-Federal Procurement Policy shall apply to non-federally funded contracts.

**1.8 List of SNRHA Funds:** The Executive Director shall maintain a list of SNRHA funding specifying whether the funds are from ARRA sources or federal or non-federal sources and the list shall state under which procurement policy the funds are to be used. SNRHA shall make such a list available to SNRHA employees who work in procurement matters.

**1.9 Exclusions From Federal Requirements Under This Policy:** It is SNRHA's general policy that SNRHA conduct its procurements which are not governed by this Policy, e.g. Non-Federal procurements, in a manner which is consistent with the customary and acceptable business practices as found in Nevada and as allowed by Nevada law and SNRHA's Non-Federal Procurement Policy. The following procurements shall not be governed by this Policy:

(a) Procurements from income generated by the Central Office Cost Center through reasonable fee-for-service arrangements under 24 CFR Part 990, e.g., management fees, bookkeeping fees, and asset management fees, etc. Such fee income is not considered Federal program income and subject to 24 CFR part 85. Fee income is governed only by State and local requirements, as applicable;

(b) Real Estate Purchase and Sale Transactions. (Surveys, appraisals, environmental site assessments, and financing analyses are considered Consultant services and are governed by this Policy);

(c) Funds received from insurance claims;

(d) Loan transactions and documents;

(e) Employment contracts;

(f) Limited partnership agreements; and

(g) The operation of the Section 8 Housing Choice Voucher Program, which is exempted from 24 CFR 85.36 (see March 11, 1988, Federal Register, page 8050). Procurement activities within the voucher program, therefore, are governed by applicable state and local law. To the extent that the SNRHA utilizes procurement practices for its voucher program that are different from those required under 24 CFR 85.36, SNRHA will conduct those procurements in compliance with its Non-Federal Procurement Policy.

**1.10 Policy NOT All-Inclusive.** While this Procurement Policy is intended as the primary reference document for all SNRHA's ARRA procurement matters (except for SNRHA's Federally and Non-Federally funded procurement matters), no document can be all-inclusive. Where situations arise that, in the reasonable judgment of SNRHA, have not been addressed in this Policy, SNRHA should contact its legal counsel or the local HUD field office for further guidance.

**1.11 Application of New Law.** In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with this Policy, automatically supersede this Policy, and the SNRHA Executive Director shall make appropriate modifications to this Policy within a reasonable time of the effect of the revised law and present the revised policy to the Board for approval.

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

**2.1 Procurement Planning:** Planning is essential to managing the procurement function properly. Therefore, SNRHA will annually review its record of prior purchase, as well as future needs, to:

(a) Find patterns of procurement actions that could be performed more efficiently or economically;

- (b) Maximize competition and competitive pricing among contracts and decrease the SNRHA's procurement costs;
- (c) Reduce the SNRHA's administrative costs;
- (d) Ensure that supplies and services are obtained without any need for re-procurement, e.g., resolving bid protests; and
- (e) Minimize errors that occur when there is inadequate lead time. Consideration should be given to storage, security, and handling requirements when planning the most appropriate purchasing actions.
- (f) Give priority consideration to rehabilitation of vacant rental units;
- (g) Prioritize capital projects, that are already underway and require additional funds, or are included in the Five-Year Capital Fund Action Plan;
- (h) Give priority to Capital Fund Stimulus Grant projects than can award contracts based on bids within 120 days from February 17, 2009 (the date of the Recovery Act was signed).

**2.2 Authority:** The Board is responsible for ensuring that any procurement policies adopted by SNRHA are appropriate for SNRHA. Therefore, this Policy and any later changes to it shall be submitted to the Board for approval.

- (a) Under this Policy, the Board appoints and delegates procurement authority to the Executive Director (“ED”) to approve procurements of \$100,000 or less, either as a single contract or in the aggregate as the ED deems is in the best operating interests of SNRHA. All procurements over \$100,000 must be approved by the Board before executing the contracts necessary for the procurement.
- (b) The Board further authorizes the ED or Designee to approve change orders and contract amendments/modifications up to \$100,000, either as a single action or in the aggregate, as the ED deems is in the best operating interests of SNRHA. All contract amendments/modifications over \$100,000 must be approved by the Board before executing the documents necessary for the amendment/modification.
- (c) The Board further authorizes the ED or Designee to approve time extensions which the ED or Designee deems are in the best operating interest of SNRHA.
- (d) All procurement responsibilities shall be administered by SNRHA’s Contracting Officer (“CO”), who shall be the ED. However, the ED has the authority to delegate, in writing, all or part of SNRHA’s procurement functions to individuals staffed within SNRHA (“Designee”). Therefore, the person within SNRHA with authority for procurement responsibilities is referred to within this Policy as the CO when he/she performs that function, regardless of any other job, position or title he/she may have.

**2.3 Operational Procedures:** The ED shall issue operational procedures to implement this Policy (“Operational Procedures”), which shall be based on HUD Handbook 7460.8 (REV-2). The ED shall also establish a system of sanctions for violations of the ethical standards described in Section 18 below.

**2.4 Administration:** The CO shall comply with this Policy and the Operational Procedures and ensure that:

(a) SNRHA’s procurement actions comply with this Policy, applicable HUD review requirements, as provided in the Operational Procedures, and applicable federal laws;

(b) Procurement requirements are subject to an annual planning process to assure efficient and economical purchasing;

(c) 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;

(d) For procurements other than small purchases, a minimum of 15 days from the date of public notice is provided for preparation and submission of bids or proposals; and notice of contract awards is made available to the public;

(e) Solicitations are conducted in full compliance with HUD standards and federal law,

(f) An independent cost estimate is prepared before solicitation issuance and is appropriately safeguarded for each procurement above the small purchase limitation, and an appropriate cost or price analysis is conducted for each of the responses received for all procurements;

(g) For sealed bid procurements, contract award is made to the responsive and responsible bidder offering the lowest price;

(h) For competitive proposal procurements, contract awarded is made to the offeror whose proposal offers the greatest value to SNRHA, considering price, technical, and other factors as specified in the solicitation;

(i) Unsuccessful firms are notified within 10 days after a final decision is made as to contract award;

(j) Indefinite Quantity Contracts are not used unless a minimum and maximum quantity is clearly stated therein;

(k) There are sufficient unencumbered funds available to cover the anticipated cost of each procurement before contract award or modifications (including change orders) are executed;

- (l) Contractors' work is inspected before payment;
- (m) Payment is made promptly for contract work which has been performed and accepted; and.

**2.5 Signature Required:** Each contract or purchase action (e.g., new contract, modification, interagency agreement, purchase order, change order, etc.) that obligates SNRHA to pay a contractor or vendor must be signed by the CO or an individual to whom the ED has expressly delegated the authority to make such an obligation, in accordance with the Operational Procedures.

(a) An oral commitment to bind SNRHA to any contract or purchase action will never be enforceable against SNRHA even if the oral commitment was allegedly made by an SNRHA employee, the CO, or the Board.

(b) Contractors and Vendors must verify that the individual purporting to bind SNRHA has the actual authority to bind SNRHA to the procurement, contract or purchase action at issue.

### 3. PROCUREMENT METHODS.

**3.1 Selection of Method:** If it has been decided that SNRHA will directly purchase the required items, one of the following procurement methods shall be chosen, based on the nature and anticipated dollar value of the total requirement.

(a) Purchases greater than \$100,000: All purchases and contracts with a value that exceeds \$100,000 shall only be completed pursuant to one of the following methods:

- (i) Sealed Bid (IFB);
- (ii) Competitive Proposal (RFQ/RFP/QBS);
- (iii) Similar process (IFB, RFP, QBS) conducted by another governmental agency;
- (iv) Justified Single or Sole Source.

(b) Purchases equal to or less than \$100,000: All purchases and contracts with a value of \$100,000 or less may be completed using the appropriate Small Purchase method as explained in Section 4 below.

### 4. SMALL PURCHASE METHODS:

**4.1 General:** Any contract not equal to or less than \$100,000 may be made in accordance with the small purchase procedures authorized in this Section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this Section. However, larger requirements may be broken into smaller ones to afford small and minority businesses the opportunity to participate in SNRHA's procurements. The CO should

document in the contract file the reasons for breaking down larger requirements into smaller ones.

**4.2 Small Purchases of \$100 or less:** Small purchases of \$100 or less (“Petty Cash Small Purchases”), which can be satisfied by local sources, may be processed through the use of a petty cash account. The CO shall follow the Operational Procedures with respect to Petty Cash Small Purchases.

**4.3 Small Purchases of \$2,000 or Less:** For small purchases of \$2,000 or less (“Micro Purchases”), the CO must only solicit one quotation if the solicited price is considered reasonable. Micro Purchases should be distributed equitably among qualified sources. If practicable, a quotation shall be solicited from a qualified source other than the previous source before placing a repeat order. Nothing herein prevents SNRHA from conducting a competitive process for Micro Purchases. The CO shall follow the Operational Procedures with respect to Micro Purchases.

**4.4 Small Purchases between \$2,001 to less or equal to \$100,000:** The CO shall make procurements for small purchases in excess of \$2,001 but less than or equal to \$100,000, by following the procedures set forth in the Operational Procedures for Request For Quotations (“RFQs”). SNRHA’s policy is to award contracts to the offeror whose offer satisfies SNRHA’s best interest.

**5. SEALED BIDS:** This section applies to procurements greater than \$100,000 which are made using sealed bidding.

**5.1 Conditions for Use:** Sealed bidding is the preferred method for construction procurement and shall be used for all competitive procurements to obtain construction and equipment contracts exceeding the Small Purchase limitation and for procurements under the Capital Fund Program (“CFP”), or any construction related federal grant. Additionally, sealed bidding should not be used for professional service contracts. For contracts to be awarded based on sealed bidding the following conditions should be present:

(a) A complete, adequate, and realistic specification or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work;

(b) The procurement lends itself to a firm fixed price contract; and

(c) The selection of the successful bidder can be made principally on the basis of price.

**5.2 Rejection of Bids:** SNRHA 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 the procedures detailed in the Operational Procedures. Additionally, SNRHA may reject any bid based on that contractor’s past performance (i.e., contract performance and/or quality of work), as long as SNRHA has adequate and appropriate documentation within the files justifying such action.

**5.3 Solicitation:** SNRHA will issue a written Invitation For Bids (“IFB”) to solicit bids for procurements made by sealed bidding. The CO shall follow the IFB solicitation procedures detailed in the Operational Procedures when issuing IFBs and amendments thereto.

**5.4 IFB Amendments:** SNRHA can amend an IFB at any time when SNRHA, in its discretion, deems the amendment necessary. The CO will comply with the IFB amendment procedures detailed in the Operational Procedures when amending an IFB.

**5.5 IFB Cancellation:** SNRHA may at its sole discretion cancel any IFB at any time when SNRHA has determined the cancellation necessary or in SNRHA’s best interest. SNRHA will comply with the IFB cancellation procedures detailed in the Operational Procedures when canceling an IFB.

**5.6 Receipt of Bids:** All bids received shall be time-stamped but not opened. SNRHA shall store the time stamped, unopened bids in a secure place until bid opening. A bidder may withdraw its bid at any time prior to bid opening.

**5.7 Bid Opening:** Bids shall be opened publicly and in the presence of at least one witness. An abstract of bids shall be recorded and the bids shall be available for public inspection to the extent required by federal law.

**5.8 Contract Award:** SNRHA’s policy is to award sealed bid contracts to the responsible bidder whose bid’s dollar value is the lowest overall and whose bid is responsive to the IFB. The CO shall follow the sealed bid contract award procedures detailed in the Operational Procedures. If only one responsive bid is received from a responsible bidder, award shall not be made unless a cost or price analysis verifies the reasonableness of the price.

**5.9 Mistakes in Bids:**

(a) Before bid opening: The CO may permit correction or withdrawal of inadvertently erroneous bids, where appropriate, by the bidder’s written or telegraphic notice received in the office designated in the IFB prior to the time set for bid opening.

(b) After bid opening: The CO may permit corrections in bids after bid opening only if the bidder can show by clear and convincing evidence that:

- (i) a mistake of a non-judgmental character was made;
- (ii) the nature of the mistake; and
- (iii) the bid price actually intended.

A low bidder alleging a non-judgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made.

(c) All decisions to allow correction or withdrawal of bid mistakes shall be supported by a written determination signed by the CO.

(d) After bid opening, no changes in bid prices or other provisions of bids shall be permitted, which are prejudicial to SNRHA's interests or fair competition.

**5.10 Bonds:** SNRHA's policy is to ensure that bidders will honor their bids, complete work as contracted, and pay subcontracts and suppliers by requiring bidders to post a bond or multiple bonds, if necessary, as detailed in the Operational Procedures.

## 6. COMPETITIVE PROPOSALS:

**6.1 Conditions for Use:** Competitive proposals (including turnkey proposals for development) are an acceptable alternative to sealed bidding for procurements that exceed the Small Purchase dollar amount when SNRHA determines that any of the following conditions exist:

(a) The contract requirements cannot be described specifically enough to permit the use of sealed bidding or the work is not definite enough to accurately estimate the total cost of the contract;

(b) The nature of the contract's requirements is such that SNRHA needs to evaluate more than just price to be sure that the prospective contractor understands SNRHA's needs and can successfully complete the contract, especially when contracting for professional services (e.g., legal, architect-engineer, accounting, etc.) where SNRHA needs specific expertise and experience; or

(c) The requested work lends itself to different approaches, e.g., proposals.

**6.2 Solicitation:** There are two types of competitive proposals: Request for Proposals ("RFP") and Qualification Based Solicitation ("QBS"). Generally, competitive proposals shall be solicited using an RFP; however, a QBS may be used to solicit Architect/Engineer ("A/E") Contracts or to select development partners for mixed-financed projects.

### 6.3 Request for Proposals:

(a) **Solicitation:** The CO shall issue a written RFP, which shall clearly identify the relative importance of price and other evaluation factors and sub-factors, including the weight given to each technical factor and sub-factor. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals.

(b) **Evaluation:** The CO shall establish a mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitations issued. The proposals shall only be evaluated on the criteria stated in the RFP. Respondents may not impose conditions or change requirements to suit the respondent's own needs or desires; such an imposition or change no matter how minor may, in SNRHA's sole discretion, result in SNRHA rejecting the proposal.

(c) **Negotiations:** Unless there is no need for negotiations with any of the offerors, negotiations shall be conducted with offerors who submit proposals determined to have a reasonable chance of being selected for award, based on evaluation against the technical and price factors as specified in the RFP. Such offerors shall be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. The CO's primary objective in negotiations is to maximize SNRHA's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. However, revealing one respondent's price in an attempt to get another respondent to reduce its price is prohibited. No offeror shall be provided information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal. Offerors shall not be directed to reduce their proposed prices to a specific amount in order to be considered for award. A common deadline shall be established for receipt of proposal revisions based on negotiations. The CO will conduct all negotiations as detailed by the Operational Procedures.

(d) **Award:** After evaluation of the proposals, (or the final revised proposals if any), the contract shall be awarded to the responsible firm whose qualifications, price and other factors considered, are the most advantageous to SNRHA (the top-rated responsive and responsible proposer). SNRHA will provide timely notice of the award to all proposers as required by the Operational Procedures.

**6.4 Architect/Engineer Services (Qualifications-Based Selection, QBS):** Pursuant to NRS 625.530(3), all architect/engineer services shall be procured on the basis of the competence and qualifications of the architect/engineer and not on the basis of competitive fees. Under the QBS method, the proposer's qualifications are evaluated and the most qualified competitor is selected, subject to the negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. QBS procedures shall not be used to purchase other types of services (i.e., construction contracts) even though architect-engineer firms are potential sources. The CO will follow the QBS procedures in the Operational Procedures when conducting a QBS procurement.

## **7. NONCOMPETITIVE PROPOSALS:**

**7.1 Conditions for Use:** Procurements shall be conducted competitively to the maximum extent possible. Procurement by noncompetitive proposals may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids, or competitive proposals, and one of the following applies:

(a) The item is available only from a single source, based on a good faith review of available sources;

(b) An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to SNRHA, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement methods, and the emergency procurement shall be limited to those supplies, services or construction necessary to meet the emergency;

(c) No HUD pre-award is required for non-competitive proposals as stated in Section 8.4 (C), Chapter 8 of HUD Procurement Handbook No. 7460.8 Rev 2. However, SNRHA must make available upon HUD request SNRHA's Capital Fund Stimulus Grant Procurement Policy and any documents requested related to the procurement activity as stated in 24 CFR 85.36 (g).; or

(d) After solicitation of a number of sources, competition is determined inadequate.

A single response to a competitive procurement, either an IFB/RFQ/RFP or QBS, does not constitute sole source procurement. **SNRHA may award a contract based on a sole response and shall document the files to demonstrate that the procurement was appropriately advertised and the procurement was determined to be fair and reasonable.**

**7.2 Justification:** Each procurement based on noncompetitive proposals shall be supported by a written justification for using such procedures. The justification shall be approved in writing by the CO.

**7.3 Price Reasonableness:** The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing a cost analysis, as described in Section 10 below.

## **8. Procurement of Legal Services.**

**8.1 Methods of Procurement:** SNRHA may choose, in its sole discretion, any method listed below that is reasonable based on the facts surrounding the particular situation to procure legal services.

(a) Small Purchase Procedures. If the relatively simple and informal small purchase methods are used, price or rate quotations will be obtained from an adequate number of qualified sources.

(b) Sealed Bids. This method is normally not appropriate for securing legal services because sealed bidding does not permit SNRHA to consider other factors besides price (e.g., experience) when selecting a legal services contractor.

(c) Competitive Proposals. This method is generally preferred when procuring professional services because it allows for the consideration of technical quality or other factors (in addition to price) for securing services estimated to cost more than SNRHA's Small Purchase Dollar Amount.

(d) Noncompetitive Proposals. This method may only be used when the other methods of procurement are infeasible and the circumstances described in 24 CFR 85.36(d)(4) are applicable (e.g., legal services are available from only a single source; public exigency or emergency for the requirements will not permit a delay resulting from competitive solicitation; after solicitation of a number of sources, competition is determined inadequate; or HUD authorizes the use of noncompetitive proposals).

**8.2 Time and Materials Contracts:** Legal services can be procured on an hourly basis using a time-and-materials contract (or sometimes referred to as a “labor-hour contract”). Under these contracts, the contractor’s services are pre-priced (usually, in terms of hours) in the contract, and SNRHA orders services in unit amounts (e.g., hours) as needed until the funds in the contract are exhausted. SNRHA may use this type of contract only after the CO determines that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk.

**8.3 Obtaining Legal Services by Procurement or Employment Methods:** SNRHA may employ an attorney directly (e.g. in-house counsel), or SNRHA may enter into a procurement contract with an attorney or firm. The procurement of legal services shall follow the procedures outlined in paragraph 8.1 above. The employment of in-house counsel is not covered by 24 CFR 85.36. SNRHA’s in-house counsel, if any, is ineligible to receive procurement contracts for legal services, because all services of SNRHA’s in-house counsel would be part of his/her employment contract and cannot be procured separately. Where legal services are desired outside of the scope of services provided by SNRHA in house counsel, SNRHA may use one of the procurement procedures described in paragraph 8.1 above.

#### **8.4 Contracts for Litigation Services:**

(a) With the exception of litigation involving SNRHA acting as a section 8 private developer, SNRHA must submit to HUD Regional Counsel for prior written concurrence any litigation service contract where the fee is expected to exceed \$100,000 with a private attorney involving an SNRHA program, project, or activity receiving loan, grant, or other subsidy assistance from HUD. Such contracts shall make provision for reasonable fees and reimbursement of necessary expenses. If additional funding or budget revision will be required to cover the cost of litigation services, SNRHA shall consult appropriate Field and Regional Offices staff. Contracts for litigation services must meet the requirements of the HUD Litigation Handbook 1530.1 REV-5 dated May 2004 (the “Litigation Handbook”).

**8.5 Headquarters Program Associate General Counsel Approval:** No contract for attorney’s fees for litigation services entered into by SNRHA, which calls for an estimated maximum price in excess of \$300,000 may be approved by the Regional Counsel without the prior concurrence of the Headquarters Program Associate General Counsel.

### **9. Employment Contracts.**

**9.1 Employment vs. Independent Contracts:** There is a distinction between employing an individual (employment contracts), and contracting for independent services (independent service contract). Independent services contracts are procured and subject to this policy, while employment contracts are not.

**9.2 Executive Directors:** Executive Directors may be hired as SNRHA employees or may be retained under an independent services contract.

**10. INDEPENDENT COST ESTIMATE; COST AND PRICE ANALYSIS:**

**10.1 Small Purchases:** Before making an award of less than \$100,000 the CO must determine that the proposed price is fair and reasonable. For most small purchases a price analysis made as directed by the Operational Procedures is sufficient to make that determination. In small purchases for services or items of a non-commercial nature, the CO should determine whether a more detailed cost analysis as explained in this Section is needed.

**10.2 Independent Cost Estimate:** The CO will conduct an independent cost estimate (“ICE”) for each procurement action above the small purchase threshold of \$100,000 pursuant to the procedures in the Operational Procedures. As a part of the Cost or Price Analysis the ICE shall be compared to the proposed costs to ensure that such costs are appropriate.

**10.3 Cost and Price Analysis, General:** A cost or price analysis shall be performed for all procurement actions, including contract modifications. The CO shall follow the procedures in the Operational Procedures when performing a cost and price analysis. SNRHA’s policy is that the degree of analysis required shall depend on the facts and complexity surrounding each procurement action.

**10.4 Submission of Cost or Pricing Information:** If the procurement is based on noncompetitive proposals, or when only one offer is received, or for other procurements as deemed necessary by SNRHA (e.g., when contracting for professional, consulting, or architect/engineer services) the offeror shall be required to submit:

- (a) A cost breakdown showing projected costs and profit;
- (b) Commercial pricing and sales information, sufficient to enable SNRHA 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
- (c) Documentation showing that the offered price is set by law or regulation.

**10.5 Cost Analysis:** Cost analysis shall be performed if an offeror/contractor is required to submit a cost breakdown as part of its proposal. When a cost breakdown is submitted: A cost analysis shall be performed of the individual cost elements; SNRHA shall have a right to audit the contractor's books and records pertinent to such costs; and profit shall be analyzed separately.

**10.6 Acceptable Costs/Profit:** Costs shall be allowable only to the extent that they are consistent with applicable Federal cost principals (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation, 48 CFR Chapter 1). In establishing profit, SNRHA shall consider factors such as the (a) complexity and risk of the work involved; (b) the contractor's investment and productivity; (c) the amount of sub-contracting, (d) the quality of past performance, and (e) industry profit rates in the area for similar work.

**10.7 Price Analysis:** A comparison of prices shall be used in all cases other than those described in Paragraph 10.4 above.

## 11. CANCELLATIONS OF SOLICITATIONS:

**11.1 Cancellation of Solicitation:** The CO may cancel any RFQ, IFB, RFP, QBS, or any other solicitation at any time when deemed necessary or when otherwise determined to be in SNRHA's best interest.

**11.2 Rejection of Bids/Proposals:** The CO may cancel any solicitation and may reject any and/or all bids and/or proposals that have already been received at any time when deemed necessary or when otherwise determined to be in SNRHA's best interest.

**11.3 Documentation of Cancellation:** The CO shall document the reasons for cancellation in the procurement file as required by the Operational Procedures. The reasons for cancellation and/or rejection shall be provided upon request to any offeror solicited.

**11.4 Notice:** A notice of cancellation shall be sent to all offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any re-solicitation or future procurement of similar items.

**11.5** If all otherwise acceptable bids received in response to an RFQ or IFB are at unreasonable prices, or only one bid is received and the price is unreasonable, SNRHA shall cancel the solicitation and either:

(a) Re-solicit using an RFP; or

(b) Complete the procurement by using the RFP method following Paragraphs 6.3(c) and 6.3(d) above (when more than one otherwise acceptable bid has been received), or by using the noncompetitive proposals method and following paragraph 7.2 above (when only one bid is received at an unreasonable price); provided that the CO determines in writing that such action is appropriate, all bidders are informed of SNRHA's intent to negotiate, and each responsible bidder is given a reasonable opportunity to negotiate.

## 12. COOPERATIVE PURCHASING:

**12.1 Intergovernmental Agreements:** SNRHA may enter into State and local intergovernmental agreements to purchase or use common goods and services or to make purchases directly from appropriate contracts issued by other governmental agencies. The decision to use an intergovernmental agreement or conduct a direct procurement shall be based on economy and efficiency. If used, the ensuing purchase document (contract or agreement) shall stipulate who is authorized to purchase on behalf of SNRHA and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions, including a "not to exceed" amount. SNRHA will attempt to use Federal or State excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs.

**12.2 General Services Administration (GSA) Contracts:** SNRHA shall not procure from GSA contracts in lieu of conducting further competition; however, SNRHA may solicit GSA contracts for competitive procurements so long as the CO complies with all related requirements (e.g., Board approval; cost and/or price analysis; etc.).

### 13. CONTRACTOR QUALIFICATIONS AND DUTIES

**13.1 Contractor Responsibility:** SNRHA shall not award any contract until the prospective contractor (i.e., low responsive bidder or successful respondent) has been determined to be responsible. A responsible contractor must:

(a) Have adequate financial resources to perform the contract, or the ability to obtain them;

(b) Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;

(c) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them;

(d) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all the bidder's/offeror's existing commercial and governmental business commitments;

(e) Have a satisfactory performance record;

(f) Have a satisfactory record of integrity and business ethics; and

(g) Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not being suspended, debarred or under a HUD-imposed LDP.

**13.2 Evidence of Responsibility;** It is incumbent upon prospective contractors to provide acceptable evidence of their ability to meet the requirements in Paragraph 13.1 above. Acceptable evidence normally consists of a commitment or explicit arrangement that will be in existence at the time of contract award to rent, purchase, or otherwise acquire the needed facilities, equipment, financing, personnel, or other resources.

**13.3 Investigation:** The CO should conduct an investigation to determine that a prospective contractor is responsible as detailed in the Operational Procedures. The breadth and depth of the investigation will depend upon:

(a) The size and complexity of the contract;

(b) SNRHA's or the CO's degree of prior experience with the prospective contractor; and

(c) The extent and ease to which the CO can cancel the contract, and subsequently use a replacement contractor.

**13.4 Necessary Evidence:** The CO should only request, obtain, and review that information deemed necessary to determine the prospective contractor's responsibility. To determine responsibility, the CO may, in his/her sole discretion, use various investigation methods, as permitted in the Operational Procedures, to determine:

- (a) Financial capability;
- (b) Compliance with delivery and performance schedules;
- (c) Performance record;
- (d) Integrity and business ethics;
- (e) Whether the prospective contractor has necessary organization experience, accounting and operational controls, and technical skills;
- (f) Whether the prospective contractor has necessary production, construction, and technical equipment and facilities; and
- (g) The prospective contractor's eligibility to receive an SNRHA contract.

**13.5 Failure to Comply with the CO's Investigation:** If the CO determines that the prospective contractor failed to reasonably comply with the CO's investigation to determine the prospective contractor's responsibility, then at its sole discretion, SNRHA may award the contract to another prospective contractor, or cancel the contract, in a manner consistent with this Policy and the Operational Procedures.

**13.6 Responsible at Time of Award:** The CO must determine that the prospective contractor is responsible at the time of award. The CO shall not award the contract to a non-responsible prospective contractor. The CO shall indicate to prospective contractors the time frame in which they are required to submit evidence of responsibility.

(a) For sealed bidding the prospective contractor must be responsible at the point where the low, responsive bidder has been determined. Prospective contractors may be afforded the opportunity to provide acceptable evidence of their ability to meet the stated requirements after bid opening in accordance with this Policy and Operational Procedures.

(b) For the competitive proposal method, the prospective contractor must be responsible after the successful respondent has been selected for award. Prospective contractors may be afforded the opportunity to provide acceptable evidence of their ability to meet the stated requirements after the respondent has been selected in accordance with this Policy and Operational Procedures.

**13.7 Determination of Non-responsibility:** With the exception of a finding that a prospective contractor is suspended or debarred under a HUD Limited Denial of Participation, a determination of non-responsibility will be a matter of the CO's sole discretion and judgment, given the preponderance of the evidence. The CO shall make the determination of non-responsibility and provide timely notice thereof in accordance with the Operational Procedures. Once a prospective contractor has been determined to be non-responsible, the CO may award the contract to another prospective contractor or cancel the solicitation.

**13.8 Suspension and Debarment:** Contracts shall not be awarded to debarred, suspended, or ineligible prospective contractors. Contractors may be suspended, debarred, or

determined ineligible by HUD in accordance with HUD regulations (24 CFR Part 24) when necessary to protect SNRHA in its business dealings.

(a) The Purchasing Manager shall ensure that the staff person preparing the contract shall, pursuant to the Operational Procedures, enter the prospective contractor's information into the applicable GSA website, print the resulting information and place the printout within the applicable contract file, and shall review the printout to confirm that the contractor is not listed on that site as debarred or suspended.

(b) Similarly, the Purchasing Manager shall ensure that the staff person preparing the contract shall, pursuant to the Operational Procedures, check the applicable HUD Limited Denial of Participation (LDP) website, print the resulting information and place the printout within the applicable contract file, and shall review the printout to confirm that the contractor is not listed on that site as having a limited denial of participation.

**13.9 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.

#### **14. TYPES OF CONTRACTS, CLAUSES, AND CONTRACT ADMINISTRATION**

**14.1 Contract Types:** Any type of contract which is appropriate to the procurement and which will promote SNRHA's best interests may be used, with the following exceptions:

(a) The cost-plus-a-percentage-of-cost and percentage of construction cost methods are prohibited;

(b) A cost reimbursement contract shall not be used unless it is likely to be less costly or it is impracticable to satisfy 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); and

(c) 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.

(d) 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.

**14.2 Options Contracts:** SNRHA may include in its contracts options for additional quantities or performance periods as permitted under the Operational Procedures, provided that:

(a) The option is contained in the solicitation;

- (b) The option is a unilateral right of SNRHA;
- (c) An unpriced option is considered a new procurement and therefore may not be used.
- (d) The option contract complies with the requirements of SNRHA's current ACC and does not exceed contract duration time as detailed in the Operational Procedures;
- (e) Options may not be exercised after the term of the contract has expired.
- (f) The contract states a limit on the additional quantities supplied by the option;
- (g) The options are evaluated as part of the initial competition;
- (h) The contract states the period within which the options may be exercised;
- (i) The options may be exercised only at the price specified in or reasonably determinable from the contract; and
- (j) The options may be exercised only if determined to be more advantageous to SNRHA than conducting a new procurement.

**14.3 Contract Clauses:** All procurements shall include the clauses and provisions necessary to define the rights and responsibilities of the parties. In addition to containing a clause identifying the contract type, all contracts shall include any clauses required by federal statutes, executive orders, and their implementing regulations, and as required by the Operational Procedures. The Operational Procedures shall contain the text of all clauses and required certifications (such as required non-collusive affidavits) used by SNRHA.

(a) "Buy American" Requirements—Section 1605 of "the Recovery Act"

(i) None of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

(ii) Subsection (a) shall not apply in any case or category of cases in which the head of the Federal department or agency involved finds that-

a) Applying subsection (a) would be inconsistent with the public interest:

b) Iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality: or

**c)** Inclusion of iron, steel and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

**d)** If the head of a Federal department or agency determines that it is necessary to waive the application of subsection (a) based on a finding under subsection (b), the head of the department or agency shall publish in the Federal Register a detailed written justification as to why the provision is being waived.

**e)** This section shall be applied in a manner consistent with United States obligations under international agreements.

**14.4 Contract Administration:** A contract administration system designed to ensure that contractors perform in accordance with their contracts shall be maintained and detailed in the Operational Procedures.

**14.5 Contractor Inspection:** SNRHA will inspect a contractor's supplies, services, and/or construction, as well as monitor the contractor's performance, status reporting on construction contracts and similar matters by following the procedures set forth for such inspections in the Operational Procedures.

**14.6 Final Contractor Payment:** SNRHA will make the final payment to the contractor by following the requirements set forth in the Operational Procedures concerning the final contractor payment and the closing of the contract. The Operational Procedures will reflect the following:

**(a)** Within 60 days of the completion of all work included in a contract the contractor will be given a list of required items necessary to close that contract and receive final payment;

**(b)** The contractor will have no more than 60 days from the receipt of the notice to respond with the required items;

**(c)** After the 60-day period SNRHA will advertise for 3 consecutive days its intent to close the contract;

**(d)** Immediately after the first advertisement date there will be a 30-day wait period for anyone that may have an interest in the contract to file a claim with SNRHA;

**(e)** After the end of the 30-day wait, SNRHA will pay valid claims against the contract, the contract will be closed, and no further payments will be made to the contractor (and the contractor shall have no right to appeal after the 30-day wait period for interested parties to file a claim with SNRHA).

**(f)** Any funds remaining from that contract will be reprogrammed back into the respective budgets

**(g)** If the contractor fails to respond to or otherwise remedy the list of required items within 60 days, the contractor will be in material breach of the contract.

**15. SPECIFICATIONS:**

**15.1 General:** All specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying SNRHA's needs. Specifications shall be reviewed prior to solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. Functional or performance specifications are preferred. Detailed product specifications shall be avoided whenever possible. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase (but see Section 17 below). For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

**15.2 Limitation:** The following specifications limitations shall be avoided:

(a) Geographic restrictions not mandated or encouraged by applicable Federal law (except for architect-engineer contracts, which may include geographic location as a selection factor if adequate competition is available);

(b) Unnecessary bonding or experience requirements;

(c) Brand name specifications (unless a written determination is made that only the identified item will satisfy SNRHA's needs); and

(d) Brand name or equal specifications (unless they list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use).

Specifications shall be scrutinized to ensure that organizational conflicts of interest do not occur (for example, having a consultant perform a study of SNRHA's computer needs and then allowing that consultant to compete for the subsequent contract for the computers).

**16. APPEALS AND REMEDIES:**

**16.1 General:** It is SNRHA's policy to resolve all contractual issues informally without litigation. Neither the contractor nor SNRHA shall file a complaint with the Court or refer a dispute to HUD until all administrative remedies have been exhausted through SNRHA. 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. HUD will only review protests in cases of violations of Federal law or regulations and failure of SNRHA to review a complaint or protest.

**16.2 Bid Protests:** SNRHA shall receive and conduct all bid protests as detailed in the Operational Procedures. Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy. Any protest against a solicitation must be received before the due date for receipt of bids or proposals. Any protest against the award of a contract must be received within 10 calendar days after receipt of notification of contract award or the protest will not be considered. All bid protests shall be in writing, submitted to the CO or Designee, who shall issue a written decision on the matter. The

CO may, at his or her discretion, suspend the procurement pending resolution of the protest, if warranted by the facts presented.

**16.3 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 decision shall inform the contractor of its appeal rights to a higher level in SNRHA as detailed in the Operational Procedures.

**17. SECTION 3 [Housing and Urban Development Act of 1968 (24 CFR 135)]**

**17.1 Overview:** The purpose of Section 3 is to ensure that, to the greatest extent feasible, employment, training, and business opportunities are created by HUD financial assistance be directed to low and very-low income persons. Efforts to promote Section 3 objectives must be consistent with existing Federal, State and local laws and regulations

**17.2 Covered Programs:** Section 3 requirements apply to:

(a) SNRHA utilization of funds for public housing development, operations and capital fund programs; and

(b) Certain Notification of Funding Availability (NOFA) and grant agreements governing assistance to SNRHA may contain Section 3 requirements.

**17.3 Covered Work:** Section 3 requirements apply to contracts for work and do not apply to contracts for the purchase of supplies and materials. However, contracting with SNRHA resident-owned businesses for the purchase of supplies and materials is considered providing an “other business related economic opportunity” under 24CFR 135.40, which can be used to satisfy SNRHA’s overall Section 3 obligations. Additionally, Section 3 requirements apply to contracts that include the installation of purchased materials or equipment.

**17.4 Mandatory Section 3 Contract Clause:** The mandatory Section 3 contract clause can be found at 24 CFR 135.38, which applies to all contracts covered by Section 3. Covered contracts described at 24 CFR 135.3(a) include development, operating and modernization assistance. This clause is included in forms HUD-5370, HUD-5370C and HUD-5370EZ

**17.5 Goals:** The SNRHA has adopted the following scale for resident hiring that is to be used on all construction contracts, service contracts and professional service contracts that contain a labor component. It is expected that an appropriate number of residents with particular qualifications or a willingness to begin unskilled labor will be able to participate in the SNRHA’s contracted labor efforts. A prime contractor may satisfy the SNRHA’s resident hiring requirements through its subcontractors.

**RESIDENT HIRING SCALE FOR SECTION 3 RESIDENTS  
TRAINING AND EMPLOYMENT OPPORTUNITIES  
(11/2009)**

| <b>TOTAL LABOR DOLLARS</b><br>(use total contract amount for Service contracts) | <b>RESIDENT AS A % OF<br/>TOTAL LABOR DOLLARS</b> |
|---|---|
| Labor dollars \$25,000 but less than \$100,000                                  | 10% of the labor dollars                          |
| \$100,000 but less than \$200,000   | 9% of the labor dollars                           |
| At least \$200,000 but less than \$300,000                                      | 8% of the labor dollars                           |
| At least \$300,000 but less than \$400,000                                      | 7% of the labor dollars                           |
| At least \$400,000 but less than \$500,000                                      | 6% of the labor dollars                           |
| At least \$500,000 but less than \$1 million                                    | 5% of the labor dollars                           |
| At least \$1 million but less than \$2 million                                  | 4% of the labor dollars                           |
| At least \$2 million but less than \$4 million                                  | 3% of the labor dollars                           |
| At least \$4 million but less than \$7 million                                  | 2% of the labor dollars                           |
| \$7 million or more   | 1-1/2% of the labor dollars                       |

The SNRHA has established four (4) ways in which a contractor may fulfill the Section 3 Requirements. They are as follows:

1. Subcontract or joint venture with a resident owned business. The business must be 51% or more owned by SNRHA public housing residents or subcontract/joint venture with a business that employs full-time, 30% or more SNRHA public housing residents and/or low and very low-income individuals within the City of Las Vegas; or
2. Direct hiring of the SNRHA’s public housing residents, Section 8 participants and/or low and very low-income neighborhood residents based on the Resident Hiring Scale; or
3. Contractor incurs the cost of providing skilled training for residents in an amount commensurate with the sliding scale set forth in the Resident Hiring Scale; or

Contractor makes a contribution to the SNRHA’s Section 3 Training Fund to provide assistance to residents to obtain training. The level of contribution would be commensurate with the sliding scale set forth in the Resident Hiring Scale

**18. ASSISTANCE TO SMALL AND OTHER BUSINESS.**

**18.1 Required Efforts:** Consistent with Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, SNRHA shall make efforts to ensure that small and minority-owned businesses, women's business enterprises, labor surplus area

businesses, and individuals or firms located in or owned in substantial part by persons residing in the area of SNRHA development are used when possible. Such efforts shall include, but shall not be limited to:

- (a) Including such firms, when qualified, on solicitation mailing lists;
- (b) Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
- (c) Dividing total requirements, when permitted and economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- (d) Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
- (e) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
- (f) Including in contracts a clause requiring contractors, to the greatest extent feasible, to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with the project to business concerns which are located in, or owned in substantial part by persons residing in the area of the project;
- (g) Including in contracts a clause, as described in 24 CFR 135; 9-1 requiring prime contractors, when subcontracting is anticipated, to take require the positive steps listed above in this section (a-f) with the subcontractors.

Goals may be established by SNRHA periodically for participation by small businesses, minority-owned businesses, women's business enterprises, labor surplus area businesses, and business concerns which are located in, or owned in substantial part by persons residing in the area of the project in SNRHA's prime contracts and subcontracting opportunities.

**19. ETHICS IN PUBLIC CONTRACTING:**

**19.1** General: SNRHA shall adhere to the following code of conduct, consistent with the Operational Procedures and applicable federal law.

**19.2** Conflict of Interest: No employee, officer or agent of this SNRHA 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.

**19.3 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.

**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.

## **20. EFFECTIVE DATES:**

### **20.1 Effective Dates of Obligation and Expenditure of ARRA Funds:**

(a) Obligate 100% of the funds within 1 year of the date on which the funds become available to the Housing Authority for obligation (3/18/10)

(b) Expend 60% of the funds within 2 years of the date on which the funds became available to the Housing Authority for obligation (3/18/11)

(c) Expend 100% of the funds within 3 years of the date on which the funds became available to the Housing Authority for obligation (3/18/12)

**20.2 Effective Dates of this Procurement Policy:** All provisions included in this Policy shall expire upon the completion of the procurement and contracting activities associated with the ARRA funding.