

MODEL STATEMENT OF PROCUREMENT POLICY

FOR

PUBLIC HOUSING AUTHORITIES

OPERATING IN NEW JERSEY

REV. 4 (11/00)

This Model Procurement Policy for Public Housing Authorities Operating in New Jersey was prepared by Terrence J. Corrison, Esq. and Donald A. Caminiti, Esq. of the law firm of Breslin and Breslin, P.A., Hackensack, New Jersey in conjunction with Rutgers University, Center for Government Studies. The Policy was originally prepared in 1994 for use in the Procurement and Contract Management Course of the New Jersey Public Housing Authority Training Program sponsored by the New Jersey Department of Community Affairs.

PREFACE

This Model Statement of Procurement (hereinafter the "Statement") for Public Housing Authorities (hereinafter PHA's) operating in New Jersey reflects a compilation of various federal and state laws, regulations, rules and policies. The Statement was first prepared on behalf of the Training Committee appointed by the New Jersey Department of Community, Division of Housing to conduct a course of instruction for Executive Directors in Procurement and Contract Management. Representatives of the Department of Community Affairs, Division of Housing and Division of Local Government Services, U.S. Department of Housing and Urban Development, the New Jersey Chapter of NAHRO and N.J.A.H.R.A. participated in the initial review of this policy.

Revisions have been made since the original review in 1994, the most recent being those made in November 2000 reflecting comprehensive changes to the New Jersey Local Public Contracts law effective April 17, 2000. These changes include but are not limited to changes to the bid threshold and the way it is set, certification of purchasing agents, competitive purchasing for all matters exceeding 15% of the bid threshold and an optional competitive contracting process. The policy as amended will be submitted to HUD for its approval.

The Statement is intended to provide Public Housing Authorities operating in New Jersey with a comprehensive document which incorporates both Federal and New Jersey procurement laws, regulations and rules. The provisions reviewed and adopted are 24 C.F.R. 85.36 adopted March 1988, (hereinafter the "Act"), HUD Handbook 7460.8 Rev. 1 adopted January 1993, (hereinafter the "Handbook") and the Model Procurement Policy, (hereinafter MPP) appended thereto as well as the Local Public Contracts Law contained in N.J.S.A. 40A:11-1 et seq. and rules promulgated pursuant thereto provided in N.J.A.C. 5:34-1 et seq and %:30-5.1 and 11.1.

The Statement provides Housing Authorities in New Jersey with procurement guidelines which reflect both State and Federal laws and is intended to resolve many of the conflicts which have plagued Housing Authorities in addressing the various laws and rules in the past. In deciding which

state or federal law or rule to adopt the "common rule" contained in 24 C.F.R. 85.36(b) was employed. The rule provides that PHA's use their own procurement procedures that reflect applicable State and local laws and regulations, provided that they conform to applicable Federal law. Where both state and federal laws encompass the same area, the stricter or more limiting rule which encourages competition is adopted. In some cases the federal procurement policies are stated but notations or comments serve as reminders to consult applicable New Jersey laws or rules. In some instances the Statement contains provisions which are recommended but which appear in neither state or federal law or rules. These instances are specifically noted in the comments. While this Statement is intended to be utilized to assist Housing Authorities in complying with both federal and state laws, Executive Directors and Contracting Officers should be familiar with the provisions on which it is based and should consult those provisions when conflicts arise. References which should be available to all Executive Directors and procurement agents include the HUD Handbook, Model Procurement Policy, N.J.S.A. 40A:11-1 et seq., N.J.A.C. 5:34-1 et seq. 5:30-5.1 and 11.1 and N.J.S.A.40A:9-22.1 et seq. In some instances it will also be advisable to consult Housing Authority counsel, and representatives of HUD and the Division of Local Government Services.

ACKNOWLEDGMENT

While much of this statement was newly drafted in 1994, a large portion was adopted from existing Housing Authority Statements. Acknowledgment and thanks must be given to the Housing Authorities of Jersey City and the City of Passaic from which statements many of these provisions and comments were adopted as well as to Joseph Valenti of the Division of Local Government Services whose comparative analysis of New Jersey and federal laws was most useful in preparing this Statement.

Terrence J. Corrison, Esq.
Breslin and Breslin, P.A.
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Table of Abbreviations

Act	24 CFR 85.36
FAR	Federal Acquisition Regulation (48 CFR 1 <u>et seq.</u>)
Handbook	HUD Handbook 7460.8 Rev. 1 (adopted January 1993)
MPP	HUD Model Procurement Policy (appended to HUD Handbook 7460.8)
N.J.S.A.	New Jersey Statutes Annotated
N.J.A.C.	New Jersey Administrative Code
PHA	Public Housing Authority
Statement	Model Statement of Procurement for Public Housing Authorities

**MODEL STATEMENT OF PROCUREMENT POLICY FOR PUBLIC
HOUSING AUTHORITIES OPERATING IN NEW JERSEY**

Established for the Housing Authority of _____ (hereinafter the "PHA") by Board action on _____. This Statement of Procurement Policy complies with HUD's Annual Contributions Contract (ACC), HUD Handbook 7460.8, "Procurement Handbook for Public Housing Agencies", the procurement standards of 24 CFR 85.36, N.J.S.A. 40A: 11-1, et seq. (the New Jersey Local Public Contracts Law) and Rules contained in New Jersey Administrative Code (N.J.A.C. 5:34-1.1 et seq. and 5:30-5.1 and 11.1)

I. GENERAL PROVISIONS

A. PURPOSE

The purpose of this Statement of Procurement Policy is to provide for the fair and equitable treatment of all persons or firms involved in purchasing by the PHA: assure that supplies, services and construction are procured efficiently, effectively, and at the most favorable prices available to the PHA; promote competition in contracting; provide safeguards for maintaining a procurement system of quality and integrity; and assure that PHA purchasing actions are in full compliance with applicable Federal standards, HUD regulations, and State laws.

Source: HUD Model Procurement Policy (April 11, 1991) (hereinafter "MPP") Sec. I-A; and 24 CFR 85.36 (hereinafter referred to as the "Act") Sec. (b) (1).

B. APPLICATION

- This Statement of Procurement Policy (Statement) applies to all contracts for procurement of supplies, services and construction entered into by the PHA after the effective date of this Statement. It shall apply to every expenditure of funds by the PHA for public purchasing, irrespective of the source of funds, including contracts which do not involve an obligation of funds (such as concession contracts); however, nothing in this Statement shall prevent the PHA from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with law. The term "procurement", as used herein, includes both contract and modifications

(including change orders) for construction or services, as well as purchase, lease, or rental of supplies and equipment.

Source: MPP Sec. I-B and 40A:11-4.1 (as to Concession Contracts) and 40A:11-13.1 (as to gifts and bequests).

C. PUBLIC ACCESS TO PROCUREMENT INFORMATION

Procurement information shall be a matter of public record to the extent provided in N.J.S.A. 47:1A-1 et seq. (New Jersey Right to Know Law), and shall be available to the public as provided in that statute.

Source: MPP Sec. I-C; N.J.S.A. 47:1A-1 et seq.

II. PROCUREMENT AUTHORITY AND ADMINISTRATION

A. All procurement transactions shall be administered by the Contracting Officer, who shall be the Executive Director or other individual he or she has authorized in writing. The Executive Director shall issue operational procedures to implement this Statement, which shall be based on HUD Handbook 7460.8, N.J.S.A. 40A:11-1 et seq. and N.J.A.C. 5:34-1 et seq. as they may be amended and supplemented. The Executive Director shall also establish a system of sanctions for violations of the ethical standards described in Section IX below, consistent with State Law.

Source: MPP (Sec. II-A)

Notwithstanding the foregoing, the PHA may by Resolution, establish the office of purchasing agent (which may be the Executive Director or his designee) or purchasing department. Such purchasing agent or department shall have the authority, responsibility and accountability as the contracting agent for all purchasing activity, to prepare public advertising for bids, to review bids and to award contracts which do not exceed the bid threshold set forth in N.J.S.A. 40A:11-3 and Section III(C) of this policy and conduct any activities as may be necessary or appropriate to the purchasing function.

Source: Adapted from N.J.S.A. 40A:11-9 (1999).

- B. The Executive Director or his/her designee shall ensure that:
1. Procurement requirements are subject to a planning process to assure efficient and economical purchasing;
 2. Contracts and modifications are in writing, clearly specifying the desired supplies, services or construction, and are supported by sufficient documentation regarding the history of the procurement, including as a minimum the method of procurement chosen, the selection of the contract type, the rationale for selecting or rejecting offers, and the basis for the contract price;
 3. For procurement other than small purchases, where time permits, public notice of an upcoming procurement should be given at least ten days before a solicitation is issued. The PHA should provide offerors with as much time as possible to respond to solicitations and should attempt to provide at least 15 days between issuance of the solicitation and receipt of offers, but in no event may the time in which an offeror can respond to a solicitation be less than ten days in accordance with N.J.S.A. 40A:11-23, for Publicly Bid Contracts or twenty days in accordance with N.J.S.A. 40A:11-4.5a for optional New Jersey Competitive Contracting as per Section III(E) of this policy.
 4. Solicitation procedures are conducted in full compliance with Federal Standards stated in 24 CFR 85.36, or State and Local Law that are more stringent, provided they are consistent with 24 CFR 85.86;
 5. An independent cost estimate is prepared before solicitation issuance and is appropriately safeguarded for each procurement above the small purchase limitation, and a cost or price analysis is conducted of the responses received for all procurement.
 6. Contract award is made to the responsive and responsible bidder (or offeror for procurement under small purchase procedures) offering the lowest price (for sealed bid contracts) or contract award is made to the offeror whose proposal offers the greatest value to the PHA, considering price, technical, and other factors as specified in the solicitation (for contract awards based on competitive proposals); unsuccessful firms are notified within ten days after contract award;

7. There are sufficient unencumbered funds available to cover the anticipated cost of each procurement before contract award or modification (including change orders), work is inspected before payment, and payment is made promptly for contract work performed and accepted; and
8. The PHA complies with applicable HUD review requirements, as provided in the operational procedures supplementing this statement;
9. The Contracting Officer has maintained records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

Source: Partially MPP Sec. II-B; Act Sec. (b)(9); Sec. 7; Based in part on N.J.A.C. 5:30-5.1 et seq.

C. This Statement and any later changes shall be submitted to the Board of Commissioners for approval. The Board appoints and delegates procurement authority to the Executive Director [or Purchasing Agent] and is responsible for ensuring that any procurement policies adopted are appropriate for the PHA.

Source: MPP Sec. II-C

III. PROCUREMENT METHODS

A. SELECTION OF METHOD

If it has been decided that the PHA will directly purchase the required items, one of the following procurement methods shall be chosen, based on the nature of an anticipated dollar value of total requirement.

B. SMALL PURCHASE PROCEDURES

1. **General**

Any purchase, contract or agreement for the performance of any work or the furnishing or hiring of materials or supplies, the cost or price of which, together with any other sums expended or to be expended for the performance of any work or services in connection with the same immediate program, undertaking, or activity or project or the furnishing of similar materials or supplies during the same fiscal year paid with or out of public funds, does not exceed in the fiscal year the total sum of Seventeen Thousand Five Hundred Dollars (\$17,500.00) or Twenty-five Thousand Dollars if the PHA purchasing agent is qualified in accordance with N.J.S.A. 40A:11-9 (or such other threshold amount as may be established in accordance with N.J.S.A. 40A:11-3) may be made in accordance with the small purchase procedures authorized in this section.

Contract requirements shall not be artificially divided so as to constitute a small purchase under this section (except as may be reasonably necessary to comply with Section VIII. A of this Statement). For a contract which is single in character or inclusive of the provision or performance of additional goods or services, all of the goods or services requisite for the completion of such contract shall be included in one contract.

2. **Duration.**

Any purchase contract or agreement made pursuant to this section may be awarded for a period of 24 consecutive months, except that professional service contracts which are awarded without competitive bidding may be awarded for a period not exceeding 12 months unless

they are awarded pursuant to the optional New Jersey Competitive Contracting provisions set forth in Section III(E) in which case they may be awarded for a period not exceeding five years.

Source: MPP Sec III-B-1; N.J.S.A. 40A: 11-3 (as amended, 1999), and 11-7 and Act Sec. (d) (1).

3. Purchasing Authority

When authorized by Resolution small purchases under this Section may be made by the Purchasing Agent or Department. Such authorization may be granted for each contract or by a general delegation of power to negotiate and award such contracts.

Source: N.J.S.A. 40A:11-3 (as amended 1999).

Comment: This provision incorporates both the federal small purchase procedure with the New Jersey bidding threshold. While the federal act sets a threshold of \$100,000.00 above which formal bidding or competitive proposals are required, in New Jersey the threshold is currently set at \$17,500.00 (unless the purchasing agent is qualified pursuant to N.J.S.A. 40A:11-9 in which the threshold is currently \$25,000.00). This figure is adjusted by the Governor in consultation with the Dep't. of Treasury every five years. Since the "stricter policy applies" the small purchase threshold in New Jersey is \$17,500 or \$25,000.00 (as applicable) rather than \$100,000.00. Note that the twenty four month maximum duration is required by N.J.S.A. 40A:11-3b.

4. Petty Cash Purchases

Small purchases under \$ _____ [insert a dollar amount, e.g. \$250.00] which can be satisfied by local sources may be processed through the use of a petty cash account. The Director of Accounting and Finance shall ensure that: the amount is established in an amount sufficient to cover small purchases made during a reasonable period; security is maintained and only authorized individuals have access to the account; the account is periodically reconciled and replenished by submission of a voucher to the PHA finance officer; and, the account is periodically audited by the finance officer or designee to validate

proper use and to verify that the account total equals cash on hand plus the total of accumulated vouchers. The total petty cash maximum account limit is \$_____. [Insert dollar amount here].

(a) For petty cash purchases only one quotation need be solicited if the price received is considered reasonable. Such purchases must be distributed equitably among qualified sources. If practicable, a quotation shall be solicited from other than the previous source before placing a repeat order.

Source: MPP Sec. III-B-2

Comment: The last line of Section 4 is added as a safeguard to insure that the account is properly administered. The limit inserted should be high enough to allow reasonable use but low enough to require regular review by the finance auditor upon replenishing. Note that these provisions differ from and are more stringent than those that appear in the MPP.

The Training Committee recommends that in order to comply with the spirit of fostering greater economy and encouraging competition mandated by the various procurement laws, it is appropriate to curb the use of single quotations to matters under \$250.00 (or such other reasonable amount) but in no event may the threshold exceed 15% of the bid threshold established by the PHA in Section III.B.1 of this policy in accordance with N.J.S.A. 40A:11-6.1.

5. Telephone or Oral Quotations

Small Purchases Costing Between \$_____ [the Petty Cash amount from Section 4] and \$_____ [insert a dollar amount which shall not exceed 15% of the currently applicable N.J. Statutory bid threshold of \$17,500.00 or \$25,000.00 as per N.J.S.A. 40A:11-6.1].

If it is unreasonable or impractical to procure through sealed bids, these purchases may be made by obtaining price or rate quotations from an adequate number of qualified sources which shall not be less than two. Quotations may be oral so long as careful written documentation is

maintained and kept as a public record. The documentation shall detail all relevant factors including at a minimum, the names, addresses, and/or telephone numbers of the offerors and persons contacted, and the date and amount of each quotation. The award shall be made to the offeror providing the lowest acceptable quotation, unless justified in writing based on price and other specified factors, such as for architect-engineer contracts. If non-price factors are used, they shall be disclosed to all those solicited.

Source: Adapted from MPP Sec. III-B- 4, 24 CFR 85.36.

Comment: See Comment to Section 6 below.

6. Written Quotations

Small Purchases Costing Between \$ _____ [Insert Maximum amount from Section 5 above which shall not exceed 15% of the currently applicable N.J. Statutory bid threshold of \$17,500.00 or \$25,000.00 as per N.J.S.A. 40A:11-6.1] and \$17,500.00 [or \$25,000.00, as applicable] and N.J. Statutorily Exempt Purchases Up to \$100,000.00.

This section applies to procurement costing between \$ _____ (the maximum from Section 5 above) and the bid threshold established by the authority in accordance with N.J.S.A. 40A:11-3 which is currently \$17,500 (or \$25,000 if the purchasing agent is qualified pursuant to N.J.S.A. 40A:11-9). It also applies to procurement costing between the bid threshold and \$100,000.00 which are exempt from the New Jersey statutory bidding requirements pursuant to N.J.S.A. 40A:11-5. If it is unreasonable or impractical to procure through sealed bids, these purchases may be made by obtaining price or rate quotations from at least two sources. Under this section quotations must be in writing. Adequate documentation must be made of the procurement. The award shall be made to the offeror providing the lowest acceptable quotation, unless justified in writing based on price and other specified factors, such as for architect engineer contracts. If non-price factors are used, they shall be disclosed to all those solicited.

Source: Adapted from MPP Sec. III-B-3; N.J.S.A. 40A:11-4; and N.J.S.A. 40A:11-5, 40A:11-6.1; Opinion of Brigid Bohan, Esq. Chief Counsel, HUD as contained in 12/11/91 Memo to John P. Deller

Comment: Note that all of the amounts in Section 4, 5, and 6 are discretionary except the \$17,500.00/\$25,000.00 and \$100,000.00 maximums provided for in Section 6. This model differs from the MPP in that Section 4 limits the use of single source quotations to purchases under 15% of the New Jersey bid threshold.

Note that while N.J.S.A. 40A:11-6.1a requires that a PHA obtain “two competitive quotations, if practicable,” the HUD MPP provides that “three offerors shall be solicited to submit price quotations” but does not provide that you must actually obtain the quotes from those solicited. As such, this provision has been adopted to provide that at least two quotations be obtained before the award is made. Of course, PHAs are encouraged to obtain as many quotes as is feasible under the circumstances.

These provisions further differ from the MPP in that they provide two small purchase thresholds: one for at least two telephone or oral quotes and another for written quotations. PHA's may adopt their own threshold small purchase amounts consistent with the principles of open competition and the PHA's needs and experiences.

Effective with the 1999 revisions to N.J.S.A. 40A:11-6.1 New Jersey now provides for competitive purchasing for all matters (except for professional services) which cost 15% or more of the bid threshold adopted by the agency. This is consistent with the HUD requirement that all procurement be conducted in a manner providing full and open competition. Pursuant to the Federal Act, professional services and other N.J. statutorily exempt matters pursuant to N.J.S.A.40A:11-5 are not exempt from competition, but rather, are subject to either competitive proposals (Section III(D)) when the cost exceeds \$100,000.00 or the small purchase procedures set forth above, as per the specific threshold amounts.

It must be emphasized that the fact that the New Jersey statute exempts a matter (e.g. professional services) from public bidding and the Act provides for small purchase procedures, does not mean that an Authority can use sole source procurement for such purchases. An Authority is obligated to conduct the procurement in a manner providing "full and open competition" (Act 85.36 (c) (1)). The foregoing Small Purchase Procedure sample clauses provide minimal compliance with the principle of open competition. It should also be emphasized that while the Act was amended to permit small purchase procedures up to \$100,000.00 there is nothing to prevent an Authority from imposing a lower threshold where it would be appropriate to insure greater competition and value. Accordingly, even for statutorily exempt matters below \$100,000.00, Authorities should consider using a lower threshold amount and utilizing the competitive proposal system outlined in Section III(D) below.

The HUD memo cited as a source specifically addresses professional services in New Jersey but by analogy applies to all New Jersey statutory bidding exceptions contained in N.J.S.A. 40A:11-5.

C. PUBLICLY ADVERTISED SEALED BIDS

1. Conditions For Use

The method of sealed bids shall be used for all matters which exceed the bid threshold sum of \$17,500.00 (or \$25,000.00 as per N.J.S.A. 40A:11-9 or the amount set in accordance with N.J.S.A. 40A:11-3a.) which are not exempt from bidding under New Jersey law as provided for in N.J.S.A. 40A:11-5, the Emergency purchases and contracts exceptions addressed in N.J.S.A. 40A:11-6 and the optional Competitive Contracting Exceptions set forth in N.J.S.A. 40A:11-4.1 Those matters which are exceptions under those provisions (e.g. professional services, extraordinary unspecifiable services, insurance and emergency procurement) shall be procured through either the competitive proposal method (where they exceed \$100,000.00) as provided for in Section III D of this Statement or the Small Purchase Procedures (for procurement up to \$100,000.00) under Section III B 4

or the Competitive Contracting Provisions of N.J.S.A.40A:11-4.1 and Section III(E) of this Policy.

Source: Act Sec.(d)(2) and MPP Sec.III-C-1; N.J.S.A. 40A:11-4, 11-4.1 & 11-5.

Comment: While the Federal Act permits the PHA to choose between bidding and competitive proposals based upon certain standards, the New Jersey statute does not. It specifically mandates that procurement shall be made by public advertising for bids and bidding except for specific subject matters set forth in N.J.S.A. 40A:11-4.1 and 11-5 and N.J.S.A. 40A:11-6. Since the New Jersey statute is stricter in this regard than the Federal Act, it supersedes the Federal Act. Accordingly, except for those subjects specifically excluded from bidding in N.J.S.A. 40A:11-4.1, 11-5 and 11-6, PHA's must utilize the public bidding procedure for items costing in excess of \$17,500.00 (or \$25,000.00 for qualified purchasing agents.)

2. Advertisement and Solicitation of Bids

a) Invitation For Bids

An invitation for bids shall be issued including specifications and all contractual terms and conditions and documents applicable to the procurement, including a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirement of the invitation for bids. The invitation for bids shall state the time and place for both the receipt of bids and public bid opening. Bidders shall be given as much time as possible in which to prepare and submit bids. Wherever practicable they shall be given no less than fifteen days. In no event shall bidders be provided less than ten days to prepare and submit bids.

b) Advertisement

The invitation for bids shall be advertised in a official newspaper sufficiently in advance of the date fixed for receiving the bids to promote competitive bidding, but in no event less than ten (10) days prior to such date. Responses to such

notices shall be honored to the maximum extent possible. Invitations for bids may be mailed to potential vendors where vendor lists are available. However, no vendor shall receive an invitation to bid or the applicable specifications prior to the publication of the invitation in a official newspaper.

c) Amendments to Bid Documents

Amendments to the invitations to bid, advertisement, specification or other bid document must be in writing indicating the number and issue date of the document it amends and be noted in the PHA register or log. For contracts for other than construction work a copy of the amendment shall, no later than five days (excluding weekends and holidays) prior to the bid opening, be published in an official newspaper and shall be provided by certified mail, certified facsimile or by a delivery service with certification of receipt, to each prospective bidder who received the bid package or submitted a bid. For contracts for construction the aforesaid notice period is seven days (excluding weekends and holidays) but the notice need not be published in an official newspaper . If an amendment needs to be issued just before the scheduled bid opening date, the bid opening shall be postponed for an adequate period of time to comply with the aforesaid notice requirements and to permit potential bidders to fully analyze the change and to submit timely bids. Failure of the PHA to comply with this section shall require the re-advertisement of bids.

For Construction contracts the bidder must submit an acknowledgment by the Bidder of all changes or revisions on a form to be prepared by the PHA. The failure to submit the form with the bid shall render it unresponsive and it shall be rejected. See N.J.S.A. 40A:11-23.1 and Section V.D.3 below.

Source:

Subpara. (a) MPP Sec. III-C-2, Sec. II-B-3 and Sec III-C-2; N.J.S.A. 40A:11-23 (as amended eff. Jan. 1998); Act Sec. (d) (2) (i) (A) and (ii) (A) (B). Subpara. (b) N.J.S.A. 40A:11-23. Subpara. (c) N.J.S.A. 40A:11-23, 11-23.1 and HUD Handbook 7460.8 Rev. 1 Sec. 4-10.

3. Bid Opening and Award

- a) All purchase contracts or agreements requiring public advertisement for bids shall be awarded to the lowest responsible bidder. Bidders may be disqualified in accordance with Section III (C)(4) below.
- b) No bids shall be received after the time designated in the advertised invitation for bids.
- c) All sealed bids shall be opened publicly in the presence of at least one witness. If the published specifications provide for the receipt of bids by mail, those bids which were mailed to the contracting unit shall be sealed and shall only be opened for inspection at such time and place as all bids received are unsealed and announced. The purchasing agent or his designee shall publicly receive all bids, proceed to unseal them, and publicly announce the contents in the presence of any bidders (or their representatives) who are present, and shall also tabulate and record the prices and terms of the bids, and report said tabulation to the Board of Commissioners of the PHA for its action.
- d) All bids received shall be time-stamped, but not opened, and shall be stored in a secure place until the time of bid opening. The time-stamp on each sealed bid shall be dispositive of and prima facie evidence of the time of its receipt by the PHA.
- e) A bidder may, of right and without penalty, withdraw its bid in written or telegraphic form at any time prior to the opening and unsealing of bids, provided that any mailed or telegraphic withdrawal over the bidder's signature is placed in the mail and postmarked prior to the time set for the bid opening.
- f) If equal low bids are received from responsible bidders, award shall be made by drawing lots or similar random method, unless in accordance with New Jersey law, otherwise stated in the invitation for bids. Said awards shall be reviewed by and subject to the opinion of counsel to the PHA, and are further

subject to Bidder's submission of proper evidences of insurance, bonding, etc. If set forth in the bid specifications, where two or more responses offer equal prices and are the lowest responsible bids or proposals, an award may be made to the vendor whose response, in the discretion of the PHA is most advantageous, price and other factors considered. In such a case the award resolution or purchase order documentation shall explain why the vendor selected is the most advantageous.

- g) Contracts arising from the bids shall be awarded by the PHA's Board of Commissioners. Said awards shall be reviewed by and subject to the opinion of counsel to the PHA, and are further subject to Bidder's submission of proper evidences of insurance, bonding, etc.
- h) When required by the bid plans and specifications, the following requirements shall be considered mandatory items to be submitted at the time specified by the PHA for the receipt of bids; the failure to submit any one of the mandatory items shall be deemed a fatal defect that shall render the bid proposal unresponsive and that cannot be cured by the governing body;
- A guarantee to accompany the bid;
 - A consent of surety;
 - A statement of corporate ownership pursuant to Section VI(D) herein and N.J.S.A. 52:25-24.2;
 - A listing of subcontractors pursuant to Section III(C)(4) herein and N.J.S.A. 40A:11-16;
 - A bidder's acknowledgment on the form addressed under Section V(D)(3)a herein, of receipt of any notice, revisions or addenda to the advertisement or bid documents.
 - Any required Contractor's Certification of Registration in accordance with N.J.S.A. 34:11-56.48
- i) The Board of Commissioners of the PHA shall award the contract or reject all bids or take such other action as may be authorized by Federal and State law within such time as may be specified in the invitation to bid, but in no case more than sixty (60) days (except that the bid of any bidders who consent thereto, at the request of the PHA, may be held for consideration for such longer period as may be agreed) in accordance with N.J.S.A. 40A:11-24.

- j) Unsuccessful bidders shall be notified of the contract award within ten (10) days of awarding same.
- k) A PHA may reject all bids for those reasons set forth in Section III(I)(2) below in accordance with N.J.S.A. 40A:11-13.2.

Source:

- Subpara. a) MPP Sec. III-C-2 and N.J.S.A. 40A:11-6.1
- Subpara. b) N.J.S.A. 40A:11-23
- Subpara. c) MPP Sec. III-C-3; N.J.S.A. 40:11:23, and Act Sec. (d)(2)(ii)(C)
- Subpara. d) MPP Sec. III-C-2
- Subpara. e) MPP Sec. III-C-2
- Subpara. f) MPP Sec. III-C-3, N.J.S.A. 40A11-6.1
- Subpara. g) Implicit rather than, explicit in the MPP and the Act
- Subpara. h) N.J.S.A. 40A:11-23.1 & 23.2
- Subpara. i) MPP Sec. II-B-6
- Subpara. k) N.J.S.A. 40A:11-13.2

4. Disqualification of Bidders

In accordance with N.J.S.A. 40A:11-4 and Section IV(A)(2) of this Policy the PHA may, by resolution disqualify a bidder if it finds that it has had prior negative experience (as defined by said statute) with the bidder. In such circumstances, PHA legal counsel shall be consulted before initiating the disqualification process in accordance with N.J.S.A. 40A:11-4.

5. Bidding Requirements For Construction Contracts for Certain Kinds of Work

a) Public Works Contractor Registration Act

PHAs must comply with N.J.S.A. 34:11-56.48 which requires that all contractors, subcontractors and sub-subcontractors register with the Department of Labor prior to bidding or engaging on certain public works contracts that exceed the prevailing wage threshold. The prevailing wage threshold is \$2000.00 for PHA's. Under the statute, "public works projects" are any construction, reconstruction, demolition, alteration, repair or maintenance of a public building regularly open to and used by the general public or a public institution. PHA legal counsel should be consulted to determine if a particular project is subject to these requirements.