



New York City Housing Authority Procurement Policy Manual



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Glossary

Architecture/Engineering Qualifications-based Procurement: The term “Qualifications-based Procurement” refers to a method of procurement specifically for architectural/engineering (A/E) professional services whereby offerors qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation.

Bid Bond or Bid Guarantee: The terms “Bid Bond” and “Bid Guarantee” refer to a form of security assuring the bidder, in the event they win the bid, will accept and undertake the contract according to the terms at which they bid.

Central Office Cost Center (COCC) Funds: The term “Central Office Cost Center (COCC) Funds” refers to the 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.”

Change Order: The term “Change Order” means an order, proceed order, direction, or agreement that either modifies the nature of the work, materials, supplies, equipment, or services to be performed or furnished under a Contract, which is generally within the originally defined scope of work for such Contract, or accelerates the performance of the work, and any associated increase to the compensation payable under the Contract due to such order, direction, or agreement. The term does not include a modification to a Contract that solely (i) adjusts the time for performance, or (ii) provides a Contract Capacity Increase (formerly known as Funding Increase).

City Record: The “City Record” refers to the official journal of New York City, published daily and including, but not limited to, legal notices released by City agencies, listings of public hearings, and procurement solicitations and awards.

Code of Federal Regulations (CFR): The term “Code of Federal Regulations” refers to the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government.

Commercial Products: The term “Commercial Products” refers to products and services sold in substantial quantities at established catalog or market prices.

Contingencies: The term “Contingencies” refers to future events or circumstances which may occur.

Contract: The term “Contract” means any agreement, purchase order, act or arrangement whereby NYCHA is committed to expend or does expend funds in return for work, labor, services, personal services, supplies, equipment, materials, insurance, or any other benefit, or any combination of the foregoing, or any other agreement or act whereby NYCHA sells, transfers, conveys, leases, assigns, or otherwise gives up any property, right, or benefit of value to NYCHA. The term “Contract” shall not include: 1) contracts for financial or other assistance made with a government; 2) contracts, resolutions, indentures, declarations of trust, or other instruments authorizing or relating to the authorization, issuance, award, and sale of bonds, certificates of indebtedness, notes, or other fiscal obligations of NYCHA; 3) contracts for the employment of individuals who will be subject to an employer-employee relationship that is in turn part of the personnel process subject to civil service rules.



Contract Amendment: The term “Contract Amendment” refers to a document that alters an existing Contract. It is considered a separate legal document that changes the existing Contract by adding, removing, or changing the terms, obligations and benefits set forth in the existing Contract.

Contract Capacity Increase: The term “Contract Capacity Increase” (formerly known as Funding Increase) refers to an increase to a Contract’s “maximum” or “not-to-exceed” amount for the sole purpose of ordering or obtaining additional quantities or services as originally contracted for or within the general scope of the contract.

Contract Modification: The term “Contract Modification” refers to the process by which NYCHA can alter an original Contract or a Contract that has had prior modifications. Alterations made via Contract Modifications must be within the general scope of the underlying Contract. There are various types modifications, including Change Orders, Contract Capacity Increases, Contract Extensions, Contract Terminations, Contract Extensions for Payment Purposes Only (PPO), Price Increases, and Notice to Proceed Changes.

Contract Type: The term “Contract Type” refers to the specific type of agreement entered into between NYCHA and its contractors, consultants, and vendors of products. The type is often dictated by the type of services/work being performed and the most appropriate payment structure for the services/work.

Davis-Bacon: The term “Davis Bacon” refers to the Davis-Bacon Act of 1931 (as amended), which requires the payment of prevailing wage rates to laborers on federally-funded contracts for the construction, alteration, and repair of public works.

DECAR: The term “DECAR” refers to procurements for Demolition, Excavation, Construction, Alteration, or Renovation services. The term is derived from New York State Public Housing Law (PHL) 151(1). Examples of DECAR contracts that NYCHA utilizes include, but are not limited to exterior restoration services, concrete canopy replacements, general construction.

Intergovernmental Agreement: The term “Intergovernmental Agreement” refers to a method of procurement involving the use of already existing contracts from other government agencies or entering into a contract with another government agency to purchase goods and services.

Master Services Agreement: The term “Master Services Agreement” refers to a contract between two parties with an ongoing project or business relationship that offers flexibility in delivering the goods or services outlined in the agreement in terms of quantity and scope of work.

Micro Purchase: The term “Micro Purchase” refers to the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the Micro Purchase Threshold.

Minority/Women-owned Business Enterprise (M/WBE): The term “M/WBE” refers to businesses that are at least fifty-one percent owned, controlled and operated by, or in the case of a publicly owned business, at least fifty-one percent of the stock is owned by citizens or permanent residents who are: Asian/Pacific, Black, Hasidic Jews, Hispanic, Native American, Women.

New York State Contract Reporter: The “New York State Contract Reporter” refers to New York State’s procurement opportunities newsletter, featuring notices of procurement activity from State and City agencies, authorities, public benefit corporations, and SUNY and CUNY campuses.



Off-the-Shelf The term “Off-the-Shelf” refers to a product that is not designed or made-to-order, but taken from existing stock, supplies, or IT products.

Other Category Procurements: The term “Other Category Procurements” refer to procurements not defined as supplies/materials or DECAR services. They include, but are not limited to, Professional Services, Legal Services and customizable goods. Examples of NYCHA contracts that result from Other Category Procurements include, but are not limited to, janitorial and cleaning services, intellectual property legal services, and IT security assessment services.

Payment Bond: The term “Payment Bond” refers to a bond posted by a vendor that guarantees the vendor will pay its subcontractors and materials suppliers throughout the term of the contract.

Performance Bond: The term “Performance Bond” refers to a bond that serves to guarantee satisfactory completion of a vendor’s performance obligations under a contract.

Personal Service Contract: Contracts for the employment of individuals who will be subject to employer-employee supervisory relationship that is in turn part of the personnel process subject to civil service rules.

Piggybacking: The term “Piggybacking” refers to the practice of using an existing contract between another governmental entity and vendor as the basis of the Contract between NYCHA and the vendor to acquire the same goods or services included in the other government entity’s contract.

Preferred Sources/Vendors: The term “Preferred Sources/Vendors” refers to types of vendors given preference when procuring certain goods or services as required by and detailed in New York State Finance Law 162. New York State’s preferred source organizations are the New York State Department of Corrections and Community Supervision, Division of Correctional Industries (Corcraft), the New York State Preferred Source Program for People Who Are Blind (NYSPSP), and New York State Industries for the Disabled (NYSID).

Pre-Qualified List (PQL): Pre-Qualified Lists (PQLs) are lists of vendors that have been evaluated as possessing a specified minimum level of experience/qualifications to be able to deliver or perform a certain good/service in advance of soliciting the procurement.

Procurement Method: The term “Procurement Method” refers to the way in which NYCHA purchases and solicits goods and services.

Project Labor Agreement: The term “Project Labor Agreement” refers to an agreement between NYCHA and construction trades and their affiliated unions that requires all bidders on construction projects to agree with the terms set forth therein.

New York State Public Housing Law: The term “New York State Public Housing Law” refers to the regulations established by the State relating to its Public Housing Authorities.

Request for Expressions of Interest (RFEI): The term “Request for Expressions of Interest” refers to a solicitation of prospective proposers that serves to gauge interest in a particular procurement or gather general service or product information.



Request for Information (RFI): The term “Request for Information” refers to a solicitation of prospective proposers that serves to assist the Authority in gathering general information about products, services, and vendors.

Request for Proposal (RFP): The term “Request for Proposal” refers to a method of procurement involving solicitation of proposals in which vendors provide details on their specific approach to the requested work and evaluation considerations include, among other things, both price and ability to most successfully carry out work requested.

Request for Qualification: The term “Request for Qualification” refers to a solicitation of prospective vendors that requests the vendor’s background and experience providing a specific good or service. Request for Qualification often serves as the first part in a two-part procurement.

Request for Quotation: The term “Request for Quotation” refers to a method of procurement involving solicitation of quotes for the purchase of specific goods. The Sealed Bid procurement method is a type of Request for Quotation.

Sealed Bid: The term “Sealed Bid” refers to a type of procurement method in which NYCHA prepares bid documentation, including details of the desired good or service, and bidders submit a sealed bid containing the price at which the vendor can deliver the good or perform the service described in the bid documentation.

Section 3: The term “Section 3” refers to Section 3 of the Housing and Urban Development Act of 1968, as amended (“Section 3”) and implemented by HUD regulations. Its purpose is to increase economic opportunity for low- and very-low income persons, particularly those who are recipients of government assistance for housing.

Simplified Acquisition Threshold: The term “Simplified Acquisition Threshold” refers to the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods.

Small Purchase: The term “Small Purchase” refers to those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold.

Task Order: The term “Task Order” refers to a direction issued under a valid Contract to perform work in accordance with the terms of the Task Order. Such terms may include, but are not limited to, the scope of work, quantity of goods/services, timeline and budget.

Work Authorization: See Task Order definition.

I. General

A. Purpose and Scope

This Policy Manual governs NYCHA's procurement policy and is based on Federal, State, and City regulations and statutes, in addition to NYCHA policies, that are applicable to NYCHA procurements. The purpose of this Policy Manual is to:

- Consolidate policies and references to other relevant documentation into a single, centralized source for easy access by NYCHA staff.
- Help NYCHA's procurements comply with applicable laws, regulations, statutes, and internal policies.
- Provide for the fair and equitable treatment of persons or firms involved in selling goods and services to NYCHA.
- Provide for the efficient and effective procurement of goods and services at the most favorable prices to NYCHA.
- Encourage and promote competition in procurement.
- Promote economic opportunities for Section 3 business concerns, resident-owned businesses, and M/WBEs, by actively creating procurement opportunities that preference these groups.
- Support compliance with Federal regulations requiring documentation for procurement transactions, in accordance with the requirement in [2 CFR § 200.319\(d\)](#) that NYCHA have in place written procedures for procurement actions.

B. Who Should Use the Procurement Policy Manual

This Policy Manual is intended to be a reference tool for NYCHA staff involved in the procurement of goods and services. It is designed to assist staff members across business units in confirming that their procurements are in compliance with applicable Federal, State, and City regulations and NYCHA policies, providing guidance on permitted methods of procurement and contracting.

C. How to Use the Procurement Policy Manual

This Policy Manual provides an overview of procurement regulations and is chronologically organized to align with the procurement lifecycle (Procurement Planning, Source, Purchase, Contract Management). A complete and sequential reading will provide the reader with an understanding of procurement regulations to successfully carry out a procurement from planning to solicitation and contracting. Specific information includes, but is not limited to, details on procurement methods and contract types, solicitation requirements, bonding requirements, change order thresholds, and ethics in procurement. Associated attachments are included separately to support more detailed explanations of specific policies.

Visuals have been included throughout the Policy Manual to aid in the understanding of procurement requirements. At the conclusion of this section there exists a quick reference table with a summary of information on procurement policies according to funding source. For individuals looking for information on specific procurement methods, an index is included at the back of the Policy Manual for reference purposes. Links to regulation language have also been included throughout the body of the Policy Manual; to navigate to the language, hover over the regulation number (for example 2 CFR § 200.319)



and click. There is also a table included in Appendix C that consolidates and links to the regulations referenced throughout the Policy Manual.

D. Important Considerations

If this Policy Manual conflicts with any applicable law, regulation, statute, or ordinance, the applicable law, regulation, statute, or ordinance shall apply. This includes regulatory changes that impact the dollar thresholds for certain procurement methods (e.g., Micro Purchase threshold).

To aid in the efficiency and control of NYCHA procurement operations, the Chief Procurement Officer may approve immaterial updates to this Policy Manual, which include, but are not limited to, adjustments to policies resulting from changes in governing regulations and clarifications of existing policies.

E. Application

The policies detailed in this Policy Manual apply to all NYCHA Contracts, including to those executed prior to the approval of this Policy Manual.

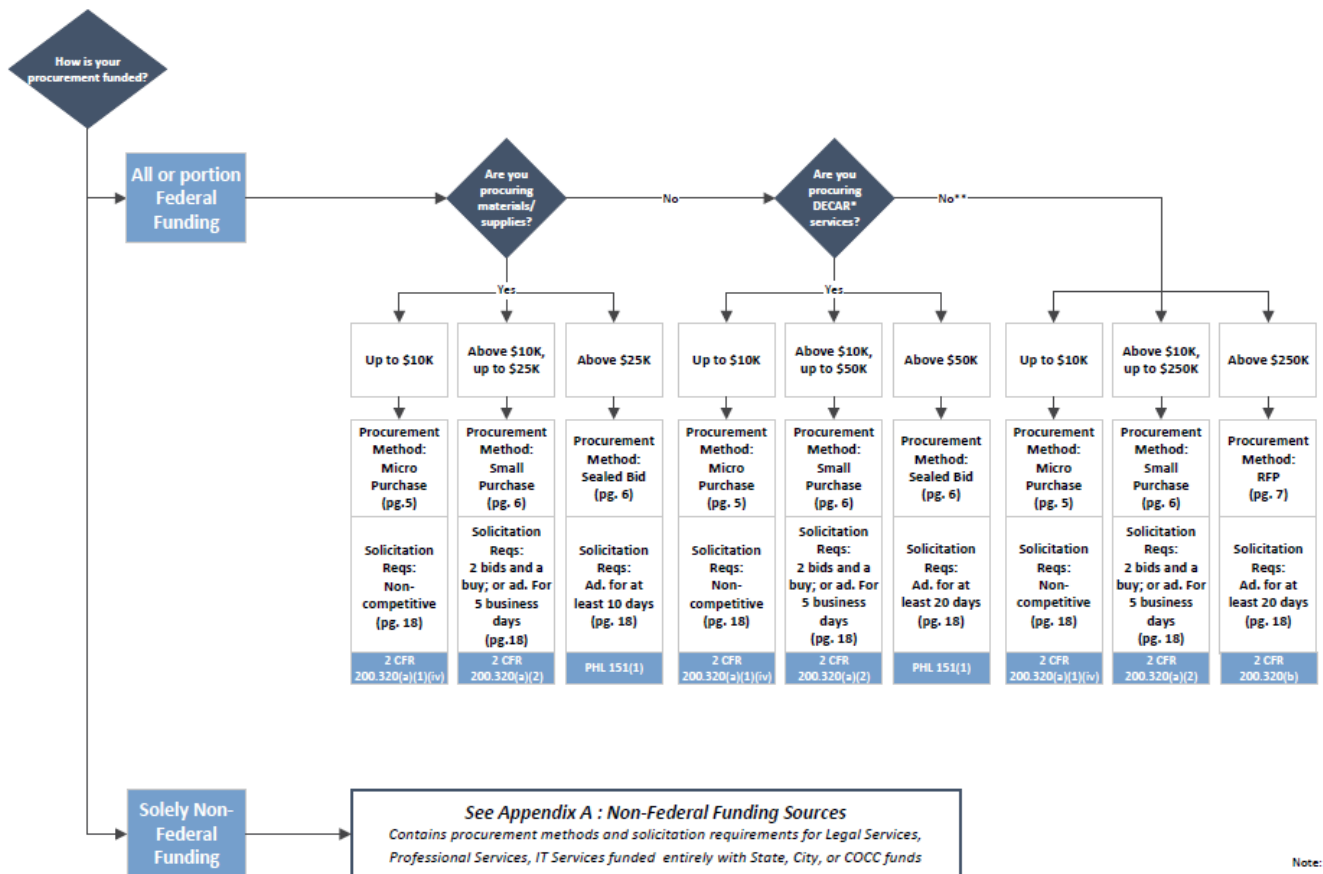
F. Self-Certification

NYCHA self-certifies that this Procurement Policy and NYCHA's procurement methods meet the self-certification requirements established at [2 CFR § 200.325\(c\)\(2\)](#) and, as such, NYCHA is exempt from prior HUD review and approval of individual procurement action.

G. Exceptions

The policies in this Policy Manual apply to all procurement actions of the Authority. Exceptions are noted in Appendix A: Non-Federal Funding Sources.

H. Quick Reference Table – Procurement Policies by Funding Source



*Defined as services for Demolition, Excavation, Construction, Alteration, or Renovation

** Procurements that are not Materials/Supplies or DECAR services include, but are not limited to, Professional Services, Legal Services, Information Technology Services, customizable goods, and procurements that bundle goods and services

Note: Graphic thresholds are based on default micro purchase ceiling.

II. Procurement Planning

A. Preliminary Considerations

The following requirements apply to all NYCHA procurements (except where noted to the contrary) and are necessary for compliance with governing procurement rules and regulations.

1. Funding Source
 - a. The following requirements apply to all NYCHA procurements funded through Federal funds or multi-source funds that include Federal funds.
 - b. For policies for NYCHA procurements entirely using non-federal funding sources, which include State funds, City funds, and Central Office Cost Center (COCC) funds, see Appendix A: Non-Federal Funding Sources.
2. Federal Regulations
 - a. NYCHA's Federally funded procurements are governed by [2 CFR § 200 et seq.](#)
 - b. NYCHA must conduct all procurement transactions in a manner that supports full and open competition. For details see [2 CFR § 200.319\(a\)](#).
 - c. NYCHA "must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract" ([2 CFR § 200.319\(c\)](#)).
 - d. NYCHA's procurement "procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis of lease versus purchase alternatives will be undertaken, and any other appropriate analysis to determine the most economical approach" ([2 CFR § 200.318\(d\)](#)).
 - e. NYCHA "is encouraged to use Federal excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs" ([2 CFR § 200.318\(f\)](#)).
 - f. The following procurements must comply with section 6002 of the Solid Waste Disposal Act:
 - i. The purchase price of the item exceeds \$10,000; or
 - ii. The value of the quantity acquired in the preceding fiscal year was greater than \$10,000. For details see [2 CFR § 200.323](#).
 - g. All solicitations must:
 - i. Incorporate a clear and accurate description of the technical requirements for the good or service to be procured that does not contain features which unduly restrict competition; and
 - ii. Identify all requirements which vendors must fulfill and all other factors to be used in the evaluation of bids or proposals. For details see [2 CFR § 200.319\(d\)\(2\)](#).

3. State and City Regulations

- a. All NYCHA procurements for materials and supplies over \$25,000, and demolition, excavation, construction, alteration, and renovation (“DECAR”) over \$50,000 are governed by New York State Public Housing Law (“PHL”) [151](#) and [151-a](#) regardless of funding source. Section 151 of the PHL requires that Contracts covering DECAR work and costing in excess of \$50,000 and Contracts covering the purchase of materials or supplies and costing in excess of \$25,000 shall be procured in accordance with the Sealed Bid Method.¹
- b. NYCHA must abide by the procurement mechanisms set forth within [Section 162](#) of the New York State Finance Law for the purchase of all suitable products and services made or provided by New York State delineated preferred sources/vendors (e.g., New York State Industries for the Disabled), whenever such products or services are available. For details on preferred sources, see [Attachment 9](#) (Preferred Sources).
- c. NYCHA’s procurements are not governed by New York City’s Procurement Policy Board rules (“PPB Rules”).

B. Procurement Methods

Methods of procurement refer to the ways in which NYCHA purchases and solicits goods and services. The cost and type of good or service, among other considerations, will determine the appropriate method of procuring that good or service.

1. Commercial Cards

NYCHA may use Commercial Cards to purchase business-related goods or services at dollar amounts that do not require competitive procurement. For example, they are used for payment of business-related materials, supplies, or services, including metered parking, postage, and metro cards. Expenditures paid for using a commercial card may not exceed the threshold noted in Standard Procedure 100:13:1 (NYCHA Commercial Card).

2. Requests for Information Prior to Procurement Solicitations

1. NYCHA is permitted to employ methods that allow the Authority to solicit information from vendors prior to release of final procurement solicitations without providing any vendor with unfair competitive advantage. These methods include:
 - a. Request for Expressions of Interest (RFEI) that serve to assist the Authority in gauging interest, defining contract terms, and developing a sound scope of work for a particular procurement.
 - b. Requests for Information (RFI) that serve to assist the Authority in gathering general information about products, services, and vendors.

3. Micro Purchase

1. Thresholds
 - a. Default threshold

¹ For procurements where DECAR is to be performed on office or warehouse space leased by NYCHA, the business unit must consult with the Law Department as to the applicability of PHL 151.

- i. A Micro Purchase may be used when the goods or services being procured can be obtained for an amount not greater than \$10,000 (or \$2,000 in the case of acquisitions of construction subject to the Davis-Bacon Act)² ([48 CFR § 2.2.1](#))
 - b. Increased threshold
Provided that NYCHA complies with the requirements of [2 CFR § 200.320\(a\)\(1\)\(iv\)](#) and (v), and consistent with State law, the CPO shall be authorized to increase NYCHA's micro-purchase threshold in accordance with the following
 - i. For purchases administered by the Supply Management & Procurement Department:
 1. A Micro Purchase may be used when the goods being procured can be obtained for an amount not greater than \$25,000 ([2 CFR § 200.320\(a\)\(1\)\(iv\)](#) & [PHL 151\(1\)](#)).
 2. A Micro Purchase may be used when the services being procured can be obtained for an amount not greater than \$50,000 ([2 CFR § 200.320\(a\)\(1\)\(iv\)](#)).
 - ii. For purchases administered by other NYCHA departments, Micro Purchases may be procured according to the above increased thresholds only with the approval of the CPO or their designee.
 2. When employing the Micro Purchase method of procurement, NYCHA must distribute purchases "equitably among qualified suppliers" ([2 CFR § 200.320\(a\)\(1\)\(i\)](#)).

For additional information on Micro Purchases, see [Attachment 3](#) (Micro Purchase Procurement).

4. *Small Purchase*

A Small Purchase procurement (also known as simplified acquisition) may be used for the following:

1. For purchases of materials or supplies, the cost of which is above \$10,000 and up to \$25,000 ([PHL 151\(1\)](#)).
2. For the purchase of DECAR services, the cost of which is above \$10,000 and up to \$50,000 ([PHL 151\(1\)](#)).
3. For Other Category Procurements, the cost of which is above \$10,000 and up to \$250,000 ([2 CFR § 200.320\(a\)\(2\)](#)).
4. When the increased Micro Purchase threshold is employed (see Section 3.1.b of this section), the following changes occur to the Small Purchase threshold:
 - a. The Small Purchase threshold for materials and DECAR services no longer applies
 - b. For Other Category Procurements, a Small Purchase may be used for purchases above \$50,000 and up to \$250,000

For additional information on Small Procurements, see [Attachment 4](#) (Small Purchase Procurement).

5. *Sealed Bid*

1. A Sealed Bid **must** be used for the following:

² Or other such amount as amended by Federal regulation

- a. For the purchases of materials or supplies, the cost of which is above \$25,000 ([PHL 151\(1\)](#)).
 - b. For the purchase of DECAR services, the cost of which is above \$50,000 ([PHL 151\(1\)](#)).
2. A Sealed Bid **may** be used for the following:
- a. When procuring Other Category procurements in situations in which submission of a detailed approach to the work is not necessary.

For additional information on Sealed Bids, refer to [Attachment 5](#) (Sealed Bids).

6. *Request for Proposal*

Request for Proposal (RFP): An RFP is generally used when conditions are not appropriate for the use of the Sealed Bid method when procuring Other Category Procurements (includes professional services, procurements for both goods and services, and customizable goods) ([2 CFR § 200.320\(b\)\(2\)](#)). For additional information, see [Attachment 6](#) (Request for Proposals (RFPs)).

For assistance identifying which of the procurement methods detailed on this page to use, see Figure 1 below.

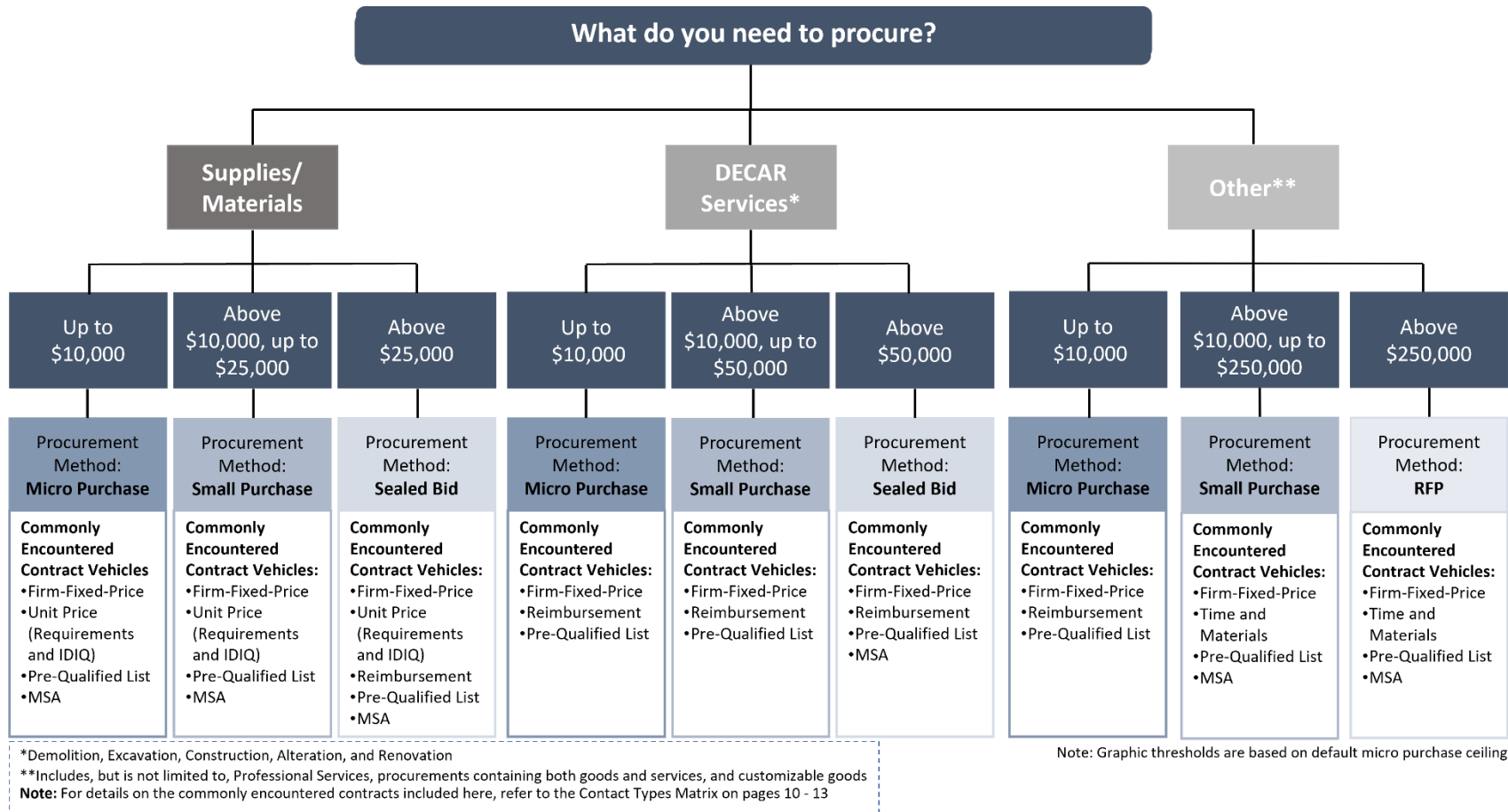


Figure 1 – Common Procurement Methods

7. *Request for Qualifications*

NYCHA is permitted to employ Requests for Qualifications, a method of solicitation that serves to gather evidence of a vendor's qualifications to assess their ability to provide a specific good or service. The Request for Qualifications is typically used to establish a list of qualified vendors on a Pre-Qualified List. (See below for information on Pre-Qualified Lists).

8. *Pre-Qualified Lists (PQLs)*

1. PQLs may be used in situations in which NYCHA would like to eliminate non-responsible firms, or firms that will not be able to satisfactorily complete the project according to defined standards. It is important to note that PQLs do not function as a contract, but instead provide a pool of vendors from which NYCHA can competitively procure.
2. NYCHA "must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition" ([2 CFR § 200.319\(e\)](#)).
3. In addition, NYCHA "must not preclude potential bidders from qualifying during the solicitation period" ([2 CFR § 200.319\(e\)](#)).

9. *Design Build³*

If permitted by State law, NYCHA may enter into a contract with a single entity for the design and construction of a project on the basis of best value. Any contracts of this kind must comply with State regulations and Design-Build procurements undertaken by NYCHA using Federal funds must also comply with Federal regulations.

10. *Architecture and Engineering Qualifications-based Procurement*

NYCHA "may use competitive proposal procedures for qualifications-based Procurement of A/E professional services whereby competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services" ([2 CFR § 200.320\(b\)\(2\)\(iv\)](#)).

11. *Intergovernmental Agreements*

The Federal regulations in [2 CFR § 200.318\(e\)](#) advise non-Federal entities such as NYCHA as follows:

1. "To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, non-Federal entity is encouraged to enter into state and local Intergovernmental Agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services".
2. Mechanisms to enter into Intergovernmental Agreements include Piggybacking, cooperative purchase agreements and Federal, State and City backdrop contracts and lists, including, but not limited to contracts provided by the New York State Office of General Services (OGS), the United States General Services Administration (GSA) contracts, the New York City Department of Citywide Administrative Services (DCAS) and the New York City Department of Information Technology and Telecommunications (DoITT).

³As detailed in State of New York 7636B



3. NYCHA is permitted to procure off the OGS and GSA backdrop contracts, except when purchasing DECAR services over \$50,000.

For more information on use of OGS and GSA backdrop contracts, see [Attachment 10](#) (OGS and GSA Backdrop Contracts).

12. *Non-competitive Procurement*

Procurement by non-competitive proposals is procurement via receipt of a bid/proposal from only one source and may be used only when one or more of the following circumstances apply ([2 CFR § 200.320\(c\)](#)):

1. Sole Source: The item is only available from a single source. For details, see [Attachment 7](#) (Sole Source Procurement).
2. Single Source: The item is available from only one vendor that is uniquely qualified to provide the good/service.
3. Emergency: The public emergency for the requirement will not permit a delay resulting from a competitive solicitation. For details see [Attachment 8a](#) (Emergency Procurement).
4. Express Approval: The Federal awarding agency or pass-through entity expressly authorizes non-competitive proposals in response to a written request from NYCHA.
5. Inadequate Competition: After a solicitation of a number of sources, competition is determined inadequate. NYCHA may deem competition to be inadequate and make a non-competitive award after NYCHA has (i) publicly advertised a sealed bid or request for proposals, and (ii) no or limited responsive bids were received in response to such advertised procurement.
6. Exigency: Non-competitive acquisition in circumstances and conditions that include, but are not limited to, the following:
 - a. NYCHA has an exigent need to respond to a court order, stipulation, or consent decree;
 - b. there is an exigent need to award a contract because available funds will be lost and/or recaptured;
 - c. there is an exigent need to avoid, prevent, or alleviate diminution of value and/or waste;
 - d. an existing vendor has been terminated, has defaulted, has withdrawn from, or has become otherwise unavailable, or NYCHA has decided not to renew or extend an existing contract in the best interest of NYCHA and/or its residents and NYCHA requires a substitute or successor vendor on an exigent basis;
 - e. an exigent need for goods, services, construction, and/or construction-related services exists that cannot be timely met through competitive sealed bidding or competitive proposals;
 - f. there is a limited number of vendors available and able to perform the work and there is an exigent need for such work or services;
 - g. there is an exigent need to extend a contract one or more times beyond the contract term, provided that the vendor's performance is satisfactory or that any deficiencies have been or are addressed or are effectively addressed through a corrective action plan, and the extension(s) is for the minimum time necessary to meet the need;
 - h. there is an exigent need to procure legal services or consulting services in support of current or anticipated litigation, investigative or confidential services;



- i. there is an exigent need to procure construction-related services for a later phase of an ongoing complex construction project from the same vendor where it is not practicable to define the full scope of work at the beginning of the project, the original solicitation included notice that the selected vendor may be the only vendor eligible for later phases of the project, there are compelling programmatic reasons to use the same vendor for the successive phases, and the vendor's performance is satisfactory;
- j. there is an exigent need to procure changed or additional work on an ongoing construction project when an agency wishes to retain a new vendor because it is not practicable or advantageous to award such work by change order or modification to the original vendor; or
- k. there is an exigent need to procure construction when, during an ongoing construction project, there is a compelling necessity to perform additional work, which constitutes a material change of scope, and, due to the exigent circumstances, the advantages of negotiating with either an existing vendor or a limited number of other vendors clearly outweigh the disadvantages of a lack of or restriction of competition.

For details on Exigency, see [Attachment 8b](#) (Exigency).

13. *Special Non-competitive*

Certain purchases do not require competitive procurement, including:

1. Personal Service Contracts.
2. Utility Contracts.
3. Insurance Policies.
4. Contracts for Real Property.
5. Relocation of Residents.
6. Commercial Credit Cards.

For a list and description of non-competitive contracts, including the above, see [Attachment 11](#) (Other Types of Non-competitive Contracts).

C. Contract Types

Contracts are the agreements into which NYCHA enters once an appropriate vendor has been identified via the solicitation process. Contracts dictate the stipulations of the procurement and serve to provide for the successful completion of work.

1. *Prohibited Contracts*

NYCHA is not permitted to use the cost plus a percentage of cost method of contracting ([2 CFR § 200.324\(d\)](#)).

2. *Contract Types*

NYCHA may enter into various types of contracts. See *Table A – Contract Types Matrix* on the following page for details.

Table A – Contract Types Matrix

| Type of Contract | Definition | Applicability | Limitations |
|--|---|---|--|
| <i>Fixed-Price</i> | | | |
| Firm-Fixed-Price (Lump Sum) | Contracts whose price will not change regardless of the cost to the contractor while performing the work | <ul style="list-style-type: none"> • Fair and reasonable prices can be established at time of award, for example: <ul style="list-style-type: none"> ○ Definite design or performance specifications are available ○ Products are off-the-shelf, or are modified commercial products or services, and are offered at realistic prices ○ Realistic price estimates can be made in advance | <ul style="list-style-type: none"> • Performance uncertainties must be identified in advance |
| Fixed-Price with Economic Price Adjustment | Contracts that allow for adjustment in the contract price based on occurrence of contingencies | <ul style="list-style-type: none"> • In cases where both of the following apply: <ul style="list-style-type: none"> ○ The market for a particular supply or service is especially volatile or prone to adjustments (such as prevailing wage increases) ○ NYCHA needs a contract for a term beyond fulfillment of an initial quantity | <ul style="list-style-type: none"> • Contingencies must be clearly defined in contract • Contract must contain ceiling price |
| Unit Price (Non-Bid Factor) | Contract for which the contractor provides quantities of supplies or services for the fixed unit prices included in the bid or proposal | <ul style="list-style-type: none"> • Can be either a Requirements or IDIQ contract (refer to sections below for applicability) | <ul style="list-style-type: none"> • NYCHA must provide good faith estimated quantities for the supplies or services in solicitation so that the bidder can price accordingly |

Table A – Contract Types Matrix

| Type of Contract | Definition | Applicability | Limitations |
|----------------------------|---|--|---|
| <i>Fixed-Price</i> | | | |
| Unit Price (Bid Factor) | Contract for which NYCHA establishes the unit prices and estimated quantities for supplies or services in the solicitation and the contractor includes in its bid a bid factor or multiplier to be applied to each of NYCHA’s established unit prices | <ul style="list-style-type: none"> • Can be either a Requirements or IDIQ contract (refer to sections below for applicability) | <ul style="list-style-type: none"> • NYCHA must set forth unit prices in the solicitation so that the bidder can accurately apply the bid factor |
| <i>Cost</i> | | | |
| Cost Reimbursement | Contract that provides for payment of allowable incurred costs up to an estimated total cost that the contractor may not exceed | <ul style="list-style-type: none"> • Uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy | <ul style="list-style-type: none"> • Contractors accounting system is adequate for determining costs • Requires appropriate oversight during performance that will provide reasonable assurance that efficient methods and cost controls are used |
| Cost plus Fixed-Fee | Contract that provides for payment to the contractor of a negotiated fee fixed at the time of contract award and for which the fee may be adjusted as a result of changes in the work to be performed | <ul style="list-style-type: none"> • Situations in which other types of contracting may present too great a risk to contractors (i.e. there is high degree of uncertainty in, or ultimate cost of, accomplishing a contract’s requirements) | <ul style="list-style-type: none"> • Available for use only when no other type is feasible |

Table A – Contract Types Matrix

| Type of Contract | Definition | Applicability | Limitations |
|--|---|--|--|
| <i>Indefinite / Definite Contracts</i> | | | |
| Definite Quantity | Contract for the delivery of a definite quantity of specific supplies or services for a fixed period of time | <ul style="list-style-type: none"> • Applicable in situations where NYCHA requires specific quantities of goods/services for a fixed period of time | <ul style="list-style-type: none"> • Requires NYCHA to be able to define the quantity of supplies or services in advance • Supplies must be readily available or available after a short lead time |
| Requirements | Contract that provides for filling all of NYCHA’s purchase requirements for specified supplies or services in a fixed period of time | <ul style="list-style-type: none"> • NYCHA anticipates recurring requirements, but cannot predetermine precise quantities needed during a definite period | <ul style="list-style-type: none"> • NYCHA must provide an estimated maximum of goods or services |
| Indefinite Delivery / Indefinite Quantity (IDIQ) | Master Services Agreements providing for delivery of an indefinite quantity, within stated limits (a minimum and maximum quantity), of supplies or services during a fixed period | <ul style="list-style-type: none"> • In cases where both of the following apply: <ul style="list-style-type: none"> ○ NYCHA cannot predetermine precise quantities, above a specified minimum, needed during the contract period ○ NYCHA is comfortable with re-procuring the supplies or services in the event the contract reaches the maximum | <ul style="list-style-type: none"> • In the event the contract reaches the maximum stated limit, NYCHA will need to re-procure the supplies or services |

Table A – Contract Types Matrix

| Type of Contract | Definition | Applicability | Limitations |
|---------------------------------|---|---|---|
| <i>Time and Materials</i> | | | |
| Time and Materials (Labor Hour) | Contracts whose cost is the sum of the actual cost of materials and direct labor hours charged at fixed hourly rates that reflect wages, general, and administrative expenses | <ul style="list-style-type: none"> • NYCHA has determined that no other contract type is suitable | <ul style="list-style-type: none"> • Contract must include ceiling price • Vendors may be reluctant to enter into contract as they assume risk of exceeding contract value • The non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls |
| <i>Other</i> | | | |
| Letter Contract | Preliminary contractual instrument authorizing the contractor to begin performing services or delivering supplies while contract terms are negotiated | <ul style="list-style-type: none"> • Appropriate for emergency work or other urgent and compelling needs | <ul style="list-style-type: none"> • Does not provide incentive for cost control on contractor's part • Places NYCHA in a weak bargaining position |

D. Diversity Programs

1. SECTION 3

Section 3 refers to Section 3 of the Housing and Urban Development Act of 1968, as amended (“Section 3”). Its purpose is to “ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent” ([24 CFR § 75.1](#)).

1. Related Contract Provisions:
 - a. Except for contracts strictly for the purchase of materials and supplies, the requirements of Section 3 will be included in every Federally funded Contract entered into by NYCHA. For details on Section 3 compliance, see Standard Procedure 006:20:1 (Section 3 – Contractor Compliance (INTERIM)).
 - b. Additionally, NYCHA may include Section 3-type requirements in contracts not subject to the Section 3 requirements of [24 CFR § 75](#). In cases such as these, the contractor’s Section 3 obligations are contractual and not grounded in law.
2. Section 3 Minimum Numerical Goals
 - a. A NYCHA contractor is required to demonstrate compliance with Section 3 minimum numerical goals as included in Standard Procedure 006:20:1 (Section 3 – Contractor Compliance (INTERIM)) or its successor.
3. Solicitation of Section 3 Business Concerns:
 - a. In an effort to ensure meaningful participation of Section 3 Business Concerns, as defined within 24 CFR 75.5, in contracting opportunities, NYCHA should make every effort to evaluate whether there is an opportunity for Section 3 Business Concern participation in a procurement.
4. Resident-owned businesses
 - a. Section 3 also addresses Section 3 Business Concerns which include businesses that are owned and operated by residents of NYCHA developments and have provided certification attesting that it is a resident-owned business.
 - b. NYCHA is permitted to solicit contracts with public housing resident-owned businesses, providing the business has not received one or more contracts with a total combined dollar value of \$1,000,000 as a result of the alternative procurement process to preference resident-owned businesses ([24 CFR 963.10\(d\)](#)).

2. M/WBE

NYCHA strives to foster economic empowerment of minorities and women by cultivating the development of minority- and women-owned business enterprises (M/WBE); the policies included below serve to ensure the meaningful participation of M/WBE firms in NYCHA’s procurement process and NYCHA must take all necessary affirmative steps to assure that M/WBEs are used when possible.

1. Steps to assure use of M/WBEs:
 - a. Placing qualified minority and women’s business enterprises on solicitation lists;
 - b. Assuring minority and women’s business enterprises are solicited whenever they are potential sources;

- c. Establishing delivery schedules, where the requirement permits, which encourage participation by minority and women's business enterprises;
 - d. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce;
 - e. Requiring the prime contractors, if subcontracts are to be let, to take the affirmative steps listed above. ([2 CFR § 200.321\(a\)](#)).
2. Break-up of larger contracts:
 - a. NYCHA is permitted to break up larger procurements to encourage M/WBE participation ([2 CFR § 200.321\(b\)\(3\)](#)).
 3. NYCHA M/WBE Sub-contracting Utilization Policies: To ensure adequate contracting opportunities for M/WBE-certified vendors, NYCHA's M/WBE Program includes the following solicitation policies:
 - a. If the estimated contract value is above \$250,000, the contract shall contain provisions regarding the requirement to subcontract 30% of the total value of the contract to M/WBE-certified vendors. See [Attachment 13b](#) (M/WBE Utilization Requirements) for more information.

For additional information on M/WBEs and guidelines to foster their participation, see [Attachments 13a](#) and [13b](#).

3. *DIVERSITY PREFERENCES*

1. When procuring products and services provided by New York State delineated preferred sources/vendors, NYCHA must give preference to these sources/vendors (Section 162 of the New York State Finance Law). See [Attachment 9](#) (Preferred Sources) for more information.
2. For micro and small purchases of products and services not included in '1' above, NYCHA pursues a "Section 3 Business Concern (S3BC) and M/WBE-first policy." This policy states that NYCHA preferences S3BCs and M/WBE vendors over non-S3BCs/non-M/WBE-certified vendors. Between S3BCs and M/WBE-certified vendors, S3BCs are given preference over M/WBE-certified vendors.
3. The preferences detailed in section 2 above will be carried out in accordance with [2 CFR § 200.320\(a\)\(1\)\(i\)](#), which states NYCHA must distribute Micro Purchases equitably among qualified suppliers

See [Attachment 13c](#) for detailed policies regarding solicitation outreach in accordance with diversity preferences.

E. Cost Estimation

For procurements valued above the Simplified Acquisition Threshold (including contract modifications), NYCHA must perform an independent cost estimate prior to receiving bids or proposals ([2 CFR § 200.324\(a\)](#)). For details on cost estimation, see [Attachment 14](#) (Independent Cost Estimation).

F. Technical Specification Review

In cases where HUD makes a request to review technical specifications on proposed procurements, NYCHA must provide the technical specifications for review. Generally, this will occur prior to



incorporation within the solicitation document, but the Federal Awarding Agency or pass-through entity may review after a solicitation has been developed ([2 CFR § 200.325\(a\)](#)).

III. Source

A. Solicitation Requirements

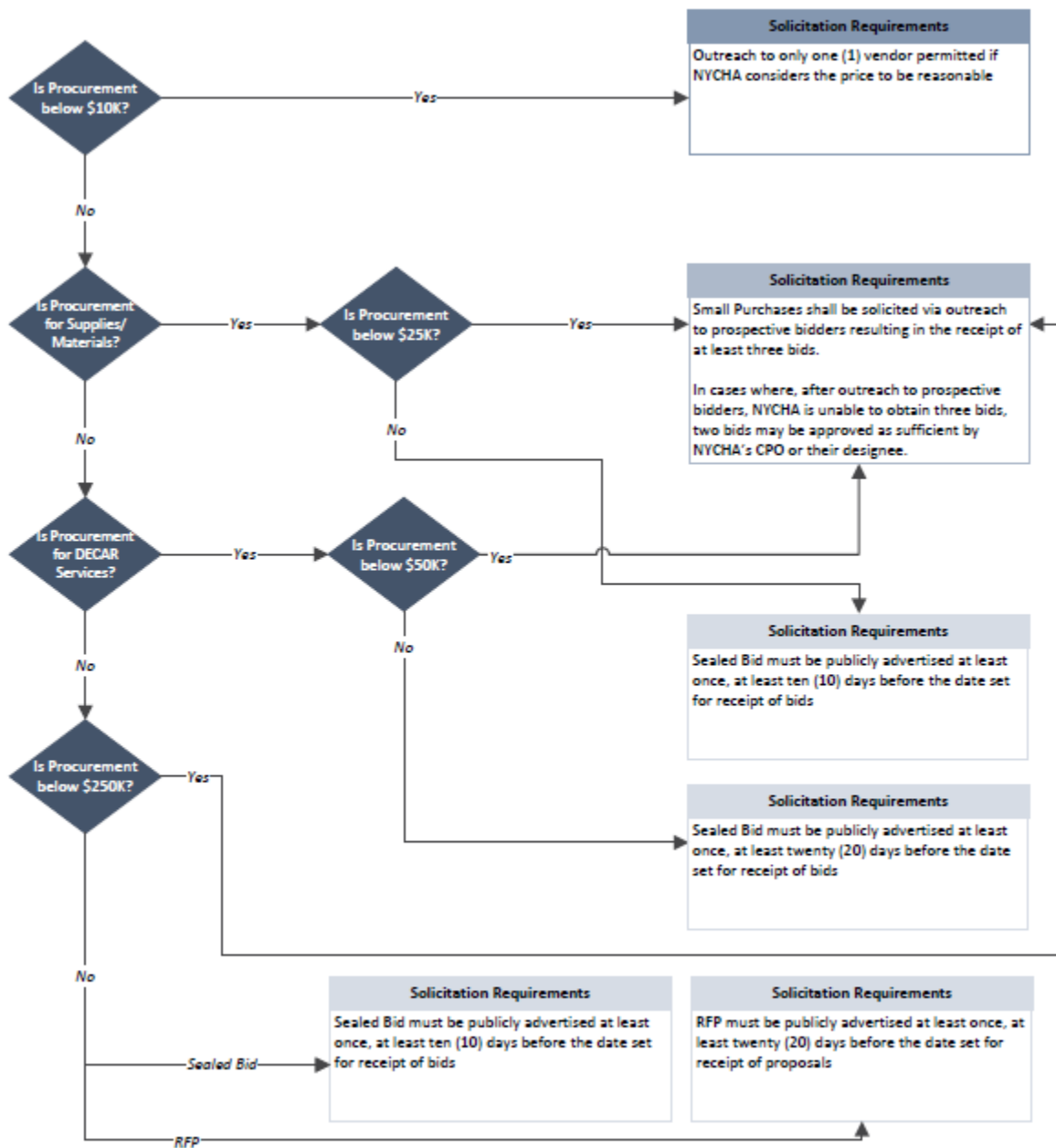
Solicitation requirements vary based on procurement value and the type of goods or services being procured. NYCHA's solicitation requirements are as follows:

1. Micro Purchases may be awarded without soliciting competitive quotations if NYCHA considers the price to be reasonable ([2 CFR § 200.320\(a\)\(1\)\(ii\)](#)).
2. Small Purchases
 - a. Small Purchases shall be solicited via direct outreach or public advertisement to prospective bidders resulting in the receipt of at least three bids.
 - b. In cases where, after soliciting prospective bidders, NYCHA is unable to obtain three bids, two bids may be approved as sufficient by NYCHA's CPO or their designee.
3. Sealed Bids ([PHL 151\(1\)](#) and [151-a](#)):
 - a. For Supplies/Materials Purchases over \$25,000, sealed bids must be publicly advertised at least once, at least ten (10) days prior to the date set for the receipt of bids on NYCHA's website and in one or more sources including the City Record, New York State Contract Reporter, or other trade paper calculated to reach parties interested in bidding.
 - b. For DECAR Purchases over \$50,000, sealed bids must be publicly advertised at least once, at least twenty (20) days before the date set for receipt of bids on NYCHA's website and in one or more sources including the City Record, New York State Contract Reporter, or other trade paper calculated to reach parties interested in bidding.
 - c. For Other Category Procurements, sealed bids must be publicly advertised in the City Record at least once, at least ten (10) days prior to the date set for receipt of bids on NYCHA's website and in one or more sources including the City Record, New York State Contract Reporter, or other trade paper calculated to reach parties interested in bidding.
4. Request for Proposals (RFP) must be advertised on NYCHA's website and in one or more sources including the City Record, NYS Contract Reporter, or other trade paper calculated to reach parties interested in bidding at least twenty (20) days prior to the date set for the receipt of bids, or such other time period that the Chief Procurement Officer (CPO) determines is not restrictive of competition.

For assistance with understanding solicitation requirements, see Figure 2 below.

For solicitation requirements of non-federal funding sources, refer to Appendix A: Non-Federal Funding Sources.

Figure 2 – Solicitation Requirements



Note: Graphic thresholds are based on default micro purchase ceiling.

B. Bid Correction

In cases where bids lack certain details, information on NYCHA’s bid correction procedures is included in Standard Procedure 002:94:1 (Resolution of Procurement Protests).

C. Inadequate Competition

Special conditions apply if, after solicitation of a number of sources, competition is determined inadequate. For details see [Attachment 16](#) (Inadequate Competition).

IV. Purchase

A. Considerations When Awarding Contracts

NYCHA must award contracts only to responsive, responsible vendors possessing the “ability to perform successfully under the terms and conditions of a proposed procurement” ([2 CFR § 200.318\(h\)](#)).

Consideration will be given to such matters as NYCHA may consider, among other things, contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. Standards of vendor responsibility and responsiveness are established in Standard Procedure 002:94:1 (Resolution of Procurement Protests) and are also included in [Attachment 17](#) (Responsive and Responsible Factors).

B. Award

Contracts for Supplies and Materials above \$25,000 and DECAR above \$50,000 shall be awarded to the lowest responsive, responsible bidder. However, if NYCHA shall deem it to its best interest or necessary to promote economy and efficiency the following exceptions are permitted:

1. NYCHA may reject or re-advertise all bids by majority vote of the Members of NYCHA’s Board.
2. NYCHA may award to other than the lowest responsive, responsible bidder by unanimous vote of the Members of NYCHA’s Board ([PHL 151\(1\)](#)).

C. Contracting Process and Provisions

1. Federally Required Contract Provisions

All Federally funded Contracts shall include certain clauses required by, among other things, [Appendix II](#) to 2 CFR Part 200. For additional information, see [Attachment 18](#) (Required Contract Provisions).

2. NYCHA Required Contract Provisions

All NYCHA Contracts must contain certain provisions as specified by the Corporate Affairs Division of NYCHA’s Law Department. In no event shall any changes be made to Law Department approved terms and conditions or standard/template contract documents without the Law Department’s express approval made in consultation with appropriate program units having jurisdiction over the matter.

3. Cost Provisions in Contracts

1. Contracts under a Federal award are only permitted to use costs or prices based on estimated costs if costs incurred or cost estimates included in negotiated prices would be allowable for NYCHA under [Subpart E](#) (Cost Principles) of 2 CFR § 200. NYCHA may reference its own cost principles that comply with the Federal cost principles.
2. In accordance with [2 CFR § 200.324\(b\)](#), NYCHA must negotiate profit as a separate element of the price for each contract in which there is no price competition, such as Micro Purchases, and in cases where a cost analysis is performed. To establish fair and reasonable profit, consideration must be given to a variety of factors, including:
 - a. The complexity of the work to be performed.
 - b. The risk borne by the contractor.
 - c. The contractor’s investment.
 - d. The amount of subcontracting.
 - e. The quality of the contractor’s record of past performance.

- f. Industry profit rates in the surrounding geographical area for similar work.

D. Bonding Requirements

Detailed guidance for bonding requirements is available in [Attachment 19](#) (Bonding Requirements).

Federal regulations in [2 CFR § 200.326](#) advise non-Federal entities such as NYCHA as follows:

“For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or passthrough entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

1. A bid guarantee from each bidder equivalent to five percent of the bid price. The ‘bid guarantee’ must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
2. A performance bond on the part of the contractor for 100 percent of the contract price. A ‘performance bond’ is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.
3. A payment bond on the part of the contractor for 100 percent of the contract price. A ‘payment bond’ is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.”

E. Approval, Ratification and Rescission of Award

1. Contract Approvals: Contracts valued in excess of \$1 million must be approved by NYCHA’s Board. Contracts up to or at \$1 million shall be approved by NYCHA’s CPO or their designee.
2. Ratification of Award: If the CPO and the EVP (or chief officer) having jurisdiction over the subject matter of a contract, change order or amendment, determine the contract, change order or amendment must be executed prior to obtaining the Board’s approval as required herein, the CPO and EVP (or chief officer) must make a determination in writing and present the contract, change order or amendment to the Board for ratification at the next regularly scheduled board meeting. Any contract, change order or amendment executed according to this process must include language stating that the contract, change order or amendment was subject to prior board approval which was not obtained at the time such was executed.
3. Rescission of Award: If Board approval has previously been obtained and subsequently the vendor is determined not viable, then the CPO has discretion to rescind the award administratively pending ratification by NYCHA’s Board.

F. Protest Procedure

Any actual or prospective bidder, proposer, or contractor may protest the solicitation of bids, request for proposals, or the award of a Contract on the grounds that NYCHA has substantially failed to follow the standards set forth in NYCHA's procurement policies and related procedures. NYCHA shall resolve and handle such protests in compliance with its protest Standard Procedure 002:94:1 (Resolution of Procurement Protests).

V. Contract Management

A. Quality Assurance

NYCHA must “maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders” ([2 CFR 200.318\(b\)](#)).

B. Settlement of contractual and administrative issues

The regulations in [2 CFR § 200.318\(k\)](#), pertaining to contractual and administrative issues, advise non-Federal entities such as NYCHA as follows:

“The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.”

C. Task Orders

1. For Master Services Agreements (MSA) between NYCHA and a single vendor, direct assignment of a Task Order is permitted.
2. For Master Services Agreements (MSA) that contain multiple vendors
 - a. Task Orders can be assigned via various methods, including:
 - i. A method of competitive procurement permitted within this Policy Manual
 - ii. Direct assignment of the Task Order to a vendor included on the MSA
 - iii. Rotating assignment of Task Orders to the vendors included on the MSA
 - b. When assigning Task Orders, consideration should be given to equitable distribution of Task Orders to vendors included on the MSA to the extent feasible

D. Change Order and Contract Capacity Increase Approvals

- a. Board approval is required when the sum of all Change Orders and Contract Capacity Increases (formerly known as Funding Increases) associated with a given Contract exceeds 10 percent of the original value of the Contract or \$1 million, whichever amount is higher. For Change Orders and Contract Capacity Increases below the applicable threshold, approval shall be provided by the CPO or their designee.
- b. For Change Orders/Contract Capacity Increases on Contracts that have had a previous Change Order/Contract Capacity Increase approved by the Board, Board approval is required when the sum of all additional Change Orders and Contract Capacity Increases since the previous Board approval exceeds \$1 million. Change Orders and Contract Capacity Increases that do not trigger Board approval require approval from the CPO or their designee.

For assistance in understanding whether your Change Order/Contract Capacity Increase requires Board approval, see Figure 3 below:

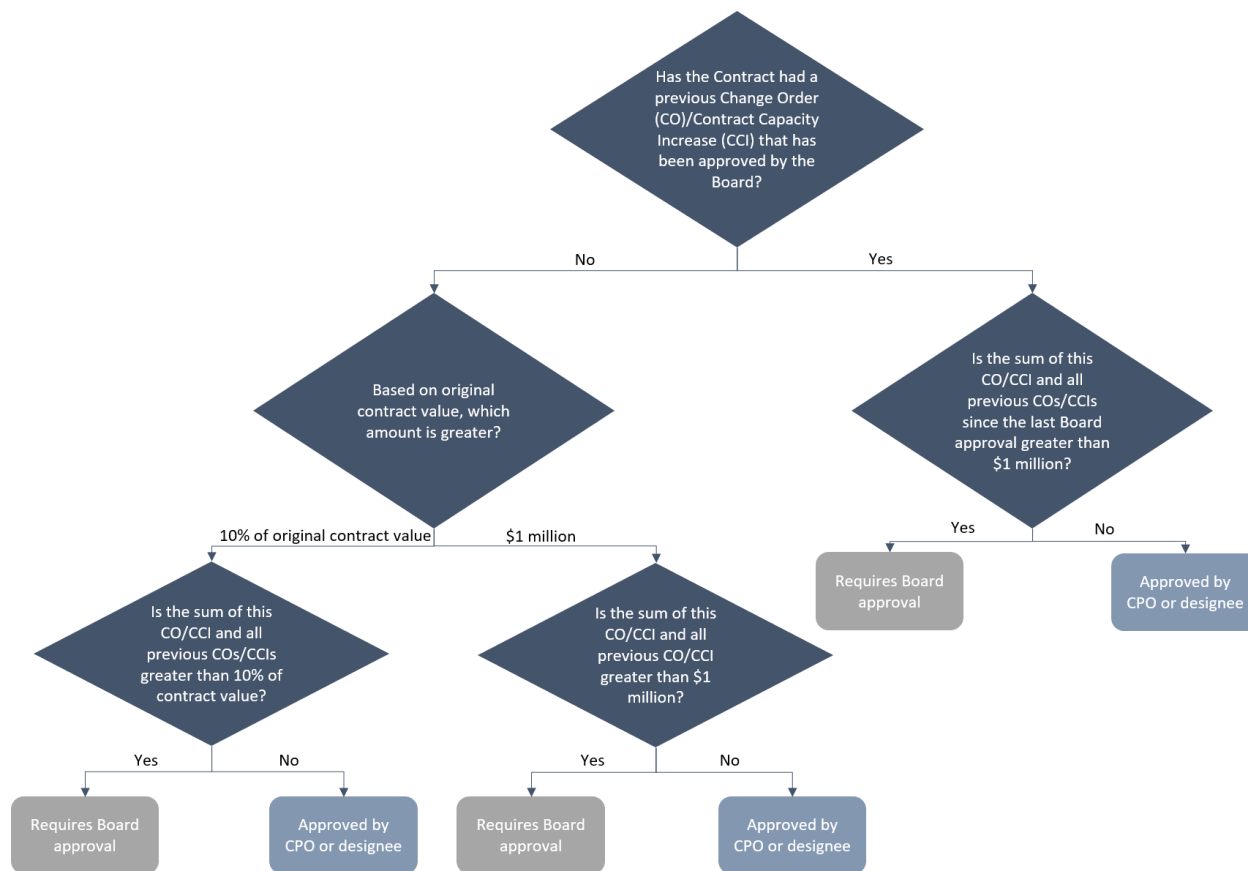


Figure 3 – Change Order/Contract Capacity Increase Decision Tree

E. Procurement Board

Composed of leadership across NYCHA, the NYCHA Procurement Board promotes the policies governing procurement and management of contracts at NYCHA. The NYCHA Procurement Board also pursues the continuous improvement of NYCHA’s procurement and contract management functions.

VI. Compliance Considerations

A. General Policies and Procedures

1. NYCHA's Chair is responsible for the compliance of all NYCHA procurements with applicable laws, regulations, and ordinances. In furtherance thereof, the Chair delegates the day-to-day responsibility for this task to NYCHA's Chief Procurement Officer (the "CPO").
2. NYCHA's Chair delegates the day-to-day responsibility for ensuring that appropriate budgets and funding are in place for all Contracts, Contract actions, and Contract administrative actions to NYCHA's Chief Financial Officer (the "CFO") so that NYCHA can make timely expenditures in connection therewith. The CFO shall undertake all appropriate actions in furtherance thereof and may delegate this task to the appropriate division(s) within NYCHA's Finance Department.
3. No Contract shall be awarded or executed, and no contract action shall be taken, without the prior written approval of the CPO or their designee, subject to the approval of NYCHA's Members (the "Board") pursuant to the requirements of [PHL 151](#) or such other requirement that the Contract or contract action require Board approval pursuant to law or otherwise.
4. NYCHA must carry out procurements according to its own documented procedures. These procedures must reflect applicable State and City laws, provided the procurements conform to applicable Federal law and the standards identified in [2 CFR 200.318\(a\)](#).
5. Except in cases where other laws are contradictory, all contracts for public work awarded by NYCHA shall be carried out in accordance with sections 106, 106-a and 106-b of the New York State General Municipal Law ([PHL 151\(6\)](#)).

B. Ethics

1. *Individual Conflicts of Interest*

Details regarding individual conflicts of interest as related to procurement can be found in the Conflicts of Interest section of NYCHA's Human Resources Manual and are supplemented by applicable provisions of Chapter 68 of the Charter of the City of New York ([2 CFR § 200.318\(c\)\(1\)](#)).

2. *Organizational Conflicts of Interest*

Details regarding organizational conflicts of interest can be found in NYCHA's current Organizational Conflicts of Interest policy ([2 CFR § 200.318\(c\)\(2\)](#)).

3. *Procurement Ethics Policy*

Details regarding ethical procurement and contract administration can be found in NYCHA's Procurement Ethics Policy.

C. Oversight and Records Retention

NYCHA's Procurement Department must maintain records sufficient to detail the history of a procurement. These records will include, but are not limited to, the following: the funding source, the independent cost estimate; the rationale for the method of procurement; the solicitation documents; selection of Contract type; information regarding contractor selection or rejection and the basis thereof; the basis for the Contract price; contract administration issues/actions; and approval or disapproval memos from the CPO. The level of documentation should be commensurate with the value of the procurement ([2 CFR § 200.318\(i\)](#)).



Detailed records retention requirements can be found in NYCHA Standard Procedure 008:59:2 (Records Retention and Disposal Schedules)

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Appendix A: Non-Federal Funding Sources

Note: The below policies apply solely to purchases of Legal Services, Professional Services, and Information Technology Services purchased with non-Federal funds.

Non-federal funding sources include State funds, City funds, and Central Office Cost Center (COCC) funds.⁴ See below for the procurement method thresholds and solicitation requirements for applicable purchases.

A. Procurement Methods

1. A Micro Purchase is used for purchases up to \$250,000.
2. A Small Purchase is used for purchases above \$250,000 and up to and including \$1,000,000.
3. Procurements above \$1,000,000 must be competitively procured.

B. Solicitation Requirements

1. Micro Purchase: A Micro Purchase may be awarded without soliciting competitive quotations if NYCHA considers the price to be reasonable.
2. Small Purchase
 - i. Small Purchases shall be solicited via direct outreach or public advertisement to prospective bidders resulting in the receipt of at least three bids.
 - ii. In cases where, after outreach to prospective bidders, NYCHA is unable to obtain three bids, two bids may be approved as sufficient by NYCHA's CPO or their designee.
3. Procurements above \$1,000,000 shall be competitively procured or procured through a process that fosters adequate competition as determined by the CPO.

C. Other Applications

1. Litigation services up to \$1,000,000 may be non-competitively procured with approval of the CPO.

⁴ HUD considers Central Office Cost Center (COCC) Funds to be local income and "defederalized."

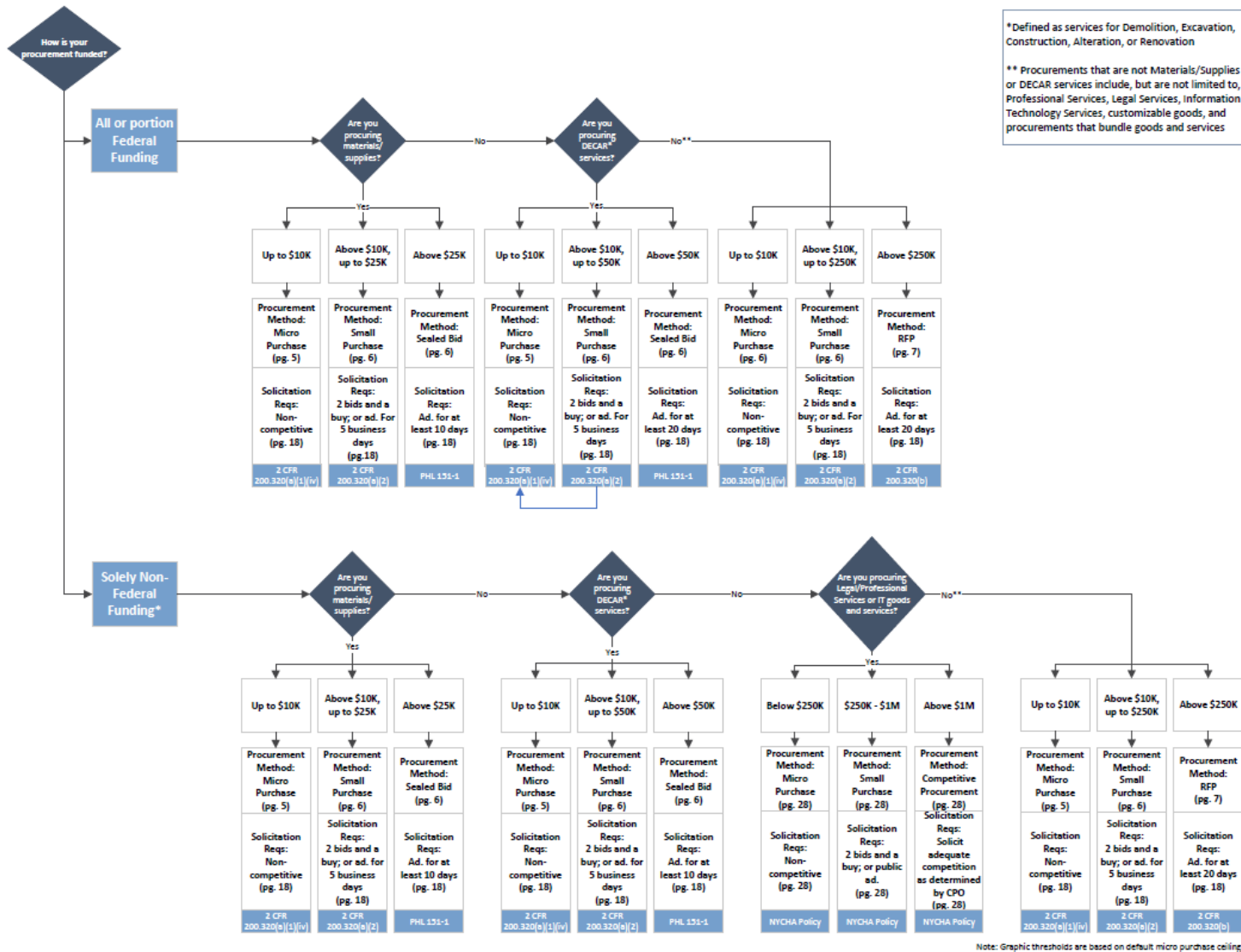


Figure 3 – Procurement Policy By Funding Source

Appendix B: Regulation Reference Table

The below table contains a list of all regulations cited in this Policy Manual.

| | Section | Regulation | Topic |
|---------|---|--|--|
| Federal | Title 2 – Grants and Agreements; Part 200; Subpart D – Post Federal Award Requirements | 2 CFR § 200.318 | General procurement standards |
| | | 2 CFR § 200.319 | Competition |
| | | 2 CFR § 200.320 | Methods of procurement to be followed |
| | | 2 CFR § 200.321 | Contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms |
| | | 2 CFR § 200.323 | Procurement of recovered materials |
| | | 2 CFR § 200.324 | Contract cost and price |
| | | 2 CFR § 200.325 | Federal awarding agency or pass-through entity review |
| | 2 CFR § 200.326 | Bonding requirements | |
| | Title 2 – Grants and Agreements; Part 200; Subpart E – Cost Principles | Subpart E of 2 CFR § 200 | Cost Principles |
| | Title 2 – Grants and Agreements; Part 200; Appendix II – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards | Appendix II of 2 CFR § 200 | Contract provisions for non-Federal entity contracts under federal awards |
| | Title 24 – Housing and Urban Development; Subtitle A; Part 75 – Economic Opportunities for Low- and Very Low-Income Persons | 24 CFR § 75.1 | Purpose |
| | Title 24 – Housing and Urban Development; Subtitle B; Chapter IX; Subpart B; Part 963 – Public Housing – Contracting with Resident-owned Businesses | 24 CFR § 963.10 | Contracting with resident-owned businesses |
| State | Consolidated Laws of New York, Public Housing Law (PHL); Article VIII – Provisions Relating to Approval, Construction, Management and Operation of Projects | PHL 151 | Authority construction contracts, cancellation of contracts, disqualification to contract with authority, statement of non-collusion in bids or proposals |
| | | PHL 151-a | Separate specifications for certain subdivisions of work involved in the construction or alteration of buildings as a part of or in connection with housing projects |
| | Consolidated Laws of New York, State Finance; Article 11 – State Purchasing | Section 162 | Preferred Sources |

Appendix C: PPM Attachments

See below for the full list of Attachments that accompany the Procurement Policy Manual.

[Attachment 1](#) – Restriction of Competition

[Attachment 2](#) – Breaking Up Procurements

[Attachment 3](#) – Micro Purchase Procurement

[Attachment 4](#) – Small Purchase Procurement

[Attachment 5](#) – Sealed Bids

[Attachment 6](#) – Request for Proposal (RFP)

[Attachment 7](#) – Sole Source Procurement

[Attachment 8a](#) – Emergency Procurement

[Attachment 8b](#) – Exigency

[Attachment 9](#) – Preferred Sources

[Attachment 10](#) – OGS and GSA Backdrop Contracts

[Attachment 11](#) – Other Types of Non-Competitive Contracts

[Attachment 12](#) – Contract Types

[Attachment 13a](#) – M/WBE

[Attachment 13b](#) – M/WBE Utilization Requirements

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[Attachment 14](#) – Independent Cost Estimate

[Attachment 15](#) – Identical Low Bids

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[Attachment 18](#) – Required Contract Provisions

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New York City Housing Authority
Procurement Policy Manual
Attachments



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Introduction

This document serves as an accompaniment to the Procurement Policy Manual (PPM) and provides supplemental information on various procurement policies. Each of the Attachments below have been developed to serve as stand-alone documents, providing additional details on the policies laid out in the PPM. It is best practice to use this document in conjunction with the PPM. Both documents have been cross-referenced to provide the user easy access to the relevant policies and supplemental information.

Attachment 1 – Restriction of Competition

The below guidance provides supplemental information regarding [2 CFR § 200.319](#). Procurements “must be conducted in a manner providing full and open competition.”

- I. “In order to ensure objective contractor performance and to eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids or requests for proposals and the like shall be excluded from competing for such procurements.” ([2 CFR 200.319\(b\)](#))
- II. The following situations are examples of restraint on competition that should not be included or allowed in a procurement ([2 CFR 200.319\(b\)](#)):
 - a. “Placing unreasonable requirements on firms in order for them to qualify to do business;
 - b. Requiring unnecessary experience or excessive bonding;
 - c. Non-competitive pricing practices between firms or between affiliated companies;
 - d. Allowing organizational conflicts of interest;
 - e. Specifying a “brand name” product without allowing “an equal” product possessing established essential characteristics; and
 - f. Any arbitrary action in the procurement process.”
- III. Geographical preferences are also restrictive of competition and are prohibited, except in the following situations ([2 CFR 200.319\(c\)](#)):
 - a. When State licensing laws impose geographical preferences;
 - b. When Federal statutes “expressly mandate or encourage geographic preference”; and
 - c. When procuring Architectural/Engineering services, “geographical location may be a selection criterion if its application leaves an appropriate number of qualified firms, given the nature and size of the contract, to compete for the Contract.”

Attachment 2 – Breaking Up Procurements

Breaking up procurements is the practice of breaking larger procurements into multiple, smaller procurements. It is permitted only in certain situations as detailed below:

| Breaking procurements into smaller procurements IS appropriate in the following situation(s): | Breaking procurements into smaller procurements IS NOT appropriate in the following situation(s): |
|--|---|
| <ul style="list-style-type: none">• To encourage maximum participation by M/WBE entities (2 CFR § 200.321).• To break out a procurement to make it more economically feasible (i.e., splitting procurements according to geographical location in cases where procuring from one vendor would incur additional travel-based costs). | <ul style="list-style-type: none">• To break a procurement into smaller procurements to avoid competitive requirements that would apply if the procurement was not broken up, a process known as “bid splitting”. |

Attachment 3 – Micro Purchase Procurement

The below graphic includes policies and guidance regarding Micro Purchases, which includes but is not limited to cost estimation, solicitation, and contract awards.

| Micro Purchase | | |
|-----------------------------------|---|--|
| Dollar Threshold | Default Threshold | <ul style="list-style-type: none"> A Micro Purchase may be used when the goods or services being procured can be obtained for an amount not greater than \$10,000 (or \$2,000 in the case of acquisitions of construction subject to the Davis-Bacon Act) (48 CFR § 2.2.1). |
| | Increased Threshold | <ul style="list-style-type: none"> A Micro Purchase may be used for the following: <ul style="list-style-type: none"> For purchases of materials and supplies, the cost of which is not greater than \$25,000 (2 CFR § 200.320(a)(1)(iv) & PHL 151(1)). For purchases of services, the cost of which is not greater than \$50,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act (2 CFR § 200.320(a)(1))). Refer to Section II.B.3.1.b for permitted use. |
| Preliminary Considerations | <ul style="list-style-type: none"> To the extent practicable, NYCHA must distribute Micro Purchases equitably to qualified vendors. NYCHA is not permitted to break down larger purchases into multiple smaller purchases for the sole purpose of meeting the Micro Purchase threshold and avoiding competitive procurement (“bid splitting,” as referenced in Attachment 2). | |
| Cost Estimation | <ul style="list-style-type: none"> Preparation of an Independent Cost Estimate is generally not necessary. Price reasonableness normally will be based on comparison with historical price paid for the item, commercial catalog prices, or other offers. | |
| Solicitation Guidance | <ul style="list-style-type: none"> Micro Purchases may be awarded without soliciting competitive quotations if NYCHA considers the price to be reasonable. If NYCHA does not consider the price provided by the vendor to be reasonable, NYCHA must reach out to another vendor to obtain a reasonable price. | |

Attachment 4 – Small Purchase Procurement

The below guidance provides supplemental information regarding Small Purchase Procurements, which includes, but is not limited to, cost estimation and bid splitting.

| Small Purchase | |
|-----------------------------------|--|
| Dollar Threshold | <p>The dollar threshold for Small Purchases is dependent on the type of good or service being procured, per 2 CFR § 200.320(a)(2) and PHL-151(1):</p> <ul style="list-style-type: none"> • Supplies/Materials: Above \$10,000 and up to \$25,000. • DECAR Services⁵: Above \$10,000 and up to \$50,000. • Other⁶: Above \$10,000 and up to \$250,000. • Note: When the increased Micro Purchase threshold is employed (see Attachment 3), the following changes occur to the Small Purchase threshold: <ul style="list-style-type: none"> • The Small Purchase threshold for materials and DECAR services no longer applies. • For Other procurements, a Small Purchase may be used for purchases above \$50,000 and up to \$250,000. |
| Preliminary Considerations | <ul style="list-style-type: none"> • Requirements aggregating more than the Small Purchase threshold shall not be broken down into multiple purchases that are less than the Small Purchase threshold merely to permit use of a non-competitive procurement approach or avoid requirements that apply to purchases that exceed the Small Purchase threshold (“bid splitting,” as referenced in Attachment 2). |
| Cost Estimation | <ul style="list-style-type: none"> • The Independent Cost Estimate may be based on prior purchases, commercial catalogs, or detailed analyses. |
| Solicitation Requirements | <ul style="list-style-type: none"> • Small Purchases shall be solicited via direct outreach or public advertisement to prospective bidders resulting in the receipt of at least three bids. • In cases where, after outreach to prospective bidders, NYCHA is unable to obtain three bids, two bids may be approved as sufficient by NYCHA’s CPO or their designee. |

⁵ DECAR Services: Demolition, Excavation, Construction, Alteration, and Renovation.

⁶ Includes but not limited to Professional Services procurements where goods/customizable goods are included with services.

Attachment 5 – Sealed Bids

The below guidance provides supplemental information regarding Sealed Bids, including but not limited to implications of [PHL 151](#) and Wicks Law on sealed bids.

- I. NYCHA may publicly solicit sealed bids and award a Firm Fixed (Lump Sum) or Unit Price Contract to the lowest bidder who is responsive, responsible, and whose bid conforms with all of the material terms and conditions of the solicitation. The Firm Fixed (Lump Sum) or Unit Price Contract NYCHA awards may be via a Job Order Contract vehicle, which contains a catalog of priced services and is used in situations where NYCHA will require different combinations of work for a job order.
- II. All bids will be publicly opened at the time and location prescribed in the invitation for bids. NYCHA's Procurement Department shall determine which bidders are responsive and responsible and the Chief Procurement Officer (CPO) may reject any determination of responsiveness or responsibility.
- III. [PHL 151\(1\)](#) requires that DECAR work costing more than \$50,000 must be procured by sealed bid and advertised for at least 20 days, and materials and supplies costing more than \$25,000 must be procured by sealed bid and advertised for at least 10 days. [PHL 151\(1\)](#) also provides that NYCHA may reject all bids or re-advertise for bids for the foregoing DECAR work or materials and supplies if a majority vote of NYCHA's Board determines it is in NYCHA's best interests or is necessary for the economy and efficiency in the economy and efficiency of the project. Furthermore, NYCHA may award such DECAR work or materials and supplies to a bidder other than the lowest bidder only by a unanimous vote of NYCHA's Board.
- IV. Wicks Law
 - a. [PHL 151-a](#) (Wicks Law) provides that if a sealed bid is used to procure Contracts for the erection, construction, reconstruction or alteration of any building or other appurtenance as a part of or in connection with a project (defined in PHL 3), for which the entire cost of such work exceeds \$3,000,000, then separate specifications must be prepared for the following three components of work: (i) plumbing and gas fitting; (ii) steam heating, hot water heating, ventilating and air conditioning apparatus; and (iii) electric wiring and standard illuminating fixtures. [New York Labor Law § 222\(b\)](#) provides that the foregoing does not apply if NYCHA has entered into a "Project Labor Agreement" as defined therein.
 - b. If Wicks Law does not require the preparation of separate specifications, the invitation for bids must require that bidders submit a separate sealed list naming each subcontractor the bidder will use to perform work on the Contract, and the agreed amount to be paid to each, for: (i) plumbing and gas fitting; (ii) steam heating, hot water heating, ventilating and air conditioning apparatus; and (iii) electric wiring and standard illuminating fixtures. When procuring a Requirements Contract, it is not necessary to specify the agreed upon amount to be paid to each subcontract, as there is no guaranteed amount affixed to the contract so it is not possible for the contractor to know the amount that will be paid to each such subcontractor. When procuring an indefinite delivery indefinite quantity (IDIQ) contract the amount of each subcontract should be based on the amount of the minimum guarantee.
 - c. After the low bid is announced, the sealed list of subcontractors submitted with such low bid shall be opened and the names of such subcontractors shall be announced, and thereafter any change of subcontractor, or agreed upon amount to be paid to each,



shall require the approval of NYCHA, upon a showing to NYCHA of a legitimate construction need for such change, which shall be open to public inspection. A showing of a legitimate construction need, however, shall not be required for changes in the amounts paid to subcontractors on a Requirements Contract or an IDIQ contract in excess of the minimum guarantee.

- d. A legitimate construction need shall include, but not be limited to, a change in project specifications, a change in construction material costs, a change to subcontractor status as determined pursuant to [Labor Law § 222](#) or the subcontractor has become otherwise unwilling, unable or unavailable to perform the subcontract. The sealed list of subcontractors submitted by all other bidders shall be returned to such bidders unopened after the Contract award.
- V. Sealed bidding cannot be used to procure A/E professional services.

Attachment 6 – Request for Proposal (RFP)

The below guidance includes supplemental information regarding RFPs, including, but not limited to, evaluation guidance and specifics of Architectural/Engineering RFPs.

- I. A Request for Proposal (RFP) is used to procure professional or other types of services where NYCHA seeks to evaluate, among other things, proposers' proposed methods to perform the work. RFPs are generally used when the Sealed Bid Method is not required by law or appropriate because NYCHA seeks to evaluate factors other than price. See [Attachment 5](#) (Sealed Bids) for restrictions on using RFPs.
- II. RFPs are used to procure professional services above the Small Purchase threshold.
- III. The following requirements apply to RFPs:
 - a. NYCHA must publicly advertise an RFP for at least 20 days or such other time period that the Chief Procurement Officer (CPO) determines is not restrictive of competition. The RFP must contain a clear statement of work, identify all evaluation factors and their relative importance, and describe the methods with which NYCHA will conduct any technical evaluation of the proposals.
 - b. Responses to the RFP shall be evaluated based on the evaluation factors in the RFP which must include price and other factors, except for Qualifications-Based Selection (QBS) (see item IV below).
 - c. Proposals must be solicited from an adequate number of qualified sources.
 - d. Award(s) shall be made to the highest scoring responsive and responsible firm(s) pursuant to the evaluation factors in the RFP.
- IV. NYCHA may conduct a qualification-based selection (QBS) procurement for architectural/engineering (A/E) professional services whereby NYCHA issues a request for qualifications, competitors' qualifications are evaluated, and the most qualified competitor is selected subject to negotiation of fair and reasonable compensation. This method, where price is not used as a selection factor, can only be used in procurement of A/E professional services and will not be used to purchase other types of services even though A/E firms are potential candidates to perform such services ([2 CFR 200.320\(b\)\(2\)\(iv\)](#)).

Attachment 7 – Sole Source Procurement

The below includes guidance on sole source procurement as defined in [2 CFR § 200.320\(c\)\(2\)](#), including but not limited to guidance on preparation of a justification memo and cost analysis.

- I. If a good or service is sold by only one vendor, NYCHA may solicit a proposal from such vendor and the Chief Procurement Officer (CPO) may approve the award of a Contract to such vendor on a noncompetitive basis.
- II. The Procurement Department shall prepare a justification memo explaining the circumstances surrounding the sole source procurement. The memo should include:
 - a. The cost and term of the Contract.
 - b. Confirmation that the goods/services are not available from multiple sources.
 - c. Explanation of why NYCHA cannot use similar or alternative goods/services which are available from multiple sources.
 - d. The due diligence performed by NYCHA to independently determine whether the required goods/services can only be obtained from one source or whether they are in fact available from multiple sources.
- III. The Program Unit, with the assistance of the Procurement Department, must conduct a cost or price analysis before conducting a sole source procurement and before the receipt of a proposal from a single vendor. The method and degree of analysis depends on the facts surrounding each particular procurement, but as a starting point, NYCHA must conduct an Independent Cost Estimate before receiving bids or proposals (see [Attachment 14](#)).

Attachment 8a – Emergency Procurement

An emergency procurement is a noncompetitive procurement for supplies and/or services which are necessary to abate an emergency ([2 CFR § 200.320\(c\)\(3\)](#)).

Emergency Procurement

| Emergencies are: | Emergencies are not: |
|--|--|
| <p>Unforeseen or unpreventable events, e.g.:</p> <ul style="list-style-type: none"> • Fire • Flood • Earthquake • Epidemic • Riot • Equipment or structural failure • Events that threaten the health or safety the public | <p>Events resulting from poor planning resulting in an immediate need for supplies and/or services.</p> |
| <p>Sudden or unexpected occasions for action that are not self-created and could not have been avoided with proper planning.</p> | <p>A need or desire to expedite the solicitation process outside true emergencies, as defined herein.</p> |

Attachment 8b – Exigency

The following content details additional policies and procedures associated with the exigent non-competitive method of procurement:

- I. Procedure
 - a. After CPO makes a determination that an exigent circumstance exists, then NYCHA may engage in preliminary discussions with a vendor to explore the feasibility of a proposed non-competitive acquisition.
 - b. The Department EVP or Department head shall approve on the request to use the non-competitive acquisition method supporting the circumstances outlined in Section II.B.12.6 of this Procurement Policy Manual.
 - c. The CPO shall countersign the request approving the use of the non-competitive acquisition method for a particular procurement or for a particular type of procurement and notifies the CEO and COO.
 - d. The CEO or COO may override the decision to use the non-competitive acquisition method.
 - e. The Procurement or the Administering Department shall maintain a written record of the conduct of negotiations in the procurement record.
 - f. The CPO shall approve the intent to award and present to the NYCHA Board as required by the PPM.

- II. Small Purchases: The policy contained in Section I above shall not apply to noncompetitive acquisitions below the small purchase threshold.

- III. Notice of Award
 - a. Frequency: Notice of contract award shall be posted on NYCHA’s website in a location that is accessible by the public.
 - b. Content
 - i. Such notice of award shall include:
 1. Purchase description;
 2. Name and address of the vendor;
 3. Dollar value of the contract;
 4. Date of the published notice of intent to enter into negotiation, if applicable; and
 5. Contract start and expiration dates.

Attachment 9 – Preferred Sources

Pursuant to [Section 162](#) of New York State Finance Law, procurement from certain preferred sources is exempt from competitive procurement. The below includes guidance regarding preferred sources, including but not limited to purchasing goods/commodities from the correctional industries program and non-profit agencies for the blind and severely disabled.

- I. If a preferred source sells the goods/commodities sought by NYCHA, NYCHA may award a contract to a preferred source in the following priority:
 - a. If the goods are available from the correctional industries program of the Department of Corrections and Community Supervision, then NYCHA shall procure the goods from that program.
 - b. When such commodities are not available from the source listed in (a) above, such commodities shall then be purchased from qualified charitable non-profit-making agencies for the blind that have been approved for such purposes by the commissioner of the Office of Children and Family Services.
 - c. When commodities are not available from the sources listed in (a) and (b) above, such commodities shall then be purchased from a qualified non-profit-making agency for other severely disabled persons approved for such purposes by the commissioner of mental health, a qualified special employment program for mentally ill persons approved for such purposes by the commissioner of mental health, or a qualified veterans' workshop approved for such purposes by the commissioner of education.
- II. When NYCHA seeks to procure services that are available by qualified non-profit-making agencies for the blind and those for the other severely disabled, by qualified special employment programs for mentally ill persons and by qualified veterans' workshop, equal priority shall be accorded the services rendered and offered for sale by these groups. In the case of services:
 - a. NYCHA shall make reasonable efforts to provide a notification describing their requirements to those preferred sources which provide the required services
 - b. If, within ten days of the notification, one or more preferred sources submit a notice of intent to provide the service, the service shall be purchased in accordance with this section. If more than one preferred source or facilitating entity submits a notification of intent and meets the requirements, costs shall be the determining factor for purchase among the preferred sources.
 - c. If, within ten days of the notification, no preferred source indicates intent to provide the service, then the service shall be procured as otherwise required by this manual.
- III. A list of Preferred Source Offerings from the New York State Office of General Services (OGS) is available on the [OGS website](#).

Attachment 10 – OGS and GSA Backdrop Contracts

| OGS and GSA Backdrop Contracts | | |
|---------------------------------|---|--|
| | New York State OGS | Federal GSA |
| Types of Procurements Permitted | <ul style="list-style-type: none"> • Materials/Supplies regardless of value • DECAR at or below \$50,000 • Other category purchases regardless of value | |
| Solicitation Guidance | <ul style="list-style-type: none"> • NYCHA must procure off backdrop contracts according to its established solicitation policies. • In cases where the solicitation requirements of the specific backdrop contract are more stringent than NYCHA’s solicitation policies, NYCHA must procure according to the backdrop contract solicitation requirements. • In cases where the contracts permit solicitation of a sole vendor, NYCHA may procure via sole source according to the discretion of the Chief Procurement Officer (CPO) or their designee (note that for OGS contracts, approval for single source procurement must be obtained from OGS). | |
| Helpful Resources | <ul style="list-style-type: none"> • OGS Contract Lists <ul style="list-style-type: none"> • Commodities • Services • Technology | <ul style="list-style-type: none"> • Ordering Procedures for Federal Contracts <ul style="list-style-type: none"> • Supplies and Services not requiring a Statement of Work • Services requiring a Statement of Work |



Attachment 11 – Other Types of Non-Competitive Contracts

Procurement by noncompetitive method may be used only if one of the circumstances set forth in [2 CFR § 200.320\(c\)](#) apply. The following types of contracts also do not require a competitive procurement:

- I. Personal Service Contracts: NYCHA is not required to competitively procure Contracts for the employment of individuals who will be subject to an employer-employee supervisory relationship that is in turn part of the personnel process subject to civil service rules.
- II. Utility Contracts with Regulated Providers: Competitive procurement is not required for Contracts for the purchase of utility service, such as gas, electricity, and telephone where such utility service is regulated by, for instance, the New York State Public Service Commission, or any interstate public utility regulated by either the Federal Energy Regulatory Commission or the Federal Communications Commission, and the rates are subject to a tariff.
- III. Insurance Policies: NYCHA's Risk Finance Department competitively solicits an insurance broker, and the insurance broker seeks pricing from various insurance companies.
- IV. Contracts for Real Property: Contracts for the purchase or sale of real property or a leasehold or any other interest therein are not required to be competitively procured. This includes leases by NYCHA of residential space within developments and purchases or leases of personal property from owners of site parcels when necessary to the continued operation of the building in which the personal property exists.
- V. Relocation of Residents: Agreements, commitments, or acts whereby NYCHA assists a resident of the site of a Development to remove from the site and to relocate elsewhere.
- VI. Commercial Credit Cards: NYCHA may issue commercial credit cards to departments and offices that frequently pay directly for business-related materials, supplies, or services that cannot be acquired through the Procurement/Materials Management Department (including but not limited to metered parking, postage, and MetroCards).
- VII. Other various payments or Contracts that cannot, by their nature, be competitively procured:
 - a. Claim Settlements;
 - b. Change Orders and Contract Capacity Increases;
 - c. Magazine/newspaper subscriptions for the advertisement of procurements;
 - d. Postage and other purchases from the U.S. Postal Service; and
 - e. Contracts with or payments to the Triborough Bridge and Tunnel Authority for an E-ZPass account for the payment of tolls on roads, bridges, and in tunnels.

Attachment 12 – Contract Types

The below includes guidance regarding certain types of Contracts NYCHA is permitted to enter into, including but not limited to a description of the contract and situations in which it is appropriate to use.

- I. **Firm Fixed-Price (Lump Sum):** This contract type requires the delivery of products or services at a specific price, fixed at the time of contract award and not subject to any adjustment on the basis of the contractor's costs incurred in performing the Contract. It is appropriate when fair and reasonable prices can be established at time of award, definite design or performance specifications are available, products are off-the-shelf or modified commercial products or services for which realistic prices can be offered, any performance uncertainties can be identified, and a reasonable cost can be estimated in advance.
- II. **Fixed-Price with Economic Price Adjustment:** In cases where the market for a particular supply or service is especially volatile and NYCHA needs a contract for a term greater than just an initial quantity, this contract type allows for adjustment in the contract price based upon the occurrence of specified contingencies stated in the contract. The contract contains initial firm-fixed prices that may be adjusted upward or downward during the performance period based on the specified contingency in the contract. The Contract must contain a clause that clearly describes the specified contingency and explains how the price adjustment will be calculated, describes the frequency of adjustment, and includes the overall ceiling price.
- III. **Unit Price (Non-Bid Factor):** A Unit Price (non-bid factor) Contract provides that the contractor provides quantities of supplies or services for the fixed unit prices in the contractor's bid or proposal. A unit price contract can be either an Indefinite Delivery/Indefinite Quantity (IDIQ) Contract or a Requirements contract upon acceptance of the bid the contractor is required to provide quantities of supplies or services for the fixed unit prices up to a stated not-to-exceed amount in the Contract. Whether the contractor can be required to provide quantities which cost more than the stated not-to-exceed amount depends on whether the contract is a Requirements Contract or an IDIQ contract, as discussed in greater detail in sections VIII and IX below.
- IV. **Unit Price (Bid Factor):** A Bid Factor Contract is generally the same as a Unit Price Contract except that instead of the contractor establishing the pricing of the items of supplies and services in its bid, NYCHA establishes the unit prices in the solicitation and the contractor provides in its bid a "bid factor" or multiplier to be applied uniformly to each of the NYCHA established unit prices. Upon acceptance of the bid or proposal, the contractor provides the quantities of items of supplies or services for the NYCHA established unit prices adjusted (either upward or downward) by the contractor's bid factor or multiplier up to a stated not -to-exceed amount in the Contract. Similar to a Unit Price Contract, whether the contractor can be required to provide quantities above the stated not-to-exceed amount depends on whether the contract is a Requirements Contract or an IDIQ Contract, as discussed in greater detail in sections VIII and IX below.
- V. **Cost Reimbursement:** Cost-reimbursement contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These Contracts establish an

estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the Chief Procurement Officer (CPO). Cost Reimbursement Contracts are suitable only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract. A Cost Reimbursement Contract may be used only when the contractor's accounting system is adequate for determining costs applicable to the contract and appropriate surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used.

- VI. **Cost plus Fixed-Fee:** This is a type of Cost-Reimbursement Contract that provides for payment to the contractor of a negotiated fee (profit) that is fixed at the time of contract award. The fixed fee does not vary with the Contract's actual costs (e.g., the contractor will not receive a greater fee for incurring less cost), but may be adjusted as a result of changes in the work to be performed under the contract (e.g., as a result of a change order). This Contract type permits contracting for efforts that might otherwise present too great a risk to contractors (e.g., there is a high degree of uncertainty in, or the ultimate costs of, accomplishing the contract's requirements). A Cost plus Fixed-Fee Contract presents the greatest risk to NYCHA because it provides the contractor only a minimum incentive to control the costs of contract performance. Therefore, it should be used only when no other type is feasible. Like all cost-reimbursement contracts it requires a significant amount of monitoring by NYCHA to aid in contractor compliance.
- VII. **Definite Quantity Contracts:** Definite-Quantity Contracts provide for delivery of a definite quantity of specific supplies or services for a fixed period of time (e.g., one year), with deliveries or performance to be scheduled at designated locations upon order. A definite quantity contract may be used when it can be determined in advance that (1) a definite quantity of supplies or services will be required during the contract period and (2) the supplies or services are regularly available or will be available after a short lead time.
- VIII. **Requirements Contracts:** Requirements Contracts provide for the filling of all of the PHA's purchase requirements for the supplies or services specified in the contract during a fixed period of time and within a specific geographical area. A Requirements Contract may be appropriate when NYCHA anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that it will need during a definite period. Note, however, that while a Requirements Contract presupposes that it is not possible to determine the precise quantities of supplies or services that NYCHA requires, a solicitation for a Requirements Contract must contain a good faith estimate of the quantities of supplies or services that NYCHA anticipates it will require. If NYCHA ends up ordering quantities greatly in excess of the good faith estimate, the contractor will be contractually obligated to provide the extra quantities for the same unit prices, but the contractor may seek to charge NYCHA for its costs and expenses incurred in providing the unforeseen extra quantities. A Requirements Contract must have a maximum dollar amount which should be based on NYCHA's good faith estimates in the solicitation and the contractor's unit prices for the supplies and services. Contract Capacity Increases to purchase the maximum amount are subject to the policies detailed in the Contract Management section of the Procurement Policy Manual.

IX. Indefinite Delivery / Indefinite Quantity (IDIQ) Contracts

- a. IDIQ Contracts provide for delivery of an indefinite quantity, within stated limits (a minimum and maximum quantity), of supplies or services during a fixed period. Quantity limits may be stated in the Contract as number of units or as dollar values. NYCHA may use an IDIQ Contract when it cannot predetermine, above a specified minimum, the precise quantities of supplies or services that it will require during the contract period, and it is inadvisable to commit itself for more than a minimum quantity. NYCHA should use an Indefinite Quantity Contract only when a recurring need is anticipated. The solicitation for an IDIQ Contract should specify the total minimum and maximum quantity of supplies or services that NYCHA will acquire under the Contract. This may be expressed in units (e.g., number of items) or total dollar amount. The consideration on an IDIQ Contract is guarantying that the contractor will provide a minimum amount of supplies and services. The minimum amount must be a non-nominal quantity of services or dollar amount of services rendered. As the consideration for an IDIQ Contract is the minimum guaranty, NYCHA can award multiple IDIQ Contracts to different contractors with the same scope. Once the contractor under an IDIQ Contract has performed or provided the maximum amount of supplies or services set forth in the Contract, the contractor is not obligated to supply any additional supplies or services. Because there is no further obligation of the contractor to perform after the contractor has performed or provided the maximum amount of supplies or services, there is no longer a binding Contract. If NYCHA has a need for additional supplies or services, the supplies or services must be re-procured. The supplies or services cannot be obtained by increasing the capacity above the maximum amount stated in the IDIQ Contract. The maximum amount on an IDIQ Contract may be increased by a fixed percentage or amount stated in the Contract subject to the procedures in the Contract Management section of the PPM regarding Contract Capacity Increases.
- b. All IDIQ Contracts must have the guaranteed minimum amount specified in the Contract. Each IDIQ Contract must also have a maximum amount specified in the Contract with the exception of Contracts for the following services:
 - i. Architect and engineering services
 - ii. Legal services provided by an attorney or law firm
 - iii. Construction and project or program manager services
 - iv. Any services approved by the CPO
- c. If NYCHA awards multiple IDIQ Contracts for the services set forth in (b) above off the same procurement, the procurement instrument may provide that NYCHA will establish an overall maximum amount that may be allocated to all Contracts awarded under the procurement at NYCHA's discretion, subject to the guaranteed minimum compensation for each IDIQ Contract, without stating a fixed maximum amount of compensation to each awarded IDIQ Contract. The overall maximum amount of compensation may then be apportioned by NYCHA, at its discretion, among the IDIQ Contracts in varying amounts throughout the Contracts' term. Each of these IDIQ contracts must reference the overall maximum amount of compensation and have a clause that provides that the IDIQ Contract is one of multiple Contracts awarded off the same procurement and the maximum amount may be allocated by NYCHA to each

of the IDIQ Contracts at NYCHA's discretion, subject to the guaranteed minimum. The overall maximum amount allocated to multiple IDIQ contracts cannot be increased for the reasons discussed in section IX above.

- d. Where NYCHA has the discretion to allocate an overall maximum amount to multiple IDIQ Contracts and apportion the maximum amount among the IDIQ Contracts, NYCHA must avoid allocating or apportioning the amounts in a way that would be violative of full and open competition. An example of where such a violation could occur is if NYCHA imbalances the allocation and apportions a higher volume of work to contractors who scored lower than the higher scoring contractors.

X. **Time and Materials (Labor Hour Contract):** A Time and Materials Contract provides for acquiring supplies or services on the basis of: (a) Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and (b) Materials at cost, including, if appropriate, material handling costs as part of material costs. A time and materials Contract may be used only when the CPO has determined that no other type of contract is suitable (i.e., it is not possible at the time of contract award to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of confidence), and the contract includes a ceiling price that the contractor exceeds at its own risk. The CPO shall justify the reasons for and amount of any subsequent change in the ceiling price in writing for the Contract file. A Time and Materials Contract incentivizes the contractor to drive up the cost or labor use. The more the contractor's labor force works, the more profit the contractor realizes. Therefore, appropriate NYCHA surveillance of contractor performance is required to aid in oversight of efficient methods and effective cost controls.

XI. **Letter Contract:** A Letter Contract is a written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing supplies or performing services. performing services or delivering supplies while the Contract terms are negotiated. A Letter Contract is a form of negotiated Contract and may result in any Contract type (e.g., Fixed-Price, Cost Reimbursement). It should be used only in exceptional circumstances and is most appropriate for emergency work or other urgent and compelling needs. The single advantage of this method is that it expedites the procurement process. The contractor may begin performance on urgent requirements before the full requirements of the contract are finalized. The disadvantage of a Letter Contract is that it provides no incentive for cost control by the contractor, and NYCHA is in a very weak bargaining position at the time the final Contract is negotiated. The contractor is already performing the work, and the work is usually critical. A Letter Contract may be used when: (a) NYCHA's interests demand that the contractor be given a binding commitment so that work can start immediately; and (b) negotiating a definitive contract is not possible in sufficient time to meet the requirement. However, a Letter Contract should be as complete and definite as feasible under the circumstances. Letter Contracts that are subject to Davis-Bacon or HUD-determined wage rate requirements shall so state, and where feasible, the applicable wage determination shall be attached.

Attachment 13a – M/WBE

The below contains guidance regarding the use of Minority and Women-owned Business Enterprises (M/WBEs) aligned with [2 CFR § 200.321](#).

- I. **Minority-Owned Business:** 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.
- II. **Women’s Business Enterprise:** A women's business enterprise is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.
- III. [2 CFR § 200.321\(a\)](#) requires NYCHA to take all necessary affirmative steps to assure that minority businesses and women’s business enterprises are used when possible. The affirmative steps must include the following:
 - a. Placing qualified M/WBEs on solicitation lists.
 - b. Soliciting M/WBEs whenever they are potential sources.
 - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by M/WBEs. For example, if NYCHA has an aggregate need for services that exceed the Small Purchase Threshold, NYCHA may split the aggregate need into smaller procurements, including procurements that fall below the Small Purchase Threshold, if the goal of splitting the aggregate need is to increase M/WBE participation and actually does increase M/WBE participation.
 - d. Establishing delivery schedules, where the requirements permit, which encourage participation by M/WBEs.
 - e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
 - f. Requiring the prime contractor to take the affirmative steps listed above when procuring subcontractors.
- IV. In order to encourage participation by M/WBEs, HUD permits the following alternate bid and Contract guaranties which may be used in lieu of the bonding requirements set forth in [Attachment 19](#):
 - a. Separate performance and payment bonds, each for 50 percent or more of the contract price.
 - b. A 20 percent cash escrow.
 - c. A 25 percent irrevocable letter of credit



Attachment 13b – M/WBE Utilization Requirements

Contracts with an estimated total value above \$250,000 solicited via Sealed Bid or RFP shall require bidders and proposers to commit to the following M/WBE utilization requirements:

- I. For vendors that are not New York City-certified Minority or Women-Owned Business Enterprises (M/WBE), 30% of the total contract value must be subcontracted to M/WBEs, with 15% of the total contract value subcontracted to Minority-owned Business Enterprise(s) (MBEs) and 15% to Women-owned Business Enterprises (WBEs).
- II. For vendors that are a New York City-certified MBE, 15% of the total contract value must be subcontracted to New York City-certified WBE(s) and vice versa.
- III. For vendors that are a New York City-certified MBE and WBE, the vendor must choose one certification for the contract and then subcontract 15% of the total contract value to a firm with the certification that the vendor did not choose (e.g., if a vendor chooses the MBE certification, they must subcontract 15% of the total contract value to a WBE).
- IV. NYCHA development project contracts require 25% of the total contract value to be subcontracted to M/WBEs.



Attachment 13c – Diversity Preference Tiers for Certain Procurement Types

NYCHA preferences vendors in accordance with the following tier system:

1. Preferred Sources¹ (applicable for procurements of products and services provided by New York State delineated preferred sources/vendors)
2. Section 3 Business Concerns
3. Minority- and Women-owned Business Enterprises (M/WBE)

See below for detailed policies regarding solicitation outreach in accordance with diversity preferences:

- I. Preferred source/vendor products and services:
 - For products and services provided by New York State delineated preferred sources/vendors, NYCHA must award to a preferred source/vendor
 - In cases where a preferred source vendor is not able to provide the product or service, NYCHA will pursue solicitation of bids according to the order in Section II below
- II. Non-preferred source/vendor products and services
 - a. For micro purchases:
 - i. Outreach to a Section 3 Business Concern that provides the desired good/service
 - ii. Outreach to a M/WBE that provides the desired good/service
 - iii. Outreach to a non-Section 3 Business Concern/non-M/WBE vendor that provides the good/service
 - iv. The above preferences will be carried out in accordance with [2 CFR § 200.320\(a\)\(1\)\(i\)](#), which states NYCHA must distribute Micro Purchases equitably among qualified suppliers
 - b. For small procurements
 - i. Outreach to Section 3 Business Concerns that provide the desired good/service
 - ii. If sufficient Section 3 Business Concerns are not available, supplement with M/WBE-certified vendors
 - iii. If sufficient Section 3 Business Concerns or M/WBE-certified vendors are not available, supplement with outreach to non-Section 3 Business Concerns/non-M/WBE vendors

¹ New York State's preferred source organizations are the New York State Department of Corrections and Community Supervision, Division of Correctional Industries (Corcraft), the New York State Preferred Source Program for People Who Are Blind (NYSPSP), and New York State Industries for the Disabled (NYSID).

Attachment 14 – Independent Cost Estimate

An Independent Cost Estimation is an estimate of costs of the goods or services to be acquired under a Contract, Change Order, or Contract Capacity Increases. NYCHA must perform a cost or price analysis in connection with certain procurement actions, including contract modifications, in accordance with established policies ([2 CFR § 200.324\(a\)](#)). It serves as the basis for evaluating the reasonableness of a contractor’s proposed costs or prices. It also aids in determining the procurement method to be used. The table below contains guidance for Independent Cost Estimates for each type of procurement.

| | Required? | NYCHA Policy |
|-----------------------|-----------|---|
| Micro Purchase | ✗ | <ul style="list-style-type: none"> An Independent Cost Estimate is generally not necessary; evaluation of quotes post-receipt to be based on comparison of historical prices paid for item, commercial catalog, and or other offers. |
| Small Purchase | ✗ | <ul style="list-style-type: none"> Estimate based on prior purchases, commercial catalogs, or detailed analyses (e.g., purchases for services). |
| Sealed Bid | ✓ | <ul style="list-style-type: none"> Typically broken out into major categories of cost (e.g., labor, materials, and other direct costs, such as travel, overhead, and profit). Commercially Available Products/Services: May require a less detailed Independent Cost Estimate as marketplace tends to provide current reliable pricing information. |
| RFP | ✓ | <ul style="list-style-type: none"> Non-commercial Goods/Services: Requires extensive estimation method and detailed Independent Cost Estimate. |

Attachment 15 – Identical Low Bids

The below includes guidance on what steps to take in the event NYCHA receives two low bids of the same amount.

- I. If identical low bids are submitted under the Sealed Bid method by two or more responsive, responsible bidders, the Contract shall be awarded to one of such bidders as follows:
 - a. When such low bids do not exceed \$1,000,000 the Chief Procurement Officer (CPO) or his or her designee may either:
 - i. Select the successful bidder by the drawing of lots, giving the bidders involved adequate notice and opportunity to attend the drawing; or
 - ii. Select one of such low bidders based on NYCHA's best interest and, after obtaining approval from the CPO or their designee, make the award.
 - b. When such low bids exceed \$1,000,000, the CPO or his or her designee may either:
 - i. Draw lots among the tied bidders, giving the bidders involved adequate notice and opportunity to attend the drawing, and thereafter report the result of such drawing to the Board Members of NYCHA for their action by Authority resolution; or
 - ii. Recommend to the Board Members for their action by Authority resolution the selection of one of the low bidders for award as being in the best interest of the Authority, stating the reasons for such recommendation.



Attachment 16 – Inadequate Competition

The below includes guidance on steps to take in the event NYCHA receives only one bid in response to a publicly advertised solicitation.

If NYCHA publicly advertises a solicitation and receives only one bid, the Chief Procurement Officer (CPO), after determining that the solicitation contained a clear and understandable scope, may approve the award to the sole bidder. However, such award must be accompanied by a justification memo explaining the circumstances surrounding the lack of competition and why NYCHA should award the contract without adequate competition.

Attachment 17 – Responsive and Responsible Factors

Responsive bids

A "responsive" bid/proposal is one that conforms to the requirements of the solicitation. However, the Authority, in its sole discretion, may waive what it considers to be a bidder's non-material non-responsiveness to the requirements of the solicitation. Per Standard Procedure 02:94:1 (Resolution of Procurement Protests), factors affecting the responsiveness of bids/proposals include, but are not limited to:

| Responsiveness factors | |
|---|---|
| Factor | Detailed explanation |
| Bid requirements / specifications | Compliance with the requirements of the instructions and/or specifications. |
| Terms and conditions | Conformance with the terms and conditions of the solicitation. |
| Appropriate form of submission | Submission of bids/proposals in the form specified in the solicitation, including all required signatures, in ink, and including all required pricing information. |
| Initialing requirements | Compliance with any requirement that alterations in bids/proposals be initialed in ink by the bidder/proposer. |
| Adherence to time and place of submission | Submission of bids/proposals by the time and date, and at the place for submission, specified in the solicitation. |
| Bid balancing | Submission of a bid that is not unbalanced (i.e., a bid which is not in whole or substantial part weighted differently from the norm). |
| Exceptionally low bids | Submission of a bid that is so much lower than the Authority's estimate of the cost of, or anticipated bids for, the Contract, that it appears unlikely that the contractor will be able to perform the Contract satisfactorily at the price bid. |
| Minimum qualifications | Satisfaction of any minimum qualifications set forth in the solicitation (including, without limitation, minimum financial qualifications and minimum experience requirements). |

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| Requested materials | Submission of samples, literature or other documents or information requested by the Authority. |
| Disclosures | Submission of all required disclosure statements. |
| Bid security | Submission of bid security, if required. |
| License copies | Submission of copies of licenses, if required. |
| Site inspection | Attendance at a site inspection, if required. |

Responsible contractors

A "responsible" contractor is one that has the capability to perform fully the Contract requirements and the business integrity to justify the award of public funds. Per Standard Procedure 02:94:1 (Resolution of Procurement Protests), factors affecting the Authority's determination of a contractor's responsibility may include, but are not limited to:

Responsibility factors

| Factor | Detailed Explanation |
|-------------------------------------|---|
| Financial resources | Whether the contractor has the financial resources necessary to carry out the work in a competent and acceptable manner for the amount of the bid and in compliance with required delivery or performance schedules, taking into consideration the contractor's other business commitments |
| Qualifications | Whether the contractor has the necessary skill, ability, experience and technical qualifications. |
| History of similar work | Whether the contractor has performed work of the same general type and scale called for under the proposed Contract. |
| Capabilities | Whether the contractor has the organization, material, equipment, facilities, personnel resources and expertise (or ability to obtain them) necessary to carry out the work in a competent and acceptable manner for the amount of the bid and in compliance with required delivery or performance schedules, taking into consideration the contractor's other business commitments. |
| History of satisfactory performance | Whether the contractor has a satisfactory record of performance, in general, and specifically on other Contracts awarded by the Authority or any Federal, State or local government, agency or instrumentality. A prospective contractor that failed without good cause to perform in accordance with the specifications or within the time limit provided in one or more Authority Contracts, or that has otherwise performed unsatisfactorily on prior Authority Contracts, shall be presumed to be non-responsible unless the Issuing Department determines that the circumstances were beyond the contractor's control or that the contractor has taken appropriate corrective action. In |

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| | addition, past failure to apply sufficient tenacity and perseverance to perform acceptably is strong evidence of non-responsibility. |
| Business integrity record | Whether the contractor has a satisfactory record of business integrity and compliance with laws. Evidence of a lack of integrity or failure to comply with laws may include, without limitation, a judgment of conviction, a pending criminal indictment or information, a grant of immunity, or an investigation in connection with a criminal prosecution of the contractor; a judgment of civil liability under state or Federal antitrust statutes for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or evidence of the suspension or revocation for cause of any professional license. |
| Debt and default | Whether the contractor is in arrears on any debt or contract with any governmental entity, has defaulted upon any obligation to any governmental entity, or is in arrears on any tax. |
| Place of business | Whether the contractor has a permanent place of business. |
| Previous disqualification | Whether the contractor has been previously disqualified from award of a Contract. |
| False statements | Whether the contractor has made or caused to be made any false, deceptive or fraudulent statement in any bid, proposal or application for Authority or other government work. |
| Unauthorized subcontractor(s) | Whether the contractor has used any unauthorized subcontractor or has subcontracted more of the Contract work than was authorized in the Contract. |
| Financial resources | Whether the contractor has the financial resources necessary to carry out the work in a competent and acceptable manner for the amount of the bid and in compliance with required delivery or performance schedules, taking into consideration the contractor's other business commitments. |
| Qualifications | Whether the contractor has the necessary skill, ability, experience and technical qualifications. |
| Failure to cooperate | Whether the contractor has failed to cooperate with reasonable requests of any Authority inspector or representative with respect to any pending work under Contract provisions, plans or specifications. |
| Improper conduct | Whether the contractor has engaged in improper conduct, including but not limited to: an intentional billing irregularity or negligent billing practices; submitting a false claim or frivolous or exaggerated claims; the falsification of a document or record; the willful destruction of a document or record that the contractor had an obligation to maintain; bribery; use of a false or deceptive statement to obtain some benefit; causing competition to be restrained or limited; misrepresentation; falsely claiming to be a women-owned, minority owned or small business; or other dishonesty incident to obtaining, prequalifying for, or performing any Contract or modification thereof. |
| Work site conditions | Whether the contractor has created a hazardous condition at any work site or has failed to alleviate or remove a hazardous condition created at any work site. |
| Disregard for safety | Whether the contractor has disregarded the personal safety of its employees or its subcontractors, the public or Authority residents or personnel. Due |

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| | consideration shall be given to whether available evidence concerning the training of the contractor's employees, the equipment actually in use at the work site, and the contractor's practices for identifying and addressing deficiencies and securing employee compliance demonstrate a genuine commitment to safety, or lack of same. |
| Neglect of bill payment | Whether the contractor has habitually and without just cause neglected the payment of bills or otherwise disregarded obligations to a subcontractor, supplier of materials, or an employee of the contractor. |
| Adequate accounting and auditing procedures | Where the Contract includes provisions for reimbursement of contractor costs, whether the contractor has accounting and auditing procedures adequate to control property, funds or other assets, and to accurately delineate costs and attribute them to their causes. |
| M/WBE | Whether the contractor has complied with applicable requirements to take affirmative steps to aid in the use of minority-owned, women-owned, small businesses and subcontractors when possible. |
| Section 3 | Whether the Contractor has complied with Section 3 requirements set forth in Contracts with the Authority. |
| Equal opportunity | Whether the contractor has complied with applicable equal opportunity requirements regarding hiring, training and employment. |
| Suspension, debarment, and caution lists | Whether the contractor has been suspended or debarred from, or otherwise denied participation in, any contracts awarded by a Federal, State or local government, agency or instrumentality, or placed on a "caution list" or similar type of list by any Federal, State or local government, agency or instrumentality. |
| Other serious reasons | Whether there is any other serious reason that would cause the Authority to doubt the capability of the contractor to perform Authority Contract requirements. |
| Regulatory evasion | Whether the contractor was organized or established, or operates in a manner designed, to evade the purpose of this Procedure or any other law, rule, regulation or procedure relating to the procurement or performance of a government contract. |
| Relation to suspended or debarred contractor | Whether the contractor is a successor, assignee, subsidiary or affiliate of a suspended or debarred contractor. As used in this Procedure, the term "affiliate" of a contractor means any entity that controls the contractor, is controlled by the contractor or is under common control with the contractor. |
| Fraudulent, criminal, or improper conduct | The fraudulent, criminal or other improper conduct of any officer, director, shareholder, partner, employee or other individual associated with a contractor or any affiliate of a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor or with the contractor's knowledge, approval or acquiescence. The fraudulent, criminal or other improper conduct of one contractor participating in a joint venture or other similar arrangement may be imputed to other participating contractors. The fraudulent, criminal or other improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct. |

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| <p>Affiliate acts and omissions</p> | <p>In furtherance and not in limitation of the fraudulent, criminal, and improper conduct outlined above, in evaluating a contractor's responsibility, the Authority may consider the factors set forth herein insofar as they apply to acts or omissions on the part of any affiliate of such contractor, or any officer, director, 5% shareholder, joint venture participant or principal of such contractor or affiliate. In addition, for purposes of determining contractor responsibility, references to the Authority shall be deemed to include any construction manager, private manager or other such entity performing services for or on behalf of the Authority.</p> |
| <p>Multiple bids</p> | <p>If more than one bid submitted by a bidder is under consideration by the Authority for award, and the Authority determines that the bidder is able to meet the qualifications for the award of some, but not all, of the Contracts on which it has bid, the Authority will determine which bid or bids should be rejected for failure to meet such qualifications. The Authority may also take into consideration Contracts already awarded to the bidder and the extent of their completion as affecting the bidder's qualifications for the award of additional Contracts.</p> |

Attachment 18 – Required Contract Provisions

In addition to other provisions required by the Federal agency (e.g., HUD) or NYCHA, NYCHA Contracts, including those for cooperative purchases, must contain certain provisions set forth in the following sources and summarized below, as applicable.

- I. From [2 CFR § Part 200, Appendix II](#), Federal regulations advise non-Federal entities such as NYCHA as follows:
 - a. “Contracts for more than the Simplified Acquisition Threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
 - b. All Contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.
 - c. Equal Employment Opportunity: Except as otherwise provided under 41 CFR Part 60, all Contracts that meet the definition of ‘federally assisted construction contract’ in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, ‘Equal Employment Opportunity’ (30 FR 12319, 12935, 3 CFR Part, 1964– 1965 Comp., p. 339), as amended by Executive Order 11375, ‘Amending Executive Order 11246 Relating to Equal Employment Opportunity,’ and implementing regulations at 41 CFR part 60, ‘Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.’
 - d. Davis-Bacon Act, as amended (40 U.S.C. 3141–3148): When required by Federal program legislation, all prime construction Contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, ‘Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction’). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a Contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The Contracts must also include a provision for compliance with the Copeland ‘Anti Kickback’ Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, ‘Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States’). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- e. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708): Where applicable, all Contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- f. Rights to Inventions Made Under a Contract or Agreement: If the Federal award meets the definition of ‘funding agreement’ under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that ‘funding agreement,’ the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, ‘Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,’ and any implementing regulations issued by the awarding agency.
- g. Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended: Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- h. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- i. Debarment and Suspension (Executive Orders 12549 and 12689): A Contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), ‘Debarment and Suspension.’ The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- j. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352): Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Contract, grant or



any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

- k. See 2 CFR § 200.322 Procurement of recovered materials.”
- II. Other Federal Law – CFR and HUD Forms
 - a. Notice of applicable HUD or other funding agency requirements and regulations pertaining to reporting as set forth in [2 CFR § 200.328](#), [2 CFR § 200.343](#), and [24 CFR § 570.507](#).
 - b. Applicable HUD Forms including, but not limited to, HUD Forms 5369 and 5370 if funded under the HUD Capital Fund Program.
 - c. Applicable provisions set forth in [24 CFR § 75.3](#) et seq. (or as amended), if the Contract is being financed using "Section 3 covered assistance" from HUD.
 - d. Provisions required by the subrecipient agreement between NYCHA and the City of New York relating to the Community Development Block Grant Disaster Recovery (CDBG-DR) program, if applicable.
- III. New York State Law
 - a. Pursuant to [PHL 151\(2\)-\(4\)](#), the requirement to cooperate with any investigations conducted by a New York State or City governmental agency empowered to examine witnesses under oath, or by the Office of the Inspector General of NYCHA, with respect to agreements or persons which are the subject of the investigation, and potential penalties which may result from the refusal to testify or cooperate with the investigation, such as the cancellation of contracts or disqualification from doing business with NYCHA.
 - b. A provision requiring compliance with [New York's Paid Sick Leave Law](#), which requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.

Attachment 19 – Bonding Requirements

Detailed bonding requirements are as follows:

Contracts to be awarded by NYCHA for construction or facility improvement work exceeding the Small Purchase Threshold, except as otherwise approved by HUD, the minimum security requirements are below. For assistance with Contract type definitions (e.g. Requirements, Indefinite Delivery / Indefinite Quantity) refer to Attachment 12.

- I. A bid guarantee must be furnished by each bidder equivalent to five percent of the bid price including for contracts for contracts awarded on a Requirements or IDIQ basis. For Contracts awarded on a Requirements or Indefinite Delivery / Indefinite Quantity (IDIQ) basis, the bid price shall be the amount of the bidder's proposed bid that is used for purposes of determining the low bid, which shall generally consist of the aggregate cost of the bidder's proposed unit prices multiplied by the estimated quantities in the form or proposal or bid documents. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- II. A performance bond for 100 percent of the Contract price must be furnished, prior to award, by the contractor whose bid has been accepted with the exception of Contracts awarded on a Requirements or IDIQ basis. A performance bond is one executed in connection with a Contract to secure fulfillment of all the contractor's obligations under such Contract.
- III. A payment bond for 100 percent of the Contract price must be furnished, prior to award, by the contractor whose bid has been accepted with the exception of Contracts awarded on a Requirements or IDIQ basis. A payment bond is one executed in connection with a Contract to safeguard payment as required by law of all persons supplying labor and material in the execution of the work provided for in the Contract.
- IV. For Contracts awarded on a Requirements or IDIQ basis, the contractor whose bid has been accepted may be required to furnish, prior to award, performance and payment bonds, each for 100 percent of its bid price. However, consideration should be given as to whether these bonding requirements should be included in procurements for Requirements or IDIQ Contracts as the contractor is not guaranteed to perform work in quantities up the amount of the bid price. Therefore, requiring the contractor to furnish performance and payment bonds for 100% of its bid price prior to award may result in NYCHA being charged premiums for unused bonding capacity or NYCHA incurring additional costs and consideration should be given to utilizing the following bonding requirements in subsection (V) below for requirements contracts and subsection (VI) below for IDIQ contracts.
- V. For contracts awarded on a Requirements basis, a payment or performance bond may not be required to be furnished, prior to award, by the contractor whose bid has been accepted as the contractor. Or, alternatively, the contractor may be required to furnish, prior to award, payment and performance bonds in a lesser amount than its bid price. In each case, the contractor can be required, on an ongoing basis, to furnish payment and performance bonds in the amount of each task order (or equivalent instrument) issued under the Contract that exceeds, in the aggregate of all task orders (or equivalent instruments) issued under the Contract, the amount of the payment and performance bonds furnished by the contractor prior to award . In such case, each bidder on a Requirements contract, for which the bonds are not required prior to award or which the bonds required prior to award are less than the bid price, must furnish a

letter from its bonding company as part of its bid certifying that the bidder can obtain performance and payment bonds up to the amount of its bid price.

- VI. For Contracts awarded on an IDIQ basis, at a minimum, a payment and performance bond for 100 percent of the minimum guaranty must be furnished, prior to award, by the contractor whose bid has been accepted. Or, alternatively, the contractor may be required to furnish, prior to award, payment and performance bonds in an amount greater than 100 percent of the minimum guarantee but in a lesser amount than its bid price. In each case, the contractor will be required, on an ongoing basis, to furnish payment and performance bonds in the amount of each task order (or equivalent instrument) issued under the contract that exceeds, in the aggregate of all task orders (or equivalent instruments) issued under the Contract, as applicable, the minimum guarantee or the amount of the payment and performance bonds furnished by the contractor prior to award. In such case, each bidder on an IDIQ Contract for which the bonds required prior to award are less than the bid price must furnish a letter from its bonding company as part of its bid certifying that the bidder can obtain performance and payment bonds up to the amount of its bid price.
- VII. Contracts for the performance of routine maintenance or repair work and that are awarded on a Requirements basis, where there is no guaranteed minimum quantity to the contractor, shall not be subject to the bonding requirements of this section.
- VIII. Nothing in this section shall prohibit requiring a contractor to obtain a bid guarantee and/or performance and/or payment bonds in excess of the minimum requirements in Part I of this section or for contracts other than construction or facility improvement work exceeding the Small Purchase Threshold provided that excessive bonding requirements are prohibited.
- IX. As more fully described in Attachment 0a, HUD provides that alternative assurance of completion methods may be used for the purposes of facilitating M/WBE participation.

Appendix A – Regulation Reference Table

| | Section | Regulation | Topic |
|---------|--|--|--|
| Federal | Title 2 – Grants and Agreements; Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Subpart D – Post Federal Award Requirements | 2 CFR § 200.318 | General procurement standards |
| | | 2 CFR § 200.319 | Competition |
| | | 2 CFR § 200.320 | Methods of procurement to be followed |
| | | 2 CFR § 200.321 | Contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms |
| | | 2 CFR § 200.323 | Procurement of recovered materials |
| | | 2 CFR § 200.324 | Contract cost and price |
| | | 2 CFR § 200.325 | Federal awarding agency or pass-through entity review |
| | | 2 CFR § 200.326 | Bonding requirements |
| | | 2 CFR § 200.328 | Financial reporting |
| | | 2 CFR § 200.329 | Monitoring and reporting program performance |
| | 2 CFR § 200.344 | Closeout | |
| | Title 2 – Grants and Agreements; Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Subpart E – Cost Principles | Subpart E of 2 CFR § 200 | Cost Principles |
| | Title 2 – Grants & Agreements; Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Appendix II – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards | Appendix II of 2 CFR § 200 | Contract provisions for non-Federal entity contracts under federal awards |
| | Title 24 – Housing and Urban Development; Subtitle B; Chapter I; Subchapter B; Part 135 – Economic Opportunities for Low- and Very Low-Income Persons | 24 CFR § 75.1 | Purpose |
| | Title 24 – Housing and Urban Development; Subtitle B; Chapter V; Subchapter C; Part 570 – Community Development Block Grants | 24 CFR § 570.507 | Reports |
| | Title 41– Public Contracts and Property Management; Subtitle B; Chapter 60 – Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor | 41 CFR § 60 | Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor |

| | Section | Regulation | Topic |
|--------------|---|-------------------------------|--|
| State | Consolidated Laws of New York, Public Housing Law (PHL); Article I – Short Title; Policy of State and Purpose of Chapter; Definitions | PHL 3 | Definitions |
| | Consolidated Laws of New York, Public Housing Law (PHL); Article VIII – Provisions Relating to Approval, Construction, Management and Operation of Projects | PHL 151 | Authority construction contracts, cancellation of contracts, disqualification to contract with authority, statement of non-collusion in bids or proposals |
| | | PHL 151-a | Separate specifications for certain subdivisions of work involved in the construction or alteration of buildings as a part of or in connection with housing projects |
| | Consolidated Laws of New York, State Finance; Article 11 – State Purchasing | Section 162 | Preferred Sources |
| | Consolidated Laws of New York, Labor; Article VI – Payment of Wages | Section 196-b | Sick leave requirements |
| | Consolidated Laws of New York, Labor; Article VIII – Public Work | Section 222 | Project labor agreements |