

HOUSING AUTHORITY OF THE CITY OF SEDRO-WOOLLEY



HYBRID MEETING OF THE BOARD OF COMMISSIONERS

Thursday, January 11, 2024 @ 3:00pm

Board Meeting:

**[https://kcha-
org.zoom.us/j/87317905217?pwd=bXuUaKiOlum7vG5xPfVaGir
6uFSF8j.1](https://kcha-org.zoom.us/j/87317905217?pwd=bXuUaKiOlum7vG5xPfVaGir6uFSF8j.1)**

Meeting ID: 873 1790 5217

Passcode: 082720

Phone: 253 215 8782

Hillsview Apartments
830 Township St
Sedro-Woolley, WA 98284

HOUSING AUTHORITY OF THE CITY OF SEDRO-WOOLLEY



SPECIAL HYBRID MEETING OF THE BOARD OF COMMISSIONERS AGENDA

Thursday, January 11, 2024 – 3:00pm

Hillsview Apartments – 830 Township Street, Sedro-Woolley, WA 98284
Zoom

-
- I. Call to Order**
 - II. Roll Call**
 - III. Public Comment**
 - IV. Action Items for Discussion & Approval**
 - A. Resolution No. 490** – Approval of the SWHA Procurement Policy **1**
 - V. Executive Session**
 - A. To discuss litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency.
(RCW 42.30.110 (2)(a)(iii))
 - VI. Adjournment**

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SEDRO-WOOLLEY HOUSING AUTHORITY

Date: January 11, 2024
To: Board of Commissioners
From: Saeed Hajarizadeh, EVP Administrative Services

Subject: Resolution No. 490: Approve Procurement Policy

US Department of Housing and Urban Development (HUD) recently conducted a monitoring review of Sedro-Woolley Housing Authority (SWHA) in April 2023. Even though King County Housing Authority (KCHA), as the managing agent for your properties, used its procurement policy in day to day business practices of SWHA, HUD required a separate policy adopted by your Board.

Therefore, staff worked with counsel and developed the attached policy which is similar that of KCHA with updated changes recommended by HUD and Counsel, and will be utilized to procure goods and Services for SWHA.

Action: Adopt Resolution 490 to approve the SWHA Procurement Policy

SEDRO WOOLLEY HOUSING AUTHORITY (SWHA)

PROCUREMENT POLICY

APPROVED BY RESOLUTION 490

January 11, 2024

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A. GENERAL OVERVIEW AND GUIDELINES

1. PURPOSE

This Procurement Policy of the Sedro Woolley Housing Authority (SWHA) is established to provide operating guidelines and methods of procuring goods and/or services in accordance with the Mission of the Authority.

This Policy will provide for the fair, equitable, impartial, and unbiased treatment of all persons and business entities involved in procurement related activities with SWHA.

It is the intent of this Policy to assure the quality of goods, services and performance of contracts in the most efficient and cost effective manner possible.

This Policy will support competitive procurement, and will provide safeguards for sustaining the integrity, responsibility and management practices in all procurement matters.

All procurement actions will fully comply with all applicable Federal standards, state and local laws and HUD regulations. SWHA has self-certified that SWHA's procurement system meets the standards of 2 CFR Part 200 for all fund sources where 2 CFR Part 200 applies. No other procurement policies are allowed unless expressly authorized by this Manual.

The SWHA has contracted with the King County Housing Authority (KCHA) to manage all properties and affairs of SWHA. This policy was written in cooperation with KCHA. Parts of this policy refer to specific positions and personnel of KCHA and who report to KCHA Executive Director and his/her designees. Such KCHA positions will act in the same position for SWHA and are included in the policy to support and clarify prudent controls and segregation of duties.

2. APPLICATION

This Policy applies to all procurements of goods, equipment, materials, and services, including purchases, equipment leases, routine maintenance, construction contracts, social service contracts and professional service contracts.

It applies to all SWHA owned and managed properties, SWHA owned properties managed by third party property management companies, privately owned properties and Partnership properties.

This Policy applies to every expenditure of funds, from all funding sources. Funding sources include, but are not limited to Public Housing Operating and Capital funds, HOME/CDBG, Section 8/Housing Choice Voucher Housing Assistance Payments (HAP) and Administrative Fees, any Federal, state or local funding including grants and subsidies and SWHA operating revenues and reserves. SWHA shall comply with 2 CFR

Part 200 provisions for all federal funding sources that are required to comply with 2 CFR Part 200.

This Policy will not exempt SWHA from complying with the requirements of any grant, contract, gift, or bequest that is otherwise consistent with law. This Policy allows different funding sources to use different procurement processes and procedures based on the requirements of the specific funding sources and as provided for in this Policy.

3. DELEGATION OF AUTHORITY

The Executive Director of SWHA is designated by the Board of Commissioners to act as the SWHA Contracting Officer for all procurement actions.

As Contracting Officer, the Executive Director will approve all procurement actions and execute all contractual obligation documents for SWHA.

The Executive Director may designate SWHA Department Heads as Contracting Officers, stating clearly the limitation of their procurement authority to approve procurement actions or execute contractual obligation documents.

The Executive Director ensures that all procurement actions meet the requirements of applicable laws, regulations and procedures.

The Executive Director may approve procedures and guidance for effective and efficient implementation of this Policy.

4. PUBLIC ACCESS TO THE POLICY

This Policy is a public document per RCW 42.56, the Washington Public Records Act. It is available to the public for review and/or dissemination, following the procedures of SWHA's Public Disclosure Request Policy. There is nothing in this Policy subject to redaction or withholding if a public document request for the Policy is received.

5. ETHICS AND CONFLICT OF INTEREST

In accordance with the SWHA Human Resources (HR) Policies and Procedures, no SWHA Commissioner, employee, temporary employee or volunteer will engage in any act which is in conflict with their official duties. Refer to Section 3.12 Ethics and Conflict of Interest, in the HR Policies and Procedures Manual for complete guidelines.

6. ENVIRONMENTALLY PREFERRED PROCUREMENT

To support a more sustainable Housing Authority and to minimize environmental impacts, SWHA will procure recycled content and environmentally preferred products unless such products do not perform satisfactorily and/or are unreasonably expensive. This is consistent with Resolution 5005, Commitment to Sustainable Communities Through Excellence in Environmental Stewardship, dated May 2005.

7. WOMEN AND MINORITY OWNED BUSINESSES ENTERPRISES (WMBE)

To support WMBEs, SWHA encourages qualified WMBEs to get placed on solicitation rosters (e.g. Plan Centers, Small Works Roster).

8. BUILD AMERICA, BUY AMERICA ACT

This Policy acknowledges the enactment of the Build America, Buy America Act (BABA) on November 15, 2021 which established a domestic content procurement preference for iron, steel, manufactured products, and construction material used in infrastructure projects funded with Federal Financial Assistance (FFA).

The Federal agencies (HUD, Office of Management and Budget, and other infrastructure FFA providers) responsible for implementing BABA are, at the time of approval of the Policy, developing the implementation regulations, guidance, and waivers for BABA.

SWHA and its vendors will apply the BABA implementation regulations, guidance, and waivers in effect at the time the project using FFA for infrastructure solicitation for bid or proposal is publically issued.

B. PROCUREMENT METHODS COMMON TO ALL SWHA OPERATIONS

1. REVIEW AND APPROVAL PROCESS

Procurement transactions valued under \$50,000 may be authorized by the issuing Department without further review or approval by the Administrative Services Department, with two exceptions: a) the procurement has been declared an emergency, or, b) a change order is valued at 10% or more of the cumulative contract value, regardless of the size of the change order amount. (See Sections B18 and 16, respectively, for more information regarding these two types of exceptions.) Department Heads will ensure compliance with this Policy and may delegate in writing their Department's procurement actions to qualified employees, stating the limitation of their authority.

The Administrative Services Department reserves the right to audit other Department procurements under \$50,000 to ensure compliance with this Policy.

All procurement transactions valued over \$50,000 must have review and approval by the Administrative Services Department. Such transactions include, but are not limited to, bid solicitation, contract award and execution, change orders, contract modifications and Interlocal Agreements (that involve an exchange of monies). Review and approval by Administrative Services must be documented on the Procurement Approval Request Form.

2. BUDGET AUTHORITY

Before any goods and/or services are solicited, they must be budgeted for and approved in the current calendar year's budget. If the good and/or service is not budgeted and is valued under \$50,000, approval must be obtained from the Department Head (or designee) before solicitation begins. If the good and/or service is valued over \$50,000 and unbudgeted, approval must be obtained from the Chief Administrative Officer before solicitation begins.

3. COST ESTIMATE

A cost estimate is recommended in order to compare the market value of the solicitations received to what SWHA expects to pay for goods and/or services expected. The following is recommended as applicable to the size of procurement:

- a. Price paid on the most recent contract or purchase order based on similar items.
- b. Analysis if no recent contract or purchase order item cost detail exists.
- c. Written analysis for all items within the scope of work.
- d. Breakdowns of direct costs, labor, overhead and profit.

For procurements using federal funds that are required to comply with 2 CFR Part 200, an independent cost estimate is required when:

- a. The housing authority's procurement procedures or operation fails to comply with the procurement standards in this part;
- b. The procurement is expected to exceed Small Purchases and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
- c. The procurement, which is expected to exceed Small Purchases, specifies a "brand name" product;
- d. The proposed contract is more than Small Purchases and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- e. A proposed contract modification changes the scope of a contract or increases the contract amount by more than Small Purchases.

4. VERY SMALL PURCHASES

Very Small Purchases (VSP) (also known as Micro-purchases) are defined as those that are valued under \$10,000. Only one bid or quote is required ("single source"), however, it is recommended that 2 or more are solicited to ensure that the pricing is fair and market competitive.

5. SMALL PURCHASES

Small Purchases (SP) are defined as those that are valued between 10,001 to \$250,000. Two, preferably three, bids or quotes are required when using the SP procedure. The Small Works Roster (SWR) procedures for this size of procurement may be used instead of the SP procedures. Refer to Section C7 for details about the SWR.

6. LARGE PURCHASES

Large Purchases (LP) are defined as those that are valued over \$250,000, regardless of the funding source. Two, preferably three bids or proposals are required when using the LP procedure. Public advertising must be conducted when using LP procedures. The Small Works Roster (SWR) procedures may be used instead of the LP procedures for non-federally funded projects for procurements valued up to \$300,000. (Refer to Section C7)

7. BID/SOLICITATION DOCUMENTS

Bid documents are prepared appropriate to the type of procurement. Invitation for Bid (IFB), Requests for Proposals (RFP) and Requests for Qualifications (RFQ) will differ in their specific requirements so that vendors can accurately complete the bid/solicitation. The bid documents must clearly state in layman terms all the requirements, performance expectations, results and standards expected for completing and accepting the bid.

Addenda to the bid documents must be published in writing if:

- a. Additional information is discovered and/or given that would give a competitive advantage to one or more bidders.
- b. The bid deadline is extended due to changes in the solicitation.

- c. Addenda must be sent to all bidders who have requested a bid package and be a part of the bid documents for any bidders who request the bid documents after the addenda are published.

8. PRE-BID CONFERENCES

Pre-bid conferences are recommended for projects that are complex and may not be fully understood by bidders when reviewing the bid documents. The conferences are held to review scope of work, to provide additional information and to answer questions. Pre-bid conference information (location, date, time, contact person) must be included in the bid documents.

Mandatory pre-bid conferences where non-attendance by a bidder will deem them “non-responsive” must be approved in advance by the Chief Administrative Officer with a written memorandum by the issuing Department. Waivers may be issued on a case by case basis or a broader basis at the discretion of the Chief Administrative Officer.

9. BIDDER SUBMISSIONS

When bids are required to be submitted to the SWHA Central Campus and are required to be submitted on a specific due date and time, to ensure timely submission by vendors to SWHA, the front desk receptionist should be informed by the issuing Department about the following:

- a. name of the bid;
- b. due date and time of the bid;
- c. whether a date stamp is required, and if so, where it needs to be located on the bid submission envelope.

It will not be the responsibility of the receptionist to ensure that bids are submitted in a timely manner. The issuing Department should have a representative stationed where the bids are due a few minutes before the due date and time to guide potential bidders on where to submit their bids.

For bids issued by staff at field offices, a staff member must be at the office to take and date stamp the bids when they are submitted, if there is a required due date and time required for bid submission.

Other bidder submission provisions include:

- a. No bid may be accepted after the time and date specified in the bid documents.
- b. Bids must remain sealed, unopened and secure until the designated opening time.
- c. A bidder may withdraw the bid at any time prior to the bid opening upon written request.
- d. A bidder may modify the bid at any time prior to the bid opening upon written request.

When conducting a formal Invitation for Bid (IFB), the bid must be opened in a public and formal setting, which may include an online platform. The following procedures apply to the bid opening process:

- a. The public is allowed to attend the bid opening;
- b. The bids are tabulated on a bidder list or roster;
- c. The bidder and their bid amount are announced by the witness;
- d. The bidder name and their bid amount are recorded by a recorder, who is not acting as the witness;
- e. No declaration of a winning bid is stated at the bid opening. Just state that the bids will be reviewed and SWHA will notify the selected bidder.

10. DETERMINING RESPONSIVE AND RESPONSIBLE BIDDERS

The Contracting Officer or their designee must determine if the bidder is responsive and responsible based on the following criteria:

- a. A responsive bidder is one that meets at least these basic criteria:
 - i. Submits all the required documents and forms on time;
 - ii. Completes the required documents and forms as instructed;
 - iii. The instructions for bidders should include a provision giving SWHA the discretionary authority to waive technical defects in the bid. SWHA may waive these defects, but only where the non-compliance (1) does not deprive SWHA of the assurance that the contract will be entered into and performed and (2) does not confer a competitive advantage on the bidder(s).
- b. A responsible bidder is one that meets at least these basic criteria:
 - i. Meets the basic requirements to perform the job or project;
 - ii. Has adequate financial resources to perform a contract;
 - iii. Is able to comply with the associated legal or regulatory requirements;
 - iv. Is able to deliver according to the contract schedule;
 - v. Has a history of satisfactory performance;
 - vi. Has good reputation regarding integrity and business ethics;
 - vii. Has or can obtain necessary data, equipment, and facilities;
 - viii. Is otherwise eligible and qualified to receive award if its bid is chosen; and
 - ix. Has not been suspended, debarred or otherwise determined to be ineligible for award of contracts by the Department of Housing and Urban Development (HUD) or any other agency of the U.S. Government, the State of Washington or SWHA (See Section C6 for debarment by SWHA).
- c. A bidder who was initially the apparent winner but is declared “not responsible” has an opportunity to appeal that determination.
 - i. In writing: SWHA must provide reasons in writing. The preferred method of notifying the bidder is email. Keep the date stamp information in the file. If U.S. mail is to be used, you must send via certified mail, return receipt requested.
 - ii. Bidder may appeal:
 - a) Within time specified in bid documents (recommend 2 business days).
 - b) By requesting in writing that declaration of “not responsible” be reviewed and reconsidered.

- iii. SWHA may not consider additional information that was not in the original bid documents.
 - a) If bidder is still determined “not responsible”, SWHA issues in writing the final determination.
 - b) SWHA will issue a final determination within seven business days and provide at least two full business days written notice to the bidder of its intent to either award a contract for the project, or to reject all bids and resolicit the project per this Policy.

11. PERFORMING DUE DILIGENCE

After a bidder is determined to be responsive and responsible, due diligence must be performed to ensure that SWHA can award a contract to the successful bidder. Due diligence items should include:

- a. Current with worker’s compensation with Department of Labor and Industries (L&I),
- b. Current with the Department of Employment Security,
- c. Not on debarred lists with Federal and State governments and SWHA,
- d. Current and active business State of Washington Uniform Business Identifier (UBI) and contractor license (if applicable) with L&I,
- e. Current experience modification factor with L&I,
- f. Conducting reference checks.

12. CONTRACT AWARD

Award of a contract is based on the criteria set forth in the solicitation and bid documents. Award is usually made under the following conditions:

- a. To the lowest responsible and responsive bidder, as determined by price, delivery, quantity, quality of goods or services offered, performance record, adequate financial resources, business ethics, compliance with public policy, no suspensions or debarments, bid is not unbalanced, and ability to complete the procurement.
- b. To the firm or individual that receives the highest rating from a panel of evaluators under the Request for Qualifications or Request for Proposals solicitation process.
- c. Multiple contracts for professional and general services to the same vendor may be awarded under a single solicitation as long as the following conditions are met:
 - i. The bid documents clearly state that SWHA reserves the right to award multiple contracts in lieu of change orders.
 - ii. The scope of work for the contracts is similar and does not deviate from the scope outlined in the bid documents.
 - iii. The total value of all the contracts awarded does not exceed the project’s budget or cost estimate.

For jobs or projects valued under \$50,000, contract award may be executed by the issuing Department. For contracts valued above \$50,001, the award is performed by an Executive Vice President or the President (Chief Executive Officer). Documentation needed to award at this stage of procurement includes at a minimum:

- a. Procurement Approval Request form completed and signed/dated by the Dept. Director;
- b. Award memorandum justifying the award;
- c. Copy of the winning bid or proposal;
- d. Copy of the bid tabulation or scoring sheet; and,
- e. Contract award letter on SWHA letterhead and signed by the appropriate SWHA staff, with a section on the award letter for the vendor to sign and acknowledge receipt of the award letter.

After the contract is awarded and before a contract is executed, a Certificate of Insurance (and, if applicable, payment and performance bonds) must be submitted by the winning bidder and it must contain all the required insurance provisions. (See Section B21 for details on insurance requirements). **Failure to provide proof of the adequate insurance (and/or bonds) within seven (7) days of the Notice of Award will result in forfeiture of the award.**

13. CONTRACT EXECUTION

After the award letter is received back from the vendor, and the insurance (and bond, if applicable) requirements are met, a contract is executed by both parties. Typically SWHA will sign the contract first.

Except in special circumstances, all SWHA vendors will use the SWHA contract. SWHA may sign the vendor contract when the project is very specialized and language in the vendor contract is more complete and accurate to describe the tasks necessary for the project.

Review of vendor written contracts must be performed by the Administrative Services Department before contract execution is performed by the issuing Department.

14. CONTRACT TERMS

Contracts for professional and social services shall be a “not to exceed” type both for value and term. The maximum term for these types of contracts shall be five years, with a few exceptions. (See Section G4-Long Term Agreements for details). Construction contracts shall be for the duration of the construction project.

All contracts submitted for review and approval must include a Not to Exceed (NTE) value for the contract which encompasses the total potential value of the procurement during the entire term of the contract. This value, which is generally not shared with contractors performing services, will be included in the Quarterly Procurement Report which is presented to the Board of Commissioners.

For construction type contracts the NTE is usually the bid amount. When change orders in this category are received in Administrative Services, they should include a justification of the change describing the conditions which caused it and an analysis of the cost in relation to an independent cost estimate and/or the values bid in the original bid response.

Service contract NTEs have a different formula to follow. If the contract is for a fixed period, with no opener, then the NTE is the contract value. Such a contract can only be changed via the conditions change method and then only when the procuring documents allow for term changes or have a broad enough scope definition to include additional work. Contracts which are for a more limited period, but whose terms allows for extensions should reflect an NTE which includes all extensions even **if there is a possibility that the extension language will not be triggered**. The annual value of such a contract multiplied it by the number of total years it potentially could be in effect equals the NTE. Because the terms of such contracts can be up to five years, an inflation factor may be applied.

Best practice dictates that contracts which are to be extended should not be allowed to lapse prior to the extension. No payments can be made for services performed under an expired contract.

Once an NTE is calculated, it should not change for the entire term of the contract, unless there is a conditions change that changes the scope of the services. If such a conditions change takes place, and the annual value of the contract is expected to be at a higher level through the remainder of the term, the NTE should be restated. This would be the process which would take place if a contract is let on a “pilot” basis. If the pilot is then scaled up, the new annual value of the contract is likely to be higher. During the quarter the contract is increased due to this scope change, the change order would be considered a conditions change. Thereafter, the new annual value would be used to as the basis for the revised NTE.

15. **CONTRACT ADMINISTRATION**

The issuing Department is responsible for the administration of their contracts. Contract administration at a minimum includes:

- a. Assigning a qualified employee to manage the contract;
- b. Approving timely payment to the vendor as per the contract terms;
- c. Monitoring contract expenses and remaining balance;
- d. Maintaining current certificates of insurance;
- e. Responding to and solving vendor complaints made by either the public or staff;
- f. Monitoring compliance of contract provisions;
- g. Maintaining the contract/project file in an orderly manner; and,
- h. Insuring contractors or vendors are performing within the scope of work, schedules and contract terms.

16. **CHANGE ORDERS**

Change orders should be made with great caution so as to not appear to have been created in order to avoid properly procuring the good and/or service needed. The procedures to properly execute a change order include:

- a. It is prepared and issued after the award of a contract.

- b. The Contract Documents should state that SWHA may at any time, as the need arises, make minor changes within the scope of the project (e.g. modify the drawings, designs, specifications) without invalidating the contract.
- c. Change Orders should include:
 - i. a detailed description of the proposed change in work;
 - ii. a reference to the applicable working drawings and specifications (if appl.);
 - iii. a fixed price (credit, debit, or no cost) for the change in contract work;
 - iv. estimate of any additional time, if any, required to complete the work;
 - v. the contractor's itemized breakdown of the cost of materials and labor and an itemized breakdown for any applicable subcontractors;
 - vi. the change indicated on the architectural or engineering drawings (if appl.).
- d. Change Order approval process:
 - i. By the Project Manager or Construction Coordinator for field driven change orders valued under \$5,000 (as determined and/or delegated by the Department Head).
 - ii. By the Contract Administrator (see Section B15) and Department Head for change orders under \$50,000.
 - iii. By Administrative Services for non-construction related change orders valued between \$50,000 and \$100,000.
 - iv. By the Administrative Services and Executive Departments for non-construction change orders valued over \$100,000 or for construction related change orders over \$50,000.
 - v. Change Orders 10% or more above the original contract amount, **regardless of the value of the change order**, require the approval of the Administrative Services Department and Executive Director (or assigns).
 - vi. Negative/deductive change orders may stay within the issuing Department for approval.
- e. Documentation to get change orders approved should at a minimum include:
 - i. Procurement Approval Request Form signed and dated the appropriate change order number, in a sequential series,
 - ii. Memorandum explaining the need for the change order,
 - iii. Change Order form,
 - iv. Justification for the change order from the vendor in form of a letter, pricing sheets, or other similar documents, if the vendor is requesting the change order,
 - v. Photographs (construction projects).

17. ZERO-COST CHANGE ORDER

Zero-cost change orders involve changing the contract without monies being exchanged by SWHA or the vendor. Zero-cost change order approval follows the same processes as the change order approval (refer to Section 16d above) if the change is substantial. To determine what is "substantial", contact the Procurement Analyst in Administrative Services for assistance. Use the Zero-cost change order form which includes language on

what sections of the contract are being modified and how they are modified, along with signatures by the appropriate SWHA staff and vendor representative.

18. NON-COMPETITIVE PROCUREMENT

- a. **Emergency:**
 - i. Procurement procedures may be waived under emergency circumstances, where time is of the essence in preventing serious injury or damage to SWHA staff, residents, or property; or, which threaten the public health, welfare or safety.
 - ii. There must be an immediate and serious need for supplies, services or construction, where the need cannot be met by any other procurement method.
 - iii. The emergency procurement must be limited to those supplies, services or construction necessary to control and correct the urgent situation.
 - iv. The emergency must be declared in writing by the issuing Department Head to the Executive Director (or assigns).
 - v. Once the emergency situation is under control, proceed with normal procurement procedures as per this Policy.
 - vi. Detail the circumstances, conditions, services and results in a memorandum to the file.
- b. **Sole Source (note: this section does not apply to public works projects per RCW 39.04, UNLESS the project meets the definition for “Exemption”, see item d. below)**
 - i. Defined as services and/ or goods of such a unique nature that it is clearly and justifiably the only practicable source to provide the service and/or good.
 - ii. To obtain award approval of the solicitation, justify by means of memorandum to include:
 - a) the screening process and market research to determine that only one company can supply the goods and/or services; or
 - b) the legitimate specifications to which only one vendor can successfully respond; and,
 - c) the good or service availability through only one vendor; and,
 - d) the circumstances for the procurement.
- c. **Special Market Conditions (note: this section does not apply to procurements using federal funds required to comply with 2 CFR Part 200. Additionally this section does not apply to public works projects per RCW 39.04, UNLESS the project meets the definition for “Exemption”, see item d. below):**

This occurs when a need to act quickly or through a specific channel to take advantage of special circumstances to acquire a lower cost good such as an opportunity to secure a “good buy” at an auction OR goods offered a very favorable price that would be sold before SWHA would have a chance to complete the competitive bid process. To obtain award approval, justify in a memorandum to include:

- i. The market condition;
 - ii. cost analysis and comparisons to standard procurement methods;
 - iii. the time constraints; and
 - iv. the circumstances requiring the procurement.
- d. **Exemptions to RCW 39.04.280 (note: this section does not apply to procurements using federal funds required to comply with 2 CFR Part 200.)**
 - i. Purchases that are clearly and legitimately limited to a single source of supply;
 - ii. Purchases involving special facilities or market conditions;
 - iii. Purchases in the event of an emergency
 - iv. Purchases of insurance and/or bonds; and,
 - v. Public works in the event of an emergency.
- e. **Lack of Competition / Less than two (2) Bidders (note: this section does not apply to procurements using federal funds required to comply with 2 CFR Part 200.)**
 - i. Attempt to obtain written statements from non-bidders detailing reason(s) why solicitation was not bid.
 - ii. Re-bid solicitation as necessary.
 - iii. To award the bid, justify in a memorandum to the contract file:
 - a) why the bid process was not flawed;
 - b) why no purpose would be served by re-soliciting the work;
 - c) the availability of contractors to perform the work;
 - d) the time requirements related to the urgency of the performance; and
 - e) the general surrounding circumstances for lack of competition.

19. **REQUEST FOR PROPOSALS (RFP)**

An RFP is issued when price is determined to not be the sole criteria needed to select a bidder. Other criteria may include, but are not limited to: experience, qualifications, references, interviews, product quality or specifications; with price being one of the required criteria. RFPs are typically issued for professional services, general services and/or social service projects or programs. RFPs are also allowed for construction projects, provided that the RFP include all the provisions and regulations needed as an IFB method would require.

RFP criteria are assigned fixed point values or letter grades. For points, a typical maximum a bidder can obtain is 100, however, this is not a fixed number and may vary.

- a. **Proposal Opening**
 - i. RFP proposals are not opened in a public setting.
 - ii. RFP proposals are date stamped when received by reception.
 - iii. RFP proposals are kept sealed and only opened after the due date and time designated by SWHA.

- b. **RFPs are to be evaluated by a selection committee of at least three (3) qualified persons as determined by the Department Head or assigns.** The persons on the committee should recuse themselves from evaluating proposals if there is a conflict of interest, real or perceived, with the proposers or if they have a strong bias for or against any of the proposers. Non-SWHA staff may be on the selection committee as long as they sign the *Conflict of Interest Certification* form. Recommendations for evaluations include:
- i. Proposer's responsiveness to information requested;
 - ii. Proposer's qualifications to successfully complete the project;
 - iii. Proposer's references to include SWHA past performance if a current or former vendor, and/or three (3) references if a new vendor;
 - iv. Comparison of the proposals to the project requirements in the RFP;
 - v. Determining if all required information, certifications, and conditions have been satisfied; and,
 - vi. Section 3 analysis, as applicable. (See Section D5 for details)

c. **Proposal Interviews:**

The issuing Department may conduct interviews separately with the top proposers. The primary object of the proposal interview is to maximize the SWHA's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. The Procurement Manager shall determine whether interviews are necessary and if deemed necessary, shall indicate to, or discuss with, each proposer still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as cost, price, technical approach, past performance, and terms and conditions) that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposer's potential for award. The scope and extent of discussions are a matter of the contracting officer's judgment.

Proposers may provide SWHA a Best and Final Offer upon completion of the proposal interview. Best and Final Offers are submitted only once unless SWHA determines that it is in its best interest to conduct additional discussions. If no Best and Final Offer is submitted by a proposer, then the immediate previous offer will constitute the Best and Final Offer.

d. **Award:**

SWHA will award based on qualifications, technical ability, scope, and price of the highest rated proposer.

If no agreement is reached, the next highest proposer rated may be selected. If an inability to reach an agreement with the proposers occurs, Procurement Managers may consider a re-bid of the solicitation, a scaled down project, or project cancellation, whichever is in the best interest of SWHA.

20. REQUEST FOR QUALIFICATIONS (RFQ)

RFQs are very similar to RFPs in that they use criteria, weighted by points or a letter grade, to determine which vendor is best qualified to perform the job or project. One criteria not used in the initial review of vendors is price. Price is negotiated separately after a contract is awarded but before contract execution.

When using funds from Federal sources, the RFQ process may only be used when procuring Architectural and Engineering (A&E) services, development partners in a Public Housing Mixed-Finance project, Rental Assistance Demonstration project, or Section 8 funded projects. All other professional services procurements funded by federal funds required to comply with 2 CFR Part 200 must use the appropriate procurement process – very small, small, or large purchase.

RFQs must follow the proposal opening, evaluation review and proposal negotiations as outlined above in Section 19B, Request for Proposals.

21. INSURANCE AND INDEMNIFICATION

All vendors who are under contract with SWHA are required to carry insurance and have their insurance meet SWHA minimums. The contracts also require indemnity language, which must be a separate section in the contract and NOT intermingled with the insurance requirements. Such language is not to be considered the SWHA policy on insurance requirements for every contract. Insurance requirements of SWHA are, whenever possible, individually tailored to a specific contract or contract risk environment by the Risk Manager.

a. **Basic insurance requirements:**

Four basic types of insurance are required of almost all contracts:

- i. Commercial General Liability
- ii. Business Automobile Liability
- iii. Workers Compensation and
- iv. Stop Gap (Washington Employers Liability)

b. **Other insurance requirements:**

Depending upon the potential risk related to the goods or services provided by a vendor, other types of insurance or financial guarantee may also be required, including but not limited to:

- i. Professional Liability (Errors and Omissions-E&O)
- ii. Property
- iii. Builders' Risk
- iv. Pollution Liability
- v. Crime
- vi. Cyber Liability

22. INSURANCE CLAIMS—for claims above the deductible

- a. For the initial clean up and repair of the facility/structure, which may include fire and/or water damage, securing the premises from further damage or other related

work, SWHA staff and the insurance company must follow the Emergency procurement procedures as outlined in Section B(18)(a) of this Policy.

- b. To complete the repairs to restore the facility/structure to its original condition (or at least a close facsimile to what is expected by SWHA), staff and the insurance company must follow the procurement procedures, where applicable, as outlined in Sections B and C of this Policy.

23. RECORDS RETENTION

SWHA shall comply with the retention requirements for procurement-related records outlined in the Local Government Common Records Retention Schedule (CORE) pursuant to Chapter 40.14 RCW, 2 CFR Part 200, and any additional records management procedures published by SWHA's Administrative Services department. The Contracting Officer is responsible for ensuring that all procurement related records are maintained in accordance with agency policies and procedures and retained for the minimum retention period required by state, federal, and local statute, grant agreement, and other contractual obligations. When the retention period has expired, the Contracting Officer is responsible for the disposition of procurement-related records, ensuring appraisal by the Washington State Archives where required by CORE, or destruction of the records in accordance with SWHA's records management policies and procedure.

24. COOPERATIVE PURCHASING

SWHA may enter into cooperative and interagency purchase agreements in order to achieve simplified, expedited, and efficient procurement. SWHA may enter into intergovernmental or interagency purchasing agreements without competitive procurement provided the following conditions are met:

- a. The agreement provides for greater economy and efficiency and results in cost savings to the SWHA;
- b. The agreement is used for common supplies and services that are of a routine nature only;
- c. SWHA has taken steps to ensure that any supplies or services obtained using another agency's contract are purchased in compliance with the procurement standards of 2 CFR 200;
- d. SWHA's procurement files should contain a copy of the Intergovernmental Agreement and documentation showing that cost and availability were evaluated before the agreement was executed, and these factors are reviewed; and
- e. The agreement must be between SWHA and a state or local governmental agency, which may be another PHA.

25. BRAND NAME ORDERING (to be placed in the bid documents and/or contract)

Specific brand name products must have approval of the Department Head of the issuing Department before the solicitation is released for bid.

- a. In order to specify a specific name brand product (Sherwin Williams red #34 paint, for example) in a solicitation, the Department issuing the bid must establish the following:
 - i. No other comparable or superior product(s) exists; and,
 - ii. Other products would not provide comparable or superior results.
 - iii. For Federally funded projects, the term “or approved equal” must be in the bid documents.
- b. Additionally, at least one of the following criteria for that specific brand product must be met:
 - i. It reduces the project costs and increases the efficiency of operations over a long term period;
 - ii. It increases the functionality of building systems;
 - iii. It simplifies inventory management; and enhances SWHA’s ability to negotiate more favorable contracts.

26. APPEALS AND REMEDIES

- a. General:

Disputes involving public funds will not be referred to the original funding agency until all administrative remedies have been exhausted by SWHA.
- b. Bid Protests:
 - i. A written protest may be filed by an interested party to the solicitation.
 - ii. The protest must be received by SWHA no later than two full business days following the bid opening.
 - iii. The protesting bidder may request, in writing, copies of all of the submitted bids for the project being protested within two business days of the bid opening. This request may be made directly to the issuing department and is not subject to the request for documents process through the Public Records Act. An award cannot occur until at least two business days after such documents have been provided.
 - iv. SWHA will issue a final determination within seven business days and provide at least two full business days written notice of its intent to either award a contract for the project, or to reject all bids and resolicit the project per this Policy.
- c. Contract Claims:
 - i. All claims by a contractor relating to contract performance will be submitted in writing.
 - ii. The Department Head or designee will review and determine the status of the claim.
 - iii. The Department Head may conduct a conference with the contractor on the claim to resolve the issue.
 - iv. Written documentation, conference minutes, and supporting evidence will be maintained in the project file.
 - v. Any claims involving disputed actions for public funded projects require a work stoppage until the contract claim is resolved.

C. PROCUREMENT PROCEDURES AND METHODS COMMON TO ALL CONSTRUCTION PROJECTS (regardless of funding)

1. BID BOND

- a. For construction or facility improvement contracts or subcontracts exceeding \$250,000, a bid guarantee equivalent to five percent (5%) of the bid price will be required. Department Heads, with justification, may establish lower limits for bid bond submittal on a project by project basis.
- b. May be provided in the form of a Bid Bond, certified check, or other negotiable instrument deemed acceptable by the Chief Administrative Officer
- c. Assures that, upon acceptance of the bid, contract documents will be executed by the bidder.
- d. All negotiable instruments will be placed in the custody of issuing Department. Negotiable instrument security will be assured by maintaining the documents in the SWHA safe. Return of the negotiable instruments will be made upon contract execution with the successful bidder.
- e. Bid Withdrawal After Bid Opening
 - i. A bidder who submits an erroneous low bid may withdraw the bid at the risk of forfeiting the bid bond. The bid withdrawal is permissible if there was an obvious error in the low bid, and the mistake is readily apparent from the bid itself. The bidder must notify SWHA and submit evidence of the error within twenty-four (24) hours of the bid opening. A memo must be made to the file describing the circumstances of the low bid withdrawal, and justification for return or forfeiture of the bid bond. The Executive Director must approve any return or forfeiture of bid bonds.
 - ii. Evaluating factors for return or forfeiture of bid bonds should include:
 - a) Whether the bidder acted in good faith;
 - b) Whether the bidder acted without gross negligence;
 - c) Whether the bidder gave prompt notice of the error;
 - d) Whether the bidder will suffer substantial detriment by forfeiture;
 - e) Whether SWHA's status has not greatly changed, and no substantial hardship will be caused.
 - iii. Any low bidder who withdraws its bid is prohibited from bidding on the same project if it is subsequently re-solicited.

2. PAYMENT AND PERFORMANCE BOND

- a. Performance and Payment (P&P) Bonds will be obtained from the contractor for one hundred percent (100%) of the contract price for all public works projects with a contract value of \$250,000 or above. For public works projects valued under \$250,000, a P&P bond may be waived in lieu of additional retainage (refer to chapter 3b below)

- b. Bonds for federally funded projects must be obtained from guarantee or surety companies acceptable to the U.S. Government as listed in U.S. Treasury Circular Number 570. Bonds for other projects shall be secured by a surety company authorized to do business in the state of Washington with ability to secure the value of the contract. The surety's company A.M. Best rating shall be A-:IV or greater.

3. RETAINAGE

- a. Retainage on construction projects will be 5% of the contract value. Retainage amount must be published in the bid documents and referenced in the contract. Retainage is required for all public works projects costing \$35,000 or more.
- b. For public works projects valued under \$250,000, at the option of the contractor, SWHA, may, in lieu of a P&P bond, retain 10% retainage.
- c. SWHA must complete and submit a *Notice of Completion* with the Washington State Department of Labor and Industries (L&I), Dept. of Revenue and Employment Security Dept. that the specified public works project has been completed. Before final settlement can be made on any public works project, the prime contractor and each and every subcontractor must submit an "Affidavit of Wages Paid" (see Section C4 below) to SWHA. No payments are to be made from retained funds until receipt L&I's *Certificate of Release* that the contractor and subcontractors have paid all required taxes, and that no claims from material suppliers, laborers, or subcontractors exist.
- d. No retainage shall be deposited into an interest bearing escrow account.

4. INTENTS AND AFFIDAVITS

- a. The Contractor and their subcontractors must file a "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" with the Washington State Department of Labor and Industries (L&I). There is no minimum dollar contract amount. Intent and Affidavit forms are required for every public works contract regardless of the size of the contract.
- b. The Intent form is filed immediately after the contract is awarded and before work begins, if that is possible. SWHA may not make any payments until contractors have submitted an Intent form that has been approved by L&I.
- c. The Affidavit form is not filed until after all the work is completed. SWHA may not release final retainage until all contractors have submitted an Affidavit form that has been certified by the L&I.

5. LIQUIDATED DAMAGES

- a. **Definition:** Liquidated damages are specified daily charges deducted from moneys otherwise payable to the contractor for each day the contractor fails to meet a milestone and/or contract completion date. Another way of looking at liquidated damages is that it is the price the contractor must pay per day for working beyond the required completion dates. Liquidated damages are a contract-based remedy for breach of contract. It must be agreed to by the parties

in the construction contract. Besides project value, these factors also need to be considered in determining liquidated damages:

- i. Time sensitivity
- ii. Milestones
- iii. Funding source requirements
- iv. Impacts on residents and/or services
- v. Impacts on the community
- vi. Phased project
- vii. Substantial completion date
- viii. Physical completion date
- ix. Final completion date

6. DEBARMENT OF CONTRACTORS

During the course of a contract, situations may occur that indicate a contractor or its subcontractors should not participate in future SWHA business for a period of time. Such nonparticipation, known as debarment, is necessary to protect SWHA and the public from contractors, subcontractors, consultants or vendors who do not deliver goods and services in a cost effective and quality manner or who otherwise exhibit unacceptable business practices.

a. Criteria:

- i. Refusal to properly execute contract documents in a timely period;
- ii. History of failure to do warranty work as requested or needed;
- iii. Material breach of prior SWHA contracts;
- iv. Deliberate or repeated violations of state or federal laws or regulations including but not limited to those pertaining to payment of prevailing wages, worker safety, and industrial insurance;
- v. Deliberate misrepresentations in bid or contract documents;
- vi. Default on a bid bond and/or payment and performance bond once in a 2 year period;
- vii. Failure to complete the project in a timely manner;
- viii. Adversarial behavior from the contractor that creates undue hardship to SWHA, tenants and the overall project.
- ix. Conviction of a company or its owners for a crime, including but not limited to: collusion, fraud, bribery, theft, falsification or destruction of records, or receiving stolen goods;
- x. Submission of a false or fraudulent claim; or
- xi. Debarment by another government entity.

b. Process:

- i. The SWHA Department Head shall recommend debarment in writing to SWHA's Chief Administrative Officer. The recommendation should include all supporting documentation that establishes one (or more) of the above-noted criteria relied on in making the debarment decision.
- ii. The DED should make a decision on the debarment within 10 business days of receiving the recommendation, unless it is not practical to do so, in which event the DED must make a decision as soon as reasonably possible.

- iii. If the decision is to debar, the DED shall send the written decision to the contractor. If the DED wishes to reject the recommendation of the Department Head to debar, he or she shall communicate the reasons in writing to the Department Head.
- iv. The contractor or its subcontractor shall have thirty (30) business days from the date a decision to debar is issued to appeal the decision. During this time, the contractor shall be given the opportunity to review copies of all non-attorney/client privileged documents relied on in the making the decision. The appeal must be in writing and sent to the SWHA Executive Director. The contractor or its subcontractor has the right to meet with the Executive Director or the Executive Director's designee to appeal its case. Until the decision on the appeal is finalized by the Executive Director, the debarred contractor or subcontractor is ineligible to submit additional bids or participate with others in a bid to SWHA.
- v. The Executive Director shall have 30 business days from the date of receipt of the notice of appeal to make a decision on upholding or overturning the debarment. The Executive Director may appoint an Appeals Committee to assist in the hearing and recommendation process. The final decision will be made in writing to the contractor by the Executive Director. That decision is final and not subject to further appeal.
- vi. For the term of the debarment, the officers and principals of the debarred contractor or subcontractor shall also be barred from contracting directly or indirectly with SWHA, including through a separate organization or legal entity or as a subcontractor.
- vii. Information on debarment is forwarded to the Procurement Analyst in Administrative Services who will place the information on the P drive in the Procurement and Contracting folder. Information must include name of the contractor, reasons for debarment and time period of debarment.
- c. Term: Up to 3 years from final determination, at the discretion of the DED or, in the event of a timely appeal to the Executive Director, at the final discretion of the Executive Director.
- d. Appeals Committee: If the Executive Director elects to appoint an Appeals Committee, it will be composed of a minimum of three persons familiar with the industry or profession of the contractor, subcontractor, consultant or vendor. The Committee makeup does not have to be consistent for each and every debarment case.

7. SMALL WORKS ROSTER (SWR)

The use of a SWR by SWHA (RCW 39.04.155) may be allowed for projects valued up to \$250,000 for federally funded projects and \$350,000 for non-federally funded projects in lieu of using the Small and Large Purchase procedures as outlined in this Policy. If Small Works Roster cannot be used because of lack of qualified contractors, then, depending on the project value, the Small or Large Purchase procedures must be used (details in Sections B5 and B6). SWHA does not maintain its own SWR; instead, it is contracted to third parties who are responsible for the addition/removal of contractors, public notices and

maintenance of the roster. Use of the SWR not detailed below must comply with all applicable sections of Sections B, C, D and E of this Policy.

8. TASK ORDER CONTRACTING (TOC)

- a. Background:
Pursuant to RCW 35.82.200(2), the use of a TOC solicited via a competitive Request for Proposals (RFP), may be utilized for specialized trades for small and routine construction projects, as well as maintenance projects, as long as the projects are funded using Federal grants. Non-federally funded projects may not use this TOC process in any circumstances.
- b. Dollar limits:
 - i. Contracts awarded may not exceed \$\$600,000 for the first term.
 - ii. Individual task orders may not exceed \$50,000.
- c. Term limits:
Contracts awarded to task order contractors shall have an initial term limit of three years, with an option to grant one, two -year extension at the discretion of SWHA. The total NTE shall not exceed \$1,000,000.

9. VALUE ENGINEERING

SWHA shall encourage the use of “Value Engineering” (VE) on construction projects when the value of the awarded contract exceeds the budget of the project. The use of VE may not be used for conducting pricing negotiations in a low bid contract, but for cost savings opportunities. General contractors may be requested to provide such VE services on an ongoing basis, including sponsoring VE workshops with attendance by appropriate members of the project team. Contractors may further be requested to involve their subcontractors in VE as appropriate to achieve maximum cost-effectiveness and progress efficiencies during the course of construction. VE opportunities may be present in the following activities; however, this list should not be considered exhaustive:

- a. purchase versus rental of equipment;
- b. resale of temporary materials;
- c. resale of surplus or recyclable consumables;
- d. value analysis of and selection of building systems;
- e. value analysis of materials and equipment;
- f. value analysis of component systems;
- g. value analysis of construction means and methods;
- h. scheduling;
- i. energy conservation;
- j. operations and maintenance;
- k. first costs;
- l. life cycle costs; and,
- m. quality, constructability, and product availability.

10. GENERAL CONTRACTOR/CONSTRUCTION MANAGER (GC/CM)

As an alternative to the traditional low bid methodology of selecting and contractor and managing a public works construction project, GC/CM may be used by SWHA under certain circumstances. Use of GC/CM is regulated by chapter 39.10 RCW and must comply with those requirements.

Prior to using GC/CM, SWHA must obtain the approval of the state’s Project Review Committee for each specific project for which use of GC/CM is desired. For a GC/CM project to be approved, it must meet at least one of the criteria outlined in RCW 39.10.340, and SWHA must demonstrate to the Project Review Committee that SWHA has either internal staff or hired consultants with specific Washington state GC/CM experience.

Unlike Design-Bid-Build (traditional low bid), the contractor under the GC/CM project delivery method is selected based primarily on qualifications, experience, and approach to the project with limited bidding of the contractor’s overhead and profit (percent fee) and their costs for managing the project (specified general conditions costs). The GC/CM should be selected early in the design process so the GC/CM may provide valuable preconstruction services such as value engineering, constructability reviews, project scheduling and sequencing, cost estimating, and development of a subcontracting plan. When the design documents are 90% complete, SWHA and the GC/CM negotiate the construction cost for the project (Maximum Allowable Construction Cost or MACC). After a construction contract has been signed between SWHA and the GC/CM, the GC/CM is required to publicly advertise and competitively bid all construction work and must award to the responsible bidder with the lowest responsive bid. If the total of all subcontract bid packages exceeds the negotiated MACC, the GC/CM is at risk for the budget overage. If, however, the total of all subcontract bid packages is less than the MACC, the savings are returned to SWHA. There are limitations on how much of the work the GC/CM may perform with their own forces.

Use of GC/CM can be a good project delivery method for particularly large or complex projects, but it does require additional expertise and skill to manage a GC/CM project successfully (and to obtain approval to use the method). Departments with an interest in exploring the use of GC/CM on a project should contact the Procurement Analyst in the Department of Administrative Services for a strategy discussion that may include bringing in a consultant for training and discussion of the appropriateness of the project for GC/CM.

11. PROGRESS PAYMENT SUSPENSION CRITERIA

- a. Construction or maintenance contracts only.
- b. The criteria must be published in the bid documents and included in either the contract or general conditions.
- c. Criteria include:
 - i. Non-submittal of Certified Payrolls (general and all tier subs)
 - ii. Non-compliance of Certified Payrolls

- a) Restitution to workers
- b) Incomplete or inaccurate payrolls
- c) Other required forms needed with Certified Payrolls missing
- iii. No lien release with Application for Payment
- iv. Insurance expires
- v. Federal and/or State liens on general contractor
- vi. Suspension/expiration of WA State contractor's license
- vii. Work not accomplished
- viii. Work not approved/accepted
- ix. Repeated safety violations not resolved if warnings from SWHA are ignored
- x. Incorrect Application for Payment or invoice (whichever is applicable)

D. PROCUREMENT REQUIREMENTS SPECIFIC TO ACTIVITIES USING FEDERAL FUNDS REQUIRED TO COMPLY WITH 2 CFR PART 200

1. OVERVIEW OF 2 CFR PART 200

The principal Federal regulation that SWHA must comply with when procuring goods and services using federal funds required to comply with 2 CFR Part 200 is **2 CFR Part 200.318 to .327**.

This Federal Regulation is broken down into the following sections:

- a. .318 General Procurement standards
- b. .319 Competition
- c. .320 Methods of procurement to be followed
- d. .321 Contracting with small and minority businesses, women's business enterprises and labor surplus area firms
- e. .322 Domestic preference for procurement
- f. .323 Procurement of recovered materials
- g. .324 Contract cost and price
- h. .325 Federal awarding agency or pass-through entity review
- i. .326 Bonding requirements
- j. .327 Contract provisions

2. CONSTRUCTION AND NON-ROUTINE MAINTENANCE PROJECTS

- a. Wage Rates: Projects in value of \$2,000 or above will need to comply with the Davis-Bacon Act. The **Davis-Bacon Act** of 1931 is a United States federal law that establishes the requirement for paying the local prevailing wages on public works projects for laborers and mechanics. It applies to "contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works." Davis-Bacon wage rates must be included in bid solicitations. The correct type of wages must be determined before bid publication. There are 4 types of wage categories. Most SWHA projects will fall under the "residential" wage rate category, but verification of what is the appropriate category must be determined before the bid is released to the public. Other provisions of the Davis-Bacon Act include the collection, review and approval of Certified Payrolls from the contractor and all subcontractors and wage rate interviews of a represented sample of the workers (typically 10%).
- b. Contract Forms: Specific HUD Forms will need to be included in the bid documents. These forms include:
 - i. HUD 5369-A Representations, Certifications, and Other Statement of Bidders (this form must be submitted with the contractor's bid)
 - ii. HUD 5370 General Conditions of the Contract for Construction Public Housing

- iii. HUD 5370-EZ General Contract Conditions for Small Construction Contracts (\$2,000 to \$100,000)
- iv. HUD 50071 Certification of Payments to Influence Federal Transactions (\$100,000+)
- v. HUD SF-LLL Disclosure of Lobbying Activities (\$100,000+)
- c. Contractors will need to follow the requirements of the Section 3 Program. (See Section D5 for details.)
- d. Taxes are levied via Use Tax on materials that the contractor will include in the bid price. There are no taxes levied on labor costs.
- e. Time and Material type contracts may be used only if after a determination that no other contract type is suitable and the contract includes a ceiling price that the contractor exceeds at its own risk. No change orders are allowed with this type of contract. Time and Materials type contract means a contract whose cost to SWHA is the sum of:
 - i. The actual cost of the materials;
 - ii. Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses and profit.
- f. Contractors who participate in the development or drafting of specifications, requirements, statements of work, invitations to bid or request for proposals must be excluded from competing for such procurements, unless performing under a GC/CM contract. (See Section C10)
- g. For contracts in excess of \$250,000, SWHA must perform a cost or price analysis, including all subsequent change orders and/or contract modifications.
- h. SWHA must negotiate profit as a separate element of the contract price when there is no competitive bidding scenario (e.g., only one bid received).

3. REQUIRED CONTRACT PROVISIONS

- a. For all contracts subject to 2 CFR 200, compliance with:
 - i. Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216)
 - ii. Domestic preferences for procurements (2 CFR 200.322)
 - iii. Debarment and Suspension (Executive Orders 12549 and 12689)
- b. For construction contracts over \$2,000 in value, compliance with:
 - i. Davis-Bacon Act (40 U.S.C. 3141-3148)
- c. For contracts over \$10,000 in value, compliance with:
 - i. Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act,
 - ii. Equal Employment Opportunity (41 CFR Part 60)
 - iii. Procurement of Recovered Materials (2 CFR 200.323)
 - iv. Termination for Cause and Termination for Convenience
- d. For contracts over \$100,000 in value, compliance with:
 - i. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-08)
 - ii. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

- iii. Copeland Anti-Kickback Act (40 U.S.C. 3145)
 - iv. Rights to Inventions (37 CFR Part 401)
- e. For contracts over \$150,000 in value, compliance with:
 - i. Clean Air Act (42 U.S.C.7401-7671)
 - ii. Federal Water Pollution Control Act (33 U.S.C. 1251-1387)
 - iii. Energy Policy and Conservation Act (42 U.S.C. 6201)
 - f. For contracts over \$250,000 in value, must address:
 - i. Administrative, contractual, or legal remedies in instances where contracts violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

4. PROFESSIONAL AND SOCIAL SERVICES PROJECTS

- a. Specific HUD Forms will need to be included in the RFP/RFQ documents. These forms include:
 - i. HUD 5369-A Representations, Certifications, and Other Statement of Bidders (this form must be submitted with the firm’s bid)
 - ii. HUD 5369-B Instructions to Offerors Non-Construction
 - iii. HUD 5370-C General Contract Conditions Non-Construction
- b. Consultants will need to follow the requirements of the Section 3 Program. See Item 5 below for details.

5. SECTION 3 PROGRAM

- a. Purpose:

Section 3 of the Housing and Urban Development (HUD) Act of 1968 (Section 3) requires that Housing Authorities and Agencies receiving HUD covered assistance (funding), to the greatest extent feasible, direct that assistance to businesses that provide economic opportunities to low and very low-income persons.

- b. Regulation and Guidance:

The applicable regulatory authority for Section 3 is 24 CFR 75. The current implementation guidance for Section 3 is Notice PIH 2022-10 which was issued on April 18, 2022 and remains in effect until amended, superseded, or rescinded.

- c. Section 3 Applicable and Not Applicable Public and Indian Housing Programs:

- i. Applicable:
 - a) Public Housing Capital Funds
 - b) Public Housing Operating Funds
 - c) Choice Neighborhoods

- d) Public Housing Mixed-Finance Development
- e) Rental Assistance Demonstration (RAD) – Construction and Rehabilitation
 - i) Predevelopment Costs for RAD pre-conversion work using covered PH funds
 - ii) RAD Post-Conversion contractually obligated activities
- f) Section 8 assisted properties or projects that also receive more than \$200,000 of other Section 3 covered funding, e.g., CDBG, HOME.

ii. Not Applicable:

- a. Section 8 Housing Choice Vouchers (HCV)
- b. Section 8 Monthly Rental Assistance
- c. Payments including those under PBV and PBRA Contracts
- d. RAD– Section 8 Rental Assistance ONLY
- e. Material Supplies Contracts
- f. Indian and Tribal Preferences
- g. Consultant Services requiring advanced degrees or professional licensing.

d. Definitions:

i. Public Housing Assistance:

funds include development assistance pursuant to Section 5 of the 1937 Act, Operating Funds, Capital Funds, public housing grant funds such as Resident Opportunities and Self-Sufficiency (ROSS) or Jobs Plus programs and the full extent of mixed-finance development as described in 24 CFR 905.604, regardless of whether the project is fully or partially assisted with public housing financial assistance.

ii. Section 3 Projects:

are housing rehabilitation and construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance (e.g., CDBG and HOME) when the total amount of assistance to the project exceeds a threshold of \$200,000. The threshold is \$100,000 where the assistance is from HUD’s Lead Hazard Control and Healthy Homes programs (LHCHH), as authorized by Sections 501 or 502 of the Housing and Urban Development Act of 1970, the Lead-Based Paint Poisoning Prevention Act, and the Residential Lead-Based Paint Hazard Reduction Act of 1992. The project is the site or sites together with any building(s) and improvements located

on the site(s) that are under common ownership, management, and financing.

iii. Section 3 Worker:

is any worker, for both public housing financial assistance and housing and community development assistance, who currently fits, or when hired within the past five years fit, at least one of the following categories, as documented:

- The worker's income for the previous or annualized calendar year is below the income limit established by HUD.
- The worker is employed by a Section 3 business concern.
- The worker is a YouthBuild participant.

iv. Targeted Section 3 Worker:

Is, in the context of public housing financial assistance means a Section 3 worker who is:

- a) A worker employed by a Section 3 business concern; or
- b) A worker who currently fits, or when hired fit, at least one of the following categories, as documented within the past five years:
 - i) A resident of public housing or Section 8-assisted housing.
 - ii) A resident of other projects managed by the PHA that is providing the assistance; or
 - iii) A YouthBuild participant.

An employer may choose whether the worker is defined as a Section 3 worker for a five-year period at the time of the worker's hire, or when the worker is first certified as meeting the Section 3 worker definition.

v. Section 3 Business Concern:

Is a business that meets at least one of the following criteria, documented within the last six-month period:

- It is at least 51 percent owned and controlled by low- or very low-income persons;
- Over 75 percent of the labor hours performed for the business over the prior three-month period is performed by Section 3 workers; or
- It is a business at least 51 percent owned and controlled by current public housing residents or residents who currently reside in housing assisted by Section 8.

e. Section 3 Contract Clause:

A Section 3 Clause must be included in all contracts subject to Section of the Housing and Urban Development Act of 1968, as amended and 24 CFR Part 75. Appendix A to the Policy contains a sample Section 3 Clause, provided by HUD, which may be used in contracts using Public Housing funds. SWHA reserves the right to determine what contract language is appropriate in each context.

f. Labor Hour Reporting:

SWHA will report annually to HUD:

- The total number of labor hours worked;
- The total number of labor hours worked by Section 3 workers; and
- The total number of labor hours worked by Targeted Section 3 workers.

Labor hours for Section 3 workers and Targeted Section 3 workers may be counted for five years from when their Section 3 status is established by the employer, given that employment is maintained with the same employer.

g. Compliance Safe Harbor and Reporting

Two benchmark ratios are determined by the reported labor hours and HUD has determined a safe harbor ratio for each to be deemed in compliance with the agency's Section 3 responsibilities:

Ratio 1 – Section 3 Workers to All Workers. The first ratio shows the relationship of labor hours between Section 3 workers and all workers funded by public housing financial assistance (Section 3 worker labor hours ÷ Total of all worker labor hours). The safe harbor for Ratio 1 is 25 percent or more.

Ratio 2 – Targeted Section 3 Workers to All Workers. The second ratio shows the relationship of Targeted Section 3 workers and all workers funded by public housing financial assistance (Targeted Section 3 worker labor hours ÷ Total of all worker labor hours). The safe harbor for Ratio 2 is five (5) percent or more.

If SWHA does not meet both safe harbor ratios, SWHA must instead submit qualitative reports (on a HUD form) of their efforts to comply with Section 3 requirements. SWHA will not be required to submit documentation to substantiate qualitative efforts. However, SWHA must maintain records of Section 3 statutory, regulatory, and contractual compliance on-site and provide them to HUD, if requested.

E. PROCUREMENT METHODS SPECIFIC TO NON-FEDERALLY FUNDED ACTIVITIES

1. CONSTRUCTION AND NON-ROUTINE MAINTENANCE PROJECTS

- a. It is expected that SWHA will follow RCW 39.04, the Washington State Public Works law (refer to the Glossary for a definition of “public work”), where applicable. All public works, including maintenance when performed by contract shall comply with chapter 39.12 RCW (Prevailing Wage Law-see b below).
- b. To determine what the prevailing wages are for any specific project, the wage rates are found on the L&I website (RCW 39.12.015). The new rates are published on the first business day of every February and August and take effect 30 days after publication. The rates are classified by trade and county.
- c. All bid specifications and contracts for public work and for public building service maintenance contracts must include certain provisions and information. They must state that prevailing wage rates shall be paid, and they must include a list of the applicable prevailing wage rates. These requirements also apply to certain agreements to rent, lease, or purchase a facility from a private owner where the agreement calls for construction or alteration work to be performed.
- d. The prevailing wage rates in effect on the bid due date are the prevailing wage rates that apply to that project, no matter how long it lasts, unless the contract is awarded more than six months after the bids were due. For those contracts where award was delayed more than six months, the prevailing wage rates in effect on the date of the award shall apply for the duration of the contract.
- e. SWHA’s bid specifications and contracts for public work must contain a provision stating the required prevailing rates of pay and stipulate that workers shall receive no less than the prevailing rate of wage. Those bid and contract documents must also contain:
 - i. a list of the applicable prevailing wage rates, or
 - ii. the URL to the Department of Labor & Industries prevailing wage rates pages, and
 - a) Identify the exact wage publication date to use (e.g., “Use October 14, 2010 rates.”);
 - b) State the county in which the public works project is located;
 - c) Specify that a copy of the applicable wage rates is available for viewing in your office; and,
 - d) Explain that your agency will mail a hard copy of the applicable wage rates upon request.

Whether you use method i or ii above, be sure to retain a printed version of the rates as part of your records.
- f. The contractor is responsible for paying all applicable taxes.

2. TAX CREDIT PROPERTIES AND PARTNERSHIPS

- a. SWHA has properties that are identified as “Tax Credit”. Tax Credit properties are defined as any property owned by a private individual, partnership, or

- corporation in which SWHA has very limited interest and those properties for which SWHA serves as a General Partner.
- b. Properties in this category will satisfy procurement objectives of this Policy by compliance with the clauses within the contracts for property management services which outline responsibilities and accountabilities for meeting established procurement objectives as determined by SWHA.
 - c. This Policy outlines procedures and documentation which are appropriate in any well managed procurement system. It is expected that this Policy will serve as a model to be used by SWHA tax credit property procurements.

3. TAX CREDIT PROPERTIES ARE EXPECTED TO PAY ALL APPLICABLE TAXES FOR GOODS AND SERVICES.Architectural and Engineering Services (A&E)

Per RCW 39.80, A&E professionals covered are defined as Architects, Engineers, Land Surveyors and Landscape Architects who are registered with the state to practice their respective professions and are performing services within the scope of that license.

Solicitation of A&E firms must be done through the Request for Qualifications (RFQ) process. See Section B20 for details.

THE RFQ may use geographic location as an evaluation criteria provided the application of the criteria does not overly restrict the number of firms available to submit proposals.

- a. A&E work may be conducted through a task order contract or a standard A&E contract. Task Order Contracts with A&E firms, which have undetermined projects as their scope of work, require the issuance of task orders for specific projects which refer back to the terms and conditions of the underlying contract. Individual task orders may not exceed \$100,000, including contingency.
- b. Verify that sufficient contract limits exist on underlying task order contract for proposed project.
- c. Solicit a proposal for a specific scope of work from the A&E firm.
- d. Review and approve the proposal.
- e. With Department Director approval, issue a “Not to Exceed” task order with the scope of work’s cost plus a 10% contingency.
- f. Department Directors may approve task orders between \$25,000 and \$100,000 without Executive Director (or designee) approval.
- g. Log each task order on the appropriate task order log. If applicable, inform the issuing Department of the task order amount authorized and spent at sign off.
- h. No change orders are allowed with the task order. Instead issue a new task order with a revised scope of work. If applicable, inform the issuing Department.
- i. Once the work is completed, have the task order “signed off” and approved by the Project Manager.

4. LONG TERM AGREEMENTS

- a. Defined as a contract, agreement, memorandum of understanding, etc. that has a duration that is longer than six years or has no defined ending date.
- b. Solicitations for long term agreements must include language which defines the duration of the agreement.
- c. Agreements that have costs or fees must include applicable escalation language to determine future costs.
- d. Allowable long term agreements include:
 - i. Property management services
 - ii. Banking services
 - iii. Tax/bond counsel
 - iv. Trustee services
 - v. Telecommunications services
 - vi. Independent Audit Services
 - vii. Memorandums of Understanding (MOU) between SWHA and other governments
- e. Other types of long term agreements (or existing agreements referenced above that need long term extensions) must have the approval of the Department Director and the Executive Director (or designee). To get approval, one or more of these must be justified:
 - i. Substantial cost to SWHA in re-letting the agreement to a different vendor in the future;
 - ii. Future disruption of service and loss of revenue as a result of a change to a different vendor;
 - iii. A performance analysis documenting successful contract performance and market competitiveness for costs and/or services; and,
 - iv. General circumstances of why it is in the best interest of SWHA to enter into this type of agreement.

5. ENVIRONMENTALLY PREFERRED PURCHASING

- a. All SWHA personnel will specify recycled content and environmentally preferable products unless such products do not perform satisfactorily and/or are unreasonably expensive. The priority for purchasing recycled content products shall be as follows:
 - i. The highest percentage of recycled content of post-consumer recovered material available in the marketplace; and
 - ii. The highest percentage of “pre-consumer recovered material,” available in the market-place.
- b. SWHA shall solicit the use of recycled content and other environmentally preferred products in its procurement documents.
- c. All SWHA Departments shall practice waste prevention and recycling.

GLOSSARY

Acceptance - The act of an authorized representative of SWHA acknowledging that the supplies or services are in conformity with the contract requirements.

Amendment - Written revision made to a contract after it is executed. (Also called a contract modification or zero-cost change order.)

Arbitration - A process of dispute resolution in which a neutral third party (arbitrator) renders a decision after a hearing at which both parties have an opportunity to be heard. When arbitration is voluntary, the disputing parties select the arbitrator who has the power to render a binding.

Architect and Engineer (A&E) - All professional services associated with the research, design and construction of facilities. By Statute (RCW 39.80) professionals covered are defined as Architects, Engineers, Land Surveyors and Landscape Architects who are registered with the State to practice their respective professions and are performing services within the scope of that license.

Assignee (Assigns) - A person to whom an assignment is made. (Also called grantee.)

Assignment - The act of transferring to another all or part of one's property, interest, or rights.

Award of Contract - The presentation of a purchase agreement or contract to a bidder; the acceptance of a bid or proposal.

Best and Final Offer - The last offer from a proposer clarifying the price and condition of doing the work; normally used in the final stage of the RFP/RFQ process.

Bid - A quotation submitted by a bidder in response to a solicitation. Also, in the sealed bidding method of procurement (IFB), the offer submitted by a bidder.

Bid Analysis - A bid analysis serves to assist SWHA in preparing for negotiations with the contractor to obtain a reasonable price. The extent of the analysis depends on the dollar value and complexity of the procurement. For non-routine small purchases and large purchases, a bid analysis is a written evaluation performed by SWHA: (1) obtaining a cost breakdown from the bidder(s) for all items included in the scope of work; (2) analyzing the labor, material, indirect costs, and profit proposed by the bidder(s); and (3) identifying the areas of questioned costs, unallowable costs, or items which appear to be inflated or unnecessary. Bid analysis is also performed when competition is not obtained, for contract modifications, a change order has been issued, or the procurement of professional services. For very small purchases and routine small purchases, a bid analysis may be as simple as comparing the independent cost estimate with the competitive prices received, to ensure that the contract price will be reasonable.

Bid Bond/Guarantee/Security - An insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event that a specific bidder, if his bid is accepted, fails to sign the contract as a bid. Bid bonds are required on all construction projects or where on-site labor is required of over \$250,000 to help ensure that a bid has been made in good faith

and that the bidder will enter into a contract if his or her bid is accepted. Each bid must be accompanied by a bid proposal deposit in the form of a cashier's check, postal money order, or surety bond secured by a surety company acceptable by SWHA for a sum of not less than five percent of the bid amount; personal checks or cash are not acceptable.

Bid Documents - The group of documents distributed by SWHA to each bidder when soliciting bids. Also called bid packet.

Bid Specification - Document in the bid packet that clearly explains all SWHA's requirements for the project.

Bidder's List - List of prospective contractors. (Also called Proposer's List, Source List or Mailing List.)

Bidder Roster - A list of potential bidders who obtain bid documents maintained for purposes of contacting these bidders if there is a bid addendum(s) or if additional information is distributed.

Blanket Contracts - Competitively negotiated contracts with vendors for materials, goods or services which guarantees price per unit. A purchase requisition is used to purchase materials, goods or services based on these blanket contracts. (E.g.: carpet, glass, cabinets.)

Board of Commissioners - Locally appointed citizens who serve as the Executive Directors' supervisor and policy makers of SWHA for a specified term without financial compensation.

CAO - Assistant Executive Director of Administration.

Central Office Cost Center (COCC) Funds – Fee income (from sources such as management, bookkeeping, asset management, and front line service fees) generated from management of public housing, HCV, and other programs. The fees that the COCC earns are considered local income and are, therefore, “defederalized” and 2 CFR Part 200 does not apply to COCC Funds.

Certificate of Compliance - A supplier's certification that the supplies or services in question meet certain specified requirements.

Certificate of Insurance with Endorsement - A document provided by insurance agents and brokers as proof of insurance that SWHA is listed as an additional insured which serves as evidence that SWHA has coverage under the contractor's policy of insurance. SWHA must receive and review a copy of the contractor's policy or an endorsement amending the coverage to ensure the actual required coverage is in effect before work begins pursuant to the contract.

Certificate of Non-Collusion - A statement signed by a bidder and submitted with its bid to affirm that its bid is made freely without consultation with any other bidder.

Change Order - A written agreement, signed by both parties to the contract, formalizing and defining a change in the contract requirements within the scope of the original contract. The contract documents must state that SWHA may at any time make minor changes within the scope of the project (e.g. modify the drawings, designs, specifications, method of shipping or packing, place of inspection, delivery) without invalidating the agreement. If such changes

increase or decrease the amount due the contractor, or the time of performance of the work, an equitable adjustment should be authorized by change order. The contractor must make only those changes ordered by the executed change order reviewed and approved by the Executive Director via the SMA. Each change order should be numbered and dated; describe the change to be made; indicate revision, if any, to date of completion; and list original and revised contract costs with the percentage of the change. Change orders should be made with great caution, and excessive change orders without new bids are sometimes challenged as evasions of the bid law.

Code Requirements - The federal, state and local law, ordinance, or direction necessitating specific action, method of performance or quality/quantity of an item installed.

Collusion - A secret agreement or cooperation between two or more persons to accomplish a fraudulent, deceitful or unlawful purpose.

Collusive Bidding - The response to bid invitations by two or more vendors who have secretly agreed to circumvent laws and rules regarding independent and competitive bidding.

Commercial General Liability (CGL) Insurance - Covers an organization from exposure that can result in lawsuits alleging negligence that causes injury or property damage as a result of the organization's premises, products, or completed operations.

Competitive Range - In a Request for Proposals (RFP) solicitation, those proposals, which, after evaluation by SWHA, have a reasonable chance of receiving the award, both from a technical and cost standpoint.

Comprehensive Grant Program (CGP "Comp Grant") - Provides an annual grant to be used for SWHA modernization efforts (both physical and management improvements) in accordance with an annual budget plan, to benefit the Public Housing Program only.

Comprehensive Improvement Assistance Program (CIAP) - Use of HUD Modernization funds for substantive rehabilitation of a public housing unit, public spaces community facilities, grounds, etc. CIAP applies to small Housing Authorities, e.g. Sedro Wooley.

Conflict of Interest - A situation wherein an individual as part of their duties must make a decision or take action that will affect their personal interests. No employee shall participate directly or indirectly in a procurement when they knows there is a conflict of interest.

Consideration - Acts, promises, or things of value exchanged by two parties and serving as the basis for a contract between them.

Construction - All construction (excluding ordinary maintenance), e.g. demolition, remodeling, renovation, road construction, building construction, utilities construction and for goods when on-site labor is more than 20% of the total contract.

Consultant/Expert - A person who is exceptionally qualified, by education and/or experience, in a particular field to perform a specialized service.

Contract - A deliberate verbal or written agreement between two or more competent persons to perform or not perform a specific act or acts. Usually one party agrees to provide goods or services while the other party agrees to provide compensation for those goods or services.

Contract Administration - The monitoring of the contractor's performance in order to assure compliance with performance requirements and contract terms.

Contract Close-out - The acceptance of all work and the completion of all documentation necessary to finish a contract and release SWHA and the contractor from further obligations under the contract.

Contract Modification or Amendment - A written agreement, signed by both parties to the contract, providing for a modification of the contract terms not within the scope of the original contract. It introduces substantial change or cancels details not anticipated by the original contract (e.g. specifications, delivery point, date of delivery, contract period, price, quantity) but leaves the general purpose and effect of the contract intact.

Contracting Officer – The Executive Director or a representative appointed by the Executive Director in writing, stating clearly the limitations on the appointee's procurement authority. Contracting Officers may enter into, administer or terminate procurement contracts and make related determinations and findings.

Contractor - The person or other entity entering into a contract with SWHA to perform services, work or furnish materials in accordance with a contract.

Contractor Evaluation - The person (project manager or other contracting officer) authorized to judge the performance/outcome of the contract awarded through IFB, RFP or RFQ process.

Cooperative Purchasing Agreements - SWHA has established cooperative purchasing relationships with other governmental entities, such as the State of Washington and King County Director's Association. These agreements allow SWHA to purchase competitively negotiated goods, services and materials at pre-established prices. Thus, the purchase of items under cooperative purchasing contracts may be made without soliciting other vendors.

Cost Estimate - Before starting the procurement process, SWHA should make cost estimate of what it expects the required item(s) will cost. For small purchases of routine goods, this process may be as simple as examining the price paid in the most recent contract for the same or similar item(s) and factoring in inflation or changed market conditions. For larger contracts, this process may be more complex, involving a written analysis of all items included in the scope of the work, tabulated under appropriate cost headings (direct costs, labor, overhead, and profit).

Cost-Plus Contract - A contract providing the contractor's profit is fixed at a specific percentage of the actual cost of labor and materials.

Cost-Reimbursement Contract - Contract in which the buyer and seller agree on an estimate of contract costs. The buyer agrees to reimburse the seller for reasonable and allowable costs necessary to complete the work.

Cure Notice - A document the Contracting Officer sends to notify the contractor that the contract may be terminated by reason of default if the condition endangering performance of the contract is not corrected in a specified number of days.

Davis-Bacon Act - Requires all laborers and mechanics employed in certain programs of federal financial assistance involving construction activities be paid wage rates no less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor.

Default - The omission or failure to perform a legal or contractual duty; to observe a promise or discharge an obligation; or to perform an agreement.

Department Head – The head of a department, regardless of title. The Executive Director may appoint a department head as a Contracting Officer.

Designee - Anyone given procurement authority by a Department Heads with the approval of the Executive Director. Such authority must be in writing and include monetary limits.

Direct Cost - Out-of-pocket expenditures made in conjunction with a project, e.g. for labor, material, land, fees, as distinguished from overhead, administration, profit, etc.

Emergency - Exists when (1) the situation seriously threatens the public health, welfare, safety or endangers property, or otherwise would cause serious injury to SWHA as may arise by reason of flood, earthquake, epidemic, riot, equipment failure or similar event; or (2) there is no time for a public procurement process. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency. The Executive Director should approve any situation being declared an “emergency.”

Evaluation Criteria - Weighted standards in a RFP/RFQ, relating to management capability, technical capability and approach in meeting the scope of work, performance requirements, price, and other important factors that are used for evaluating proposals from bidders/offerors.

Executive Director – The highest officer of the agency, regardless of title, who reports directly to the Board of Commissioners. Other titles include – President or CEO (Chief Executive Officer).
Excusable Time Delay - A contractor’s failure to perform for reasons beyond its control and without fault or negligence.

Federal (HUD) Funding - The source of the procurement funding is the federal government, including CGP (Comp Grant), CIAP, Performance Funding System (PFS), HOME/HOF, or any federal grant.

Firm Fixed-Price Contract - Contract type that requires the delivery of a product or service at a specified price, fixed at the time of contract award and not subject to any adjustment; the preferred type of contract.

Goods/Supplies/Equipment/Materials (Routine Goods) - Items such as maintenance, repair, operation or office supplies. Items may be purchased through negotiated blanket contracts or

cooperative purchasing/government contracts offering fixed unit prices for an extended period of time. Goods, supplies, equipment and materials may be ordered through the Purchasing Department.

Hold Harmless and Indemnification Clause - An agreement by which one party assumes the liability of another and agrees to defend them in the event of a claim. It is the legal instrument of risk transfer, while the insurance is the financial guarantee.

Indefinite Quantity Contract - Contract used for procurements in which the exact number of deliverable items is not known at the time of contracting. The contract provides for a minimum and maximum amount of goods/services which may be ordered under the contract.

Independent Contractor - A person who contracts with SWHA to render service but who is not controlled by SWHA, nor subject to SWHA's right of control with respect to their physical conduct in the performance of the service.

Informal Solicitation - For: (1) the purchase, lease or rental of goods, supplies, equipment and materials of \$250,000 and under; (2) professional or other contracted services including ordinary maintenance of \$250,000 and under; (3) contracted social services of \$250,000 and under; and (4) construction projects (Public Works/Small Works Roster) or procurements where on-site labor is required excluding ordinary maintenance of \$35,000 and under, solicitations may be obtained from contractors/vendors in writing, by telephone or FAX. A total of three (five for construction projects) potential contractors must be contacted with one WMBE or Section 3, if possible. Use the Purchase Documentation Form in the Appendix for file documentation.

Initiating Department - The Department that initiates the procurement. Any employee or Department may initiate a purchase.

Inspection - The examination and testing of supplies and services to determine whether they conform to contract requirements.

Integration - A contract where the parties adopt the writing or writings as the final and complete expression of the agreement.

Internal Controls - Safeguards which ensure that contracting will be carried out in conformity with applicable federal, state and local regulations and SWHA policy.

Invitation for Bids (IFB or Sealed Bidding) - A solicitation for responsible bidders by advertisement ("public notice") for goods or services under the sealed bidding method of competitive procurement. IFB is utilized when SWHA knows what goods and/or services it wants to procure, what results/performance it wants done, and/or the standards for how it wants it done. The bid documents must clearly explain all SWHA's requirements. IFB's are used primarily for: (1) the purchase, lease or rental of goods, supplies, equipment and materials over \$250,000; and (2) construction projects (Public Works) or procurements where on-site labor is required excluding ordinary maintenance over \$40,000.

SWHA-Owned Properties - Any property wholly owned by SWHA. They may be managed directly by SWHA or by property management firms under the direction of SWHA.

Labor Hour Contract - Contract which provides for the procurement of property or services on the basis of direct labor hours at specified, fixed hourly rates (which include direct and indirect labor, overhead, and profit).

Labor Surplus Area Business - 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 underemployment, as defined by the U.S. Department of Labor in 20 CFR 654, Subpart A, and in lists of labor surplus areas published by the Employment and Training Administration.

Lack of Competition - Less than three responsive bidders to a solicitation. Award will not be made unless a bid or criteria analysis in the form of a memorandum to file verifies the reasonableness of the price; reasons why re-solicitation would not bring about a different result; and reasons why the solicitation process was not flawed.

Late Bids - No bid will be accepted after the time and date specified in the bid documents, unless for reasons beyond the bidder's control, e.g. inclement weather, courier error, third party error, SWHA fax machine out of order (for solicitations that accept faxed bids only). Acceptance of a late bid must receive written approval from the soliciting Department's Director and the Executive Director.

Level-of-Effort Contract - Contract (usually cost-reimbursement type) which specifies the number and type of person-hours which the contractor will apply in pursuing the project.

Long-Term Agreement - Occurs when a soliciting Department initially awards a competitively bid contract and then subsequently renews the contract without competitively bidding. The Department Head and Executive Director must approve renewal of such contracts. Examples of long-term agreements include: building management, accounting services, banking services, outside attorney services, tax/bond counsel, trustee services and laundry facility services.

Lowest Responsible Bidder - In determining lowest responsible bidder, in addition to price, the following elements shall be given consideration: (1) have adequate financial resources to perform the contract or the ability to obtain them; (2) have a satisfactory performance record; (3) have a satisfactory record of integrity and business ethics; (4) have a satisfactory record of compliance with public policy (e.g. Equal Employment Opportunity); (5) not have been suspended, debarred or otherwise determined to be ineligible for award of contracts by the Department of Housing and Urban Development or any other agency of the U.S. Government (Current lists of ineligible contractors are available for inspection at SWHA/HUD); (6) such other information as may be secured having a bearing on the decision to award the contract, including, but not limited to, life cycle cost (i.e., the total cost of an item over its useful life), quality of materials proposed, where warranted; and (7) the bid is not unbalanced in that the bidder's bid is so much lower than other bids received that it is doubtful the bidder will be able to deliver the requested scope of work and meet wage requirements, if any (see "unbalanced bid" for more information).

Maintenance - Keeping existing assets or facilities in good usable, operational condition.

Mediation - Private, informal dispute resolution process in which a neutral third person, the mediator, helps disputing parties to reach an agreement. The mediator has no power to impose a decision on the parties.

Merger Clause - A provision in a contract to the effect that the written terms may not be varied by prior or oral agreements because all such agreements have been merged into the written document.

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

Negotiation - For RFP or RFQ solicitations, a discussion between the selection committee and bidders in the acceptable competitive range regarding their proposals and services being offered.

Non-Competitive Procurement - Methods of procurement in which SWHA solicits bids or quotes from a limited number of sources, such as: sole source; emergency; government (cooperative) purchasing agreements, special market conditions, long-term contracts; or lack of competition.

Notice of Award - An official notice of award sent to the successful bidder. The notice should state (if applicable) the time period given the bidder to execute its contract, fulfill performance and payment bond requirements, and submit insurance certificates with endorsements and any other requirements specified in the contract documents.

Notice of Completion - SWHA must complete and submit to the Department of Revenue notification that the specified public works project has been completed. Before final settlement can be made on any public works project, the prime contractor and each and every subcontractor must submit an "Affidavit of Wages Paid" to SWHA. No payments are to be made from retained funds until receipt of the Department's certificate that the contractor and subcontractors have paid all required taxes, and that no claims from material suppliers, laborers, or subcontractors exist.

Notice to Proceed - After review and acceptance of the bonding and insurance provided by the successful bidder and proper execution of the contract, an official written notice to proceed shall be issued to establish starting and completion dates. The contractor shall be directed not to begin work on the project until receipt of this official notice.

Ordinary Maintenance - Work that is performed on a regularly scheduled basis (e.g. daily, weekly, monthly, seasonally, semiannually, but not less frequently than once per year), (1) to service, check, or replace items that are not broken; or (2) work that is not regularly scheduled but is required to maintain the asset so that repair does not become necessary. Maintenance is keeping existing facilities in good usable, operational condition. Work performed to maintain the operations of a project which does not exceed the Very Small Purchases dollar limit.

Partnerships - Ownership entities for which SWHA acts as general partner in association with private sector limited partnerships. Also called tax credit partnerships.

Payment Bond - Assures payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. A 100% payment bond is required for construction contracts or contracts where on-site labor is performed of over \$250,000 (percentage amount may be reduced at the discretion of the Executive Director or assignee). Bonds for federally funded projects must be obtained from guarantee or surety companies acceptable to the U.S. Government as listed in U.S. Treasury Circular Number 570. Bonds for other projects shall be secured by a surety company authorized to do business in the state of Washington with ability to secure the value of the contract.

Performance Bond - Secures performance and fulfillment of the contractor's obligation. A 100% performance bond is required for construction contracts or contracts where on-site labor is performed of over \$250,000 (percentage amount may be reduced at the discretion of the Executive Director or designee). Bonds for federally funded projects must be obtained from guarantee or surety companies acceptable to the U.S. Government as listed in U.S. Treasury Circular Number 570. Bonds for other projects shall be secured by a surety company authorized to do business in the state of Washington with ability to secure the value of the contract.

Petty Cash - Very small purchases of \$50.00 and under for goods, supplies, materials and services may be processed through the use of a petty cash account. See Petty Cash Purchases Section for procedures.

Prevailing Wages - The rate of hourly wage, usual benefits, and overtime paid in the largest city in county (where the physical work is being performed) to the majority of workers, laborers, or mechanics, in the same trade or occupation. Prevailing wages are established by the Department of Labor and Industries, for each trade and occupation employed in the performance of public work. They are established separately for each county, and are reflective of local wage conditions. [RCW 39.12.010 and 015]. There is no minimum dollar amount for prevailing wage. [RCW 39.12.020].

Prime Contractor - Any person(s) or business holding a contract with SWHA will be referred to as the prime contractor.

Privately-Owned Properties - Any property owned by a private individual, partnership or corporation in which SWHA has no interest.

Procurement - Contracts and modifications (including change orders) for construction or services, as well as purchase, lease, or rental of goods, materials, supplies and equipment.

Procurement Admin – A procurement admin is any staff assigned by a Procurement Manager or Contracting Officer to regularly perform significant steps in a procurement process.

Procurement Analyst – Procurement analysts (who typically work in the Administrative Services Department) review procurements and provide technical assistance to managers and staff engaged in procurement.

Procurement Manager – The procurement manager is a manager, project manager or coordinator assigned by a Contracting Officer to manage a procurement. The procurement manager is responsible to assure that all steps in a procurement comply with SWHA procurement policy.

Professional (Consultant) Service - Any individual, firm, group, association, corporation, partnership or joint venture that provides professional services that includes architects, engineers, attorneys and accountants. Request for Proposals (RFP) is the most often utilized methods of procurement for professional (consultant) contracts.

Professional Liability Insurance (Errors and Omissions) - Protects against losses that occur when a professional fails to practice his or her art to the standards usual and customary to that profession. Professional liability insurance required of professionals (e.g. architects, engineers, attorneys, accountants, physicians) insures the work meets the requirements of the profession and the contract documents.

Proposal - For RFPs or RFQs, the offer or bid submitted by a potential contractor.

Public Notice - For all large purchases, publication by advertising in a newspaper of general circulation, a newspaper of local circulation in SWHA's area, or industry media (trade newsletters, commercial reports, etc.) any of which should reach a substantial portion of the local population. It is recommended that the ad run once; and if appropriate, additionally publicize in a minority targeted newspaper; and that the advertisements are published at least two weeks before bid opening. Notices will state the place, date, and time of where bid documents may be obtained or reviewed and cost, if any; the place, date, and time of the pre-bid conference, if any; the place, date, and time of the bid opening or proposal due date; the solicitation number or title; a point of contact for questions or requests for solicitations; and a brief description of the needed item(s).

Public Works - All work, construction, alteration, repair or improvement other than ordinary maintenance, executed at the cost of the state or of any local public agency, or which is by law a lien or charge on any property therein. This includes, but is not limited to, demolition, remodeling, renovation, road construction, building construction, ferry construction, and utilities construction. There is no minimum dollar amount for public works or prevailing wages. [RCW 39.12.020]. See Ordinary Maintenance for definition.

Public Works Procurement - Includes all purchases for public works projects including labor and materials. For procurements of \$40,000 and under, SWHA may informally solicit five contractors from the Small Works Roster including at least one WMBE or Section 3 business, if possible. If the Small Works Roster cannot be used, large purchase procedures must be used.

Purchase Order - Official purchasing document used to place orders with vendors and process payments of invoices. A purchase order may be obtained from the Purchasing Department.

Quotation - An oral, faxed or written price or offer of a good or service submitted by a bidder. For procurements over \$50,000, bidders should submit faxed or written quotations on a SWHA bid form or on company letterhead.

Request for Proposals (RFP) - A method of solicitation where SWHA's solicits prospective bidders to submit a proposal based on the terms and conditions set forth in the RFP. This process is used when SWHA can clearly define its scope of work, but cannot identify the services appropriate to meet its requirements. Bidders should evaluate the scope of work and propose a solution. Proposal evaluation and contractor selection are based primarily on criteria other than cost alone. SWHA must identify such award evaluation criteria (expertise, experience, qualifications, approach to project) and the respective weight used in the evaluation. The bidder will submit a proposal detailing its price, methodology, recommended solution, and expertise based on the evaluation criteria. After an evaluation by a selection committee of at least three evaluators, price and schedule will be negotiated with the highest rated bidders.

Request for Qualifications (RFQ) - A method of solicitation where SWHA solicits prospective architect-engineering services to submit a proposal in which price is neither requested nor used as an evaluation factor; instead, interested firms submit proposals evidencing their experience, training, technical qualifications, and expertise for a specific work or project. After evaluation by a selection committee of at least three evaluators, only the highest ranked firm or firms are interviewed or requested to submit a proposal describing the most appropriate, innovative, etc. approach or methodology to perform the work. A fair and reasonable price is then negotiated with the best qualified firm. If SWHA cannot reach agreement on the final price and/or final scope of work, SWHA may then negotiate with the next highest rated respondent until an acceptable contract is executed. Use of an RFQ is required in A&E solicitations which are by law excluded from using price as an evaluation criteria. Other types of solicitations where it may be appropriate to use the RFQ process (non-federal funds only): accounting, attorney, physicians or professional service firms.

Responsible Bidder - See "lowest responsible bidder".

Responsive Bid/Offer - A bidder/proposer whose bid does not vary from the specifications, requirements, submittals and terms set out by a solicitation.

Routine Goods - Goods that may be purchased through a catalog, such as electrical supplies, paint, appliances and parts, plumbing supplies, lumber and hardware, tools, janitorial supplies, safety equipment, office furnishings and equipment, computer equipment, pagers, telephones and cellular phones, work clothing, etc.

Sanctions - Measures which may be invoked by HUD to exclude or disqualify contractors from participation in HUD programs (e.g., debarment and suspension).

Scope/Statement of Work - Written definition of work to be performed which establishes standards sought for the goods or services to be supplied. Depending on the complexity of the procurement, the scope may: identify the work to be performed; set parameters by which the desired scope of work can be defined and by which progress and results can be measured; required some defined "end product" and some tangible form of progress/compliance reporting; a scope for a labor-hour type of requirement should specify the kind of labor categories required to perform the work, and any qualification requirements (e.g. experience, certification); nature of the work.

Sealed Bidding (IFB) - A solicitation method where bids are publicly solicited and a firm-fixed-price contract (lump sum or unit sum) is awarded to the lowest responsible bidder that conforms with all the material terms and conditions of the invitation for bids. This method of procurement requires a clearly, accurately, and completely written scope of work and specifications from SWHA describing its requirements; a public bid opening, an evaluation of bids, and award the contract based on the lowest bid submitted by a responsible contractor. The sealed bid method is the preferred method for procuring construction and goods, supplies, equipment and materials.

Selection Committee - In a RFP/RFQ solicitation, a committee of at least three evaluators who analyze the proposals submitted according to the evaluation criteria set out in the solicitation.

Severability - A clause commonly found in contracts which provides that in the event that one or more provisions are declared void, the balance of the contract remains in force.

Show Cause Letter - A document the Contracting Officer sends to a defaulting contractor to notify the contractor that the contract may be terminated by reason of default unless the contractor can prove within a specified period of time (e.g. 10 days) that the condition was not his or her fault.

Small Business - A business which is: independently owned; not dominant in its field of operation; and not an affiliate or subsidiary of a business dominant in its field of operation.

Small Works Roster - A list of contractors from whom bids or proposals are requested for construction projects (Public Works) or procurements where on-site labor is required excluding ordinary maintenance or an estimated cost of \$250,000 and under (\$300,000 for non-federally funded projects) An informal solicitation of five contractors with one WMBE or Section 3 business, if possible, is used to evaluate and select a contractor. At least annually, SWHA must advertise in a newspaper of general circulation the existence and requirements for being placed on its small works roster. If unable to procure construction projects through use of the Small Works Roster, Large Purchase procedures must be followed. (See Small Works Roster Purchases for procurement procedures.)

Social Services - A service designed to provide meaningful opportunities for socio-economic growth, healthy living or lifetime stability for specific sectors of the SWHA population. The purpose or goal of these services is to assist individuals to develop into self-reliant citizens and promote social equity. Examples of services include but are not limited to education/training programs, employment assistance, housing programs/assistance, childcare, youth programming, food security/subsidies, health care, senior services, etc.

Sole (Single) Source - A contractor or vendor who provides services or goods of such a unique nature that the contractor is clearly and justifiably the only practicable source to provide the service or good. The justification is based on either the uniqueness of the service or good or sole availability at the location required. Award shall not be made unless a bid analysis in the form of a memorandum to file verifies the reasonableness of the price.

Soliciting Department - The Department that actually solicits the procurements. Certain purchases may be made by specific Departments who then take responsibility for the procurement. E.g. Purchasing: routine goods, supplies and materials; telephones, telephone,

cabling and telephone systems, security systems; MIS: computer equipment, software and computer cabling; Construction/Maintenance: construction work or other work with on-site labor having Davis Bacon or Prevailing Wages requirements.

Specifications - Clear and accurate description of the technical requirements of a service or supply contract. All specification must be written in a manner so as to not preclude products or services of an equal nature to participate or compete.

Standardization - The process of examining specifications and needs for items of similar end usage and drawing up one specification that will meet the needs for most or all purchases of that item.

State or Local Funding - The source of the procurement funding is state or local government, including HOF, Trust Fund, Non-HUD Project Funding, or any state or local grant.

Subcontract - Any contract, purchase order, or other purchase agreement, including modifications and change orders to the foregoing, entered into by a subcontractor to furnish supplies, materials, equipment, and services for the performance of the prime contract or a subcontract.

Subcontractor - Any person(s) or business holding an agreement with the prime contractor in which the relationship is not that of employer and employee and any portion of the contractor's obligation is performed, undertaken or assumed.

Tax Credit Partnerships - See partnerships.

Termination for Convenience - Ending performance of a contract when the products or services are no longer required, the contractor has defaulted on the contract or when it is in the best interests of SWHA to terminate the contract.

Termination for Default/Cause - Termination of a contract when the contractor fails to perform or make progress so as to endanger performance.

Time-and-Materials Contract - Contract which provides for payment of supplies and services on the basis of incurred direct labor hours (at fixed rates which include direct costs, indirect costs, and profit) and materials (at cost).

Time Delay - An interruption during which services, supplies, or work are not delivered in accordance with the performance time schedule stated in the contract.

Unbalanced Bid - A bid that is so much lower than other bids received that it is doubtful the bidder will be able to deliver the requested scope of work and meet wage requirements, if any. The soliciting Department should verify with the bidder that its bid was not erroneous by reviewing the cost elements of the solicitation. If after this review the bidder does not withdraw its bid, the soliciting Department may determine the bidder is unable to perform the contract and therefore the bid is nonresponsive. A memorandum to the contract file approved by the Executive Direction should justify bid rejection.

Variance - An immaterial variance is an informality or irregularity as to a matter of the form of a bid which does not prejudicially affect the substantial rights of the interested parties. The test of whether or not a variance is material is whether or not it gives a bidder a substantial advantage or benefit not enjoyed by other bidders. When bids are submitted, immaterial or non-prejudicial variances can be waived as informalities; however, bids with material defects must be rejected.

Women/Minority Business Enterprise (WMBE) Participation - Federal regulations requiring SWHA take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

Women's Business Enterprise - A business that is at least 51% owned by a woman or women who also control or operate the business.

THE HOUSING AUTHORITY OF THE CITY OF SEDRO-WOOLLEY

RESOLUTION NO. 490

APPROVAL OF THE SWHA PROCUREMENT POLICY

WHEREAS, in the course of its daily business, contracts for and acquires goods and services,
and;

WHEREAS, the Housing Authority needs a Procurement Policy that has been adopted by the
Board of Commissioners;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS
OF THE HOUSING AUTHORITY OF THE CITY OF SEDRO-WOOLLEY;** as follows:

The Procurement Policy of the Sedro-Woolley Housing Authority is hereby adopted as
attached.

**ADOPTED AT THE SPECIAL MEETING OF THE BOARD OF COMMISSIONERS
OF THE HOUSING AUTHORITY OF THE CITY OF SEDRO-WOOLLEY AT AN OPEN
PUBLIC MEETING THIS 11th DAY OF JANUARY, 2024.**

**THE HOUSING AUTHORITY OF THE
CITY OF SEDRO-WOOLLEY, WASHINGTON**

LAURIE FELLERS, Chair
Board of Commissioners

ROBIN WALLS
Secretary-Treasurer