

Housing Authority of the City of Linden

Procurement Policy

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I. GENERAL PROVISIONS

A. PURPOSE

This Procurement Policy (“Policy”) was established by the Housing Authority of the City of Linden (hereinafter the “HACL”) in order to ensure compliance with all applicable Federal and State laws, rules, and regulations, including but not limited to the Annual Contributions Contract (“ACC”) of the U.S. Department of Housing and Urban Development (“HUD”), HUD Handbook 7460.8 REV 2, “Procurement Handbook for Public Housing Agencies”, Title 2 of the Code of Federal Regulations (specifically 2 C.F.R. 200.317 through 2 C.F.R. 200.326), New Jersey Local Public Contracts Law (N.J.S.A. 40A: 11-1 et. seq.), and the New Jersey Administrative Code (N.J.A.C. 5:34-1.1 et. seq.).

This Procurement Policy is written and kept on file at the HACL in order to provide for the fair and equitable treatment of all persons or firms who do or may in the future provide goods and/or services to the HACL and to ensure that any and all goods and services are procured by the HACL in an efficient, timely and effective manner, in full compliance with any and all applicable Federal and State laws, rules, and regulations.

The Procurement Policy is intended by the HACL to promote competition in all forms of public contracting at the HACL; to maintain a system of procurement characterized by the highest quality and integrity; and to assure that all HACL purchases are conducted and brought to completion in full compliance with any and all applicable Federal and State laws, rules, and regulations.

B. APPLICATION

This Procurement Policy shall apply to all contracts entered into by the HACL for the purpose of procuring any goods and/or services subsequent to the date on which this Procurement Policy was adopted by the Board of Commissioners (“Board”) of the HACL. The Procurement Policy shall apply to every expenditure of funds by the HACL for public purchasing, irrespective of the sources of funds, including contracts which do not involve an obligation of funds (such as concession contracts); however, nothing in this Statement shall prevent the HACL from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with law. When both HUD and non-Federal grant funds are used for a project, the work to be accomplished with the funds should be separately identified prior to procurement so that appropriate requirements can be applied, if necessary. If it is not possible to separate the funds, HUD procurement regulations shall be applied to the total project. If funds and work can be completed by a new contract, then regulations applicable to the source of funding may be followed.

The term “procurement,” as used in this Policy, includes, but is not limited to, the procuring, purchasing, leasing, or renting of: (1) goods, supplies, equipment, and materials; (2) construction and maintenance; (3) consulting services; (4) Architectural and Engineering (A/E) or other professional services; (4) social services; and (5) other services. It shall be understood to refer to both contracts and any and all modifications thereto (including change orders, purchase orders and minor field (site) modifications).

C. PUBLIC ACCESS TO PROCUREMENT INFORMATION AND PROCUREMENT POLICY

Procurement information shall be a matter of public record to the extent provided in the New Jersey Open Public Records Act (“OPRA”), N.J.S.A. 47:1A-1 et. seq., and shall be available to the public as provided in that statute.

D. CHANGES IN LAWS AND REGULATIONS

In the event that an applicable law, rule, or regulation is adopted, modified, or eliminated, the revised law, rule, or regulation shall, to the extent inconsistent with these Policies, automatically supersede these Policies.

II. PROCUREMENT AUTHORITY AND ADMINISTRATION

In accordance with N.J.S.A. 40A:11-9, all procurement transactions shall be administered by the Qualified Purchasing Agent (“QPA”) selected by the Board, or his/her designee. The QPA or his/her designee shall ensure that:

- (1) Procurement requirements are subjected to an annual planning review to assure efficient and economical purchasing by the HACL;
- (2) All contracts and modifications are in writing, clearly specify the desired supplies or services, and are supported by sufficient documentation regarding the history of the procurement including, at a minimum, the method of procurement chosen, the selection of the contract type, the rationale for the selection or rejection of bids, and the basis for the contract price;
- (3) Pursuant to N.J.S.A. 40A:11-23, for procurements, other than purchases made pursuant to N.J.S.A. 40A:11-3 (i.e., when the cost or price of any contract awarded by the contracting agent in the aggregate does not exceed in a contract year the total sum of \$17,500.00), and in accordance with an appropriate enabling resolution previously adopted by the Board authorizing such purchases, public notice of an upcoming procurement should be given at least ten (10) business days in advance of the date fixed for receiving bids. The HACL will provide bidders with sufficient time to respond to all solicitations for public contracts by the HACL, and will attempt in all cases to allow at least fifteen (15) business days between the issuance of the solicitation and the date fixed for receipt of bids, but in no event shall the time in which a bidder may respond to a solicitation be less than ten (10) business days. In any event, the date fixed for the receipt of bids shall not fall on a Monday, or on any day directly following a State or Federal holiday;
- (4) An independent cost estimate will be prepared whenever appropriate prior to each and every solicitation for proposals or bid for public contracts issued by the HACL. A cost/price analysis will be conducted by the HACL whenever appropriate to evaluate responses received to a procurement request;
- (5) Contract awards shall be made to the lowest responsible bidder that tenders a responsive bid for the contract or, in the case of contracts below the bid threshold, contracts for professional services, contracts for extraordinary unspecifiable services, or for other contracts exempted from public bidding requirements, to the respondent that tenders the proposal that offers the greatest value to the HACL, taking into account price, technical, and other factors as specified in the solicitation. Unsuccessful firms will be notified by the HACL of the rejection of their bids within twenty (20) working days after contract award to the successful bidder;
- (6) There are sufficient unencumbered funds available to cover the anticipated cost of each such procurement before any contract award or modification (including change orders) is made, that work is inspected before payment, and that payment is made promptly for contract work performed and accepted;
- (7) The HACL complies with any and all applicable HUD review requirements, as provided in the operational procedures supplementing this statement;
- (8) The QPA or his/her designee maintains records sufficient to record all of the significant details of the history of each and every procurement by the HACL. These records will

include, but are not necessarily limited to, the following: the rationale for the method of procurement chosen by the QPA or his/her designee, the selection of contract type, the basis for selection or rejection of any and all bidders, and the basis for the contract price; and

- (9) The HACL operates subject to the authority of the United States Department of Housing and Urban Development and, as such, where both State and Federal law encompass the same procurement or public contract, the stricter or more limiting procedure which encourages competition shall be used in all cases, as is required by both State and Federal law. For reference, bidders may consult 2 C.F.R. 200.318(a) and N.J.A.C. 5:34-1.1(d) as to the above requirement.

Any amendments to this Procurement Policy shall be submitted to the Board for approval. The Board has delegated procurement authority to the QPA, who shall sign all purchase orders and contracts.

III. PROCUREMENT METHODS AND PROCEDURES

A. GENERAL RULES

Public contracts will be publicly advertised and awarded to the lowest responsible bidder whenever required by N.J.S.A. 40A:11-4. With respect to all public contracts not awarded directly by the QPA under N.J.S.A. 40A:11-3, the Board shall award the contract by way of a Resolution.

Interested bidders should note that, in all instances where public contracts are not required by law to be publicly advertised and bid, the HACL reserves the right to award those contracts to the vendor whose proposal is most advantageous to the HACL, price and other factors considered. Such other factors shall include but not be limited to qualifications, past performance, similar projects, and other relevant indicators of the performance and capability of the respondent.

1. HACL REGULATIONS FOR BIDDING

The HACL expressly reserves the right to draft and adopt regulations setting forth particular requirements that bidders for particular contracts shall be required to meet before their bids will be considered “responsive” by the HACL. The requirements reflected in HACL regulations may impose various technical requirements, require a particular level of experience of the bidder in a discrete field of endeavor, and may fix the general qualifications required of the bidder. The regulations of the HACL may also require that the bidder demonstrate the financial ability to complete the work called for by any particular contract, and may call upon the bidder to prove that it has at its disposal all of the capital and equipment necessary to complete the contract in a timely and workmanlike fashion. The HACL may require prospective bidders to supply a comprehensive Statement of Qualifications. If the HACL is not satisfied with the qualifications of any bidder as reflected in the Statement of Qualifications, the HACL may refuse to furnish that bidder with any plans or specifications for the contract, and need not consider any bid tendered by the unqualified bidder.

B. SELECTION OF METHODS

For all purchases made by the HACL, the following procurement methods shall be utilized:

1. PURCHASES MADE UNDER THE YEARLY AGGREGATE BID THRESHOLD

Any contract or agreement for the furnishing of any goods and/or the performance of any services, the cost or price of which, together with any other amounts expended or to be expended on the same goods or services within a calendar year, does not exceed the total aggregate amount of Seventeen Thousand Five Hundred Dollars (\$17,500.00) (or such other threshold amount as may be set via Board Resolution or by the Governor¹) may be made by the QPA without the need for a Resolution of the Board authorizing the award of the contract.

¹ Pursuant to N.J.S.A. 40A:11-3(c), the Governor, in consultation with the Department of the Treasury, shall adjust the threshold amount every 5 years beginning in 2005 and shall round the adjustment to the nearest \$1,000. This adjustment is not arbitrary and is made in direct proportion to the rise or fall of the index rate.

As the HACL currently employs or contracts with a QPA in accordance with N.J.S.A. 40A:11-9, the bid threshold has been increased in accordance with N.J.S.A. 40A:11-3 to the total aggregate amount of **Forty-Four Thousand Dollars (\$44,000.00)**.

In accordance with N.J.S.A. 40A:11-7, any contract in the aggregate, which is “single in character”, or which necessarily or by reason of the quantities required to effectuate the purpose of the contract includes the provision or performance of additional goods or services, shall not be artificially subdivided so as to constitute a small purchase under this section. Any contract awarded by the QPA pursuant to N.J.S.A. 40A:11-3 may be for a period of up to twenty-four (24) consecutive months, except that all such contracts for “professional services” as defined by the New Jersey Local Public Contracts Law may be awarded for a period not to exceed twelve (12) months.

Purchases Made Under the Yearly Aggregate Quotation Threshold

Any contract or agreement for the furnishing of any goods and/or the performance of any services, the cost or price of which amounts to less than the total aggregate sum of 15% of the applicable bid threshold, may be awarded by the QPA pursuant to N.J.S.A. 40A:11-6.1(c) without the solicitation of any competitive quotations. In all cases, however, the QPA shall ensure that the written price quote obtained is reasonable.

As the HACL bid threshold is currently \$44,000.00, competitive quotations are not required for any purchase of goods or services under 15% of this amount or under \$6,600.00.

Small purchases under \$250.00 which can be satisfied by local sources may be processed through the use of a petty cash account. The QPA shall ensure that: (a) the account is established in an amount sufficient to cover small purchases made during a reasonable period; (b) security is maintained and only authorized individuals may submit a voucher to the HACL Accounting Unit; and (c) the account is periodically audited by the QPA or his/her designee to validate proper uses and to verify that the account total equals cash on hand plus the total of accumulated vouchers.

Purchases Made That Are Less Than the Yearly Aggregate Bid Threshold but More than the Yearly Aggregate Quotation Threshold

Any contract or agreement for the furnishing of any goods and/or the performance of any services, the cost or price of which is less than the total aggregate sum of the applicable bid threshold, but is fifteen (15) percent or more of that amount, may be awarded by the QPA following the solicitation of no less than three (3) competitive quotations, if practicable, pursuant to N.J.S.A. 40A:11-6.1(a) and 2 C.F.R. 200. The award shall be made to the contractor/vendor whose response is most advantageous, price and other factors considered. In all cases, the QPA shall retain the record of the quotation solicitation and shall include a copy of the record with the voucher used to pay the particular vendor.

As the HACL’s bid threshold is currently set at \$44,000.00, the threshold for obtaining competitive quotations is 15% of the threshold amount or any amount between \$6,600.00 and \$44,000.00.

Professional service contracts as well as agreements concerning work performed by employees of the contracting unit are excluded from this provision.

2. PURCHASES MADE OVER THE YEARLY AGGREGATE BID THRESHOLD

Generally, any contract or agreement for the furnishing of any goods and/or the performance of any services, the cost or price of which exceeds the total aggregate sum of the bid threshold of Seventeen Thousand Five-Hundred Dollars (\$17,500.00) (or such other threshold amount as may be set via Board Resolution or by the Governor), shall be obtained through the public bid method or, where applicable, the competitive contracting method.

As the HACL currently employs or contracts with a QPA in accordance with N.J.S.A. 40A:11-9, the bid threshold has been increased to the total aggregate amount of Forty Four Thousand Dollars (\$44,000.00).

In the case of any procurement above the Bid Threshold, the bid or proposal can only be awarded by a formal Resolution of the Board and shall not be deemed awarded unless and until such Resolution is adopted.

3. COMPETITIVE CONTRACTING

Competitive contracting, which makes use of the “Request for Proposals” method through which public contracts are awarded to the vendor whose proposal is most advantageous, price and other factors considered, may be used by the HACL at its discretion, in lieu of public bidding (exempt from N.J.S.A. 40A:11-5), for the procurement of certain goods and/or services, the price of which exceeds the bid threshold. N.J.S.A. 40A:11-4.1.

The HACL may use competitive contracting for:

- The purchase of proprietary computer software. N.J.S.A. 40A:11-4.1(a).
- The hiring of a for-profit entity or a not-for-profit entity incorporated under Title 15A of the New Jersey Statutes, for the purpose of the operation, management or administration of (a) recreation/social service facilities or programs (which shall not include the administration of benefits under the Work First New Jersey program or under General Assistance); (b) the operation, management or administration of data processing services; or (c) the operation, management or administration of data processing services. N.J.S.A. 40A:11-4.1(b).
- Homemaker – home health services. N.J.S.A. 40A:11-4.1(d).
- Laboratory testing services. N.J.S.A. 40A:11-4.1(e).
- Emergency medical services. N.J.S.A. 40A:11-4.1(f).
- Contracted food services. N.J.S.A. 40A:11-4.1(g).
- Performance of patient care services by contracted medical staff at county hospitals, correctional facilities and long-term care facilities. N.J.S.A. 40A:11-4.1(h).
- Any good or service exempt from public bidding pursuant to N.J.S.A. 40A:11-5. N.J.S.A. 40A:11-4.1(i).

- Concessions. N.J.S.A. 40A:11-4.1(j).
- The operation, management or administration of other services with the approval of N.J. Division of Local Government Services. N.J.S.A. 40A:11-4.1(k).
- Maintenance, custodial and groundskeeping services. N.J.S.A. 40A:11-4.1(l).
- Consulting services. N.J.S.A. 40A:11-4.1(m).
- Emergency medical billing services. N.J.S.A. 40A:11-4.1(n).
- Property appraisal services. N.J.S.A. 40A:11-4.1(o).
- Reassessment or revaluation services. N.J.S.A. 40A:11-4.1(p).
- Grant writing services. N.J.S.A. 40A:11-4.1(q).
- Animal control services. N.J.S.A. 40A:11-4.1(r).

Pursuant to N.J.S.A. 40A:11-4.1, none of the contracts listed above shall be treated as contracts for “extraordinary unspecifiable services.”

The HACL shall utilize the “Request for Proposals” method in accordance with the following:

- The RFP shall include all requirements deemed appropriate and necessary to allow for full, free and fair competition between vendors, shall include all information necessary for potential vendors to submit a proposal, and shall include a methodology which the HACL will use to evaluate and rank all proposals received. N.J.S.A. 40A:11-4.4(a).
- The methodology for evaluating and ranking proposals received shall include technical, management and cost-related criteria, and shall include a weighting of criteria. The criteria utilized shall not unfairly or illegally discriminate against or exclude otherwise capable vendors. N.J.S.A. 40A:11-4.4(b).
- At no time during the proposal solicitation process shall the HACL convey information, including price, to any potential vendor that could confer an unfair advantage upon that vendor or any other potential vendor. N.J.S.A. 40A:11-4.4(c).
- All proposals and contracts awarded through the competitive contracting process shall require submission of a statement of corporate ownership, as per N.J.S.A. 52:25-24.2, and compliance with all provisions of N.J.S.A. 10:5-31 et. seq. relating to equal employment opportunity and affirmative action. N.J.S.A. 40A:11-4.4(d).
- The term of any contract awarded through competitive contracting shall not exceed five (5) years in duration, but otherwise shall be at the sole discretion of the HACL. N.J.S.A. 40A:11-4.2.
- The Board shall adopt a Resolution authorizing the award of contracts through the competitive contracting method. However, if the desired goods and/or services have been previously contracted for by the HACL using the competitive contracting process, then the original Resolution of the Board shall suffice.

All RFPs shall be administered by the HACL in the following manner:

- A notice of the availability of RFP documentation shall be advertised in an official newspaper(s) of the HACL at least twenty (20) days prior to the date established for the

submission of proposals. N.J.S.A. 40A:11-23. The HACL shall promptly reply to any request by an interested vendor by providing a copy of the RFP. The HACL may charge a fee for the RFP documentation that shall not exceed \$50.00 or the cost of reproducing the RFP documentation, whichever is greater. N.J.S.A. 40A:11-4.5(a).

- Each interested vendor shall submit a proposal that shall include all of the information required by the RFP. Failure to meet the requirements of the RFP may result in disqualification of the vendor by the HACL, at its sole election. Under no circumstances shall the provisions of an RFP be subject to negotiation. N.J.S.A. 40A:11-4.5(b).
- If the HACL utilizes its own employees to provide the goods and/or services covered by the RFP, then the HACL shall, no later than the time of advertisement, notify affected employees of the intention to solicit competitive proposals through an RFP. Employees or their representatives shall be permitted to submit recommendations and proposals affecting wages, hours, and terms and conditions of employment in such a manner as to meet the goals of the competitive contract. If employees are represented by an organization that has negotiated a contract with the HACL, only the bargaining unit shall be authorized to submit such recommendations or proposals. When requested by such employees, the HACL shall provide such information regarding budgets and the costs of performing the services by such employees as may be available. Nothing shall prevent such employees from making recommendations that may include modifications to existing labor agreements in order to reduce such costs in lieu of award of a competitive contract, and agreements implementing such recommendations may be considered as cause for rejecting all other proposals. N.J.S.A. 40A:11-4.5(c).
- The HACL shall evaluate proposals in accordance with the methodology described in the RFP. After the proposals have been evaluated, the HACL shall prepare a report setting forth the results of the evaluation and which recommends the award of a contract or contracts. The report shall list the names of all potential vendors who submitted a proposal in response to the RFP, and shall summarize the proposals of each such vendor. The report shall rank vendors in the order of evaluation, shall set forth clearly the basis for the selection of a particular vendor for award of the contract, and shall detail the terms, conditions, scope of services, fees and other matters which are to be part of the contract. The report shall be made available in its entirety to the public when the report is available to the Board. The Board shall have the right to reject all proposals for any of the reasons set forth in N.J.S.A. 40A:11-13.2. N.J.S.A. 40A:11-4.5(d).
- Award of a contract shall be made by Resolution of the Board within sixty (60) days of the receipt of the proposals, except that proposals may be held for consideration for a longer period by the HACL with the consent of the vendor or vendors concerned. N.J.S.A. 40A:11-4.5(e).
- The QPA or his/her designee shall advertise a notice in the official newspaper of the HACL summarizing the award of the contract, which summary shall include but not be limited to the nature, duration and amount of the contract price, the name of the vendor chosen by the HACL, and a statement that the Resolution and contract are both on file and are available for public inspection at the HACL Administrative Offices. N.J.S.A. 40A:11-4.5(g).
- All contracts awarded through competitive contracting shall be subject to the rules concerning certification of availability of funds adopted pursuant to N.J.S.A. 40A:11-3 and N.J.S.A. 40A:11-15. N.J.S.A. 40A:11-4.5(h).

4. STATE CONTRACTS USAGE

In accordance with 2 C.F.R. 200.318(e) and N.J.S.A. 40A:11-12, and subject to the limitations imposed by HUD OIG Audit Reports, the HACL may procure goods and/or services under any contract for such goods and/or services entered into by the New Jersey State Division of Purchase and Property without resort to public bidding or competitive contracting. Any such procurement shall be authorized by Resolution of the Board, unless the amount of the procurement is such that the QPA would have authority to award a contract under N.J.S.A. 40A:11-3.

Pursuant to N.J.S.A. 40A:11-5(4), a contract for goods and/or services may be negotiated and awarded by the HACL at its sole election, without advertising for bids, if at least three (3) quotations have been received and the lowest responsible quotation is at least 10% less than the price that the HACL would be charged under State contract. The award must be authorized by the affirmative vote of two-thirds of the full membership of the Board by way of a Resolution. A copy of the purchase order relating to any such contract, the requisition for purchase order, if applicable, and documentation identifying the price of the goods and/or services under the State contract and the State contract number shall be filed with the Director of the New Jersey Division of Local Government Services within five (5) business days of the award of any such contract by the HACL.

In the event that a contract is awarded in the manner referenced above, a cost or price analysis shall be prepared and obtained by the QPA, in conformity with any required cost and price analysis that is or may in the future be mandated by Federal law.

5. CONTRACTS EXEMPTED FROM PUBLIC BIDDING

Pursuant to N.J.S.A. 40A:11-5, a contract for goods and/or services, the total amount of which exceeds the Bid Threshold, may be awarded by Resolution of the Board without public bidding when the subject matter of the contract involves:

- The provision of “professional services” or “extraordinary unspecifiable services” as defined by the New Jersey Local Public Contracts Law.² N.J.S.A. 40A:11-5(1)(a).
- Work performed by employees of the HACL. N.J.S.A. 40A:11-5(1)(b).

² Contracts for extraordinary unspecifiable services are not subject to the normal requirements for public advertisement of bids and public bidding imposed by the New Jersey Local Public Contracts Law. These services are specialized and qualitative in nature requiring expertise, extensive training, and a proven reputation in the field of endeavor. To utilize this exception, the need for such training and reputation must be critical to the undertaking, and not merely relevant to the desire to have a reliable job performed. The services must be of such a qualitative nature that the services cannot reasonably be described by any written specification. The fact that the service can only be provided by a single contractor, or relates to subject matter in the nature of a personal, human, social or training services contract described as “technical,” “management,” “consultant” or bearing any other similar description suggesting some special nature does not make a contract one for extraordinary unspecifiable services. The HACL will demonstrate in writing its inability to prepare written specifications describing the qualitative nature of the performance of the services required before invoking this exception to the public advertising and bidding requirements of the New Jersey Local Public Contracts Law. The HACL will not combine services in the nature of extraordinary unspecifiable services with other biddable activity in any public contract so as to avoid the necessity of publicly bidding other work.

- The printing of legal briefs, records and appendices to be used in any legal proceeding in which the HACL may be a party. N.J.S.A. 40A:11-5(1)(c).
- The furnishing of a tax map or maps for the HACL. N.J.S.A. 40A:11-5(1)(d).
- The purchase of perishable foods as a subsistence supply. N.J.S.A. 40A:11-5(1)(e).
- Any product or service rendered by a public utility which is subject to the jurisdiction of the Board of Public Utilities or the Federal Energy Regulatory Commission or its successor. N.J.S.A. 40A:11-5(1)(f).
- The acquisition, subject to prior approval of the Attorney General, of special equipment for confidential investigation. N.J.S.A. 40A:11-5(1)(g).
- The printing of bonds and documents necessary to the issuance and sale thereof by the HACL. N.J.S.A. 40A:11-5(1)(h).
- Equipment repair service if in the nature of an extraordinary unspecifiable service and necessary parts furnished in connection with the service, which exception shall be in accordance with the requirements for extraordinary unspecifiable services. N.J.S.A. 40A:11-5(1)(i).
- The publishing of legal notices in newspapers as required by law. N.J.S.A. 40A:11-5(1)(j).
- The acquisition of artifacts or other items of unique intrinsic, artistic or historical character. N.J.S.A. 40A:11-5(1)(k).
- Any goods necessary or required to prepare and conduct an election. N.J.S.A. 40A:11-5(1)(l).
- Insurance, including the purchase of insurance coverage and consultant services, which exception shall be in accordance with the requirements for extraordinary unspecifiable services. N.J.S.A. 40A:11-5(1)(m).
- The performance of any work by persons with disabilities employed by a sheltered workshop. N.J.S.A. 40A:11-5(1)(n).
- The provision of any goods or services, including those of a commercial nature, attendant upon the operation of a restaurant by any nonprofit, duly incorporated, historical society at or on any historical preservation site. N.J.S.A. 40A:11-5(1)(o).
- Library and educational goods and services. N.J.S.A. 40A:11-5(1)(q).
- Marketing of recyclable materials through a recycling program, or the marketing of any product intentionally derived from solid waste recovered through a resourced recovery program involving the use of refuse-derived fuel, compost materials, methane gas, and other similar products. N.J.S.A. 40A:11-5(1)(s).
- Contracting unit towing and storage contracts. N.J.S.A. 40A:11-5(1)(u).
- The purchase of steam or electricity, or services related thereto, from any qualifying small power production facility or a qualifying cogeneration facility as defined by 16 U.S.C. 796. N.J.S.A. 40A:11-5(1)(v).
- The provision of water supply services entered into pursuant to N.J.S.A. 58:26-19 et. seq. N.J.S.A. 40A:11-5(1)(z).

- The cooperative marketing of recyclable materials recovered through a recycling program. N.J.S.A. 40A:11-5(1)(aa).
- The provision of wastewater treatment services entered into pursuant to N.J.S.A. 58:27-19 et. seq. N.J.S.A. 40A:11-5(1)(bb).
- Expenses for travel and conferences. N.J.S.A. 40A:11-5(1)(cc).
- Goods or services for the support or maintenance of proprietary computer hardware and software (not including the acquisition or upgrading of non-proprietary hardware or software). N.J.S.A. 40A:11-5(1)(dd).
- Purchases of goods and services at rates set by the Universal Service Fund administered by the Federal Communications Commission. N.J.S.A. 40A:11-5(1)(ff).
- The purchase of electricity generated from a power production facility that is fueled by methane gas extracted from a landfill. N.J.S.A. 40A:11-5(1)(hh).

Other Exemptions from Public Advertising and Bidding Requirements

If a contract for goods or services, or both, is to be made between the HACL and the United States of America, the State of New Jersey, or a county or municipality or any board, body, officer, agency or authority thereof, or with any other state or subdivision thereof, that contract may be negotiated and awarded by the HACL, at its sole election, without public bidding. N.J.S.A. 40A:65-1 et. seq.

In accordance with N.J.S.A. 40A:11-5(3), if bids have been advertised for pursuant to N.J.S.A. 40A:11-4 on two (2) occasions and (a) no bids have been received, (b) the HACL has rejected such bids on two (2) occasions because in each case the bids were not reasonable as to price or were not the product of open competition, or (c) a combination of the events in (a) and (b), above, occurred, in whatever sequence, then a contract for the goods and/or services may be awarded without further advertising for bids upon the affirmative vote of two-thirds of the full membership of the Board to adopt a Resolution to authorize such award, so long as:

- A reasonable effort has first been made by the HACL to determine that the same or equivalent goods and/or services are not available, at a cost lower than the negotiated price, from any agency or authority of the United States of America, the State of New Jersey, or the County of Union;
- The terms, conditions, restrictions and specifications set forth in the negotiated contract are not substantially different from those which were the subject of competitive bidding pursuant to N.J.S.A. 40A:11-4; and
- Any minor amendment or modification of any of the terms, conditions, restrictions and specifications set forth in the negotiated contract that were the subject of competitive bidding pursuant to N.J.S.A. 40A:11-4 shall be stated in the Resolution of the Board awarding such contract; provided further, however, that if on the second occasion bids are received the bids are rejected as unreasonable as to price, the HACL shall notify each responsible bidder of the second round of bidding of its intention to negotiate and shall afford each such bidder a reasonable opportunity to negotiate. The HACL shall not award such a negotiated contract unless the negotiated price is both lower than the lowest bid

previously rejected at the second round of bidding and is a reasonable price for the goods of services in question.

6. EMERGENCY CONTRACTS

The HACL reserves the right to negotiate and award an emergency contract pursuant to N.J.S.A. 40A:11-6, without public bidding or competitive contracting, notwithstanding that the contract price will exceed the Bid Threshold set forth in N.J.S.A. 40A:11-3(a), whenever an emergency affecting the public health, safety or welfare requires the immediate delivery of goods or the performance of services, in the following manner:

- The Head of the Department where the emergency occurred shall inform the Executive Director and the QPA of the existence of the emergency, the nature of the emergency, the time that the emergency occurred and the need for an emergency contract in order to resolve the situation created by the emergency. If the QPA is satisfied that an emergency exists, an emergency contract may be awarded without advertising for bids. Notification of the existence of an emergency in accordance with the above shall be reduced to writing as soon as is practicable, and documentation of the emergency shall be filed with the QPA immediately thereafter. N.J.S.A. 40A:11-6(a). The Board shall take such action thereafter as shall be required to provide for payment of the contract price for the emergency contract.

Pursuant to N.J.A.C. 5:34-6.1, an emergency contract shall be entered into only where:

- an actual or imminent emergency exists requiring the immediate delivery of the goods or the performance of the service;
- the need for goods or services could not have been reasonably foreseen, or the need for goods or services arose notwithstanding a good faith effort on the part of the HACL to plan for the purchase of such goods or services in advance;
- the contract is of such duration as to meet only the immediate needs of the emergency that has arisen; and
- the contract is not, under any circumstances, for a multi-year period.

C. PUBLICLY ADVERTISED SEALED BIDS

As noted above, the Board shall, by Resolution, authorize the award of any contract relating to any purchase in excess of the bid threshold.

The method of sealed bids shall be used for all public contracts: (a) which exceed the bid threshold; and (b) which are not exempt from public bidding, as provided for by N.J.S.A. 40A:11-4.1 to -4.5 (“competitive contracting”), N.J.S.A. 40A:11-5 (specially exempted categories of public contracts), and N.J.S.A. 40A:11-6 (emergency contracts), as set forth above.

Those matters which are exempt from public bidding shall be procured in accordance with Section III(D).

1. ADVERTISEMENT AND SOLICITATION OF BIDS

An invitation for bids shall be advertised in the newspaper(s) officially designated by the HACL sufficiently in advance of the date fixed for receiving the bids to promote competitive bidding, but in no event less than ten (10) business days prior to such date. N.J.S.A. 40A:11-23; N.J.S.A. 40A:11-24.

The invitation for bids shall advise potential bidders of: (1) the process for obtaining a copy of the bid specifications and bid documents; and (2) the time and place for both the receipt of bids and the public bid opening. The invitation for bids shall also include a statement that the contract award will be made to the lowest responsible and responsive bidder. The invitation for bids shall state the time and place for both the receipt of bids and public bid opening.

Invitations for bids may be mailed to potential vendors whenever a vendor list is available; however, no vendor shall receive an invitation to bid, or the applicable specifications, prior to the publication of the invitation in the newspaper(s).

2. AMENDMENTS TO BID DOCUMENTS

Amendments to any invitation for bids, bid specification, or other bid document must be in writing, indicating the number and issue date of the document it amends, and shall be noted in the appropriate HACL file.

In accordance with N.J.S.A. 40A:11-23(c), potential bidders must be notified of any such amendments. A notice of the amendment shall be provided to all who have received a bid package by: (i) certified mail; (ii) certified facsimile transmission (which produces a receipt to show the date and time of transmission and confirm the transmission was successful); or (iii) delivery service which provides certification of delivery to the sender. In addition, for non-construction contracts only, notice of the amendment shall be published in a legal newspaper no later than seven (7) days before bid acceptance (exclusive of weekends and holidays).

If an amendment needs to be issued shortly before the scheduled bid opening date, the bid opening shall be postponed for an adequate period of time to permit potential bidders to fully analyze the change and to submit timely bids. Failure to comply with this section shall require the re-advertisement of bids.

3. BID OPENING AND AWARD

The general policy of the HACL is not to recommend the award of contract in circumstances where there are fewer than two (2) independent qualified bids submitted for that contract, except in instances where it has been determined that it is unreasonable and/or improbable to believe that more than one (1) bid will be forthcoming. For the purposes of this Policy, a “bid” is defined as one submitted in accordance with all HACL policies, practices and procedural requirements, as well as the provisions of the New Jersey Local Public Contracts Law, N.J.S.A. 40A:11-1 et. seq.

- a) All contracts or agreements required to be publicly advertised and bid shall be awarded to the lowest responsible bidder.

- b) All bids/proposals shall be submitted to the HACL on or before the specified due date and time, using one of the following submission procedures: (i) hand-delivery; (2) mail; or (3) overnight/express mail delivery. All bids/proposals shall be appropriately labeled (title, due date, return address) and will be considered timely if received and time-stamped by the HACL on or before the specified due date and time. No bids shall be received by the HACL after the time designated in the advertised invitation for bids or, if there has been an amendment to the bid documents, after the time designated in the amendment. The HACL will not accept bids/proposals received late.
- c) All bids received by the HACL shall be time-stamped, but not opened, and shall be stored in a secure place until the time of bid opening.
- d) All sealed bids shall be opened publicly at such time and place designated in the advertised invitation for bids (or any subsequent amendment to the bid documents) and announced in the presence of at least one (1) witness. The QPA or his/her designee shall publicly receive all bids, proceed to unseal them, and publicly announce the contents in the presence of any bidders (or their representatives) who are present, and shall tabulate and record the prices and terms of the bids, and report said tabulation to the Board.
- e) A bidder may, of right and without penalty, withdraw its bid in writing or *via* fax transmission at any time prior to the opening and unsealing of bids, provided that any mailed or fax withdrawal over the bidder's signature is postmarked/transmitted prior to the time set for the bid opening.
- f) Where two or more bids offer the same exact price for an HACL contract which is publicly advertised and bid, the contract shall be awarded to the vendor whose bid is most advantageous to the HACL, price and other factors considered. In such a case, the resolution awarding the contract shall explain why the vendor chosen is the most advantageous to the HACL.
- g) Contracts arising from the bids shall be awarded by the Board at an open public meeting; said awards shall be reviewed by and subject to the opinion of legal counsel to the HACL and shall be further contingent upon submission by the successful bidder of proper evidence of insurance, a bonding commitment for the contract, and all other documentation required by the specifications to the contract concerned, including but not limited to, a bid guarantee pursuant to N.J.S.A. 40A:11-21, a certificate from a surety company as provided by N.J.S.A. 40A:11-22, a statement of corporate ownership as provided by N.J.S.A. 52:25-24.2, a list of subcontractors as provided by N.J.S.A. 40A:11-16, a signed document acknowledging receipt by the bidder of any notice(s) of amendment to the advertisement for bids or bid documents, and a Certificate of Registration as provided for in N.J.S.A. 34:11-56.48 et. seq. as required. N.J.S.A. 40A:11-23.2.
- h) The Board shall award the contract, reject all bids, or take such other action as is required within such time as may be specified in the invitation to bid, but in no case more than sixty (60) working days, except that the bid of any bidder or bidders who consent thereto, at the request of the HACL, may be held for consideration for such longer period as may be agreed by the bidder or bidders and the HACL. N.J.S.A. 40A:11-24(a).
- i) Unsuccessful bidders shall be notified of the contract award within twenty (20) business days of the award of the contract. Checks which have been submitted to the HACL as a security deposit for a bid by any vendor shall be returned within ten (10) business days of the award of the contract.

4. CANCELLATION OR REJECTION OF BIDS

With respect to all HACL contracts, whether or not publicly bid, corporate entities that (a) stand in the relationship of parent and subsidiary, (b) function as a single integrated entity, or which (c) are otherwise so substantially related such that one company is chiefly directed by and is the mere instrumentality of the other, may not submit bids for the same public contract. The HACL strives at all times to preserve optimum conditions of economic competition; as such, related corporate entities will not be permitted to submit two or more bids for the same public contract. Duplicate bids will not be considered by the HACL under any circumstances.

Finally, all prospective bidders should be aware that the HACL reserves the right to reject all bids, in its sole discretion, for any of the following reasons:

- the lowest bid substantially exceeds the HACL's cost estimates for the goods and/or services;
- the lowest bid substantially exceeds the HACL's appropriation for the goods and/or services;
- the HACL decides to abandon the project;
- the HACL wants to substantially revise the specification for the goods and/or services;
- the purposes or provisions of the New Jersey Local Public Contracts Law, N.J.S.A. 40A:11-1 et. seq., are being violated; or
- the HACL decides, in its sole discretion, to use a State-authorized contract to procure the goods/services in question.

Accordingly,

- (1) Any invitation for bids, request for proposals, or other solicitation may be canceled before offers are due if the HACL no longer requires the goods and/or services; the HACL can no longer reasonably expect to fund the procurement; proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable; or for any similar reason.
- (2) Further, a solicitation may be canceled, and all bids or proposals already been received may be rejected, if: ambiguous or otherwise inadequate specifications were part of the solicitation; the solicitation did not provide for consideration of all factors of significance to the HACL and necessary for a complete evaluation of all relevant criteria pertaining to the bid in question; or there is reason to believe bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.
- (3) The reasons for the cancellation of any bid or procurement effort shall be documented in the procurement file, and the reasons for cancellation and/or rejection of any bid or procurement effort shall be provided upon request to any bidder.
- (4) In any such case, a notice of cancellation shall be sent to all such bidders and, if applicable, the notice of cancellation shall explain that all such bidders will be given an opportunity by the HACL to compete on any re-solicitation or future procurement of similar items.

5. BIDDING REQUIREMENTS FOR CONSTRUCTION CONTRACTS FOR CERTAIN KINDS OF WORK

This section pertains only to construction contracts wherein the contract documents contain plans or specifications including the following categories of work:

- (a) plumbing/gas heating and kindred work;
- (b) steam power plants/steam and hot water heating and ventilating apparatus and kindred work;
- (c) electrical work;
- (d) structural steel and ornamental iron work.

Bid Forms and Certificates Required

In the event work is to be performed on the contract within one or more of the above referenced categories and is to be performed by a subcontractor to the bidder, the bidder must complete the relevant portion of the bid form by specifically identifying (by exact name and address) each subcontractor that will perform work in any of the listed trade categories **in certified fashion**. The certificate shall set forth the scope of the work, goods and services for which the subcontractor has submitted a price quote and which the bidder has agreed to award to each subcontractor should the bidder be awarded the contract. The certificate shall be submitted to the HACL simultaneously with the list of the subcontractors. The certificate may take the form of a single certificate, or a separate certificate may be submitted for each subcontractor. In the event that work is to be performed in the listed categories by the bidder's own qualified licensed In-House employees on the bidder's payroll, the bidder shall note "In-House" as to any such category. If the scope of the work under the contract does not involve any of the listed trade categories, the bidder shall note "none" as to any such category. Failure to properly fill out and execute the Certification may result in disqualification of the bidder by the HACL and award of the contract to the next-lowest responsible bidder.

Verification of Qualifications (NJ State Statute Sub-categories)

Bidders shall submit a Qualification Questionnaire for themselves and for any and all subcontractors that come under the categories listed in N.J.S.A. 40A:11-22 with their bid. The bidder is responsible for submitting any information missing from its response to a Qualification Questionnaire within three (3) business days after notification from the HACL. Failure to submit proper information accordingly may result in disqualification by the HACL. No bidders shall be permitted to change or substitute unlisted unidentified subcontractors for listed identified subcontractors, nor to change or substitute In-House personnel for listed identified subcontractors (or vice versa), after award of the contract.

Verification of Qualifications (all other subcontractors)

Each bidder shall submit a Qualification Questionnaire for other subcontractors as required. Failure to submit the requested information within three (3) business days after notification from the HACL may result in disqualification by the HACL of the bidder or subcontractor.

Timely Performance of Obligations and Manner of Payment to Subcontractors

A bidder will be strictly accountable for proper and timely performance of work by its designated listed subcontractors. Separate provisions relating to the bonding of designated listed subcontractors are set forth in this Procurement Policy.

All payments required to be paid under a contract for goods and/or services to be supplied by one of the listed subcontractors shall be the sole responsibility of the bidder. The bidder shall be responsible for submitting evidence of payments made to subcontractors at the request of the HACL.

6. *MISTAKES IN BIDS AND WITHDRAWAL OF SAME*

Negligence on the part of a bidder confers upon the negligent bidder no right of withdrawal or modification of the bid after it has been opened. After bids are opened, corrections or modifications of bids shall be permitted by the HACL only if the bidder in error can show by clear and convincing evidence that a mistake of a non-material character was made. All decisions to allow correction or withdrawal of bid mistakes shall be made by the Board after review of the circumstances of the error in question. This review shall be based upon a written summary of the nature of the error or errors signed by the QPA or his/her designee, as well as testimony of the bidder before the Board at an open public meeting, if applicable and at the discretion of the Board.

After the bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the HACL or to fair competition shall be permitted. A low bidder alleging that it committed a non-material mistake when tendering its bid may be permitted to withdraw its bid, at the sole election of the HACL, if the mistake constitutes a non-material, waivable defect in the bid as that concept is defined by the New Jersey Local Public Contracts Law, applicable regulations, and case law devolved therefrom.

Bidders who are permitted to withdraw their bids shall be assessed an administrative charge by the HACL, which charge is for the purpose of covering the expenses incurred by the HACL for administrative efforts dedicated to reviewing the original submission of the bid and the request for withdrawal.

7. *WAIVERS AND PROPER DOCUMENT SUBMISSION*

Presumption Against Waivers

Any failure by the HACL, whether inadvertent or otherwise, to enforce any term, condition, requirement or provision of any contract shall not be deemed to be a waiver thereof.

Waiver of Minor, Non-Material Bid Irregularities

The Board may, upon recommendation of the QPA, waive or permit a bidder to cure minor, non-material or insubstantial bidding irregularities or defects. All such defects or irregularities shall be referred to the legal counsel to the HACL for review and determination as to whether a waiver or cure of the defect in question is permissible in accord with applicable laws and regulations.

Photocopies/Faxed Bid Documents

The HACL will not accept photocopies or faxed copies of bidding documents requiring original signatures (e.g. ownership certificate, executed bid, consent of surety, or original bid/performance/payment bond documents, certifications, affidavits, or notarizations). Failure to include originally signed and executed forms of these documents by any bidder will render the bid invalid, and such a bid may be declared invalid and rejected by the HACL at the time the bid is examined after it is opened.

8. BONDS TO ACCOMPANY BIDS

Bid Bond/Consent of Surety

For all non-construction/non-facility improvement contracts, bid guaranties (bid bonds, certified checks, or cashiers' checks), consent of surety, and performance and payment bonds may be requested at the sole discretion of the HACL.

For all construction/facility improvement contracts in excess of \$100,000.00, every bid shall be accompanied by a bid guaranty (bid bond, certified check, or cashiers' check) in an amount not less than five (5%) percent of the amount of the bid and made payable to the HACL, and an appropriate consent of surety issued by a surety company qualified to do business in the State of New Jersey and appearing on the Federal Department of Treasury Circular #570, Part II, List (hereinafter "Approved Treasury List"), as modified and supplemented by the United States Government. Surety companies which do not appear on this List are not acceptable, and the HACL may reject any bids containing a bid bond or consent of surety by a surety company not appearing on said List.

In addition, a Performance and Payment Bond in the amount of 100% of the contract price will be required for every construction/facility improvement contract in excess of \$100,000.00. The Bond shall be in substantially the form set forth in N.J.S.A. 2A:44-147. The failure by any vendor to timely present a Bond in the proper format shall be good cause for the rejection of its bid by the HACL, at its sole discretion.

The HACL will not accept a Performance and Payment Bond that is not accompanied by a Surety Disclosure Statement and Certification to which each and every surety executing the bond has subscribed. The Surety Disclosure Statement and Certification must be complete in all respects and duly acknowledged, and shall be in the form referred to in the New Jersey Public Works Bond Act, N.J.S.A. 2A:44-143(d). The failure by any vendor to timely present a Surety Disclosure Statement and Certification in the proper format shall be good cause for the rejection of its bid by the HACL, at its sole discretion.

For all construction/facility improvement contracts in an amount less than \$100,000.00, bid guaranties (bid bonds, certified checks, or cashiers' checks), consent of surety, and performance and payment bonds may be requested at the sole discretion of the HACL.

Performance Bonds for Construction Subcontracts for Certain Kinds of Work

The following rules and procedures pertain only to construction contracts wherein the contract documents contain plans or specifications for the following categories of work:

- (a) plumbing/gas fitting and kindred work;
- (b) steam power plant/steam and hot water heating and ventilating apparatus and kindred work;
- (c) electrical work;
- (d) structural steel and ornamental iron work

In the event work to be performed under the contract falls within one or more of the above referenced categories and is to be performed by a subcontractor of the bidder, a Performance Bond shall be furnished to the HACL from a surety company on the Treasury Approved List by the bidder on the behalf of himself and/or all of the subcontractors, or by each respective subcontractor, or by any combination thereof which results in performance security equaling but not exceeding the total amount bid. In the event the work to be performed in the above designated trade categories is to be performed by the bidder's own In-House employees, then the Performance and Payment bonds need only be furnished by the bidder in the total amount of the Contract.

D. SPECIFIC RULES FOR CONTRACTS EXEMPTED FROM PUBLIC BIDDING

1. SOLICITATION OF PROPOSALS

Solicitations shall be from an adequate number of sources but not less than three (3), except as described above with respect to purchases which are less than the quotation threshold (15% of the bid threshold). The RFP 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. 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 respondents, identity of the respondents, and the contents of their proposals. The proposals shall be evaluated only on the criteria stated in the RFP.

2. EVALUATION CRITERIA FOR RFPs

The HACL shall evaluate proposals consistent with the evaluation criteria set forth in the RFP, as well as the written plan for evaluating technical and cost proposals and the review process established prior to the issuance of the RFP. The evaluation criteria shall be appropriate to the type of procurement sought, and may include the following:

- understanding of the requirements of the RFP;
- appropriateness of the technical approach in the proposal;
- quality of the work plan;
- technical capabilities; and
- management plan and demonstrated experience in performing work similar to that called for by the contract.

Evaluation Committee and Evaluation Process

The HACL will establish an Evaluation Committee tailored to the type of service the HACL is procuring. Each Evaluation Committee should have three (3) members consisting of the QPA or his/her designee, a technical staff member or Commissioner, and another technical staff member or Commissioner. In addition, an Evaluation Committee may include, where applicable, residents or members of the community who act in an advisory capacity.

Responsive and responsible proposals

As noted above, respondents for all public contracts at the HACL shall, at all times, be under an obligation to (a) tender a proposal, which is fully responsive to the proposal specifications, and (b) demonstrate that the respondent is a responsible respondent.

A “responsive” proposal is one that conforms in all material respects to the terms and conditions, specifications, legal requirements, and other request for the provision of goods or services, or both.

A “responsible” respondent is a respondent that demonstrates, in advance, the ability to complete the contract in accordance with its requirements, including but not limited to requirements pertaining to experience, moral integrity, operating capacity, financial capacity, creditworthiness, workforce, equipment and availability of specified facilities.

3. AWARD

After evaluation of any proposal revisions, the contract shall be awarded to the responsible respondent whose qualifications, price and other factors considered, are the most advantageous to the HACL.

4. NOTICE REQUIREMENTS

In the case of contracts for professional services, extraordinary unspecifiable services, or certain contracts exempted from the bidding requirements of the New Jersey Local Public Contracts Law, namely N.J.S.A. 40A:4.1 to -4.5 and N.J.S.A. 40A:11-5, the Board shall adopt a resolution stating the supporting reasons for the award of the contract without resort to public advertising for bids and open public bidding. The HACL shall also publish a brief notice in a legal newspaper stating the nature, duration, service and amount of the contract, and advising the public that both the contract and the resolution pertaining thereto are available for public inspection at the offices of the HACL during normal business hours.

5. CONTRACTS FOR ARCHITECTURAL/ENGINEERING (A/E) SERVICES

Architectural/engineering services in excess of the HACL Bid Threshold may be procured through the use of the competitive contracting method, specifically through an appropriate Request for Proposals (“RFP”) and the evaluation of proposals based on price and qualifications. Sealed bidding (i.e., open public bidding with the award of the contract to the lowest responsible bidder) **shall not be used** by the HACL to obtain contracts for architectural/engineering services.

In all cases the provisions of HUD Notice PIH 90-47 (dated September 25, 1990) and HUD Handbook 7460.8 REV 2 (Section 7.3) (dated February 2007), as said Notice and Handbook may be modified, amended or supplemented, shall govern the procurement of contracts for architectural and engineering services.

E. COST AND PRICE ANALYSIS

1. GENERAL

A cost or price analysis shall be performed for all procurement actions, including contract modifications and change orders, as required and as appropriate. The method of analysis shall be determined as indicated herein. The degree of analysis shall depend on the facts surrounding each procurement.

2. SUBMISSION OF COST OR PRICING INFORMATION

When only one offer is received for a procurement (*i.e.*, when contracting for professional services or other services exempt from public bidding requirements) the HACL shall conduct a cost analysis which may include:

- a) a cost breakdown showing projected cost and profit; or
- b) commercial pricing and sales information sufficient to enable the HACL 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.

3. COST ANALYSIS

All bidders are required to submit a cost breakdown as part of their proposal in the following cases:

- a) Competitive contracting is used and the HACL requests a cost proposal that lists separately each individual element of the total cost of performing the contract;
- b) The HACL negotiates a contract without seeking competitive quotations, as provided above. The HACL will in all such cases request a complete cost breakdown, and will use recognized cost accounting principles to establish a fair and reasonable price or established cost; or
- c) The HACL negotiates a modification to any contract, implements a minor field (site) modification, a purchase order, or a change order through a Resolution of the Board which changes the scope of work previously authorized and which impacts the price or estimated cost upwards or downwards. The HACL will in all such cases request a cost breakdown of the contractor's proposed cost.

When a cost breakdown is submitted, the HACL shall conduct a cost analysis of the individual cost elements in accordance with HUD Handbook 7460.8 REV 2 and HUD Handbook 2210.18, which provides applicable cost accounting principles. The HACL reserves the right to audit the books and records of any bidder which are pertinent to such costs, with the element of profit to be analyzed separately. Costs shall be allowed only to the extent that such costs are consistent with applicable Federal cost principles (2 C.F.R. 200.400 – 200.475) or any stricter New Jersey law that

is now in force or may be enacted in the future. In determining a fair and reasonable profit, the HACL shall consider factors such as the complexity and risk of the work involved, the contractor's investment and productivity, the amount of subcontracting, the quality of past performance, and typical industry profits/rates in the area for similar work.

4. PRICE ANALYSIS

A comparison of prices to determine the reasonableness of a bidder's price may be used in all other cases, at the discretion of the HACL.

IV. CONTRACTOR RESPONSIBILITY/RESPONSIBILITY HEARING

Contracts shall be awarded by the HACL only to responsible contractors, i.e., those who have the technical and financial competence to perform and who have a satisfactory record of business integrity. Before awarding a contract, the HACL shall review the proposed contractor's ability to perform the contract successfully, considering factors such as the contractor's integrity (including a review of List of Parties Excluded from Federal Procurement and Non-procurement Programs published by the U.S. General Services Administration), compliance with public policy, record of past performance (including contacting previous clients of the contractor) and financial and technical resources.

A. DEFAULT AND DISQUALIFICATION

If any potential vendor has (a) previously defaulted on a contract with the HACL; (b) has been found, through court adjudication, arbitration, mediation, or other contractually stipulated alternate dispute mechanism, to have (1) failed to provide goods and/or perform services, (2) failed to complete a contract in a timely manner, or (3) otherwise performed unsatisfactorily under a prior contract with the HACL; or (c) is debarred or suspended from contracting by any agency or department of the executive branch of the State of New Jersey or the Federal Government, then such bidder may be disqualified, at the sole discretion of the HACL, even if that vendor would otherwise be regarded as the "lowest responsible bidder" based upon the characteristics of its bid. N.J.S.A. 40A:11-4(a),(b).

The decision, per the above criteria, to disqualify a bidder with which the HACL has had "prior negative experience" shall be made with reference to the best interests of the HACL. In the event that disqualification is being considered by the HACL, notice and a hearing shall be provided as set forth in N.J.S.A. 40A:11-4(c).

B. PROCEDURES FOR DISQUALIFICATION

The notice of a disqualification hearing to be conducted by the HACL shall advise the bidder that it shall be entitled to present witnesses and evidence on its behalf, that it may be represented by counsel of its choice, and that the bidder may be examined by the HACL's counsel at the hearing. Notice shall be communicated to the bidder via both regular and certified mail. At the hearing, the bidder will be required to show good cause why it should not be disqualified, and will be asked and permitted to present both documents and testimony in support of its position. Subsequent to the hearing, the Board will vote and the decision of the Board shall be embodied in a written Resolution that shall recite the basis for its decision. A written copy of the Resolution memorializing the decision of the Board shall be provided to the bidder promptly upon completion. N.J.S.A. 40A:11-4(c).

V. DURATION AND TYPES OF CONTRACTS, CONTRACT CLAUSES, AND CONTRACT ADMINISTRATION

A. DURATION OF CONTRACTS

In general, any contracts for the furnishing of any goods and/or the performance of any services between the HACL and any particular vendor shall be for a period not to exceed twenty-four (24) consecutive months, except that contracts for professional services may be awarded for a period not to exceed twelve (12) consecutive months. N.J.S.A. 40A:11-15.

However, contracts may be awarded by the HACL for longer periods of time as follows:

- Thermal energy produced by a cogeneration facility, for use for heating or air conditioning or both, for any term not exceeding 40 years, when the contract is approved by the Board of Public Utilities. N.J.S.A. 40A:11-15(1)(c).
- The collection and disposal of municipal solid waste, the collection and disposition of recyclable material, or the disposal of sewage sludge, for any term not exceeding in the aggregate, five (5) years. N.J.S.A. 40A:11-15(3).
- The collection and recycling of methane gas from a sanitary landfill facility, for any term not exceeding 25 years, when the contract is in conformance with a district solid waste management plan and with the approval of the Division of Local Government Services in the Department of Community Affairs and the Department of Environmental Protection. The contracting unit shall award the contract to the highest responsible bidder, notwithstanding that the contract price may be in excess of the amount of any necessarily related administrative expenses; except that if the contract requires the contracting unit to expend funds only, the contracting unit shall award the contract to the lowest responsible bidder. N.J.S.A. 40A:11-15(4).
- Data processing service, for any term of not more than seven (7) years. N.J.S.A. 40A:11-15(5).
- Insurance, for any term of not more than three (3) years. N.J.S.A. 40A:11-15(6).
- Leasing or servicing of automobiles, motor vehicles, machinery, and equipment of every nature and kind, for a period not to exceed five years. N.J.S.A. 40A:11-15(7)(a).
- The supplying of any product or the rendering of any service by a company providing voice, data, transmission or switching services for a term not exceeding five (5) years. N.J.S.A. 40A:11-15(8).
- Any single project for the construction, reconstruction or rehabilitation of any public building, structure or facility, or any public works project, including the retention of the services of any architect or engineer in connection therewith, for the length of time authorized and necessary for the completion of the actual construction. N.J.S.A. 40A:11-15(9).
- The providing of food services for any term not exceeding three (3) years. N.J.S.A. 40A:11-15(10).
- On-site inspections and plan review services undertaken by private agencies pursuant to the "State Uniform Construction Code Act," N.J.S.A. 52:27D-119 et. seq., for any term of not more than three (3) years. N.J.S.A. 40A:11-15(11).
- The provision of water supply services or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a water supply facility, or any component

part or parts thereof, including a water filtration system, for a period not to exceed 40 years. N.J.S.A. 40A:11-15(16).

- The provision of resource recovery services by a qualified vendor, or the disposal of the solid waste delivered for disposal which cannot be processed by a resource recovery facility or the residual ash generated at a resource recovery facility, including hazardous waste and recovered metals and other materials for reuse, for a period not to exceed 40 years when the contract is approved by the Division of Local Government Services in the Department of Community Affairs, and the Department of Environmental Protection and when the resource recovery facility is in conformance with a district solid waste management plan. N.J.S.A. 40A:11-15(17).
- The sale of electricity or thermal energy, or both, produced by a resource recovery facility for a period not to exceed 40 years when the contract is approved by the Board of Public Utilities, and when the resource recovery facility is in conformance with a district solid waste management plan. N.J.S.A. 40A:11-15(18).
- The provision of wastewater treatment services for a period not to exceed 40 years when the contract for these services is approved by the Division of Local Government Services in the Department of Community Affairs and the Department of Environmental Protection. N.J.S.A. 40A:11-15(19).
- The supplying of goods or services for the purpose of lighting public streets, for a term not to exceed five years. N.J.S.A. 40A:11-15(20).
- The provision of emergency medical services for any term not to exceed five years. N.J.S.A. 40A:11-15(21).
- Towing and storage contracts, awarded pursuant to N.J.S.A. 40A:11-5(1)(u), for any term not exceeding three (3) years. N.J.S.A. 40A:11-15(22).
- Fuel for the purpose of generating electricity for a term not to exceed eight years. N.J.S.A. 40A:11-15(23).
- Basic life support services, for a period not to exceed five years. N.J.S.A. 40A:11-15(25).
- The provision of transportation services to: (a) an elderly person who is 60 years of age or older; (b) an individual with a disability who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, are unable, without special facilities or special planning or design to utilize mass transportation facilities and services as effectively as persons who are not so affected; or (c) an indigent person whose income does not exceed 100 percent of the poverty level, adjusted for family size, for any term of not more than three (3) years. N.J.S.A. 40A:11-15(27).
- The supplying of liquid oxygen or other chemicals, for a term not to exceed five (5) years, when the contract includes the installation of tanks or other storage facilities by the supplier, on or near the premises of the HAFL. N.J.S.A. 40A:11-15(28).
- Laundry service and the rental, supply and cleaning of uniforms for any term of not more than three (3) years. N.J.S.A. 40A:11-15(32).
- A contract with a private firm pursuant to N.J.S.A. 58:26-19 et. seq.) for the provision of water supply services for a term not to exceed forty (40) years. N.J.S.A. 40A:11-15(34).
- A contract for the purchase of a supply of water from a public utility company subject to the jurisdiction of the Board of Public Utilities in accordance with tariffs and schedules of charges made, charged or exacted or contracts filed with the Board of Public Utilities, for any term of not more than forty (40) years. N.J.S.A. 40A:11-15(35).

- A contract between a public entity and a private firm or public authority pursuant to N.J.S.A. 58:27-19 et. seq.) for the provision of wastewater treatment services for a term not to exceed forty (40) years. N.J.S.A. 40A:11-15(36).
- Municipal solid waste collection from facilities owned by the HACL, for any term of not more than three (3) years. N.J.S.A. 40A:11-15(38).
- Fuel for heating purposes, for any term of not more than three (3) years. N.J.S.A. 40A:11-15(39).
- Fuel or oil for use in motor vehicles for any term of not more than three (3) years. N.J.S.A. 40A:11-15(40).
- Plowing and removal of snow and ice for any term not more than three (3) years. N.J.S.A. 40A:11-15(41).
- Purchases made under a contract awarded by the Director of the Division of Purchase and Property in the New Jersey Department of the Treasury for use by counties, municipalities or other contracting units pursuant to N.J.S.A. 52:25-16.1, for a term not to exceed the term of that contract. N.J.S.A. 40A:11-15(42).
- The purchase of electricity generated through Class I renewable energy or from a power production facility that is fueled by methane gas extracted from a landfill in the county of the contacting unit for any term not exceeding twenty-five (25) years. N.J.S.A. 40A:11-15(44).
- The provision or performance of goods or services for the purpose of producing Class I renewable energy or Class II renewable energy, as those terms are defined in section 3 of P.L.1999, c.23 (C.48:3-51), at, or adjacent to, buildings owned by, or operations conducted by, the contracting unit, the entire price of which is to be established as a percentage of the resultant savings in energy costs, for a term not to exceed 15 years; provided, however, that a contract shall be entered into only subject to and in accordance with guidelines promulgated by the Board of Public Utilities establishing a methodology for computing energy cost savings and energy generation costs. N.J.S.A. 40A:11-15(45).

Any contracts awarded through the competitive contracting process may be for a duration of up to five (5) years.

Any contract for services other than professional services which is mandated by law to be for a duration of three (3) years or less, may include a provision authorizing extension of the contract for (a) one two-year period, or (b) two consecutive one-year periods, as long as:

- the contract extension is awarded by resolution of the Board after factual findings by the Board to the effect that the services called for by the contract have been provided in an effective and efficient manner;
- the contract shall not be extended so that it runs for a period of more than five (5) total years;
- any price change included in the contract extension shall be based upon the price of the original contract, as adjusted pursuant to any previous adjustment or extension, and shall not exceed the change in the index rate for the twelve (12) months preceding the most recent quarterly calculation available at the time the contract is extended; and
- the terms and conditions of the contract shall remain substantially the same.

A contract with the HACL may also be extended by mutual agreement of the parties to the contract when the HACL has commenced rebidding prior to the time the contract term expires, or when the award of a contract is pending at the time that the contract term expires.

Any multi-year contracts executed as hereinabove provided shall contain a clause or clauses making such contracts subject to availability/appropriation annually of sufficient funds that may be required in order to meet the extended obligation or contain an annual cancellation clause.

Each contract shall be signed by all parties within the time limit set forth therein, which shall not exceed twenty-one (21) business days after making the award, except that said parties may agree to extend the time limit set forth in the specifications beyond said twenty-one (21) day period. Specifically, the time of execution for a contract with the HACL may be extended, by mutual consent of the parties, beyond twenty-one (21) business days where submission of the required documentation is not practicable within that time. N.J.S.A. 40A:11-24(b).

B. PARTICULAR CONTRACTS

A cost reimbursement contract shall not be used unless it is likely to be less costly or it is impracticable to satisfy the needs of the HACL in any other manner, and the proposed contractor's accounting system is adequate to allocate cost in accordance with applicable cost principles (2 C.F.R. 200.400 – 200.475). A time and material contract may be used only if a written determination is made that no other contract type is suitable, and only if the contract includes a ceiling price that states an upper limit for the amount due to the contractor, which the contractor exceeds at its own risk.

C. NEW JERSEY PREVAILING WAGE ACT

Any and all projects at the HACL funded by the U.S. Department of Housing and Urban Development are not subject to the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et. seq., but may be subject to Davis-Bacon Prevailing Wages or HUD-Determined Prevailing Wages pursuant to federal regulations.

D. OTHER PROVISIONS AND CONDITIONS

1. FEDERAL PROVISIONS

The HACL follows the requirements of all Federal and State of New Jersey laws and regulations, and bidders for contracts at the HACL should be aware of the many requirements imposed by Federal and State of New Jersey laws and regulations upon public contracts and work performed pursuant thereto, including but not limited to (a) the requirements set forth in the bid specifications for each contract at the HACL; and (b) the various "Employment and Contracting Opportunity Requirements" of the HACL reflected in the ECO Handbook (available to prospective bidders upon request).

As required by Federal and/or State of New Jersey laws and regulations, all HACL Contracts will contain the following provisions:

- (a) A contract clause or clauses providing for administrative/contractual/legal remedies in the event of breach or violation of the contract by any contractor, including any and all appropriate provisions for sanctions and penalties for breach or violation of the contract;
- (b) A contract clause or clauses providing for termination of a contractor in default (1) for cause, and (2) for the convenience of the HACL, setting forth the procedures, rights and remedies that will accrue to the HACL and the contractor in either case;
- (c) A contract clause or clauses mandating compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented by Department of Labor regulations (41 C.F.R. Part 60);
- (d) A contract clause or clauses mandating compliance with the American Disabilities Act of 1990 as follows:

Discrimination on the basis of disability in contracting for the purchase of goods and/or services is prohibited. Bidders are required to read the Americans With Disabilities language that is included below and agree that the provisions of Title II of the Act are made a part of the contract. The contractor is obligated to comply with the Act and to hold HACL harmless.

The contractor and the Housing Authority of the City of Linden (hereafter "owner"), do hereby agree that the provisions of Title II of the Americans With Disabilities Act of 1990 (the "Act") (42 U.S.C. 12131-12134), as amended by the ADA Amendments Act of 2008, which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant there unto, are made a part of this contract. In providing any aid, benefit, or service on behalf of the owner pursuant to this contract, the contractor agrees that the performance shall be in strict compliance with the Act. In the event that the contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this contract, the contractor shall defend the owner in any action or administrative proceeding commenced pursuant to this Act. The contractor shall indemnify, protect, and save harmless the owner, its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages, of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The contractor shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the owner's grievance procedure, the contractor agrees to abide by any decisions of the owner which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the owner, or if the owner incurs any expense to cure a violation of the ADA which has been brought pursuant to its grievance procedure, the contractor shall satisfy and discharge the same at its own expense.

The owner shall, as soon as practicable after a claim has been made against it, give written notice thereof to the contractor along with full and complete particulars of the claim. If any action or administrative proceeding is brought against the owner or any of its agents, servants, and employees, the owner shall expeditiously forward or have forwarded to the

contractor every demand, complaint, notice, summons, pleading, or other process received by the owner or its representatives.

It is expressly agreed and understood that any approval by the owner of the services provided by the contractor pursuant to this contract will not relieve the contractor of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless the owner pursuant to this paragraph.

It is further agreed and understood that the owner assumes no obligation to indemnify or save harmless the contractor, its agents, servants, employees and subcontractors for any claim which may arise out of their performance of this Agreement. Furthermore, the contractor expressly understands and agrees that the provision of this indemnification clause shall in no way limit the contractor's obligations assumed in this Agreement, nor shall they be construed to relieve the contractor from any liability, nor preclude the owner from taking any other actions available to it under any other provisions of the Agreement or otherwise at law."

- (e) A contract clause or clauses mandating compliance with the Copeland "Anti-Kickback" Act, 18 U.S.C. 874, as supplemented by Department of Labor regulations (29 C.F.R. Part 5);
- (f) A contract clause or clauses mandating compliance with the Davis-Bacon Act, 40 U.S.C. 276a to 276a-7, as supplemented by Department of Labor regulations (29 C.F.R. Part 5);
- (g) A contract clause or clauses mandating compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 327-330, as supplemented by Department of Labor regulations (29 C.F.R. Part 5);
- (h) A contract clause or clauses providing for notice of awarding agency requirements and regulations pertaining to reporting;
- (i) A contract clause or clauses providing for notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract;
- (j) A contract clause or clauses providing for notice of awarding agency requirements and regulations pertaining to copyrights and rights in data;
- (k) A contract clause or clauses providing for access by the HACL, Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are or may be pertinent to the contract, for the purpose of making audits, examinations, excerpts and transcriptions;
- (l) A contract clause or clauses mandating retention of all required records for three (3) years after the HACL makes final payments and all other pending matters are closed;
- (m) A contract clause or clauses mandating compliance with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act, 42 U.S.C. 1857(h), Section 508 of the Clean Water Act, 33 U.S.C. 1368, Executive Order 11738, and the Environmental Protection Agency regulations set forth in 40 C.F.R. Part 15;

- (n) A contract clause or clauses requiring compliance with mandatory standards and policies relating to energy efficiency contained in any State energy conservation plan issued in compliance with the Energy Policy and Conservation Act, Pub. L. 94-163, 89 Stat. 871.
- (o) A contract clause or clauses, mandated pursuant to N.J.S.A. 10:5-36 et. seq. and N.J.A.C. 17:27, for the contractor's compliance with Equal Employment Opportunity requirements regarding Affirmative Action. The language is as follows:

- 1) For a contract involving goods, professional services and general services:

“During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Except with respect to affectional or sexual orientation, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. The contractor or subcontractor, where applicable will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

In conforming with the applicable employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval

Certificate of Employee Information Report
Employee Information Report Form AA-302

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Contract Compliance & EEO as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Contract Compliance & EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C. 17:27”

2) For a construction contract:

During the performance of this contract, the Contractor agrees as follows:

“The Contractor or Subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The Contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The Contractor or Subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation.

The Contractor or Subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the Contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Contractor or Subcontractor where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the Contractor or Subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the applicable employment goal prescribed by N.J.A.C. 17:27-7.3; provided, however, that the Affirmative Action

Office may, in its discretion, exempt a Contractor or Subcontractor from compliance with the good faith procedures prescribed by the following provisions A, B and C, as long as the Affirmative Action Office is satisfied that the Contractor or Subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Affirmative Action Office, that its percentage of active “card carrying” members who are minority and female workers is equal to or greater than the applicable employment goal established in accordance with N.J.A.C. 17:27-7.3, promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time.

The Contractor or Subcontractor agrees that a good faith effort shall include compliance with the following procedures:

(1) If the Contractor or Subcontractor has a referral agreement or arrangement with a union for a construction trade, the Contractor or Subcontractor shall, within three (3) business days of the contract award, seek assurances from the union that it will cooperate with the Contractor or Subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the Contractor or Subcontractor is unable to obtain said assurances from the construction trade union at least five (5) business days prior to the commencement of construction work, the Contractor or Subcontractor agrees to attempt to hire or schedule minority and female workers directly, consistent with the applicable employment goal. If the Contractor's or Subcontractor's prior experience with a Construction Trade Union, regardless of whether the Union has provided said assurances, indicates a significant possibility that the Trade Union will not refer sufficient minority and female workers consistent with the applicable employment goal, the Contractor or Subcontractor agrees to be prepared to hire or schedule minority and female workers directly consistent with the applicable employment goal by complying with the hiring or scheduling procedures prescribed under (2) below; and the Contractor or Subcontractor further agrees to take said action immediately if it determines or is so notified by the Affirmative Action Office that the Union is not referring minority and female workers consistent with the applicable employment goal.

(2) If the hiring or scheduling of a workforce consistent with the employment goal has not or cannot be achieved for each construction trade by adhering to the procedures of (1) above or if the Contractor or Subcontractor does not have a referral agreement or arrangement with a union for a construction trade, the Contractor or Subcontractor agrees to take the following actions consistent with the applicable County employment goals:

- a. To notify the Public Agency Compliance Officer, the Affirmative Action Office, and at least one minority referral organization of its manpower needs, and request referral of minority and female workers;
- b. To notify any minority and female workers who have been listed with it as awaiting available vacancies;
- c. Prior to commencement of work, to request the local construction trade union, if the Contractor or Subcontractor has a referral agreement or arrangement with

a union for the construction trade, to refer minority and female workers to fill job openings;

- d. To leave standing requests for additional referral to minority and female workers with the local construction trade union, if the Contractor or Subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area until such time as the workforce is consistent with the employment goal;
- e. If it is necessary to lay off some of the workers in a given trade on the construction site, to assure consistent with the applicable State and Federal statutes and court decisions, that sufficient minority and female employees remain on the site consistent with the employment goal; and to employ any minority and female workers so laid off by the contractor on any other construction site on which its workforce composition is not consistent with an employment goal established pursuant to rules implementing N.J.S.A. 10:5-31 et. seq.;
- f. To adhere to the following procedure when minority workers apply or are referred to the Contractor or Subcontractor:
 - i. If said individuals have never previously received any document or certification signifying a level of qualification lower than that required, the Contractor or Subcontractor shall determine the qualifications of such individuals and if the Contractor's or Subcontractor's workforce in each construction trade is not consistent with the applicable employment goal, it shall hire or schedule such persons which satisfy appropriate qualification standards; provided, however, that a Contractor or Subcontractor shall determine that the individual at least possesses the skills and experience recognized by any worker skills and experience classifications determination which may have been made by a Public Agency Compliance Officer, union, apprentice program or a referral agency, provided the referral agency is acceptable to the Affirmative Action Office and provided further, that, if necessary, the Contractor or Subcontractor shall hire minority and female workers who qualify as trainees pursuant to these rules. All of these requirements, however, are limited by the provisions of (3) below.
 - ii. If the Contractor's or Subcontractor's workforce is consistent with the applicable employment goal, the name of said female or minority group individual shall be maintained on a waiting list for the first consideration in the event the Contractor's or Subcontractor's workforce is no longer consistent with the applicable employment goal.
 - iii. If, for any reason, said Contractor or Subcontractor determines that a minority individual or a female is not qualified or if the individual qualifies as an advanced trainee or apprentice, the Contractor or Subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the Public Agency Compliance Officer and to the Affirmative Action Office.

- g. To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, be kept on forms made available by the Affirmative Action Office and submitted promptly to that Office upon request.

(3) The Contractor or Subcontractor agrees that nothing contained in (2) above shall preclude the Contractor or Subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement; provided, however, that where the practices of a union or apprenticeship program will result in the exclusion of minorities and females or the failure to refer minorities and females consistent with the county employment goal, the Contractor or Subcontractor shall consider for employment persons referred pursuant to (2) above without regard to such agreement or arrangement; provided further, however, that the Contractor or Subcontractor shall not be required to employ female and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the Contractor or Subcontractor agrees that, in implementing the procedures of (2) above it shall, where applicable, employ minority and female workers residing within the geographical jurisdiction of the union.

(4) The Contractor agrees to complete an Initial Project Workforce Report on forms provided by the Affirmative Action Office and submit a copy of said form not later than three (3) days after signing a construction contract; You are hereby put on notice that: If the successful Contractor does not submit the report within three (3) days, the Corporation shall declare the Contractor non-responsive and award the contract to the next lowest responsible bidder. To avoid this consequence, kindly submit the initial project workforce report at the time the signed contract is returned to the Corporation; provided, however, that the public agency may extend in a particular case the allowable time for submitting the form to no more than fourteen (14) days. Further, you are required to submit a copy of the Monthly Project Workforce Report once a month (by the seventh work day of each month) thereafter for the duration of this contract to the Affirmative Action Office and to the Public Agency Compliance Officer. The Contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and off-the-job programs for outreach and training of minority and female trainees employed on the construction projects.

(5) The Contractor and its Subcontractors shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the Office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the affirmative action office for conduction a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).”

2. CONDITIONS TO CONSTRUCTION CONTRACTS

Every construction contract of whatsoever nature awarded by the HACL may include in its terms, as part of the contract documents, (1) the then-current “General Conditions of the Contract for Construction-Public Housing Program” (HUD-5370); and (2) Special and Technical Conditions and Specifications drafted by the HACL for particular contracts, which shall be included at the discretion of the HACL. The above conditions and specifications shall, where they are included, be no less restrictive than the above-cited HUD General Conditions.

In addition, pursuant to N.J.S.A. 40A:11-16.7, all construction contracts shall now include the changed conditions contract provisions set forth in this section, which provisions shall be deemed to be a part of any such contract even if not expressly incorporated therein, and which provisions may not be modified in any manner by the contracting unit.

3. PERIODIC PAYMENTS TO CONTRACTOR FOR WORK

Any contract, the total price of which exceeds \$100,000.00, entered into by a contracting unit involving the construction, reconstruction, alteration, repair or maintenance of any building, structure, facility or other improvement to real property, shall provide for partial payments to be made at least once each month as the work progresses. N.J.S.A. 40A:11-16.2.

4. PERIODIC PAYMENTS TO CONTRACTOR FOR MATERIALS

Any contract, the total price of which exceeds \$100,000.00, entered into by a contracting unit involving the construction, reconstruction, alteration, repair or maintenance of any building, structure, facility or other improvement to real property (pursuant to N.J.S.A. 40A:11-16.2), may also provide for partial payments, at least once each month, with respect to all materials placed along or upon the site, or stored at secured locations, which are suitable for use in the execution of the contract, of the persons providing the materials furnished releases of liens for the materials at the time each estimate of work is submitted for payment. The total of all partial payments shall not exceed the cost of the materials. N.J.S.A. 40A:11-16.4.

5. CONTRACTS FOR DISPOSAL OF SOLID WASTE

In accordance with N.J.S.A. 40A:11-16.5, any contract for the removal/disposal of solid waste may be re-negotiated by the contractor as a matter of right, to reflect any increase in solid waste disposal costs whenever:

- (a) the increase occurred as the result of compliance with an order issued by the New Jersey Department of Environmental Protection in conjunction with the Board of Public Utilities, directing that solid waste be disposed at a solid waste facility other than the one previously utilized by the contractor; or
- (b) the increase in solid waste disposal costs occurred as a result of lawful increases in the rates, fees or charges imposed on the disposal of solid waste at the solid waste facility utilized by the person (or entity) to whom/which the contract has been awarded.

6. NUMBER OF WORKING DAYS/LIQUIDATED DAMAGES/ATTORNEYS' FEES

The contract specifications shall specify the number of working days allotted for the completion of the contract work and/or a proposed contract completion date, and shall provide for a deduction from the contract price for any wages paid by the HACL to its inspection employees necessarily required to be employed on the work for any working days in excess of the number allowed in the specifications for contract completion.

Every HACL contract shall include a liquidated damages clause that will spring into operation immediately upon the default of the other contracting party for the violation of or failure to perform any of the terms and conditions thereof or the terms and conditions of N.J.S.A. 40A:11-1. However, a contract shall not limit a contractor's remedy for the contracting unit's negligence, bad faith, active interference, tortious conduct or other reasons un contemplated by the parties, that delay the contractor's performance, to giving the contractor an extension of time for performance under the contract. N.J.S.A. 40A:11-19.

In the event of default and subsequent termination for cause of any contractor by the HACL, the contractor shall be liable for all reasonable attorneys' fees incurred by the HACL: (1) in the course of undertaking any action at equity or at law against the contractor related to the failure of the contractor to perform; or (2) in the course of engineering a transition to a replacement contractor for completion of the work. Each and every contract and RFP/bid specification package issued by the HACL shall include an attorneys' fees clause of the above-described character.

7. AMERICAN GOODS/BUY AMERICAN

The contract specifications shall provide that for any work performed at the HACL, best efforts shall be made to use only manufactured and farm products of the United States, wherever possible. N.J.S.A. 40A:11-18.

8. PRE-BID CONFERENCES FOR CONSTRUCTION CONTRACTS

The QPA or his/her designee shall, when appropriate, and at his or her discretion, schedule a pre-bid conference (prior to the scheduled bid opening) with HACL staff to acquaint prospective bidders with the details, pertinent administrative and technical requirements and specifications of the contract. Written minutes of the conference shall be kept by the QPA or his/her designee. The QPA or his/her designee may, where appropriate and at his/her discretion, combine a Pre-Bid Conference with a visit to the site of the proposed construction project.

9. TIME FOR AWARD OF CONTRACTS

The HACL shall award the contract or reject all bids within such time as may be specified in the invitation to bid, but in no case more than sixty (60) days after the close of bidding, except that the bids of any bidders who consent may, at the request of the HACL, be held for consideration for such longer period as may be agreed. All bid security, except the security of the three apparent lowest responsible bidders, shall be returned, unless otherwise requested by the bidder, within ten (10) business days after opening of the bids, and the bids of such bidders shall be considered withdrawn. Within three (3) business days after the award and signing of the contract/the approval

of the performance bond of the contractor, the bid security of the remaining bidders shall be returned. N.J.S.A. 40A:11-24(a).

If for any reason the contract is not awarded and any bidders have paid for or paid a deposit for the plans and specifications for the contract to the HACL, then that payment or deposit shall immediately be returned to such bidders when the plans and specifications are returned, in a reasonable condition, within ninety (90) days of notice by the HACL that the contract has not been awarded. N.J.S.A. 40A:11-24(b).

10. NOTICE TO PROCEED

The award of a contract by the HACL is not the equivalent of a Notice to Proceed with the work called for by the contract. The contract shall specify its term, duration and commencement date. The HACL will issue a Notice to Proceed to the contractor upon completion of all contract award preconditions and requirements by the successful bidder, and within the commencement date specified in the contract. The contractor may make a written request to the HACL for the issuance of a Proceed Notice on the date fixed for commencement of work by the terms of the contract. In the event such a written request is made the HACL shall, within seven (7) business days of its receipt thereof, issue a Notice to Proceed, as appropriate.

E. CONTRACT ADMINISTRATION

A contract administration system, designed to ensure that contractors fully perform their contracts, is maintained by the HACL. The contract administration system generally parallels the procedures set forth in HUD Handbook 7460.8 REV 2. The operational procedures set forth therein contain guidelines for the inspection of supplies, services or construction, as well as for the monitoring of contractor performance, status reporting on construction contracts, and other similar matters.

For cost reimbursement contracts with commercial firms, costs are allowable only to the extent that they are consistent with Federal cost principles (2 C.F.R. 200.400 – 200.475).

F. CHANGE ORDERS, PURCHASE ORDERS AND MINOR FIELD (SITE) MODIFICATIONS

It is the policy of the HACL to amend public contracts, when necessary, by implementing (1) a change order, (2) a purchase order, or (3) a minor field (site) modification, as appropriate in the circumstances.

1. MINOR FIELD (SITE) MODIFICATIONS

Minor field (site) modifications are utilized to affect all amendments to HACL contracts (a) that do not affect the overall scope of the work, and (b) which only result in minor price increases to the originally-awarded contract price. Minor field (site) modifications to the contract are instituted directly by HACL officers, upon a showing of proper facts supporting the modification, without adoption of a prior supporting Resolution by the Board.

2. PURCHASE ORDERS

A purchase order may be used in lieu of a change order by the HACL, at its sole discretion, where the underlying contract is an open-end contract: i.e., where goods were solicited by the HACL on a “unit basis” rather than on the basis of a request for a precise quantity of such goods, because the exact quantities needed were not known at the time bids for the contract were sought by the HACL.

3. CHANGE ORDERS

Change orders are utilized by the HACL when the underlying contract requiring amendment calls for the provision of either (a) a specific number of items, or (b) carefully defined services provided over a specified timeframe. Change orders are implemented where the amendment to the contract is sufficiently substantial in nature so as not to qualify as a “minor field (site) modification.”

Parties contracting with the HACL may prepare an application for a change order, or the HACL may at its discretion document internally the facts that support the institution of the change order. In each such case, the Board will review the matter to determine that facts exist that support the implementation of a change order. Thereafter, the Board will, if it determines the change order to be necessary and appropriate, adopt a Resolution authorizing a written amendment to the contract. No proposed change order shall be deemed effective prior to the adoption of a supporting Resolution by the Board. No work may be performed pursuant to a change order before adoption of such a Resolution.

All change orders shall be in writing, and shall be numbered consecutively and attached to the original purchase order or contract for each project.

The HACL reserves the right to make change orders that reduce the overall contract price through its own locally established procedures, to be determined by the QPA or his/her designee, with the sole proviso that all change orders increasing cost on the same contract shall include reference to such reductions.

If unit prices were not included in the original specifications for the contract, change orders shall not be issued.

Change orders for professional service contracts shall be in accordance with a schedule of specific charges or rates contained in the contract, which services shall be within the scope of the original professional services contract. Professional services that are beyond the scope of the original contract shall not be provided in the absence of an amendatory contract previously approved by the Board; in such circumstances a change order will not be utilized.

Before authorizing any change orders, the Board will ensure that the QPA has first determined that funds are available for the change order, and that the availability of said funds is certified to in writing by a duly empowered HACL officer.

It is the policy of the HACL to implement change orders only where the changes to the contract being requested could not reasonably have been foreseen in advance. In all other cases, applications for change orders will be denied.

Change orders that represent, either singly or cumulatively, more than twenty percent (20%) of the total value of the underlying contract are strongly disfavored by the HAACL, unless the contract is either (a) a contract for professional or consulting services, or (b) an emergency contract awarded in order to protect against an imminent threat to the health, safety and welfare of the tenants of the HAACL and the general public. In the event that the Board should determine that a change order exceeding the 20% limitation, and which is not covered by the excepted categories in (a) and (b) immediately above, is necessary and appropriate, the Board will follow the procedures outlined in N.J.A.C. 5:30-11.9 before proceeding to adopt a Resolution implementing that change order. If the Board determines that the change order exceeding the 20% limitation is not justifiable, a new contract shall be executed.

VI. BID SPECIFICATIONS AND RELATED REQUIREMENTS

A. GENERAL

All bid specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition. Bid specifications shall be reviewed by HACL officers prior to solicitation of bids to ensure that they are not unduly restrictive and do not contain unnecessary or duplicative items. Detailed product specifications shall be avoided whenever possible. For equipment purchases, a lease versus purchase analysis shall be performed by the QPA or his/her designee in order to determine the most economical form of procurement.

The HACL may adopt a standard form or statement or questionnaire for bidders on contracts at the HACL, and may require any person proposing to bid upon any such contract to furnish answers to the statement or questionnaire (1) showing the bidder's financial ability and experience specifically in the area of public sector work, and (2) describing in detail the precise equipment available to the bidder for performance of the contract. If not satisfied with the sufficiency of the answers to the statement or questionnaire provided by the bidder the HACL may, in its sole discretion, refuse to furnish plans and specifications to the bidder.

B. LIMITATIONS

The Local Public Contracts Law, N.J.S.A. 40A:11-1 et. seq., encourages free, open and competitive bidding.

Bid specifications shall not require any standard, restriction, condition or limitation not directly related to the purpose, function or activity for which the contract is awarded. N.J.S.A. 40A:11-13(a).

Bid specifications shall generally not require that any bidder be a resident of, or that the bidder's place of business be located in, the county or municipality in which the contract will be awarded or performed, unless such proximity is necessary for the efficient and economical performance of the contract. Contracts for collection and disposal of municipal solid waste shall not, however, contain a residency requirement. N.J.S.A. 40A:11-13(b).

Bid specifications shall not, under any circumstances, discriminate on the basis of race, religion, sex, national origin, creed, color, ancestry, age, marital status, affectional or sexual orientation, familial status, liability for service in the Armed Forces of the United States, or nationality. N.J.S.A. 40A:11-13(c).

Bid specifications shall not fail to disclose any matter necessary to substantial performance of the contract, nor fail to include any option for renewal, extension, or release which the HACL may intend to exercise or require. N.J.S.A. 40A:11-13(e).

Bid specifications shall not be drafted so as to exclude any prospective bidders by reason of the impossibility of performance, bidding or qualification. N.J.S.A. 40A:11-13.

Bidders may, at the sole discretion of the HACL, be required to submit a certificate showing clearly that the bidder owns, leases or controls all the necessary equipment required by the plans,

specifications and advertisements under which bids are solicited. If the bidder is not the actual owner or lessee of any such equipment, that bidder's certificate shall state the source from which the equipment shall be obtained, and shall be accompanied by a certificate from the owner or person in control of the equipment affirmatively granting the bidder control of the equipment for such time as is necessary for completion of the contract or relevant portion of the contract.

The following specification limitations shall be avoided: 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), and unnecessary bonding or experience requirements. Nothing in this Procurement Policy shall be construed as purporting to preempt any State licensing laws that may now or hereafter be in effect. Specifications shall be scrutinized to ensure that organizational conflicts of interest do not occur.

C. “BRAND NAME OR EQUAL” LIMITATIONS

Specifications requiring provision of a “brand name” product instead of allowing provision of a “brand name or equivalent” product are prohibited unless the product is proprietary, in which case the product may be purchased by stipulating the proprietary goods or services in the bid specification in any case in which the resolution authorizing the contract so indicates, and the special need for such proprietary goods or services is directly related to the performance, completion or undertaking of the purpose for which the contract is awarded. N.J.S.A. 40A:11-13(d); N.J.A.C. 5:34-9.2.

A clear and accurate description of the technical requirements for the goods and/or services to be procured shall be utilized, but such description shall not contain detailed product specifications or features which unduly restrict competition. The description may include a statement of the qualitative nature of the goods and/or services, and shall in any such statement set forth those minimum essential characteristics and standards to which the goods and/or services must conform in order to satisfy its intended use.

When it is impractical or uneconomical to make a clear and accurate description of the product requirements, a “brand name or equivalent” description may be used as a means to define the required product type. The specific features of the named brand, and other salient requirements and factors which must be met by all bidders, shall be clearly stated. N.J.A.C. 5:34-9.2.

D. STATEMENT OF OWNERSHIP OF CORPORATIONS OR PARTNERSHIPS

All specifications shall require that prior to receipt of the bid or accompanying the bid or proposal of a corporation or partnership each prospective bidder shall submit a “Statement of Ownership” setting forth the names and addresses of all stockholders in the corporation or partnership who own ten percent (10%) or more of its stock of any class, or of all individual partners in the partnership who own a ten percent (10%) or greater interest therein, as the case may be. If one or more stockholders or partners are themselves corporations or partnerships, the stockholders holding a ten percent (10%) or more of that corporation's stock, or the individual partners owning ten percent (10%) or greater interest in that partnership, as the case may be, shall also be listed. Names and addresses of every corporate stockholder and individual partner exceeding the ten percent (10%) ownership criteria established herein shall be listed in the statement of ownership. N.J.S.A. 40A:11-23.2; N.J.S.A. 40A:11-4.4.

VII. APPEALS AND REMEDIES

A. GENERAL

All contracts involving construction, or which are related to construction and concern architecture, engineering or construction management, shall provide that disputes arising under the contract shall be submitted to mediation, pursuant to industry standards, prior to being submitted to a court for adjudication. The above dispute resolution practice shall not apply to disputes concerning bid solicitation or the contract award process, or to the formation of contracts. N.J.S.A. 40A:11-50.

Whenever a contract dispute involving or relating to construction, as described above, concerns more than one contract, then in the context of that dispute all other interested parties shall be joined, upon the demand of a contracting party, unless the arbitrator appointed to resolve the dispute determines that such joinder is inappropriate. N.J.S.A. 40A:11-50.

Notwithstanding the foregoing, the HACL may, in its sole discretion, apply to any court of competent jurisdiction for injunctive or declaratory relief in connection with any dispute arising under any construction contract, or other construction-related contract as described above, at any time. N.J.S.A. 40A:11-50.

B. BID PROTESTS

Any prospective bidder seeking to challenge a bid specification must file such challenge in writing with the HACL no less than three (3) business days prior to the opening of the bids. Challenges filed after that time shall be regarded as void, and shall have no impact on the HACL or the ultimate award of the contract. The QPA or his/her designee may, at his/her discretion, suspend the procurement pending resolution of the protest, if warranted by the facts presented.

C. CONTRACT CLAIMS

All claims by a contractor or vendor relating to performance of a contract shall be submitted in writing to the QPA or his/her designee for a written decision. The contractor may request a conference on the claim. The written decision shall inform the contractor of its right to appeal to the Board.

VIII. ASSISTANCE TO SMALL AND OTHER BUSINESSES

A. REQUIRED EFFORTS

Consistent with Presidential Executive Orders 11625, 12138 and 12432, and Section 3 of the HUD Act of 1968, the HACL shall make efforts to the greatest extent feasible to ensure that small and minority-owned businesses, women-owned businesses, veteran-owned businesses, labor surplus area businesses, and individuals or firms located in or owned in substantial part by persons residing in the area of a HACL project are used when possible. Such efforts shall include, but 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 encourages 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, as set forth in 24 C.F.R. 135.
- g) Requiring prime contractors, when subcontracting is anticipated, to undertake the efforts listed in A-1(a) through A-1(f) above.

Goals may be established periodically by the HACL for participation in the HACL's prime contracts and subcontracting opportunities by small businesses, minority-owned businesses, women-owned businesses, veteran-owned businesses, 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.

B. 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 of 13 C.F.R. 121 shall be used, unless the HACL determines that their use is inappropriate.
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. Minority group members include, but not are limited to, Black Americans,

Hispanic Americans, Native Americans, Asian Pacific American, Asian Indian Americans, and Hasidic Jewish Americans.

3. A women-owned business is defined as a business which is at least 51% owned by a woman or women who are U.S. citizens and who also control and operate the business.
4. A veteran-owned business is defined as a business which is at least 51% owned by a United States military veteran or veterans who control and operate the business.
5. 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 C.F.R. 654 Subpart A and in lists of labor surplus areas published by the Employment and Training Administration.
6. 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 C.F.R. 135, 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 with 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 meets the definition of small business set forth above.

IX. ETHICS IN PUBLIC CONTRACTING

No employee, officer or agent of the HACL 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.

The HACL shall comply with the following provision and include it in all contracts and subcontracts:

No member, officer or employee of the HACL, no member of the governing body of the locality in which the HACL or its project is situated, and no other public official of such locality who exercises any functions or responsibilities with respect to the Project, during his tenure or for one (1) year thereafter, shall have any interest, direct or indirect in a contract with the HACL, or the proceeds thereof.

A. COMPLIANCE WITH FEDERAL REQUIREMENTS

The HACL shall comply with all provisions of the HUD Annual Contributions Contract, which severely restricts the interest of members, officers, or employees of the HACL in any project of the HACL.

B. COMPLIANCE WITH STATE LAWS

HACL Commissioners, officers, and employees of the HACL shall at all times conduct themselves in accordance with the Local Government Ethics Law, N.J.S.A. 40A:9-22.1, et seq., including requirements of N.J.S.A. 40A:9-22.5, and shall deal impartially with all parties, individuals, corporations, or institutions seeking to provide goods or services to or otherwise participate in procurement activities at the HACL.

The HACL and all parties interested in contracting with the HACL must comply with the Truth in Contracting Laws, N.J.S.A. 2C:21-34.

C. GRATUITIES, KICKBACKS, AND USE OF CONFIDENTIAL INFORMATION

HACL Commissioners, officers, employees, and 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.

D. PROHIBITION AGAINST CONTINGENT FEES

Contractors shall not retain a person to solicit or secure a HACL contract for a commission, percentage, brokerage, or contingent fee, except for bona fide employees or bona fide established commercial selling agents.

X. DISPOSITION POLICY

Pursuant to N.J.S.A. 40A:11-36, the HACL reserves the right to authorize, by Resolution of the Board, the disposition by sale of its personal property (i.e., all property excluding real property) not needed for public use, as follows:

1. If the estimated fair value of the property to be sold exceeds fifteen percent (15%) of the bid threshold in any one sale, and it is neither livestock nor perishable goods, it shall be sold at public sale to the highest bidder.
2. The HACL may, but need not, advertise for bids when it makes any such sale to the United States, the State of New Jersey, another contracting unit (as that term is defined by N.J.S.A. 40A:11-2(1)), any body politic to which it contributes tax-raised funds, any foreign nation which has diplomatic relations with the United States, or any governmental unit in the United States.
3. Notice of the date, time and place of any public sale of personal property as described in this section, together with a description of the items to be sold and the conditions of sale, shall be published in an official newspaper. Such sale shall be held not less than seven (7) nor more than fourteen (14) days after the latest publication of the notice thereof.
4. If no bids are received at such sale, the property may then be sold at private sale without further publication or notice thereof, or the HACL may elect in its sole discretion to re-offer the personal property at a second, subsequent public sale. In no event shall the personal property be sold for less than its "estimated fair value," i.e., the market value of the property between a willing seller and a willing buyer, less the cost of storage or maintenance of the personal property to the HACL.
5. With respect to the disposition of personal property by public sale, the HACL may reject all bids if the HACL determines, in the exercise of its discretion, that the rejection of all bids is in the public interest. If the HACL elects to reject all bids at a second public sale it may then sell such personal property, without further publication or notice thereof, at a private sale, provided that (a) in no event shall the negotiated price at said private sale be less than the highest price of any bid rejected at the preceding two attempted public sales, and (b) in no event shall the terms or conditions of sale be changed or amended.
6. Notwithstanding any of the foregoing the HACL may, by Resolution of the Board, include the sale of personal property no longer needed for public use as part of specifications to offset the price of a new purchase.

XI. PAY TO PLAY POLICY

Any purchase, contract or agreement pursuant to this Procurement Policy which amounts to more than the total aggregate sum of Seventeen Thousand Five-Hundred Dollars (\$17,500.00) is subject to N.J.S.A. 19:44A-20.4 et. seq., better known as the “Pay to Play” laws.

In accordance with such, the HACL is prohibited from awarding such a contract (above \$17,500.00) to any business entity that has made reportable contributions (more than \$300.00 per year) within the last year to either: (a) any municipal committee of a political party whose party member was serving as a member of the governing body of the county or municipality at the time the contract was awarded or (b) any candidate committee of a person serving in an elected position in the particular county or municipality if *the contract was not awarded pursuant to a “fair and open” process.*

This provision does not apply to the following:

- Any contract less than or equal to a yearly aggregate of \$17,500.00;
- Any “emergency” contract pursuant to the requirements of such as previously described herein³ ;
- Any contract in excess of \$17,500.00 that was awarded pursuant to a “fair and open” process.

A. FAIR AND OPEN PROCESS

Pursuant to N.J.S.A. 19:44-20.7, a “fair and open” process is one where, at the minimum, (a) the contract was publicly advertised in a newspaper or website maintained by the public entity with sufficient time (10 days or more) in advance of the awarding of the contract; (b) process that allows for public solicitation of proposals or qualifications; (c) awarded and disclosed under previously established criteria (set in writing) prior to the solicitation; and (d) publicly opened and announced when awarded.

To be a “fair and open process” a contract must be awarded by a formal Resolution of the governing body. Any contract that meets the requirements of a “fair and open process” will not be subject to the disclosure requirements of this provision and the contractor’s reportable contributions need not be disclosed.

Both a public bid and a request for proposals (RFP) are “fair and open” and therefore not subject to the disclosure requirements of this provision.

B. NON-FAIR AND OPEN PROCESS

In the case of any contract, in excess of \$17,500.00, which has not been awarded by way of a “fair and open” process as described above, the following shall be provided or else the public agency cannot award the contract:

³ Within thirty (30) days, the HACL is required to file an Emergency Procurement Report detailing the emergency with the Director of the Division of Local Government Services. N.J.S.A. 40A:11-6(c).

- (1) The governing body shall made a written determination that the contract is anticipated to be over the \$17,500.00 threshold.
- (2) The business entity (contractor, vendor, etc.) shall file a disclosure with the public agency certifying that it has not made a reportable contribution to any municipal or candidate committees of elected/appointed individuals serving on the governing body of the municipality or county during the one-year period prior to the awarding of the contract.

A separate disclosure must be made for each possible public entity that is involved. Therefore, since the HACL is made up of five (5) appointees by the municipality, one (1) by the mayor, and one (1) by the governor of the State of New Jersey, three (3) separate certifications must be provided as to potential reportable contributions to the municipality, to the Mayor, and finally to the Governor, along with any and all contributions to their respective political committees. Any reportable contribution made will make them ineligible for the contract unless, the contribution was returned within sixty (60) days of the date when the original contribution was made.

- (3) The governing body shall include language in the contract clearly indicating that no reportable contributions to the persons/groups so indicated can be made throughout the term of the contract, however short or long that may be. Should one be made, the governing body shall declare the contract void and will not be liable for any monies due under the terms of the contract.

Any contract awarded under this provision shall be done by Resolution of the Board clearly indicating that the contract is being awarded pursuant to a non-fair and open process and that the requirements as indicated above have been met.

Due to the requirements under this section, it is highly recommended that the HACL attempt, wherever possible, to award all contract above \$17,500.00 pursuant to a fair and open process. Further, all contracts awarded above the \$17,500.00 threshold shall be done by Resolution of the Board regardless of procurement method chosen for the contract.