



Fort Worth Housing Solutions Policy

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Overview

Policy Statement

As a Texas political subdivision and Texas public housing authority, Fort Worth Housing Solutions (“FWHS”) is obligated to comply with the Annual Contributions Contract (ACC) between FWHS and the United States Department of Housing and Urban Development (HUD), Federal Regulations at 2 CFR §184 and §200.318 through §200.327, as provided in the HUD Handbook 7460.8, REV 2, “Procurement Handbook for Public Housing Agencies”, applicable State of Texas laws (including, but not limited to, the Texas Local Government Code Chapters 271, 392 and 791) and applicable local laws.

Purpose

The purpose of this policy is to establish a procurement system of quality, integrity and accountability and to provide for the fair and equitable treatment of all persons and/or firms involved in procurements with FWHS, ensure that supplies, services, and construction are procured efficiently, effectively, and at the most favorable and valuable prices available to FWHS, to promote competition in procurement, and assure that FWHS procurement actions are in full compliance with applicable HUD regulations as well as federal, state, and local laws.

Applicability

1. This policy applies to the procurement of goods, supplies, equipment, services, maintenance, construction and consultation services by FWHS, its commissioners, officers, employees, subsidiaries, and affiliates, regardless of the source of funds, except as noted under “Exclusions” below.

Fort Worth Housing Solutions Policy

2. However, nothing in this policy will prevent FWHS from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with the law. When both federal and non-federal funds are used for a project, the work to be accomplished with the funds should be separately identified prior to procurement so that appropriate requirements can be applied, if necessary. If it is not possible to separate the funds, federal procurement regulations will be applied to the entire project. If funds and work can be separated and completed by a new contract, then regulations applicable to the source of funding may be followed.
 3. Nothing in this procurement policy will pre-empt any State licensing laws.
 4. Property Management Companies may follow this policy as a guideline when taking procurement actions on behalf of FWHS, its entities, and its properties.
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Fort Worth Housing Solutions Policy

Policy Contents

Contents

Section	Page
1.0 Definitions and Acronyms	5
2.0 General Provisions	13
2.A. Exclusions	13
2.B. Changes in Laws and Regulations	13
2.C. Public Access to Procurement Information	14
2.D. Procurement Planning	14
2.E. Funding Availability	14
3.0 Ethics in Public Contracting	14
3.A. Code of Conduct	15
3.B. Conflicts of Interest	15
3.C. Gratuities, Kickbacks, and Use of Confidential Information	15
3.D. Prohibition Against Contingent Fees	16
4.0 Procurement Methods	17
4.A. Micro Purchase Procedures	17
4.B. Small Purchase Procedures	17
4.C. Sealed Bids (contracts over \$50,000.00)	18
4.D. Competitive Proposals	21
4.E. Architecture and/or Engineering (A/E) Services	25
4.F. Non-Competitive Proposals	25
4.G. Cooperative Purchasing / Intergovernmental Agreements	27
5.0 Contract Modifications	28
5.A. Contract Modifications	28
6.0 Cancellation of Solicitations	29
7.0 Construction	30
7.A. Bond Requirements	30
7.B. Retainage	30
7.C. Davis-Bacon Act	31
7.D. Build America, Buy America Act	31
8.0 Contractor Qualifications and Duties	32
8.A. Contractor Responsibility	32

Fort Worth Housing Solutions Policy

8.B.	Suspension and Disbarment	32
8.C.	Vendor Lists	33
9.0	Contract Terms and Management and Appeals and Protests	34
9.A.	Contract Types	34
9.B.	Options	34
9.C.	Required Forms	35
9.D.	Contract Administration	35
9.E.	Specifications	35
9.F.	Appeals and Remedies	36
9.G.	Contractor Claims	36
10.0	Contracting with Small and Other Businesses	38
11.0	Board Approval of Procurement Actions and Delegation of Contracting Authority	39
12.0	Documentation and Required Records	40
13.0	Disposition of Surplus Property	41
14.0	Self-Certification	42
14.A.	Self-Certification	42
15.0	Resources	43
15.A.	Applicable Forms and Attachments	43
15.B.	Additional Related Policies and Procedures	43
15.C.	Key Regulatory Cites	43

Fort Worth Housing Solutions Policy

1.0 Definitions and Acronyms

Acceptance: The act of an authorized representative of FWHS acknowledging that the supplies or services conform with the contract quality and quantity requirements.

Addendum: Document or information attached or added to clarify, modify, or support the information in the original document or written work.

Aggregate Amount: A sum or gross amount.

Amendment: Written revision made to a solicitation or contract.

Annual Contributions Contract (ACC): Entered into between HUD and FWHS, setting forth terms and conditions for the operation, modernization, and development of public housing.

Anti-competitive Practices: Actions by potential contractors that improperly reduce or eliminate competition or restrain trade. (Examples are an agreement or understanding among competitors to restrain trade, such as submitting collusive bids or proposals, rotating low bids, follow-the-leader pricing, or sharing of the business. Competition may also be wrongfully discouraged by illicit business actions that have the effect of restraining trade, such as controlling the resale price of products or an improper collective refusal to bid.)

Architect/Engineer (A/E): Person (or company) usually responsible for developing the plans and specifications of a building or development and, in some cases, supervising the construction effort.

Bid: The price submitted by a bidder in the sealed bidding method of procurement.

Bidder's List: General list of persons or firms who may be interested in contracting opportunities and in submitting bids in response to an Invitation for Bid.

Fort Worth Housing Solutions Policy

Business Concern Located in the Area of the Project: A business concern, located in the area of the project, is an individual or firm located within the relevant Section 3 covered project area, as determined pursuant to 24. CFR 135.15, listed on HUDs registry of eligible business concerns, and meeting the definition of small business. A business concern owned in substantial part by persons residing in the area of the project is defined as a business concern which is 51% or more owned by persons residing within the Section 3 covered project, owned by persons considered by the U.S. Small Business Administration to be socially or economically disadvantaged, listed on HUDs registry of eligible business concerns, and meeting the definition of small business below.

Change Order: Bi-lateral action taken by the Procurement Manager to modify an existing contract. All change orders MUST be within the scope of the contract.

Changed Conditions: Construction site/repair conditions that differ significantly from conditions indicated in the contract, or conditions ordinarily encountered in the performance of the type of work in the contract.

Competitive Range: In a competitive proposal procurement, those proposals that, after evaluation by the FWHS, have a reasonable chance of receiving the award, both from a technical and cost standpoint.

Constructive Change Order: Informal requests for additional work or services caused by some act or omission to act on the part of FWHS that causes a contractor extra work, delays, or money.

Consultant: A professional person or firm that gives expert advice. Examples of consultants include but are not limited to attorney's education experts, marketing firms, auditing firms, communication firms, engineers, and architects.

Contract: An agreement between two parties that creates an obligation to perform (or not perform) a particular duty. In addition to bilateral instruments, contracts include: contract awards and notices of awards; job orders or task letters issued under basic ordering agreements, requirement contracts, or definite- or indefinite-quantity contracts; letter contracts;

Fort Worth Housing Solutions Policy

orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; bilateral (two-party) contract modifications; and various cooperative and interagency agreements. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, et seq.

Contract Administration: The monitoring of the contractor's performance to ensure compliance with performance requirements and contract terms.

Contract Modification: Any written alteration of an existing contract.

Contract Pricing Arrangements: The arrangement, as reflected in the contract, for how the vendor will be paid for services.

Contractor: A person or company who agrees to enter into a contract to provide a service, to perform labor or to provide materials.

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

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

Excusable Time Delay: Failure to perform that is beyond the control and without fault or negligence of the contractor.

Firm Fixed-Price Contract: Contract that provides for a price that is not subject to any adjustment by reason of cost experience of the contractor in the performance of the contract.

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

Independent (In-House) Cost Estimate (ICE): A written calculation of all items included in the scope of the work, and an estimated cost tabulated

Fort Worth Housing Solutions Policy

under appropriate cost headings (direct costs, labor, overhead, and profit) prior to obtaining offers.

Inspection: The examination and testing of materials, labor and services to determine whether they conform to contract requirements.

Instrumentality: Will mean a subsidiary branch of FWHS through which functions or policies are implemented.

Intergovernmental, Interlocal, Cooperative or Interagency Agreement: An agreement between FWHS and a federal, state, or local government agency (including other PHAs) for the provision of supplies or services.

Internal Controls: Safeguards that ensure contracting actions will be conducted in conformity with applicable federal, state and local regulations and policy.

Invitation for Bids (IFB): Under the sealed bidding method of procurement, the written solicitation document that explains what FWHS is buying and requests bids from potential contractors.

Joint Venture Partner: This is a participant, other than FWHS, in a joint venture, partnership, or other business arrangement or contract for services with FWHS.

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

Labor Surplus Area Business: A labor surplus area business is a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the U.S. Department of labor in 20 CFR 654., Subpart A, and in its list of labor surplus areas published by the Employment and Training Administration.

Letter Contract: A written authorization to begin work issued prior to the negotiation of a formal contract; only allowed in emergency situations.



Fort Worth Housing Solutions Policy

Level-of-Effort Contract: Contract (usually cost-reimbursement) that specifies the number and type of person-hours that the contractor will use in performance of the contract requirements.

Major Change: Modification to an existing contract that is beyond the general scope of the contract or a change to a substantive element of the contract that is so extensive that a new procurement should be used.

Minority and Women-Owned Business Enterprise (MWBE): An MWBE is a company that is primarily led (51% or more owned, managed and controlled) by an economically and socially disadvantaged individual, including these groups: African Americans, Asian American, Hispanic, Native Americans, Women.

Modification: Any written alteration to a provision of any contract accomplished by mutual agreement of the parties to the contract.

Negotiation: Discussion regarding price proposals with offerors in the competitive range for a contract being awarded.

Offer: Response to a solicitation (IFB or RFP), that, if accepted, would bind the offeror to perform the resultant contract.

Offeror: The general term for the entity that submits a response to a solicitation. For the purposes of this Policy, offeror may be used interchangeably with bidder, proposer, or respondent.

Procurement: The acquiring by contract of supplies, services, and construction with FWHS through purchase, lease, or other means.

Proposal: offer submitted by a potential contractor in the competitive or noncompetitive proposals method of procurement

Purchase Order: A written document authorizing a vendor to deliver goods or services, with payment to be made later. A purchase order sets forth the descriptions, quantities, prices, discounts, payment terms, date of performance or shipment, other associated terms and conditions, and identifies a specific vendor.

Fort Worth Housing Solutions Policy

Request for Qualifications (RFQ): A form of procurement of architect-engineering or development services by competitive proposals in which price is not requested in the Request for Qualifications (RFQ) nor used as an evaluation factor. Instead, technical qualifications only are reviewed and then a price, scope of work, and schedule are negotiated with the most qualified firm.

Quotation: In the small purchase method of procurement, the price or offer submitted by a bidder.

Request for Proposals (RFP): Solicitation method used under both the competitive and non-competitive methods of procurement. Proposal evaluation and contractor selection are based on the evaluation criteria and factors for award as stated in the RFP. Contract award is based on the best proposal responsive to the requirements of the statement of work resulting in the greatest benefit and best value to FWHS, which may not necessarily be primarily determined based on price.

Request for Quote (RFQ)/Request for information (RFI): RFQ/RFIs are used to obtain price, delivery, or other market information for planning purposes. Quotes received in response to an RFQ/RFI are not offers and are not considered binding.

Responsible Bidder: A bidder who is able to comply with the required or proposed delivery or performance schedule, has a satisfactory record of integrity and business ethics, has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them, and is otherwise qualified and eligible to receive an award under applicable laws and regulations.

Responsive Bid: A bid that complies in all material respects with the Invitation for Bids (IFB).

Sealed Bidding: A method of procurement that invites sealed bids. This method requires specifications that are clear, accurate, and complete; a public bid opening an evaluation of bids and award of the contract are based on the lowest price submitted by a responsive and responsible contractor.

Section 3 Business Concern: A business that is 51% or more owned by Section 3 residents; employs Sections 3 residents for at least 30 percent of its full-

Fort Worth Housing Solutions Policy

time, permanent staff; or provides evidence of a commitment to subcontract to Section 3 business concerns, 25 percent or more of the dollar amount of the awarded contract.

Show Cause Letter: A document the Procurement Manager sends to a defaulting contractor to notify the contractor that the contract may be terminated by reason of default unless the contractor can provide adequate justification for not terminating within a specified time period (usually 10 days)

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

Solicitation: Request for offers from potential offerors. A solicitation package generally contains the proposed contract, including contract terms and conditions, instructions to potential offerors regarding the submission of an offer, and any other information needed to prepare an offer.

Solicitation Provisions: The instructions provided to bidders/offerors included in solicitations.

Specifications: Clear and accurate description of the technical requirements of a contract.

Statement of Work (SOW): Written description of work to be performed that establishes standards sought for the supplies or services furnished under the contract.

Subsidiary: A type of operating entity created and operated over which another entity has a controlling interest.

Supplemental Agreement: A type of contract modification to which both parties agree.

Termination for Convenience: Termination of a contract by FWHS on a unilateral basis when it is in the best interests of FWHS.



Fort Worth Housing Solutions Policy

Termination for Default: Termination of a contract when the contractor fails to perform or fails to make progress to endanger performance.

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

Time-and-Materials Contract: Contract that provides for payment of supplies and services based on incurred direct labor hours (at fixed rates) and materials (at cost).

Vendor: The term often used for an offeror or contractor when talking about a person or firm qualified to do business with FWHS.

Vendor List: List of persons or firms qualified to do business with FWHS.

Fort Worth Housing Solutions Policy

2.0 General Provisions

2.A. Exclusions

This Procurement Policy, does not govern:

1. Administrative fees earned under the Housing Choice Voucher (“HCV”) program, the award of vouchers under the HCV program, the execution of landlord Housing Assistance Payments contracts under the HCV program, procurement of management agents or other goods and services at Project-Based rental Assistance properties, procurements funded with COCC/business activities income, e.g., fee-for-service revenue under 24 CFR Part 0990, procurements at LIHTC-only properties that do not include any public housing or project-based HCV units, procurements for financing transactions (e.g., those with lenders, underwriters, LIHTC syndicators or other sources of finance or credit enhancement) and/or procurements funded with non-federal funds or procurements related to RAD units following 18 months after conversion. These excluded areas are subject to applicable State and local requirements., including the Texas Local Government Code Chapters 271, 392, and 791) and applicable local laws.
2. The programs/areas listed above are subject to applicable State and local bidding requirements but are afforded the maximum degree of flexibility in their stated procurement actions, while achieving the best value for the organization and being consistent with FWHS’ Code of Conduct. To the extent feasible, a minimum of three quotes will be obtained, when possible, for procuring goods or services for FWHS areas/programs.

2.B. Changes in Laws and Regulations

In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation will, to the extent inconsistent with this policy, automatically supersede this policy.

Fort Worth Housing Solutions Policy

2.C. Public Access to Procurement Information Procurement information that is not proprietary and is a matter of public record will be made available to the public to the extent provided in the Texas Public Information Act.

2.D. Procurement Planning Planning is essential to managing the procurement function properly. Consideration will be given to storage, security, and handling requirements when planning the most appropriate procurement actions. FWHS will periodically review its record of prior purchases, as well as future needs, to:

1. Find patterns of procurement actions that could be performed more efficiently or economically for the agency.
 2. Maximize competition and competitive pricing among procurements and decrease FWHS procurement costs.
 3. Reduce FWHS administrative costs.
 4. Ensure that supplies and services are obtained without any need for re-procurement (i.e., resolving bid protests).
 5. Minimize errors that occur when there is inadequate lead time.
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2.E. Funding Availability Before initiating any procurement, FWHS will ensure that there are sufficient funds available to cover the anticipated cost of the procurement and/or any modification.

Fort Worth Housing Solutions Policy

3.0 Ethics in Public Contracting

**3.A.
Code of
Conduct** FWHS hereby establishes a code of conduct regarding procurement issues and actions and will implement a system of sanctions for violations. This code of conduct is consistent with applicable federal, state, and/or local law.

**3.B.
Conflicts of
Interest** No employee, officer, Board member, or agent of FWHS will participate directly or indirectly in the selection, award, or administration of any contract if a conflict of interest, either real or apparent, would be involved. This type of conflict would be when one of the persons listed below has a financial or other type of interest or tangible personal benefit in or from a firm competing for the award:

1. An employee, officer, Board member, or agent involved in making the award;
 2. A romantic partner or relative (parents (including step and in-laws), children (including step, half, and in-laws), siblings (including step, half, and in-laws), cousins, uncles, aunts, nieces and nephews);
 3. A business partner; or
 4. An organization which employs or is negotiating to employ or has an arrangement concerning prospective employment of any of the individuals listed in this subsection.
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**3.C.
Gratuities,
Kickbacks, and
Use of
Confidential
Information** No officer, employee, Board member, or agent of FWHS will ask for or accept gratuities, favors, or items of more than nominal value (e.g., an inexpensive hat item with logo) from any contractor, potential contractor, or party to any subcontract, and will not knowingly use confidential information for actual or anticipated personal gain.



Fort Worth Housing Solutions Policy

**3.D.
Prohibition
Against
Contingent
Fees**

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

Fort Worth Housing Solutions Policy

4.0 Procurement Methods

4.A. Micro Purchase Procedures

1. Micro Purchases are purchases (including construction) less than the amount of \$2,000.
2. Only one quote is required, provided it is considered reasonable.
3. Such purchases will be distributed equitably among qualified sources. FWHS may use Small Purchase procedures for Micro Purchases if necessary.
4. Requirements will not be broken down into several purchases less than the threshold in order to permit the use of the Micro Purchase Threshold or to avoid requirements that apply to purchases that exceed the Micro Purchase Threshold.
5. No formal solicitation is required. Quotes may be obtained orally or in writing.
6. No formal cost or price analysis is required; the execution of a contract by the President (through a Purchase Order or other means) will serve as the determination that the price obtained is reasonable, which may be based on prior experience or other factors.

4.B. Small Purchase Procedures

1. Small Purchases are purchases above \$2,000 up to \$50,000 (\$2,000 for construction).
2. FWHS will obtain a reasonable number of quotes, preferably three.
3. Quotes may be solicited orally, e-Procurement software, or by any other reasonable method.
4. Procurements of \$50,000 or more require Board approval before award can be made.
5. Award will generally be made to the responsive and responsible vendor that submits the lowest price to FWHS. If the award is to be made for reasons other than the lowest price, documentation will be provided in the procurement file.

Fort Worth Housing Solutions Policy

6. Requirements will not be broken down into several purchases less than the threshold in order to permit the use of the Small Purchase Threshold or to avoid requirements that apply to purchases that exceed the Small Purchase Threshold.
 7. No formal solicitation is required.
 8. Comparison with other offers is sufficient determination of the reasonableness of price and no further analysis is required. If a reasonable number of quotes are not obtained to establish reasonableness through price competition, the Procurement Manager will document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the Procurement Manager's personal knowledge at the time of purchase, comparison to the ICE, or any other reasonable basis.
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4.C. Sealed Bids (contracts over \$50,000.00)

Sealed bidding, also known as Invitation for Bids (IFB), will be used for all procurements that exceed \$50,000 (\$2,000 for construction) and that are not competitive proposals or non-competitive proposals, as these terms are defined in this Policy.

1. Under sealed bids, FWHS publicly solicits bids and awards a firm fixed-price contract (lump sum or unit price) to the responsive and responsible bidder whose bid, conforming to all the material terms and conditions of the IFB, is the lowest in price.
2. Sealed bidding is the preferred method for procuring construction, supply, and non-complex service contracts that are expected to exceed \$50,000.
3. Conditions for Using Sealed Bids – FWHS will use the sealed bid method if the following conditions are present:
 - a. A complete, adequate, and realistic statement of work, specification, or purchase description is available;
 - b. Three or more responsible bidders are willing and able to compete effectively for the work;
 - c. Contract can be awarded based on a firm fixed price;

Fort Worth Housing Solutions Policy

- d. Selection of the successful bidder can be made principally on the lowest price.
4. Independent Cost Estimate (ICE): For all purchases above the \$50,000 threshold, FWHS will prepare an ICE prior to solicitation. The level of detail will be commensurate with the cost and complexity of the item to be purchased.
 5. Solicitation and Receipt of Bids:
 - a. An IFB will be issued which includes the specifications and all contractual terms and conditions applicable to the procurement, and a statement that award will be made to the lowest priced, responsible, and responsive bidder whose bid meets the requirements of the solicitation.
 - b. The IFB must state the time and place for both receiving the bids and the public bid opening.
 - c. All bids received will be date and time recorded and sealed until the public bid opening.
 - d. A bidder may withdraw the bid at any time prior to the bid opening.
 6. Bid Opening and Award:
 - a. Bids will be opened publicly and in the presence of at least one witness.
 - b. All bids received will be recorded through a tabulation and made available for public inspection.
 - c. If equal low bids are received from responsible bidders, selection will be made by drawing lots or other similar random method (i.e., coin toss).
 - d. The method for doing this will be stated in the IFB.
 - e. If only one responsive bid is received from a responsible bidder, an award will not be made unless the price can be determined to be reasonable, based on a cost or price analysis.
 7. Mistakes in Bids:

Fort Worth Housing Solutions Policy

- a. Correction or withdrawal of bids may be permitted before bid opening prior to the time set for bid opening.
 - b. After bid opening, corrections in bids may be permitted only if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price intended.
 - c. A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clear on the face of the bid document, but the intended bid is unclear, or the bidder submits convincing evidence that a mistake was made.
 - d. All decisions to allow correction or withdrawal of a bid will be supported by a written determination signed by the Procurement Manager.
 - e. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of FWHS or fair competition will not be permitted.
8. Cost and Price Analysis: The presence of adequate competition should generally, be sufficient to establish price reasonableness. Where sufficient bids are not received, and when the bid received is substantially more than the ICE, and where FWHS cannot reasonably determine price reasonableness, FWHS must conduct a cost analysis, consistent with federal guidelines, to ensure that the price paid is reasonable.
9. Advertising:
- a. The solicitation must be done publicly. FWHS must use one or more of the following soliciting methods, provided that the method employed provides for meaningful competition:
 - i. Advertising in newspapers or other print mediums of local or general circulation.
 - ii. Advertising in various trade journals or publications (for construction).
 - iii. Advertising on local or general internet mediums.
 - iv. E-Procurement- FWHS may conduct its public procurement through the Internet using e-procurement systems. All e-procurements must otherwise follow 2 CFR §200.318 through §200.327, State and local requirements, and the FWHS procurement policy.

Fort Worth Housing Solutions Policy

- b. Time Estimated:
 - i. For purchases of more than \$50,000, the public notice will not run less than once each week for two consecutive weeks.
 - ii. All bids or proposals may not be opened earlier than the 15th day after the first advertisement.
 - iii. Saturdays, Sundays, or a Legal Holiday may be counted, but will not count as the 15th day; if the 15th day falls on one of these days, the deadline will be the next business day.
- c. Form: Notices/advertisements should state, at a minimum, the location, date, and time that the bids or proposals are due, the solicitation number, a contact that can provide a copy of, and information about the solicitation, and a brief description of the needed item(s).
- d. Time Period for Submission of Bids: A minimum of 21 days will generally, be provided for preparation and submission of sealed bids and 15 days for competitive proposals, however, the President of FWHS may allow for a shorter period under extraordinary circumstances, via written notification for the file.

4.D. Competitive Proposals

- 1. Competitive Proposals: The competitive method of procurement used when small purchases and sealed bidding are not appropriate; under this method, FWHS issues Request for Proposal (RFP), soliciting price and technical proposals from potential sources; evaluates the proposals and establishes a competitive range; negotiates with those in the competitive range; receives and evaluates best and final offers from those in the competitive range; and makes award to the contractor offering the most advantageous proposal, considering price and the technical Factors stated in the RFP.
- 2. Unlike sealed bidding, the competitive proposal method, also known as Request for Proposals (RFP), permits:
 - a. Consideration of technical factors other than price.
 - b. Discussion with offerors concerning offers submitted.
 - c. Negotiation of contract price or estimated cost and other contract terms and conditions.
 - d. Revision of proposals before the final contractor selection.

Fort Worth Housing Solutions Policy

- e. The withdrawal of an offer at any time up until the point of award.
3. Award is normally made based on the proposal that represents the best overall value to FWHS, considering price and other factors, e.g., technical expertise, past experience, quality of proposed staffing, etc., set forth in the solicitation and not solely the lowest price.
4. Conditions for Use: Competitive Proposals may be used if there is an adequate method of evaluating technical proposals and where FWHS determines that conditions are not appropriate for the use of sealed bids. An adequate number of qualified sources shall be solicited.
5. Independent Cost Estimate (ICE): For all purchases above the \$50,000 threshold FWHS will prepare an ICE prior to solicitation. The level of detail will be commensurate with the cost and complexity of the item to be purchased.
6. Form of Solicitation – Request for Proposal (RFP):
 - a. The RFP will clearly identify the importance and relative value of each of the evaluation factors as well as any sub-factors and price.
 - b. A mechanism for fairly and thoroughly evaluating the technical and price proposals will be established before the solicitation is issued.
 - c. Proposals will be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals until after award.
 - d. FWHS may assign price a specific weight in the evaluation factors or FWHS may consider price in conjunction with technical factors; in either case, the method for evaluating price will be established in the RFP.
7. Cost and Price Analysis: The presence of adequate competition should Generally, be sufficient to establish price reasonableness. Where sufficient proposals are not received, FWHS must compare the price with the ICE. For competitive proposals where prices cannot be easily compared among offerors, where there is not adequate competition, or where the price is substantially greater than the ICE, FWHS must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable.

Fort Worth Housing Solutions Policy

8. Advertising:
 - a. The solicitation must be done publicly. FWHS must use one or more of the following soliciting methods, provided that the method employed provides for meaningful competition:
 - i. Advertising in newspapers or other print mediums of local or general circulation.
 - ii. Advertising in various trade journals or publications (for construction).
 - iii. Advertising on local or general internet mediums.
 - iv. E-Procurement- FWHS may conduct its public procurements through the Internet using e-procurement systems. All e-procurements must otherwise follow 2 CFR §200.318 through §200.327, state and local requirements, and the FWHS procurement policy.
 - b. Time Estimated:
 - i. For purchases of more than \$50,000, the public notice will not run less than once each week for two consecutive weeks.
 - ii. All bids or proposals may not be opened earlier than the 15th day after the first advertisement.
 - iii. Saturdays, Sundays, or a Legal Holiday may be counted, but will not count as the 15th day, if the 15th day falls on one of these days, the deadline will be the next business day.
 - c. Form: Notices/advertisements should state, at a minimum, the date, and time that the bids or proposals are due, the solicitation number, a contact that can provide a copy of, and information about, the solicitation, and a brief description of the needed item(s).
 - d. Time Period for Submission of Bids: A minimum of 21 days will generally be provided for preparation and submission of sealed bids and 15 days for competitive proposals, however, the President of FWHS may allow for a shorter period under extraordinary circumstances, via written notification for the file.
9. Evaluation:
 - a. The proposals will be evaluated only using the factors stated in the RFP.

Fort Worth Housing Solutions Policy

- c. Generally, all RFPs will be evaluated by an appropriately appointed Evaluation Committee.
 - d. The Evaluation Committee will be required to disclose any potential conflicts of interest and to sign a Confidentiality and Non-Disclosure Statement.
 - e. An Evaluation Report, summarizing the results of the evaluation, will be prepared prior to award of a contract.
10. Negotiations:
- a. Negotiations will be conducted with all offerors who submit a proposal determined to have a reasonable chance of being selected for award, unless it is determined that negotiations are not needed with any of the offerors.
 - b. This determination is based on the relative score of the proposals as they are evaluated and rated in accordance with the technical and price factors specified in the RFP.
 - c. These offerors will be treated fairly and equally with respect to any opportunity for negotiation and revision of their proposals.
 - d. No offeror will be given any information about any other offeror's proposal, and no offeror will be assisted in bringing its proposal equal to any other proposal.
 - e. A common deadline will be established for receipt of proposal revisions based on negotiations.
 - f. Negotiations are exchanges (in either competitive or sole source environment) between FWHS and offerors that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give- and-take, and may apply to price, schedule, technical requirements, type of contract or other terms of a proposed contract.
 - g. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions. Discussions are tailored to each offeror's proposal and will be conducted by the Procurement Manager with each offeror within the

Fort Worth Housing Solutions Policy

competitive range. The primary object of discussions is to maximize FWHS' ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation.

- h. It is also permissible to indicate to all offerors the cost or price that FWHS' price analysis, market research, and other reviews have identified as reasonable. "Auctioning" (revealing one offeror's price in an attempt to get another offeror to lower their price) is prohibited.
11. Award: After evaluation of the revised proposals, if any, the contract will be awarded to the responsible firm whose technical approach to the project, qualifications, price and/or any other factors considered, are most advantageous to FWHS provided that the price is within the maximum total project budgeted amount established for the specific property or activity.

4.E. Architecture and/or Engineering (A/E) Services

1. FWHS will procure A/E services using Qualifications-based Selection (QBS) procedures, utilizing a Request for Qualifications (RFQ). Sealed bidding will not be used for A/E solicitations.
2. Under QBS procedures, competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.
3. Price is not used as a selection factor under this method. QBS procedures will not be used to purchase other types of services, other than Energy Performance Contracting and Developer services, though architectural/engineering firms are potential sources.

4. F. Non- Competitive Proposals

1. Noncompetitive Proposals: The method of procurement in which FWHS solicits proposal(s) from only one source or a limited number of sources, if justified in writing, for one of the following reasons: the item is available only from a single source; public emergency will not allow enough time for a competitive procurement; inadequate response is received to a competitive solicitation; or HUD approves the use of non-competitive proposals.
2. Conditions of Use: Procurement by noncompetitive proposals (sole- or single source) may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids, cooperative purchasing, or competitive proposals, and if one of the following applies:

Fort Worth Housing Solutions Policy

- a. The aggregate dollar amount of the acquisition does not exceed the micro-purchase threshold.
 - b. The item is available only from a single source based on a good faith review of available sources.
 - c. An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to FWHS, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, pandemic, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any of the other procurement methods, and the emergency procurement will be limited to only those supplies, services, or construction necessary simply to meet the emergency.
 - d. HUD authorizes the use of noncompetitive proposals; or
 - e. After solicitation of several sources, competition is determined inadequate.
3. Justification: Each procurement based on a noncompetitive proposal will be supported by a written justification for the selection of this method. The justification will be approved in writing by the Procurement Manager. Poor planning or lack of planning is not justification for emergency or sole source procurements. The justification, to be included in the procurement file, should include the following information:
- a. Description of the requirement.
 - b. History of prior purchases and their nature (competitive vs. noncompetitive).
 - c. The specific exception in 2 CFR §200.320(c) (1) -(5) which applies if a federal procurement.
 - d. Statement as to the unique circumstances that require award by noncompetitive proposals.

Fort Worth Housing Solutions Policy

- e. Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.)
 - f. Statement as to efforts that will be taken in the future to promote competition for the requirement.
 - g. Signature by the Procurement Manager.
3. Price Reasonableness: The reasonableness of the price for all procurements based on noncompetitive proposals will be determined by performing an analysis, as described in this Policy.
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4.G. Cooperative Purchasing / Intergovernmental Agreements

FWHS may enter state and/or local cooperative, interlocal or intergovernmental agreements to purchase or use common supplies, equipment, or services.

The decision to use an interagency agreement instead of conducting a direct procurement will be based on economy and efficiency.

If used, the interagency agreement will stipulate who is authorized to purchase on behalf of the participating parties and will specify inspection, acceptance, termination, payment, and other relevant terms and conditions.

FWHS may use federal or state excess and surplus property instead of purchasing new equipment and property if feasible and if it will result in a reduction of project costs.

Fort Worth Housing Solutions Policy

5.0 Contract Modifications

**5.A.
Contract
Modifications**

A cost analysis, consistent with local, state, and federal guidelines, will be conducted for all contract modifications for projects that were procured through Sealed Bids, Competitive Proposals, or Non-Competitive Proposals, or for projects originally procured through Small Purchase procedures and the amount of the contract modification will result in a total contract price more than \$50,000.

No cost analysis is required where the contract was not competitively bid and the total contract amount, with modifications(s), will not exceed the small-purchase threshold.

Fort Worth Housing Solutions Policy

6.0 Cancellation of Solicitations

1. An IFB, RFP, or other solicitation may be cancelled before bids/offers are due if:
 - a. The supplies, services or construction are no longer required.
 - b. The funds are no longer available.
 - c. Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best.
 - d. For good cause of a similar nature when it is in the best interest of FWHS.
 2. A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if:
 - a. The supplies, services , or construction are no longer required.
 - b. Ambiguous or otherwise inadequate specifications were found to be part of the solicitation.
 - c. All factors of significance to FWHS were not considered.
 - d. Prices exceed available funds, and it would not be appropriate to adjust quantities to come within available funds.
 - e. There is reason to believe that bids or proposals may not have been independently determined in open competition, may have been collusive or may have been submitted in bad faith.
 - f. For good cause of a similar nature when it is in the best interest of FWHS.
 3. The reasons for cancellation will be documented in the procurement file and the reasons for cancellation and/or rejection will be provided upon request. A notice of cancellation will be posted on the electronic procurement system.
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Fort Worth Housing Solutions Policy

7.0 Construction

7.A. Bond Requirements

1. The standards under this 7.A. apply to construction procurements that exceed \$50,000. There are no bonding requirements for small purchases or for competitive proposals. FWHS may require bonds for small purchases and competitive proposals when deemed appropriate; however, non-construction procurements should generally not require bid bonds.
 - a. Bid Bonds: For construction procurements exceeding \$100,000, offerors will be required to submit a bid guarantee from each bidder equivalent to 5% of the bid price.
 - b. Payment and Performance Bonds: For construction procurements exceeding \$100,000, the successful bidder will furnish an assurance of completion. This assurance may be any one of the following four:
 - i. A performance and payment bond in a penal sum of 100% of the contract price; or
 - ii. Separate performance and payment bonds, each for 50% or more of the contract price;
 - iii. A 20% cash escrow; or
 - iv. A 25% irrevocable letter of credit.
2. Bonds must be obtained from guarantee or surety companies acceptable to the U. S. Government and authorized to do business in the State of Texas. Individual sureties will not be considered. U.S. Treasury Circular Number 570 lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies on this circular is mandatory.

7.B. Retainage

FWHS will retain 10% of the contract award exceeding \$100,000 until completion of the work is evaluated and approved by FWHS.

Fort Worth Housing Solutions Policy

7.C. Davis-Bacon Act 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. FWHS must report all suspected or reported violations to the Federal awarding agency.

7.D. Build America, Buy America Build America, Buy America (BABA), as amended (41 U.S.C. 8301). When required by BABA Federal program legislation, all prime construction contracts awarded by non-Federal entities must include a provision for compliance with BABA (2 CFR 184).

In accordance with the statute, contractors must adhere to requirements that procured steel and iron components, manufactured products, and construction materials that are part of an infrastructure project construction are produced in the United States.

The decision to award a contract or subcontract must be conditioned upon the acceptance of the BABA provision. FWHS must report all suspected or reported violations to the Federal awarding agency.

Fort Worth Housing Solutions Policy

8.0 Contractor Qualifications and Duties

**8.A.
Contractor
Responsibility**

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

1. Have adequate financial resources to perform the contract, or the ability to obtain them.
2. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all of the bidder's/offeror's existing commercial and governmental business commitments.
3. Have a satisfactory performance record.
4. Have a satisfactory record of integrity and business ethics.
5. Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them.
6. Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them.
7. Be otherwise qualified and eligible to receive an award under applicable laws and regulations including not being suspended, debarred or under a HUD-imposed Limited Denial of Participation (LDP) list.

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

**8.B.
Suspension and
Debarment**

Contracts will not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined to be ineligible by HUD in accordance with HUD regulations (24 CFR Part 24) or by

Fort Worth Housing Solutions Policy

other federal agencies, e.g., Department of Labor for violation of labor regulations, when necessary to protect FWHS in its business dealings.

Prior to issuance of a contract, Agency staff will, as detailed within Section 10.2.H.1 and 10.2.H.2 of HUD Procurement Handbook 7460.8 REV 2, conduct the required searches within the HUD Limited Denial of Participation (LDP) system and the U.S. General Services Administration System for Award Management (SAM), and place within the applicable contract file a printed copy of the results of each such search.

8.C. Vendor Lists

All interested businesses will be given the opportunity to be included on vendor mailing lists. Any lists of persons, firms, or products which are used in the purchase of supplies and services (including construction) will be kept current and include enough sources to ensure competition.

Fort Worth Housing Solutions Policy

9.0 Contract Terms and Management; Appeals and Protests

**9.A.
Contract Types**

1. Any type of contract which is appropriate to the procurement and will promote the best interests of FWHS may be used. COST -PLUS-A-PERCENTAGE-OF-COST AND PERCENTAGE-OF CONSTRUCTION- COST METHODS MAY NOT BE USED.
 2. All solicitations and contracts will include the contract pricing arrangement, clauses and provisions necessary to define the rights and responsibilities of both the contractor and FWHS.
 3. For all cost reimbursement contracts, FWHS must include a written determination as to why no other contract type is suitable, and the contract must include a ceiling price that the contractor exceeds at its own risk.
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**9.B.
Options**

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

1. The option is contained in the solicitation.
2. The option is a lateral right.
3. The contract states a limit on the additional options and the overall term of the contract. Generally, contracts have a maximum term of five (5) years, including all option periods. There are few exceptions.
4. The options are evaluated as part of the initial competition.
5. The contract states the period within which the options may be exercised.
6. The options may be exercised only at the price specified in or reasonably determinable from the contract.
7. The options may be exercised only if determined to be more advantageous to FWHS than conducting a new procurement.

Fort Worth Housing Solutions Policy

**9.C.
Required Forms** All applicable required forms will be provided in the individual Solicitation.

**9.D.
Contract
Administration** FWHS will maintain a system of contract administration designed to ensure that Contractors perform in accordance with their contracts. This system will provide for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on major projects including construction contracts, and similar matters.

For cost-reimbursement contracts, costs are allowable only to the extent that they are consistent with the cost principles in HUD Handbook 7460.8 REV 2.

- 9.E.
Specifications**
1. All specifications will be drafted to promote overall economy for the purpose intended and to encourage competition in satisfying FWHS needs.
 2. Specifications will be reviewed prior to issuing any solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items.
 3. For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of contract.
 4. Specifications will be reviewed to ensure that organizational conflicts of interest do not occur.
 5. The following types of specifications will be avoided:
 - a. Geographic restrictions not mandated or encouraged by applicable Federal law (except for A/E contracts, which may include geographic location as a selection factor if adequate competition is available).
 - b. Brand name specifications (unless the specifications list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use and/or approved equals can be utilized).

Fort Worth Housing Solutions Policy

9.F. Appeals and Remedies

1. It is FWHS' policy to resolve all contractual issues informally and without litigation. When appropriate, a mediator may be used to help resolve differences.
2. Formal Appeals Procedure: A formal appeals procedure will be established for solicitations/contracts of more than \$50,000.
3. Bid Protest:
 - a. Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy.
 - b. Any protest a solicitation must be received before the due date for the receipt of bids or proposals, and any protest against the award of a contract must be received within ten (10) calendar days after the contractor receives notice of the contract award, or the protest will not be considered.
 - c. All bid protests will be in writing submitted to the Procurement Manager or designee, who will issue a written decision on the matter.
 - d. The Procurement Manager may, at his/her discretion, suspend the procurement pending resolution of the protest if the facts presented so warrant.
 - e. For any appeals of the decision by the Procurement Manager, the Procurement Manager's decision will inform the contractor of his/her appeal rights to the next higher level of authority in Agency.

9.G. Contractor Claims

All claims by a contractor relating to performance of a contract will be submitted in writing to the Procurement Manager for a written decision.

The contractor may request a conference on the claim.



Fort Worth Housing Solutions Policy

The Procurement Manager's decision will inform the contractor of his/her appeal rights to the next higher level of authority in Agency.

Fort Worth Housing Solutions Policy

10.0 Contracting with Small and Other Businesses

Consistent with Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, all feasible best efforts will be made to ensure that small, MWBE, and veteran's-owned, controlled and operated businesses, and other individuals or firms located in or owned in substantial part by persons residing in the FWHS projects are utilized when possible, subject to existing laws and regulations. Such efforts will include, but will not be limited to:

1. Including such firms, when qualified, on solicitation mailing lists.
2. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources.
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms.
4. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms.
5. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; Historically Underutilized Businesses (HUB).
6. Including in contracts, to the greatest extent feasible, a clause requiring contractors to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with the project to business concerns which provide opportunities to low-income residents., as described in 24 CFR Part 75 (Section 3 businesses).
7. Requiring prime contractors, when subcontracting is anticipated, to utilize possible steps listed above.

Goals will be established periodically for participation by small businesses, veteran and MWBE owned businesses, labor surplus area businesses, and Section 3 business concerns in FWHS prime contracts and subcontracting opportunities.

Fort Worth Housing Solutions Policy

11.0 Board Approval of Procurement Actions; Delegation of Contracting Authority

Board approval is required for any purchase or proposed purchase in excess of \$50,000.00. It is the responsibility of the President to make sure that all procurement actions are conducted in accordance with the policies contained herein.

While the President is responsible for ensuring that FWHS' procurements comply with this Policy, the President may delegate all procurement authority as is necessary and appropriate to conduct the business of FWHS.

FWHS procurement department will be responsible for all procurement requirements. Further, and in accordance with this delegation of authority, the President will, where necessary, establish operational procedures to implement this Policy.

The President will also establish a system of sanctions for violations of the ethical standards consistent with federal, state, or local law.

Fort Worth Housing Solutions Policy

12.0 Documentation and Required Records

FWHS must maintain records sufficient to detail the significant history of each procurement action. The level of documentation should be commensurate with the value of the procurement.

Records are to be retained for a period of three years after final payment and all matters pertaining to the contract are closed. These records will include, but will not necessarily be limited to:

1. Rationale for the method of procurement.
 2. Rationale of contract pricing arrangement.
 3. Reason for accepting or rejecting the bids or offers.
 4. Basis for the contract price.
 5. A copy of the contract documents awarded resolution or issued and signed by the President.
 6. Basis for contract modifications.
 7. Related contract administration actions.
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Fort Worth Housing Solutions Policy

13.0 Disposition of Surplus Property

Property no longer necessary for FWHS purposes (non-real property) will be transferred, sold, donated or disposed of in accordance with applicable federal, state, and local laws and regulations.

Fort Worth Housing Solutions Policy

14.0 Self-Certification

**14.A.
Self-
Certification**

FWHS self-certifies that this Procurement Policy, and the FWHS procurement system, complies with all applicable federal regulations, and as such FWHS is exempt from prior HUD review and approval of individual procurement action.

Fort Worth Housing Solutions Policy

15.0 Resources

**15.A
Applicable
Forms and
Attachments**

Attachment 1: FWHS Procurement Process

**15.B
Additional
Related Policies
and Procedures**

N/A

**15.C
Key Regulatory
Cites**

Included, as applicable, within the document sections.

Attachment 1 FWHS Procurement Process

