



VIRGIN ISLANDS HOUSING FINANCE AUTHORITY

Procurement Policy



SUBJECT:	VIHFA Procurement Policies
Version Number	6
Revised Date	4/28/2020
Effective Date	5/01/2020
APPROVAL:	
	
Daryl Griffith Executive Director	Date

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Table 1: HFA Procurement Policies and Procedures Manual Version Control

VERSION NUMBER	EFFECTIVE DATE	DESCRIPTION
VERSION 2	11/29/2018	Added Section Entitled “Liquidated Damages” on page 15
	11/29/2018	Section 5.1 updated to reflect contracts funded by federal funds will include the applicable federal requirements and contract provisions required by HUD
VERSION 3	05/20/2019	Section 4, Paragraph 3 requiring public notice before solicitation is issued was deleted.
		Section 5 updated to establish criteria to determine the procurement policy a CDBG-DR sub-recipient shall utilize.
		Section 5 updated to clearly adopt a \$5,000 small purchase threshold that requires the solicitation of three written quotes.
		Section 5 updated to permit the solicitation of Architectural and Engineering Services under CDBG-DR through a Request for Proposal.
		Section 5 updated to implement a blanket purchase order solicitation for office supplies/cleaning supplies and miscellaneous computer supplies up to a maximum of \$15,000 in any given year.
		Section 5 updated to establish a mini-bid process to be utilized within the CDBG-DR program.
VERSION 4	02/16/2020	Section 8 updated to permit the pledging of assets adequate to protect the federal interest as part of the performance bond.
		Section 5 set Micro Purchases threshold from \$100.00 to \$15,000.
		Section 5 set Small Purchases threshold from \$15,000.00 to \$50,000.
VERSION 5	03/11/2020	Section 5 set Black Purchase Order threshold to \$50,000.00.
		Section 5 “Pre-Qualified Pool” updated to permit unit pricing negotiations.

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VERSION 6	04/28/2020	<p>Section 1 updated to reflect Board Resolution No. 013-2019_ that granted the Executive Director authorization to update the Procurement Policy as needed to comply with federal procurement procedures required for the implementation and administration of the CDBG-DR Program.</p> <p>Reduce Section 5 Micro Purchase maximum threshold from \$15,000.00 to \$3,000.00.</p> <p>Section 5 “VIHFA Purchasing Methods” – Paragraph 2 (iii) moved to this subheading from under “Small Purchases” subheading.</p>
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This Procurement Policy ("the Policy") is established for the Virgin Islands Housing Finance Authority ("VIHFA") and outlines all procedures for all procurement activities of the Agency.

SECTION 1 - GENERAL PROVISIONS

Purpose

The VIHFA shall: provide for a procurement system of quality and integrity; provide for the fair and equitable treatment of all persons or firms involved in purchasing by the VIHFA; ensure that supplies and services (including construction) are procured efficiently, effectively, and at the most favorable prices available to the VIHFA; promote competition in contracting; and assure that VIHFA purchasing actions are in full compliance with applicable Territorial laws. The VIHFA is committed to the stewardship of the environment and in this effort, will strive to reduce the adverse environmental impact of our purchasing decisions by buying goods and services from manufacturers and vendors who share our commitment to the environment.

Application

This Policy applies to all procurement actions of the VIHFA, regardless of the source of funds, except as noted under exclusions, below. However, nothing in this Policy shall prevent the VIHFA from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with the law. When procuring property and services under a grant, the VIHFA will follow the same policies and procedures it uses for procurements from its non -Federal funds. The VIHFA will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations.

Definition

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

Changes in Laws and Regulations

In the event an application law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with these Policies, automatically supersede these Policies.

Any material modification of any of the policies set forth in this Policy must be approved by the VIHFA's Board of Directors (herein referred to as "the Board") except that the Executive Director is authorized to (i) correct inconsistencies and (ii) to make such other revisions to the Procurement Policy, and undertake any and all actions necessary to comply with federal procurement procedures necessary for the implementation and administration of the CDBG-DR Program.

Public Access to Procurement Information

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Most procurement information that is not proprietary is a matter of public record and shall be available to the public to the extent provided in the United States Virgin Island's Freedom of Information Act.

SECTION 2 - ETHICS IN PUBLIC CONTRACTING

General

The VIHFA hereby establishes this code of conduct regarding procurement issues and actions and shall implement a system of sanctions for violations. This code of conduct is consistent with applicable Federal and Territorial laws.

Conflicts of Interest

No employee, officer, Board member or agent of the VIHFA shall participate directly or indirectly in the selection, award, or administration of any contract if a conflict of interest, either real or apparent, would be involved. This type of conflict would be when one of the persons listed below has a financial or any other type of interest in a firm competing for the award:

1. An employee, officer, Board member, or agent involved in making the award;
2. His/her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister);
3. His/her partner; or
4. An organization which employs or is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

Gratuities, Kickbacks, and Use of Confidential Information

No officer, employee, Board member, or agent shall ask for or accept gratuities, favors, or items of more than \$25 in value from any Developer/Contractor/Vendor, potential Developer/Contractor/Vendor, or party to any subcontract, and shall not knowingly use confidential information for actual or anticipated personal gain.

Prohibition Against Contingent Fees

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

SECTION 3 - PROCUREMENT PLANNING

Procurement Planning

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Planning is essential to managing the procurement function properly. Hence, the VIHFA will periodically review its record of prior purchases, as well as future needs, to: find patterns of procurement actions that could be performed more efficiently or economically; maximize competition and competitive pricing among contracts and decrease the VIHFA's procurement costs; reduce VIHFA administrative costs; ensure that supplies and services are obtained without any need for re-procurement, e.g., resolving bid protests; and minimize errors that occur when there is inadequate lead time. Consideration should be given to storage, security, and handling requirements when planning the most appropriate purchasing actions.

SECTION 4 - CONTRACTING OFFICER DUTIES AND DELEGATION OF CONTRACTING AUTHORITY

Executive Director's Duties (ED)

The Contracting Officer, who is the Executive Director (or other individual the Executive Director has authorized in writing), shall administer all procurement transactions. The Contracting Officer shall issue Operational Procedures to implement this Policy. The Contracting Officer shall also establish a system of sanctions for violations of the ethical standards described in Section 9, consistent with Federal and Territorial laws.

The Executive Director ensures that:

1. Procurement requirements are planned to ensure that the Agency receives optimum and economical purchasing;
2. All procurement documents such as purchase orders, contracts (including modification thereto), and cooperative and interagency agreements will clearly outline the required supplies, services (including construction), specifications, materials, and equipment are properly supported and documented.
3. Notice of contract awards will be made available to the public;
4. Solicitation procedures are conducted in full compliance with Territorial laws;
5. A price or cost analysis is conducted for all procurements;
6. The contract is awarded to the responsive and responsible bidder offering the lowest price (for sealed bid contracts) or the offeror whose proposal offers the greatest value to the VIHFA, considering price, technical, and other factors as specified in the solicitation (for contracts awarded based on competitive proposals); unsuccessful firms are notified promptly after contract award;
7. There are sufficient unencumbered funds available to cover the anticipated cost of each procurement action before awarding the contract or issuing the modification;
8. Work is inspected before payment, and payment is made promptly for contract work performed and accepted; and
9. The authority to terminate contracts in accordance with the terms of such contracts are maintained by VIHFA.

Contracting Officer's Representatives and Departments Contracts Directors

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

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The Executive Director may appoint individuals as Contracting Officer's Representative ("COR") to administer the contracts and to monitor, within their appropriate area of responsibility, the performance of the Contractor/Consultant. The COR shall be responsible for performing any administrative function associated with the administration of the contract that does not involve a change in the cost or duration of contract performance. Such appointments delegating procurement authority shall be in writing, signed by the executive director, and designate the length of time that the authority has been delegated to each individual or individuals. The Contracting Officer's Representative shall have the responsibility for the following:

1. Administration of the contract;
2. Provide on-going coordination and technical assistance to the Contracting Officer and the Contractor/Consultant;
3. Define and prepare the work requirements, inspect, evaluate, and accept the Contractor's/Consultant's work;
4. Advise the Contracting Officer in writing when situations arise that may modify, disrupt or hinder performance and/or completion of work;
5. Participate in the comprehensive procurement planning for divisions; and
6. Other related duties as deemed appropriate by the Contracting Officer (or his/her designee).

Initiation of Procurement Action

Documents authorized to initiate a procurement action over \$50,000.00 shall include, but are not limited to, the following:

1. Request for Procurement Forms attached hereto (Specification/Scope of Work, Cost/Price Estimate, , etc.) and;

Unauthorized Obligations

Under no circumstances, except as stated below, are funds to be obligated by VIHFA and members of its staff unless authorized through the proper procurement process as outlined in this Policy or the accompanying Operational Procedures. The Executive Director will take appropriate positive and/or corrective action, where warranted, to ensure authority-wide compliance and adherence to said Policy and Procedure developed pursuant to the Policy.

SECTION 5 - PURCHASING METHODS

Federal Procurement

All procurements conducted by VIHFA and its subrecipients shall be conducted in a manner that provides full and open competition. To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that work on specifications, requirements, statements of work, invitations for bids or requests for proposals must be excluded from competing for such procurements.

The procurement of services, supplies, equipment or construction to be funded with Disaster Recovery CDBG funds shall include the applicable federal requirements as denoted under 2 CFR Part 200 Appendix II contract provisions, any applicable terms from the associated grant agreement, and general provisions as required by the funding agency, the U.S. Department of

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Housing and Urban Development.

1. Selection of Procurement Procedures under the CDBG-DR Program:
 - A. Agencies and/or entities that are statutorily created by the Virgin Islands Code shall be deemed state agencies who can elect to use their own documented procurement.
 - B. Other entities, including non-profits, will be required to utilize either VIHFA's documented procurement procedures, as listed on www.vihfa.gov, or adopt 2 CFR 200.318 through 200.326.
2. Award of Contracts
Under the CDBG-DR program, VIHFA and its sub-recipients are prohibited from the use of cost plus a percentage of cost and percentage of cost pricing methods.

VIHFA Purchasing Methods

A. General

Any contract not exceeding the simplified small purchase threshold may be awarded in accordance with the procedures authorized in this Section. Requirements, services or material shall not be artificially divided so as to constitute a small purchase under this section (except as may be reasonably necessary to comply with Section 14 of this Policy). The practice of dividing purchases unnecessarily to force the use of small purchase procedure is prohibited.

The VIHFA shall not break down requirements aggregating more than the small purchase threshold (or the Micro Purchase threshold) into several purchases that are less than the applicable threshold merely to: (1) permit use of the small purchase procedure or (2) avoid any requirements that applies to purchases that exceed the Micro Purchase threshold.

B. Petty Cash Purchases

Petty Cash funds can be used for small purchases if otherwise authorized in the applicable Petty Cash procedure of VIHFA. The maximum amount of each purchase shall be One Hundred Dollars (\$100.00). Each Petty Cash Fund shall not exceed Two Thousand Dollars (\$2,000.00). The Contracting Officer shall ensure that:

1. The account is established in an amount sufficient to cover small purchases made during a reasonable period (e.g., one month).
2. Security is maintained and only authorized individuals have access to the account.
3. The account is reconciled periodically, but not less than monthly, and replenished by submission of a voucher to the Chief Financial Officer or designee.
4. The account is audited quarterly by the Chief Financial Officer or designee to validate proper use and to verify that the account total equals cash on hand plus the total accumulated vouchers.

C. Micro Purchases Procedures

1. Micro purchases are for any amount over One Hundred Dollars (\$100.00) to Three

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Thousand Dollars (\$3,000.00).

2. For micro purchase amounts which are between One Hundred Dollars (\$100.00) and Three Thousand Dollars (\$3,000.00), the VIHFA shall obtain at least two (2) quotes. To the greatest extent feasible, and to promote competition, micro purchases should be distributed among qualified sources. Quotes may be solicited in writing or verbally but only written responses will be accepted. Quotes may also be through e-procurement.
3. All purchases that does not need a firm fixed price contract, require the use of VIHFA Requisition & Purchase Order and Quotation Evaluation Form. When creating a Requisition/Purchase Order, all necessary supporting documentation must be attached including the required quotes and/or a justification letter if needed.

D. Small Purchase Procedures

1. Small purchases are for any amount over Three Thousand Dollars (\$3,000.00) and up to Fifty Thousand Dollars (\$50,000.00).
2. For all small purchases between Three Thousand Dollars (\$3,000.00) and up to Fifty Thousand Dollars (\$50,000.00) for goods and/or services readily available from three (3) or more independent sources within the public and/or private market sectors, generally a minimum of three (3) quotes shall be solicited. Quotes shall be solicited in writing and only written responses will be accepted.
3. A firm fixed -price contract (e.g. purchase order) may be awarded to the qualified vendor that provides the best value to the VIHFA. If award is made for reasons other than lowest price, a written justification shall be provided in the contract file. The names, addresses, telephone numbers of offerors and persons contacted and any other relevant data shall be maintained in the procurement file.
4. All purchases that does not need a firm fixed price contract, require the use of VIHFA Requisition & Purchase Order and Quotation Evaluation Form. When creating a Requisition/Purchase Order, all necessary supporting documentation must be attached including the required quotes and/or a justification letter if needed.

Procurement Actions

All procurement actions over Fifty Thousand Dollars (\$50,000.00) shall be conducted using contracting methods, by sealed bids, competitive proposals or non-competitive proposals where appropriate.

Sealed Bids

Sealed bidding shall be used for all contracts that exceed the small purchase threshold and that are not competitive proposals (non-competitive proposals) as these terms are defined in this Policy. Under sealed bids, VIHFA publicly solicits bids and awards a firm fixed-price contract (lump sum or unit price) to the responsible bidder whose bid, conforming with all the material terms and conditions of the Invitation for Bid (IFB), is

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the lowest in price.

Sealed bidding is the preferred method for procuring construction, supply, and non--complex service contracts that are expected to exceed \$50,000.00.

A. Conditions for Using Sealed Bids

VIHFA shall use the sealed bid method if the following conditions are present: a complete, adequate, and realistic statement of work, specification, or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; the contract can be awarded based on a firm fixed price; and the selection of the successful bidder can be made principally on the lowest price.

B. Solicitation and Receipt of Bids

An Invitation for Bid (IFB), which includes the specification(s) and all contractual terms and conditions applicable to the procurement, and a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the solicitation, will be issued. The IFB must state the time and place for both receiving the bids and the public bid opening. All bids received will be dated and time-stamped, recorded on an abstract (tabulation) of bids, and stored unopened in a secure place until the public bid opening. A bidder may withdraw the bid at any time prior to the bid opening.

C. Bid Opening and Award

Bids shall be opened publicly. All bids received shall be recorded on an abstract (tabulation) of bids, and only the abstract will be made available for public inspection. If equal low bids are received from responsible bidders, selection shall be made by drawing lots or other similar random method. The method for doing this shall be stated in the IFB. If only one responsive bid is received from a responsible bidder, award shall not be made unless the price can be determined to be reasonable, based on a cost or price analysis.

D. Mistakes in Bids

Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the IFB prior to the time set for bid opening. After bid opening, corrections in bids may be permitted only if the bidder can show by clear and convincing evidence that a mistake was made, the nature of the mistake, and the bid price intended. A low bidder alleging a mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the

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bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made.

All decisions to allow correction or withdrawal of a bid shall be supported by a written determination signed by the Contracting Officer. After bid opening, changes in bid prices or the other provisions of bids prejudicial to the interest of the VIHFA or fair competition shall not be permitted.

Competitive Proposals

Unlike sealed bidding, the competitive proposal method permits consideration of technical factors other than price; discussion with offerors concerning offers submitted; negotiation of contract price or estimated cost and other contract terms and conditions; and revision of proposals before the final contractor selection. Award is normally made based on the proposal that represents the best overall value to the VIHFA, considering price and other factors, e.g., technical expertise, past experience, quality of proposed staffing, etc., set forth in the solicitation and not solely the lowest price.

A. Conditions for Use

Where conditions are not appropriate for the use of sealed bidding, competitive proposals may be used. Competitive proposals are the preferred method for procuring professional services that will exceed the small purchase threshold but can be used for construction contracts as well.

B. Form of Solicitation

Competitive proposals shall be solicited through the issuance of a Request for Proposal (RFP). The RFP shall clearly identify the importance and relative value of each of the evaluation factors as well as any sub factors and price. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals until after award. The VIHFA may assign the price a specific weight in the evaluation criteria or the VIHFA may consider the price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.

C. Evaluation

The proposals shall be evaluated only on the criteria stated in the RFP. Where not apparent from the evaluation criteria, the VIHFA shall establish an Evaluation Plan for each RFP. Generally, all RFPs shall be evaluated by an appropriately appointed Evaluation Committee. The Evaluation Committee shall be required to disclose any potential conflicts of interest and to sign a Confidentiality Statement. An Evaluation Report, summarizing the results of the evaluation, shall be prepared prior to award of a contract.

D. Negotiations

Negotiations shall be conducted with all offerors who submit a proposal determined to have a reasonable chance of being selected for award, unless it is determined that negotiations are not needed with any of the offerors. This determination is based on the relative score of the proposals as they are evaluated and rated in accordance with the technical and price factors specified in the RFP. These offerors shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their proposals. No offeror shall be assisted in bringing its proposal up to the level of any other proposal. A common deadline shall be established for receipt of proposal revisions based on negotiations. Negotiations are exchanges (in either competitive or sole source environment) between the VIHFA and offerors that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract or other terms of a proposed contract.

E. Award

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

[Architectural and Engineering Services](#)

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

CDBG-DR Program:

Under the CDBG-DR Program, when A/E services are a subset of the overall services to be procured, then VIHFA may utilize a Request for Proposal (RFP).

[Non-Competitive Proposals](#)

A. Conditions for Use

Procurement by non-competitive proposals (sole source) may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids, cooperative purchasing, or competitive proposals, and if one of the following applies:

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1. The item is available only from a single source, based on a good faith review of available sources;
2. An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the VIHFA or its tenants/clients, as may arise due to a food, earthquake, hurricane, epidemic, pandemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any of the other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary simply to meet the emergency; or
3. After solicitation of a number of sources, competition is determined inadequate.

B. Justification

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

1. Description of the requirement;
2. History of prior purchases and their nature (competitive vs. non-competitive);
3. Statement as to the unique circumstances that require award by non-competitive proposals;
4. Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);
5. Price Reasonableness. The reasonableness of the price for all procurements based on non-competitive proposals shall be determined by performing an analysis, as described in this Policy.

[Alternate Procurement Methods](#)

A. Cooperative Purchasing/Intergovernmental Agreements

The VIHFA may enter into Territorial cooperative or intergovernmental agreements to purchase or use common supplies, equipment, or services. The decision to use an interagency agreement instead of conducting a direct procurement shall be based on economy and efficiency. If used, the interagency agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. The VIHFA may use Federal or Territorial excess and surplus property instead of purchasing new equipment and property if feasible and if it will result in a reduction of project costs. The threshold for interagency agreements shall

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be \$50,000.00. If interagency agreement is expected to exceed this amount, board approval shall be obtained.

B. Blanket Purchase Orders

In the interest of economy and efficiency, the Virgin Islands Housing Finance Authority will procure frequently purchased goods and supplies (i.e. office supplies/cleaning supplies/miscellaneous computer supplies) through Blanket Purchase Orders up to a maximum threshold of Fifty Thousand Dollars (\$50,000.00) for a given year.

Through the blanket purchase order system, VIHFA will establish charge accounts with qualified vendors for repetitive small purchases. Each order shall not exceed Five Thousand \$5,000.00. This process eliminates the administrative costs for issuing individuals purchase orders for these items. The authority to purchase items utilizing the blanket purchase orders will be delegated to divisions. VIHFA's policy is that vendors must have an applicable and current business license before a blanket purchase order will be issued. Blanket Purchase Orders are effective for one year.

Under the blanket purchase procedures, the VIHFA shall obtain a minimum of three (3) quotes where applicable. Quotes shall be solicited in writing and only written responses will be accepted.

C. Pre-Qualified Pool (PQP)

The VIHFA may select contractors or vendors for any procurement activity from a qualified pool of potential contractors selected on the basis of qualifications utilizing a RFQ during the first phase and mini-bids based on lower price utilizing contracting methods, by sealed bids, competitive proposals, non-competitive proposals where appropriate or unit price negotiations during the second phase. VIHFA may elect to have qualifications submitted for an open period of time or in phases. When the procurement solicitation submission deadline is left open, qualifications will be reviewed as received or at specific intervals set forth by the Authority. When the solicitation submission deadline is broken into phases, qualifications received by the prescribed dates will be reviewed at specific intervals set forth by the Authority based upon the corresponding dates outlined. Where a PQP has been established for a particular procurement, the solicitation of mini- bids or engagement of unit price negotiations need not be publicly advertised. If a mini-bid process is utilized, contract award will be based on the lowest bidder and the capacity to complete the project.

SECTION 6 - COST AND PRICE ANALYSIS

[Cost and Price Analysis](#)

A price analysis shall be conducted for micro and small purchases under the CDBG-DR

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program, while a cost analysis shall be conducted for the following procurement actions under the CDBG-DR program: contract cost modifications, mini-bids, and projects procured through Sealed Bids, Competitive Proposals, or Non-Competitive Proposals.

Liquidated Damages

Construction contracts with liquidated damages provisions must describe the rate(s) of liquidated damages assessed per day of delay. If a contract contains liquidated damages provisions, the contract shall include the applicable liquidated damages clause and liquidated damages rates, and solicitations should advise that liquidated damages will apply.

SECTION 7 - SOLICITATION AND ADVERTISING

Method of Solicitation

- A. Petty Cash, Micro Purchases, and Small Purchases - Quotes may be solicited orally, through fax, by e-bid or by any other reasonable method, including but not limited to electronic mail.
- B. Sealed Bids and Competitive Proposals - Solicitation must be done publicly. The VIHFA must use one or more following solicitation methods, provided that the method employed provides for meaningful competition.
 - 1. Advertising in newspapers or other print mediums of local or general circulations.
 - 2. E-Procurement. The VIHFA may conduct its public procurements through the Internet using e-procurement system. However, all e-procurements must otherwise be in compliance with local requirements and VIHFA's policy.

Time Frame

For purchases of more than \$50,000.00, the public notice should run not less than three days in a newspaper of general circulation in the Virgin Islands.

Form

Notices/advertisements should state, at a minimum, the place, date, and time that the bids or proposals are due, the solicitation number, the name and number or address of a contact person that can provide a copy of, and information about, the solicitation, and a brief description of the needed items(s).

Time Period for Submission of Bids

A minimum of 15 days shall be provided for preparation and submission of sealed bids and competitive proposals. However, the Executive Director may allow for a shorter period under extraordinary circumstances.

Cancellation of Solicitations

- A. An IFB, RFP, or other solicitation may be cancelled before bids/proposals are due if:

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1. The supplies, services (including construction) are no longer required;
 2. The funds are no longer available;
 3. Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best; or
 4. Other similar reasons.
- B. A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if:
1. The supplies or services (including construction) are no longer required;
 2. Ambiguous or otherwise inadequate specifications were part of the solicitation;
 3. All factors of significance as delineated in the solicitation to the VIHFA were not considered;
 4. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
 5. There is reason to believe that bids or proposals may not have been independently determined in open competition, may have been collusive. or may have been submitted in bad faith; or
 6. For good cause of similar nature when it is in the best interest of the VIHFA.
- C. The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request.
- D. A notice of cancellation shall be sent to all bidders/offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any re-solicitation or future procurement of similar items.
- E. If all otherwise acceptable bids received in response to an IFB are at unreasonable prices, an analysis should be conducted to see if there is a problem in either the specifications or the VIHFA's cost estimate. If VIHFA's specifications and cost estimate are determined adequate and the only bid received is unreasonable, the Contracting Officer may cancel the solicitation.
- F. If problems are found with the specifications, VIHFA should cancel the solicitation, revise the specifications and re-solicit using an IFB.

Credit (or Purchasing) Cards

Credit card usage should follow the rules for all other small purchases. For example, the Contracting Officer may use a credit card for Micro Purchases without obtaining additional quotes provided the price is considered reasonable. However, for amounts above the Micro Purchases level, the Contracting Officer would generally need to have obtained a reasonable number of quotes before purchasing via a credit card.

When using credit cards, the VIHFA shall adopt reasonable safeguards to assure that they are used only for intended purposes (for instance, limiting the types of purchases or the amount of purchases that are permitted with credit cards).

SECTION 8 - BONDING REQUIREMENTS

Requirements

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The standards under this section apply to construction contracts that exceed \$100,000.00. There are no bonding requirements for small purchases or for competitive proposals. The VIHFA may require bonds in these latter circumstances when deemed appropriate; however, non-construction contracts should generally not require bid bonds.

A. Bid Bonds

For construction contracts exceeding \$750,000.00, bidders shall be required to submit a bid guarantee equivalent to 5% of the bid price.

B. Performance and Payment Bonds

For construction contracts exceeding \$ 100,000.00, the successful bidder shall furnish an assurance of completion. This assurance may be any one of the following:

1. A performance and payment bond in a penal sum of 100% of the contract price; or
2. Separate performance and payment bonds, each for 50% or more of the contract price; or
3. A 20% cash escrow; or
4. A 25% irrevocable letter of credit.
5. A pledged asset(s) that is adequate to protect the federal interest

These bonds must be obtained from guarantee or surety companies authorized to do business in the Territory where the work is to be performed. Individual sureties shall not be considered. **U.S. Treasury Circular Number 570** lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the State/Territories in which the company is licensed to do business. Use of companies on this circular is mandatory.

SECTION 9 - CONTRACTOR QUALIFICATIONS AND DUTIES

Contractor Responsibility

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

- A. Have adequate financial resources to perform the contract, or the ability to obtain them;
- B. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all of the bidders/offers existing commercial and governmental business commitments;
- C. Have a satisfactory performance record;
- D. Have a satisfactory record of integrity and business ethics;
- E. Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
- F. Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and
- G. Be otherwise qualified and eligible to receive an award under applicable laws and

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regulations, including not be suspended or debarred.

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

Suspension and Debarment

Contracts shall not be awarded to Contractors debarred, suspended, or is deemed ineligible by the VIHFA.

SECTION 10 - CONTRACT PRICING ARRANGEMENTS

Contract Options

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

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

SECTION 11 - CONTRACT ADMINISTRATION

The VIHFA shall maintain a system of contract administration designed to ensure that contractors perform in accordance with their contracts. These systems shall provide for inspections of supplies, services, or construction, as well as monitoring contractor performance, status reporting on major projects including construction contracts, and similar matters. The Executive Director or an appropriate member of the executive staff shall be responsible for monitoring the implementation of the procurement instrument and shall ensure the fulfillment of all written requirements. If the contracting organization violates any of the terms or conditions of the award, the Executive Director or his appointee shall take appropriate corrective action.

SECTION 12 - SPECIFICATIONS

General

All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying VIHFA's needs. Specifications shall be reviewed prior to issuing any solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. Function or performance specifications are preferred. Detailed product specifications shall be avoided whenever possible. Consideration

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shall be given to consolidating or breaking out procurements to obtain a more economical purchase. For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

SECTION 13 - APPEALS AND REMEDIES

Informal Appeals Procedure

The VIHFA shall adopt an informal bid protest/appeal procedure for contracts of \$150,000.00 or less. Under these procedures, the bidder/contractor may in writing request to meet with the appropriate Contracting Officer.

Formal Appeals Procedure

A formal appeals procedure shall be established for solicitation/contracts of more than \$150,000.00.

- A. Bid Protest
Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy. Any protest against a solicitation must be received before the due date for the receipt of bids or proposals, and any protest against the award of a contract must be received within five (5) calendar days after the contractor receives notice of the contract award, or the protest will not be considered. All bid protests shall be in writing, submitted to the Contracting Officer or designee, who shall issue a written decision on the matter. The Contracting Officer may, at his/her discretion, suspend the procurement pending resolution of the protest if the facts presented so warrant.
- B. Contractor Claims
All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer for a written decision. The contractor may request a conference on the claim. The Contracting Officers' decision shall inform the contractor of its appeal rights to the next higher level of authority in VIHFA.

SECTION 14 - ASSISTANCE TO SMALL AND OTHER BUSINESSES

Required Efforts

All feasible efforts shall be made to ensure that small and minority-owned businesses, women -owned business enterprises, and other individuals or firms located in or owned in substantial part by persons residing in the area of the VIHFA project are used when possible. Such efforts shall include, but shall not be limited to:

- A. Including such firms, when qualified, on solicitation mailing lists;
- B. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- D. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
- E. Including in contracts, to the greatest extent feasible, a clause requiring contractors, to provide opportunities for training and employment for lower income residents of the

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project area and to award subcontracts for work in connection with the project to business concerns which provide opportunities to low-income residents; and

- F. Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed above.

Goals shall be established by the VIHFA periodically for participation by small businesses, minority-owned businesses, women-owned business enterprises.

Definitions

The following are definitions of terms as they relate to VIHFA's required efforts to assist small businesses, women-owned business enterprises, and minority-owned businesses and other local entities.

1. A "small business" is defined as a business that is: independently owned; not dominant in its field of operation; and not an affiliate or subsidiary of a business dominant in its field of operation.
2. A "minority-owned business" is defined as a business which is at least 51% owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.
3. A "woman-owned business enterprise" is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.

SECTION 15 - BOARD APPROVAL OF PROCUREMENT ACTIONS

Approval of the Board of Directors is required for contracts and contract modifications that are in excess of Fifty Thousand Dollars (\$50,000.00) or 25% of the total contract. For contract modifications less than Fifty Thousand Dollars (\$50,000.00), the Board of Directors approval is not required unless a modification brings a consecutive series of modifications in the aggregate to an excess of Fifty Thousand Dollars (\$50,000.00). Thereafter, the Executive Director is again authorized to execute contract modifications which alone or in the aggregate do not exceed Fifty Thousand Dollars (\$50,000.00) or 25% of the total contract without the Board of Directors approval until such time as a contract modification brings the aggregate of such consecutive series of modifications to an excess of Fifty Thousand Dollars (\$50,000.00). In the event the Executive Director determines it would be in the best interest of VIHFA, the Executive Director, upon concurrence of the Chairperson of the Board of Directors, may execute a contract and/or modification for over Fifty Thousand Dollars (\$50,000.00) or a modification that brings a consecutive series of modifications over Fifty Thousand Dollars (\$50,000.00) or 25% of the total contract and do so before the next Board of Directors' meeting, provided that said contract and/or modification(s) is presented to the Board of Directors for ratification at the next Regular or Special Board meeting.

SECTION 16 - DOCUMENTATION

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

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- A. Rationale for the method of procurement (if not self-evident);
- B. Rationale of contract pricing arrangement (also if not self-evident);
- C. Reason for accepting or rejecting the bids or offers;
- D. Basis for the contract price
- E. A copy of the contract documents awarded or issued and signed by the Contracting Officer;
- F. Basis for contract modifications; and
- G. Related contract administration actions.

The level of documentation should be commensurate with the value of the procurement.

Records are to be retained for a period of three (3) years after final payment and all matters pertaining to the contact are closed.

SECTION 17 - FUNDING AVAILABILITY

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