

GUAM HOUSING AND URBAN RENEWAL AUTHORITY
Aturidat Ginima' Yan Rinueban Siudat Guahan
BOARD OF COMMISSIONERS
RESOLUTION NO. FY2020-021

Moved By: FRANK T. ISHIZAKI

Seconded By: SABINO P. FLORES

RESOLUTION AMENDING THE PROCUREMENT POLICY FOR THE GUAM HOUSING AND URBAN RENEWAL AUTHORITY

WHEREAS, Pursuant to Section 5104, Title 12 of the Guam Code Annotated, the Board of Commissioners of the Guam Housing and Urban Renewal Authority (GHURA) is given the right and responsibility to govern and control the operations of the Authority, and to establish policies for its day-to-day operations, and generally to undertake its responsibilities as governing authority for the agency; and

WHEREAS, the Board of Commissioners wishes to prudently exercise the authority given to GHURA to address procurement compliance issues from the U.S. Department of Housing and Urban Development (HUD); and

WHEREAS, GHURA's procurement shall conform to applicable Federal law and standards identified in 2 CFR Part 200.317-326, HUD's Annual Contribution Contract (ACC), and HUD Handbook 7460.8 REV-2; and

WHEREAS, The attached updated Procurement Policy dated August 28, 2020 is in compliance with the Annual Contributions Contract (ACC) between GHURA, and HUD, 2 CFR Part 200, and applicable Local laws 5GCA Chapter 5 and 2 GAR Division 4; and

WHEREAS, GHURA hereby adopts the attached updated Procurement Policy as its own regulations. In the event there is an inconsistency between Federal and Guam laws and regulations and this Procurement Policy, Federal and Guam laws and regulations shall control; and be it further

RESOLVED, that the GHURA Executive Director is the Chief Procurement Officer for all supplies and services, and the Contracting Officer for construction contracts for the agency.

IN A SCHEDULED BOARD MEETING, SINAJANA, GUAM - AUGUST 28, 2020

PASSED BY THE FOLLOWING VOTES:

AYES: Sabino Flores, Monica Guzman, George Pereda, Frank Ishizaki, Anisia Delia

NAYS: NONE

ABSENT: Joseph Leon Guerrero

ABSTAINED: NONE

I hereby certify that the foregoing is a full, true and correct copy of a Resolution duly adopted by the Guam Housing and Urban Renewal Authority Board of Commissioners on **August 28, 2020.**

(S E A L)



Ray S. Topasna

Secretary/Executive Director

GHURA

PROCUREMENT POLICY



AUGUST 28, 2020

RAY S. TOPASNA
Executive Director

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PROCUREMENT POLICY

Guam Housing and Urban Renewal Authority

Established for the Guam Housing and Urban Renewal Authority by board action on July 28, 2017

Revision Dates: August 28, 2020

This Procurement Policy complies with the Annual Contributions Contract (ACC) between Guam Housing and Urban Renewal Authority (GHURA) and the Department of Housing & Urban Development (HUD), 2 CFR Part 200, and applicable Guam 5GCA Chapter 5 and 2 GAR Division 4. "In the event there is an inconsistency between Federal and Guam laws and regulations and this Procurement Policy, Federal and Guam laws and regulations shall control."

I. GENERAL PROVISIONS

General

GHURA shall provide for a procurement system of quality and integrity, provide for the fair and equitable treatment of all persons or entities involved in purchasing by GHURA, ensure that supplies and services (including construction) are procured efficiently, effectively, and at the most favorable prices available to GHURA, promote competition in contracting, and assure that GHURA purchasing actions are in full compliance with applicable Federal standards, HUD regulations, and Guam Laws.

Application

This Procurement Policy shall apply to all procurements undertaken by GHURA. Where a procurement involves the expenditure of federal or contract funds, including grants, GHURA shall comply with such federal law and regulations which are applicable and may be in conflict with this Procurement Policy.

Definition

The term "procurement," as used in this Policy, means buying, purchasing, renting, leasing or otherwise acquiring any supplies, services or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Changes in Laws and Regulations

In the event any applicable law or regulation is modified, eliminated, or replaced, then to the extent inconsistent with this Procurement Policy, said law or regulation shall automatically supersede any inconsistent provision stated herein.

Public Access to Procurement Information

Most procurement information that is not proprietary, privileged or confidential is a matter of public record and shall be available to the public to the extent provided in the Freedom of Information Act.

II. ETHICS IN PUBLIC CONTRACTING

General

GHURA hereby establishes a code of conduct for ethics in procurement, and shall implement a system of sanctions for violations of this code of conduct. This code of conduct is and shall be consistent with applicable Federal and Guam regulations concerning ethics in procurement, including conflicts of interest.

Conflicts of Interest

No employee, officer, Board member, or agent of GHURA shall participate directly or indirectly in the selection, award, or administration of any contract if he or she has a conflict of interest, either real or apparent. Such a conflict of interest would arise when:

- An employee, officer, Board member, or agent involved in making the award; or
- His/her relative (defined as father, mother, son, daughter, brother, sister, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister); or
- His/her partner; or
- An organization which employs, is about to employ or is negotiating to employ, or has an arrangement concerning prospective employment of any of the above;

has a financial or other direct or indirect interest or benefit from an individual or entity competing for an award or being considered for a contract arising from a GHURA procurement.

Disclosure of Subsequent Employment

No employee or former employee of GHURA having official responsibility or involvement in a procurement shall accept employment with any proposed or successful bidder, offeror, or contractor with whom the employee or former employee dealt in an official capacity concerning said procurement for a period of one year from the date of separation of employment from GHURA.

Gratuities, Kickbacks, and Use of Confidential Information

No employee, officer, Board member, or agent of GHURA shall ask for or accept gratuities, favors, or items of more than \$5.00 in value from any contractor, potential contractor, or party to any subcontract, and shall not knowingly use confidential information for actual or anticipated personal gain.

Prohibition Against Contingent Fees

Contractors wanting to do business with GHURA must not hire a person to solicit or secure a contract for a commission, percentage, brokerage, or contingent fee, except for bona fide established commercial selling agencies.

Joint Ventures, Subsidiaries and Affiliates

Transactions between GHURA and any joint venture, subsidiary, affiliate, or other entity in which GHURA has any interest must comply with the conflict of interest rules contained in this Procurement Policy. A person who is an employee, officer, Board member or agent of GHURA and who also serves on another governing board of a joint venture, subsidiary, affiliate, or other entity in which GHURA has any interest, may not participate in actions by GHURA that are incidental to any agreements with the other entity.

Disciplinary Action

Any officer, employee, Board member, or agent of GHURA who violates any of the provisions of this section shall be subject to appropriate sanctions or disciplinary action consistent with GHURA's Code of Ethics and Standards of Conduct Policy. In all cases, GHURA will also consider pursuing civil and administrative remedies available under applicable law.

III. PROCUREMENT PLANNING

Planning is essential to managing the procurement function properly. Hence, GHURA will periodically review its record of prior purchases, as well as future needs to find patterns of procurement actions that could be performed more efficiently or economically, maximize competition and competitive pricing among contracts and decrease GHURA's procurement costs, reduce GHURA administrative costs; ensure that supplies and services are obtained without any need for re-procurement, e.g., resolving bid protests; and 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.

IV. PURCHASING METHODS

Petty Cash Purchases

Petty Cash purchases may be made using a Petty Cash Account. Petty Cash Accounts may be established in an amount sufficient to cover purchases less than \$100.00 per transaction per day. Only one positive quotation is needed for Petty Cash purchases. GHURA shall ensure that security is maintained and only authorized individuals have access to the Petty Cash Account. This Account shall be reconciled and replenished periodically.

Micro Purchases

Micro Purchases may be made for all purchases under \$500.00. For Micro Purchases, only

one positive quotation is required. To the greatest extent feasible, and to promote competition, micro purchases should be distributed among qualified sources.

Small Purchase Procedures

For any amounts above the Micro Purchase ceiling but not exceeding \$25,000.00, and \$100,000.00 for construction, GHURA may use small purchase procedures. No less than three offerors shall be solicited to submit price quotations, which may be obtained by fax, in writing, or through e-procurement. Award shall be made to the qualified vendor that provides the best value to GHURA. If non-price factors are used, they shall be disclosed to all those solicited. The names, addresses, and/or telephone numbers of the offerors and persons contacted, and the date and amount of each quotation shall be recorded and maintained as a public record. Any purchase of \$2,000.00 or more in the case of acquisitions for construction is subject to the Davis-Bacon Act.

For small purchases not exceeding \$25,000.00, GHURA may use small purchase procedures with one exception. Small purchase procedures must not be used for single or term contracts for professional services, if the contract exceeds \$25,000.00, GHURA shall not break down requirements aggregating more than the small purchase threshold (or the Micro Purchase threshold) into several purchases that are less than the applicable threshold merely to: (1) permit use of the small purchase procedures or (2) avoid any requirements that apply to purchases that exceed these threshold to the greatest extent feasible. To promote competition, micro purchases should be distributed among qualified sources.

Sealed Bids

Sealed bidding shall be used for all contracts that exceed the small purchase threshold and that are not competitive proposals or non-competitive proposals, as these terms are defined in this document. Under sealed bids, GHURA publicly solicits bids and awards a firm fixed-price contract (lump sum or unit price) to the responsible bidder whose bid, conforming with all the material terms and conditions of the Invitation for Bid (IFB), is the lowest in price. Sealed bidding is the preferred method for procuring construction, supply, and non-complex service contracts that are expected to exceed \$25,000.00 or \$100,000 for construction.

- A. **Conditions for Using Sealed Bids.** GHURA shall use the sealed bid method if the following conditions are present: (i) a complete, adequate, and realistic statement of work, specification, or purchase description is available; (ii) two or more responsible bidders are willing and able to compete effectively for the work; (iii) the contract can be awarded based on a firm fixed price; (iv) and the selection of the successful bidder can be made principally on the basis of the lowest price.
- B. **Solicitation and Receipt of Bids.** An IFB is issued which includes the specifications and all contractual terms and conditions applicable to the procurement, and a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the solicitation. The IFB will be publicly advertised, and must state the time and place for both receiving the bids and the public bid opening. The IFB must define the items or services in order for the bidder to properly respond. All bids received will be date and time-stamped and stored unopened in a secure place until the public bid opening. A bidder may withdraw the bid at any time prior to the bid opening.

- C. **Bid Opening and Award.** Bids shall be opened publicly at the time and place prescribed in the IFB. All bids received shall be recorded on an abstract (tabulation) of bids, and then made available for public inspection. A firm fixed price contract will be made in writing to the lowest responsive and responsible bidder. The IFB may also specify that factors such as special qualifications of potential contractors, inspection, testing, quality, workmanship, and suitability for a particular purpose may be considered as a part of the evaluation.
- D. **Noncompetitive –contracts**
If only one responsive bid is received from a responsible bidder, award shall **not** be made unless the price can be determined to be reasonable, based on a cost or price analysis and that GHURA obtains HUD approval for contracts exceeding the Simplified Acquisition Threshold or the GHURA's small purchase limit, whichever is less.
- E. **Mistakes in Bids.** Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written, e-mail, or facsimile notice received in the office designated in the IFB prior to the time set for bid opening. After bid opening, withdrawals of bids may be permitted only as stated in the advertisement for bids, which normally will require a bidder to give written notice of his claim to withdraw his bid within two business days after the conclusion of the bid opening procedure, and only if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made. All decisions to allow correction or withdrawal of a bid shall be supported by a written determination signed by the Contracting Officer. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of GHURA or fair competition shall not be permitted. GHURA shall notify a bidder within 5 business days of its decision regarding the bidder's request to withdraw its bid. Correction or withdrawal of bids after bid opening may also be allowed in cases where GHURA has reason to believe that a mistake may have been made in a bid.
- F. **Tie Bids:** Tie bids, quotes or proposals are defined as instances of identical total pricing or scoring from responsive/responsible vendors that meet all requirements as set forth in the bid, quote or proposal documents. Instances of a tie will be resolved by a drawing or other similar random method. The resolution of the tie will be announced in advance giving all "tie" vendors an opportunity to attend. The drawing or other random method for resolving a tie will be conducted in the presence of three (3) individuals who will attest to the results.

Competitive Proposals

Unlike sealed bidding, the competitive proposal method permits consideration of technical factors other than price, discussion with offerors concerning offers submitted, negotiation of contract price or estimated cost and other contract terms and conditions, revision of proposals before the final contractor selection, and the withdrawal of an offer at any time up until the point of award. Award is normally made on the basis of the proposal that represents the best overall value to

GHURA, considering price and other factors, e.g., technical expertise, past experience, quality of proposed staffing, etc., set forth in the solicitation and not solely the lowest price.

- A. **Conditions for Use.** Where conditions are not appropriate for the use of sealed bidding, competitive proposals may be used. Competitive proposals are the preferred method for procuring professional services that will exceed the small purchase threshold.
- B. **Form of Solicitation.** Other than Architectural Engineering (AE) services, competitive proposals shall be solicited through the issuance of a Request for Proposals (RFP). The RFP shall be publicized and shall clearly identify the importance and relative value of each of the evaluation factors as well as any sub factors and price. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals until after award. GHURA may assign price a specific weight in the evaluation criteria or GHURA may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.
- C. **Evaluation.** Proposals must be solicited from an adequate number of qualified sources. The proposals shall be evaluated only on the criteria stated in the RFP. Where not apparent from the evaluation criteria, GHURA shall establish a written Evaluation Plan for each RFP. Generally, all RFPs shall be evaluated by an appropriately appointed Evaluation Committee. The Evaluation Committee shall be required to disclose any potential conflicts of interest and to sign a Non-Disclosure statement. An Evaluation Report, summarizing the results of the evaluation, shall be prepared prior to award of a contract.
- D. **Negotiations.** Negotiations shall be conducted with the first highest rated offeror, and unless price can't be agreed, then go to the next highest rated offeror. This determination is based on the relative score of the proposals as they are evaluated and rated in accordance with the technical and price factors specified in the RFP. These offerors shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their proposals. No offeror shall be given any information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal.

Discussions are tailored to each offeror's proposal, and shall be conducted by the contract administrator with each offeror within the competitive range. The primary object of discussions is to maximize GHURA's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. The contract administrator shall indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as cost, price, technical approach, past performance, and terms and conditions) that could, in the opinion of the contract administrator, be altered or explained to enhance materially the proposer's potential for award. The scope and extent of discussions are a matter of the contract administrator's judgment.

The contract administrator may inform an offeror that its price is considered by GHURA to be too high, or too low, and reveal the results of the analysis supporting that conclusion.

It is also permissible to indicate to all offerors the cost or price that the GHURA's price analysis, market research, and other reviews have identified as reasonable. "Auctioning" (revealing one offeror's price in an attempt to get another offeror to lower their price) is prohibited. Proprietary information from competing offerors shall not be disclosed to the public or to competitors.

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

- F. **Architectural /Engineering (A/E) Services.** GHURA must contract for A/E services using Qualification Based Selection (QBS) procedures, utilizing a Request for Qualifications (RFQ). Sealed bidding shall not be used for A/E solicitations. Under QBS procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method.

Noncompetitive Proposals

- A. **Conditions for Use.** Procurement by noncompetitive proposals (sole-source) may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids, cooperative purchasing, or competitive proposals, and if one of the following applies:
 - 1. The item is available only from a single source, based on a good faith review of available sources; or
 - 2. An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to GHURA, as may arise by reason of a typhoon, 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 without delay such that the need cannot be met through any of the other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary simply to meet the emergency. A minimum of three informal solicitations must be obtained, and a statement to file must be provided detailing all aspects of the emergency situation and that certified statement must be provided to the Governor and Speaker; or
 - 3. HUD authorizes the use of noncompetitive proposals; or
 - 4. After solicitation of a number of sources, competition is determined inadequate.

- B. **Justification.** Each procurement based on noncompetitive proposals shall be supported by a written justification for the selection of this method. The justification shall be approved in writing by the responsible Contracting Officer. Poor planning or lack of planning is not justification for emergency or sole-source procurements. The justification, to be included in the procurement file, should include the following information:

1. Description of the requirement;
2. History of prior purchases and their nature (competitive vs. noncompetitive);
3. The specific exception in 24 CFR 85.36(d)(4)(i)(A) through (D) which applies;
4. Statement as to the unique circumstances that require award by noncompetitive proposals;
5. Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);
6. Statement as to efforts that will be taken in the future to promote competition for the requirement;
7. Signature by the Contracting Officer's supervisor (or someone above the level of the Contracting Officer); and
8. Price Reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing an analysis, as described in this Policy.

Cooperative Purchasing/Intergovernmental Agreements

GHURA may enter into State and/or local cooperative or intergovernmental agreements to purchase or use common supplies, equipment, or services. The decision to use an interagency agreement instead of conducting a direct procurement shall be based on economy and efficiency. If used, the interagency agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. GHURA may use Federal or State excess and surplus property instead of purchasing new equipment and property if feasible and if it will result in a reduction of project costs. The goods and services obtained under a cooperative purchasing agreement must have been procured in accordance with 2CFR Part 200.

V. NOTIFICATION OF PROCUREMENT OVER \$500,000

The Attorney General, the Deputy Attorney General or such Assistant Attorney General, or such Special Assistant Attorney Generals designated or appointed by the Attorney General, shall act as legal advisor during all phases of the solicitation or procurement process when the amount of award is estimated to be \$500,000.00 or more. When such attorney approves contracts, said attorney shall determine the correctness and legality of the form.

VI. COMMENTS CONCERNING SPECIFICATIONS

Each IFB or RFP issued shall contain instructions for comments concerning specifications or other provisions in the IFB or RFP to be submitted to the Contracting Officer or other individual identified

by GHURA. All timely comments received shall be considered prior to the time set for award of the contract.

VII. ICE

For all purchases above the Petty Cash/Micro Purchase threshold, GHURA shall prepare an Independent Cost Estimate (ICE) prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item to be purchased.

VIII. COST AND PRICE ANALYSIS

GHURA shall require assurance that, before entering into a contract, the price is reasonable, in accordance with the following instructions.

Petty Cash and Micro Purchases

No formal cost or price analysis is required. Rather, the execution of a contract by the Contracting Officer (or designee) through Purchase Order or other means, shall serve as the Contracting Officer's determination that the price obtained is reasonable, which may be based on the Contracting Officer's prior experience or other factors.

Small Purchases

A comparison with other offers shall generally be sufficient determination of the reasonableness of price and no further analysis is required. If a reasonable number of quotes is not obtained to establish reasonableness through price competition, the contract administrator shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the contract administrator's personal knowledge at the time of purchase, comparison to the ICE, or any other reasonable basis.

Sealed Bids

The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, and when the bid received is substantially more than the ICE, and where GHURA cannot reasonably determine price reasonableness, GHURA must conduct a cost analysis, consistent with federal guidelines, to ensure that the price paid is reasonable.

Competitive Proposals

The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, GHURA must compare the price with the ICE. For competitive proposals where prices cannot be easily compared among offerors, where there is not adequate competition, or where the price is substantially greater than the ICE, GHURA must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable.

Negotiation of Profit

Profit must be negotiated as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of the contractor's record of past performance, and industry profit rates in the surrounding geographical area for similar work.

Contract Modifications

A cost analysis, consistent with federal guidelines, shall be conducted for all contract modifications for projects that were procured through Sealed Bids, Competitive Proposals, or Non-Competitive Proposals, or for projects originally procured through Small Purchase procedures and the amount of the contract modification will result in a total contract price in excess of \$25,000.00 or \$100,000.00 for construction.

IX. SOLICITATION AND ADVERTISING

Method of Solicitation

- A. **Petty Cash and Micro Purchases.** GHURA may contact only one source if the price is considered reasonable.
- B. **Small Purchases.** Quotes may be solicited orally, through fax, or by any other reasonable method.
- C. **Sealed Bids and Competitive Proposals.** Solicitation must be done publicly. GHURA shall use one or more of the following solicitation methods, provided that the method employed provides for meaningful competition.
 - 1. Advertising in newspapers of general circulation.
 - 2. Advertising on GHURA's web page.
 - 3. E-Procurement. GHURA may conduct its public procurements through the Internet using e-procurement systems. However, all e-procurements must otherwise be in compliance with 2CFR Part 200, State and local requirements, and the Authority's procurement policy, and may include posting on the Guam Department of General Services Agency's central electronic procurement website.

Time Frame

For purchases of more than \$25,000.00 or \$100,000.00 for construction, the public notice should run not less than once each week for two consecutive weeks.

Form

Notices/advertisements should state, at a minimum, the place, date, and time that the bids or proposals are due, the solicitation number, the GHURA representative responsible for the procurement, and a brief description about the matters or items to be procured.

Time Period for Submission of Bids

A minimum of 15 days shall generally be provided for preparation and submission of sealed bids and 15 days for competitive proposals; however, subject to the requirements of the Guam Procurement Law, a shorter time is possible for a particular acquisition if supported by written determination.

Cancellation of Solicitations

- A. An IFB, RFP, or other solicitation may be cancelled before bids/offers are due if:
 - 1. The supplies, services or construction are no longer required; or
 - 2. The funds are no longer available; or
 - 3. Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best; or
 - 4. When it is in the best interests of GHURA.

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

- C. The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request.

- D. A notice of cancellation shall be sent to all bidders/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.
- E. If all otherwise acceptable bids received in response to an IFB are at unreasonable prices, an analysis should be conducted to see if there is a problem in either the specifications or GHURA's cost estimate. If both are determined adequate and if only one bid is received and the price is unreasonable, the Contracting Officer may cancel the solicitation.
- F. If problems are found with the specifications, GHURA can either amend the procurement or cancel the solicitation.

Petty Cash/ Micro Purchases

Authorized credit card holders may use a credit card for Petty Cash/Micro Purchases. Petty Cash/Micro purchases made with a credit card must follow all procurement procedures associated with such purchase. Cash advances are prohibited. Credit card purchases will be subject to scheduled and unscheduled audits on a year round basis.

X. BONDING REQUIREMENTS

The standards under this section apply to construction contracts or equipment contracts that exceed \$25,000.00. There are no bonding requirements for small purchases or for competitive proposals. GHURA may require bonds in these latter circumstances when deemed appropriate; however, non-construction contracts should generally not require bid bonds.

- A. Bid Guarantee (applicable to construction and equipment contracts exceeding \$25,000).

All bids must be accompanied by a negotiable bid guarantee which shall not be less than five percent (5%) of the amount of the bid. The bid guarantee may be a certified check, bank draft, U.S. Government Bonds at par value, or a bid bond secured by a surety company acceptable to the U.S. Government and authorized to do business in Guam where the work is to be performed

- B. Assurance of Completion. For construction contracts exceeding \$50,000, the successful bidder shall furnish:

- 1. A performance and payment bond in a penal sum of 100 percent of the contract price; or
- 2. A 20 percent cash escrow (Only for Public Housing projects); or
- 3. A 25 percent irrevocable letter of credit (Only for Public Housing projects.)

- C. These bonds must be obtained from guarantee or surety companies acceptable to the U. S. Government and authorized to do business in the State where the work is to be performed. Individual sureties shall not be considered. U. S. Treasury Circular Number 570 lists companies approved to act as sureties on bonds securing Government contracts, the

maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies on this circular is mandatory.

XI. CONTRACTOR QUALIFICATIONS AND DUTIES

Contractor Responsibility

GHURA shall not award any contract until the prospective contractor, i.e., low responsive bidder, or successful offeror, has been determined to be responsible. A responsible bidder/offeror must:

- A. Have adequate financial resources to perform the contract.
- B. Be able to comply with the required or proposed delivery or performance schedule and requirements, taking into consideration all the bidder's/offeror's existing commercial and governmental business commitments;
- C. Have a satisfactory performance record;
- D. Have a satisfactory record of integrity and business ethics;
- E. Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
- F. Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,
- G. Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended, debarred or under a HUD-imposed Limited Debarment Participant (LDP).

If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the official contract file, and the prospective contractor shall be advised of the reasons for the determination.

Suspension and Debarment

Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined to be ineligible by HUD in accordance with HUD regulations (24 CFR Part 24) or by other Federal agencies, e.g., Dept. of Labor for violation of labor regulations, when necessary to protect housing authorities in their business dealings.

Vendor Lists

All interested businesses shall be given the opportunity to be included on vendor mailing lists. Any lists of persons, firms, or products which are used in the purchase of supplies and services (including construction) shall be kept current and include enough qualified sources to ensure competition. Also, GHURA shall not preclude potential bidders from being included on vendor mailing list during the solicitation period

XII. CONTRACT PRICING

ARRANGEMENTS Contract Types

Any type of contract which is appropriate to the procurement and which will promote the best interests of GHURA may be used, **provided the cost-plus-a-percentage-of-cost and percentage-of-construction-cost methods are not used**. All solicitations and contracts shall include the clauses and provisions necessary to define the rights and responsibilities of both the contractor and GHURA.

Any use of a time and material type of contract must be supported by a written determination as to why no other contract type is suitable. GHURA may use time and material type contracts only after a determination that no other contract is suitable and only if the contract includes a ceiling price that the contractor exceeds at its own risk.

Options

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

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

XIII. CONTRACT CLAUSES

All contracts should identify the contract pricing arrangement as well as other pertinent terms and conditions, as determined by GHURA.

Additionally, the forms HUD-5369, 5369-A, 5369-B, 5369, 5370, 5370-C, and 51915-A, which contain all HUD-required clauses and certifications for contracts of more than \$50,000, as well as any forms/clauses as required by HUD for small purchases, shall be used in all corresponding solicitations and contracts issued by this Authority. To the extent that Appendix II to 2 CFR Part 200 – Contract Provisions for non-Federal Entity Contracts Under Federal Awards contains any

additional required contract clauses, then such clauses shall also be included. Where appropriate, GHURA may require a value engineering clause in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.

XIV. PROCUREMENT OF RECOVERED MATERIALS

GHURA and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. This includes procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeds \$10,000; procuring solid waste management waste services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

XV. CONTRACT ADMINISTRATION AND OVERSIGHT

GHURA shall maintain a system of contract administration and oversight designed to ensure that contractors perform in accordance with their contracts or purchase orders. These systems shall provide for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on major projects including construction contracts, and similar matters. For cost-reimbursement contracts, costs are allowable only to the extent that they are consistent with the cost principles in HUD Handbook 2210.18.

XVI. SPECIFICATIONS AND REQUIREMENTS

General

All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying GHURA needs. Specifications shall be reviewed prior to issuing any solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. Function 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. For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

Limitations

The following types of specifications shall be avoided:

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

- B. Brand name specifications (unless the specifications list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use; a “brand name or equivalent” description may be used as a means to define the performance of other salient requirements of the procurement).

Additionally, to promote full and open competition, the following shall be avoided:

1. Specifications that contain features peculiar to a product of one manufacturer
2. Placing unreasonable requirements on firms in order for them to qualify to do business.
3. Requiring unnecessary experience and excessive bonding.

Nothing in this procurement policy shall preempt any State licensing laws.

Contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals are excluded from competing for such procurements.

XVII. APPEALS AND REMEDIES

General

GHURA will attempt to resolve all contractual and administrative issues informally and without litigation. GHURA is also bound by the procurement protest mechanism contained in 5 GCA Chapter 5 Article 9. Disputes will not be referred to HUD unless all administrative remedies have been exhausted. When appropriate, a mediator may be used to help resolve differences.

Informal Appeals Procedure

To issue a bid protest/appeal for contracts of \$25,000.00 or less for general procurement and \$100,000.00 or less for construction, the bidder/contractor may request to meet with the appropriate Contract Officer.

Formal Appeals Procedure for Contracts More Than \$25,000.00 for general procurement and \$100,000.00 for construction.

- A. **Bid Protest.** 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 the receipt of bids or proposals, and any protest against the award of a contract must be received within ten (10) calendar days after the contractor receives notice of the contract award, or the protest will not be considered. All bid protests shall be in writing, submitted to the Contracting Officer or designee, who shall issue a written decision on the matter. The Contracting Officer may, at his/her discretion, suspend the procurement pending resolution of the protest if the facts presented so warrant.
- C. **Contractor Claims.** All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer for a written decision. The contractor may request a conference on the claim. The Contracting Officer’s decision shall inform the

contractor of its appeal rights to the next higher level of authority in GHURA. Contractor claims shall be governed by the Changes clause in the form HUD-5370

XVIII. ASSISTANCE TO SMALL AND OTHER BUSINESSES

Required Efforts

Consistent with Presidential Executive Orders 11625, 12138, and 12432, Section 3 of the HUD Act of 1968, and 2.2-4310 of the Procurement Act, all feasible efforts shall be made to ensure that small and minority-owned businesses, women's business enterprises, service disabled veteran owned businesses, and other individuals or firms located in or owned in substantial part by persons residing in the area of GHURA project are used when possible.

GHURA shall adopt a Section 3 Policy

Efforts to utilize small and minority-owned businesses, women's business enterprises, service disabled veteran-owned businesses and other businesses 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 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. Including in contracts, to the greatest extent feasible, a clause requiring contractors, 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 provide opportunities to low-income residents, as described in 24 CFR Part 135 (so-called Section 3 businesses); and
- F. Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed above.
- G. Goals shall be established periodically for participation by small businesses, minority-owned businesses, women-owned business enterprises, labor surplus area businesses, service disabled veteran-owned businesses, and Section 3 business concerns in GHURA prime contracts and subcontracting opportunities.

Definitions

1. A **small business** is defined as a business that is: independently owned; not dominant in its field of operation; and not an affiliate or subsidiary of a business dominant in its field of

operation. The size standards in 13 CFR Part 121 should be used to determine business size.

2. 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.
3. 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 control and operate the business.
4. A **"Section 3 business concern"** is as defined under 24 CFR Part 135.
5. A **service disabled veteran-owned business** means a business concern that is at least 51% owned by one or more service disabled veterans or, in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more individuals who are service disabled veterans and both the management and daily business operations are controlled by one or more individuals who are service disabled veterans.

XIX. BOARD APPROVAL OF PROCUREMENT ACTIONS

The GHURA Procurement Policy and all its revisions must be submitted to the Board of Commissioners for review and approval.

All contracts in an amount of \$25,000.00 or more for general procurements, and \$100,000.00 or more for construction procurements shall be submitted to the Board of Commissioners for review and approval prior to awarding a contract. Furthermore, any change orders, contract modifications and/or amendments for such contracts that exceed the original contract amount must be submitted for Board approval prior to any contract modification.

XX. INTERPRETATION OF POLICY

In the event of ambiguity, contradiction or unforeseen situations not addressed clearly or directly in this policy, the Executive Director shall use his/her best professional judgment in making a decision that will best protect the interest of GHURA and ensure GHURA's compliance with applicable statutory and regulatory requirements.

XXI. DELEGATION OF CONTRACTING AUTHORITY

While the Executive Director is responsible for ensuring that GHURA's procurements comply with this Policy, the Executive Director may delegate all procurement authority as is necessary and appropriate to conduct the business of the Agency.

Further, and in accordance with this delegation of authority, the Executive Director shall establish operational procedures to implement this Policy.

XXII. DOCUMENTATION

GHURA must maintain records sufficient to detail the significant history of each procurement action. These records shall include, but shall not necessarily be limited to, the following:

- A. Rationale for the method of procurement (if not self-evident) including any pre-procurement review;
- B. Rationale of contract type and pricing arrangement (also if not self-evident) including any technical specifications, requests for proposals or invitations for bid, and independent cost estimates;
- C. Reason for accepting or rejecting the bids or offers;
- D. Basis for the contract price (as prescribed in this handbook);
- E. A copy of the contract documents awarded or issued and signed by the Contracting Officer;
- F. Basis for contract modifications; and
- G. Related contract administration actions.

The level of documentation should be commensurate with the value of the procurement. Records are to be retained for a period of seven years as required by 5 GCA 5249 after final payment and all matters pertaining to the contract are closed.

XXIII. FUNDING AVAILABILITY

Before initiating any contract, GHURA shall ensure that there are sufficient funds available to cover the anticipated cost of the contract or modification.