

**PROCUREMENT POLICY
OF THE
NEW YORK CITY PUBLIC HOUSING PRESERVATION TRUST**

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PROCUREMENT POLICY OF THE NEW YORK CITY PUBLIC HOUSING PRESERVATION TRUST

Table of Contents

Introduction	2
Article 1. Definitions	2
Article 2. Procurement Methods	3
1. Lowest Cost Competitive Bidding	3
2. Best Value Bidding	3
3. Exceptions to formal competitive bidding	3
Article 3. Process for Alternative Project Delivery Contracts	6
1. Step one: RFQ and RFP list generation	6
2. Step two: RFP evaluation and vendor selection	6
Article 4. Best Value Criteria	7
Article 5. Prequalification Process and Participation for MWBEs and Section 3 Business Concerns	8
Article 6. Trust Procedure, Legal Standards, and Dispute Resolution	8
1. Applicable legal standards	8
2. Dispute resolution	9
3. Board approval for contracts	9
4. Amendments to the procurement policy	10

Introduction

Governor Kathleen Hochul signed the New York City Public Housing Preservation Act (“the Trust Act”), S. 9409A, codified at Article 15 of the Public Housing Law on June 16, 2022. The Trust Act creates the New York City Public Housing Preservation Trust (“the Trust”) and grants it flexibility for the procurement of contracts. This policy is adopted pursuant to the Trust Act.

Article 1 provides definitions. Article 2 describes the Trust’s foundational commitment to empowering and employing residents as well as provides the Trust’s policy regarding resident engagement in procurement processes pursuant to Section 631 of the Trust Act. Article 3 outlines when the Trust will use a particular procurement process. Article 4 explains the two-step process for awarding Alternative Project Delivery contracts under Section 634 of the Trust Act. Article 5 explains the policy for the Trust’s best value criteria, derived from Section 627 (2) of the Trust Act. Article 6 sets out specific measures for prequalifying vendors and securing the meaningful participation of minority- and women-owned business enterprises as required by Section 633 of the Trust Act. Article 7 contains certain legal standards that apply to the Trust’s contracts as well as processes for dispute resolution pursuant to Section 633 of the Trust Act.

The Trust will create improved housing conditions and meaningful economic opportunity for residents of public housing in New York City. This procurement policy will be a tool as the Trust realizes this foundational commitment to resident participation and empowerment. Except in the case of an emergency, the Trust will ensure that residents participate in decisions regarding expansive capital renovation, modernization, and construction work. The Trust’s procurement policy and its implementation will ensure that the Trust meets Section 3 Targets as well as that residents themselves can access training and employment and shape the future of public housing.

Article 1. Definitions

Alternative Project Delivery: a project delivery method such as construction manager build,¹ construction manager at risk,² or design-build³ among other delivery methods.

Best Value Bidding: a procurement process in which the proposal from a responsible vendor that meets the specifications of the procurement and offers the Trust the “Best Value” in its sole and absolute discretion, pursuant to criteria in Article 3 herein, will be awarded the contract.

Lowest Cost Competitive Bidding: a procurement process in which the proposal from a responsible vendor that meets the specifications of the procurement and is the lowest cost will be awarded the contract through blind competitive bidding.

¹ See Trust Act Sec. 627 (6).

² See Trust Act Sec. 627 (5).

³ See Trust Act Sec. 627 (8).

Minority- or Women-Owned Business Enterprise (MWBE): a business certified under New York State (Executive Law Art. 15-A) or New York City (City Charter § 1304).

Prequalified List (PQL): lists of vendors that have responded to a Request for Qualifications (“RFQ”) that the Trust determines are responsible and possess a minimum level of experience or qualifications to be able to deliver or perform a certain good/service. The process for the PQL is described in Article 5.

Prequalified Vendor: a vendor on the Prequalified List.

Section 3 Business Concern: a business meeting at least one of the following criteria, documented within the last six-month period: (i) it is at least 51 percent owned and controlled by low- or very low-income persons; (ii) over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers (those whose income meets HUD guidelines); or (iii) it is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing. Further, the status of a Section 3 Business Concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees. This definition is derived from 24 C.F.R. § 75.5.

Section 3 Targets: The benchmarks established by HUD for the total number of Section 3 employment hours worked by all workers employed with public housing financial assistance, pursuant to 24 C.F.R. 75 and rulemaking enforcing that provision.

Article 2. Procurement Methods

1. *Lowest Cost Competitive Bidding*

Lowest Cost Competitive Bidding may be used for the award of contracts in which sealed bids are publicly solicited or are solicited from a list of prequalified bidders. When the Trust determines that Lowest Cost Competitive Bidding is not practicable or advantageous, it may use the most competitive method that it determines will yield the Best Value.

The Trust may use Lowest Cost Competitive Bidding or open competitive bidding when it determines that it would be in the public interest or promote greater efficiency or economy.

2. *Best Value Bidding*

Where the Trust determines that competitive sealed bidding is not practicable or advantageous, it will use Best Value Bidding as the procurement method for contracts.

When awarding an Alternative Project Delivery contract using Best Value, the Trust will follow the two-step process outlined in Article 3 and award the contract to the bid that it determines offers the Trust the Best Value.

3. *Exceptions to formal competitive bidding*

There are several exceptions to the use of formal competitive processes.

1. When the annual value of a contract **does not exceed certain thresholds**, the Trust may enter a procurement contract without a formal competitive process. For any contract under \$50,000—or under \$500,000 that would procure goods or services from a MWBE—the Trust may procure without a formal competitive process.
2. When there is an **emergency** involving danger to life, safety, or property and that emergency is unforeseen and pressing enough that resolution cannot await the timeline of a competitive process, the Trust may act immediately without conducting a competitive process.
3. The Trust may use informal processes when it encounters **exigent circumstances**. The Trust will document the exigent circumstances and the procurement efforts made to meet the exigent need. These circumstances may include:
 - i. The Trust has an exigent need to respond to a court order, stipulation, or consent decree, or needs to procure legal or consulting services in support of anticipated litigation, investigation, or confidential services.
 - ii. There is an exigent need to award a contract because available funds will be lost or recaptured.
 - iii. There is an exigent need to avoid, prevent, or alleviate diminution of value and/or waste.
 - iv. An existing vendor has been terminated, has defaulted, has withdrawn from, or has become otherwise unavailable, or the Trust has decided not to renew, or extend an existing contract in the best interest of the Trust or residents, and the Trust requires a substitute or successor vendor on an exigent basis.
 - v. An exigent need for contracts that cannot be met through competitive sealed bidding or competitive proposals.
 - vi. There is a limited number of vendors available to perform the work and there is an exigent need for such work or services.

- vii. The Trust has an exigent need for contracts that are necessary for its core operations such as utility contracts, insurance policies, banking services, commercial credit cards, or subscriptions.
- 4. When the Trust wishes to enter **a contract with another government entity**, including NYCHA, it may do so without a competitive process.
- 5. When the Trust determines that it is in the public interest and promotes economy and efficiency to purchase from an **existing government procurement contract**, it may do so. The Trust need not conduct its own competitive process here, but it must analyze the existing government contract and method of procurement prior to purchasing goods or services.
- 6. When the Trust or a duly appointed representative determines in writing that based on a market analysis that there is only one source or a single source for the contract the Trust needs, it may contract with that source as a sole source or single source contract. In these cases, the Trust will ensure that pricing is fair and reasonable before awarding the contract.
- 7. When the Trust begins a competitive process for bids or proposals and receives no or one responsive bid from a vendor, the Trust may take the following steps to award a contract.
 - i. In the case of no answers, the Trust may turn to a PQL or look for another potential, responsible vendor. The Trust will endeavor to receive and document requests for answers from three such vendors; it will award the contract based on the responsive and responsible vendor that provides the Best Value.
 - ii. In the case of only one responsive answer from a vendor, if an officer of the Trust determines after setting forth reasons that the answer a) likely offers the Best Value to the Trust or is reasonably the only responsive bid that could be submitted and b) that it is in the interests of the public, efficiency, and economy to accept it, the Trust may contract with the vendor.

Article 3. Process for Alternative Project Delivery Contracts

The Trust's open and competitive bidding process for capital renovation, modernization, construction, and some related services will focus on awarding Alternative Project Delivery contracts to generate the best value for residents and the Trust. The process for these procurements will follow a two-step process.

1. *Step one: RFQ and RFP list generation*
 - a. The Trust will issue a request for qualifications (RFQ). The RFQ will include a general description of the public work, selection criteria, and the maximum number of respondents who will be advanced to the request for proposal (RFP) stage.
 - b. The selection criteria will closely track best value and may include other qualifications the Trust finds appropriate for the procurement. These will include the respondent's demonstrated project understanding, financial capability, responsibility, and record of past performance.
 - c. The Trust will use these criteria to evaluate the respondents to the RFQ and list those that will receive the RFP. The Trust will consider and encourage the participation of MWBEs, New York State small businesses, and Section 3 Business Concerns.
2. *Step two: RFP evaluation and vendor selection*
 - a. Respondents who are invited to respond to the RFP may be made of teams of entities; if those teams change after they are invited to issue an RFP, the Trust must approve the changes for the responding team to remain eligible for the procurement award.
 - b. The request for proposals will include the scope of work, goals of the work, targets, and methods for achieving those targets for MWBE and/or Section 3 Business Concern participation, and the criteria for evaluating the proposals. These criteria will include the quality of the proposal's solution, the qualifications and experience of the proposer, and the cost factors of the proposal. The Trust may add additional criteria for each project, such as the proposal's manner and schedule of implementation, the proposer's ability to complete the work in a timely and satisfactory manner, the projected maintenance costs after completion, impact on street, car, and mass transit traffic, and community impact.
 - c. The Trust will score the proposals according to these criteria. It will publish the final scores on its website after the start date of the contract.

- d. The Trust will select the proposal that provides it with the Best Value.
- e. The Trust may negotiate or meet with all, or a subset, of qualified proposers. The Trust will maintain a written record of the conduct of these negotiations or discussion and the basis for its decision to continue or suspend negotiations. The Trust may decide to negotiate or enter discussions with a subset of the proposers and will set out a determination in writing.
- f. If the Trust enters negotiations with any qualified proposer, it will allow all proposers in the final negotiation subset to revise their proposals and make a best and final offer. At this point, the Trust will score all proposals by responsive and responsible proposers and award the contract to the proposers which offers the best value. The Trust retains the right to negotiate the final contract terms and conditions with the selected vendor or selected finalists.

Article 4. Best Value Criteria

When evaluating to optimize quality, cost, and efficiency, the Trust will rely on the following price and performance criteria as well as other criteria specified at the outset of a specific procurement process:

- a. **the proposer's past project history**, including performance, quality, timeliness, customer satisfaction, budget accuracy, cost overrun minimization, relevant resident engagement, ability to limit change orders, and appropriateness of project plans;
- b. **the proposer's qualifications**, including technical capacities, key personnel qualifications, financial capability, and ability to assess and manage and minimize risk impact;
- c. **the proposer's legal compliance and labor relations success**, including its ability to comply with and past record of compliance with applicable legal requirements and existing labor standards, as well as its history maintaining harmonious labor relations, protecting the health and safety of workers, meeting Section 3 targets, and paying wages above a locally defined living wage;
- d. **the proposer's MWBE or Section 3 Business Concern status** will be used as a quantitative factor, which may vary depending on the type of solicitation. This quantitative factor shall be used to calculate the total points awarded in a best value bidding process, but the exact number of points may vary in each competitive process. The total points will be based on relevant objective and quantifiable analysis relevant to the procurement at stake and the objectives and goals set by New York City for the

relevant business sector. The exact number for a specific competitive process will be announced alongside the other criteria that constitute the basis for determining which proposal or bid offers the Trust the best value. When the proposer is a joint enterprise, the significance of the MWBE or Section 3 Business Concern in the proposal will affect the number of points awarded.

Article 5. Prequalification Process and Participation for MWBEs and Section 3 Business Concerns

- a. The Trust will endeavor to develop a list of Prequalified Vendors, particularly MWBE and Section 3 Business Concerns. The Trust will issue RFQs and evaluate answering vendors. The Trust will ensure every Prequalified Vendor is responsive, responsible, and capable of fulfilling contracts for the needs of the Trust.
- b. Consistent with applicable law, the Trust may invite a Prequalified Vendor to participate in an RFP process for a contract where the Trust reasonably believes that the vendor meets the requirements of that contract's process and could deliver a competitive proposal. When using the PQL, the Trust will invite at least three vendors to submit proposals wherever practicable.
- c. The Trust will endeavor to be a leader for advancing the participation of MWBE and Section 3 Business Concerns. The Trust will regularly review its success in engaging MWBE vendors and Section 3 vendors and meet with such vendors to improve its procurement policies and processes.
- d. Pursuant to New York City Administrative Code § 6-129, the Trust will develop specific targets and policies for the participation of MWBEs in its procurements. These targets for different sectors of goods and services will be set in reference to the goals of New York City. The Trust will review its progress towards these goals, the effectiveness and efficiency of its process, and whether to change either its MWBE goals or process.

Article 6. Trust Procedure, Legal Standards, and Dispute Resolution

1. *Applicable legal standards*
 - a. If any provision of this policy conflicts with federal law, federal law shall control. If any provision of this policy conflicts with the Act, the Act shall control. However, if any provision of this policy conflicts with New York State or City law, so long as such provision is consistent with the Trust Act, the policy shall control. See Trust Act §§ 629 (8); 633 (1); 634 (1); 648.

- b. All contracts of the Trust shall be subject to §§ 6-108 and 6-123 of the Administrative Code of the City of New York. The Trust is a “contracting agency” for the purposes of the City Code § 6-123. See Trust Act § 633 (3).

2. *Dispute resolution*

- a. The Trust shall adopt fair and equitable procedures to resolve disputes (i) for the resolution of contract awards, (ii) appeals of responsiveness or responsibility determinations by the Trust, and (iii) for appeals of prequalification determinations by the Trust. The Trust may set a minimum contract threshold for each type of appeal.
- b. A decision by the Trust will be rendered.
- c. If the vendor wishes to further appeal a decision involving contract disputes, the Trust may select a neutral, third-party arbitrator in New York State to review the Trust’s determination pursuant to the American Arbitration Act and such decision may be binding if the amount at stake in the dispute is under \$5,000,000; if it is \$5,000,000 or over, the contesting vendor must go to the New York State courts for further recourse.

3. *Board approval for contracts*

- a. Board approval for contracts is designed to provide governance of the risk the Trust may face arising out of a procurement.
- b. Board approval is necessary for:
 - i. Contracts recommended for approval by the General Counsel;
 - ii. Non-alternative delivery method contracts that are valued at or above the greater of \$1,000,000 or 10% of the Trust’s annual budget for the year in which the contract is awarded, and that are awarded based on best value or noncompetitive process;
 - iii. Alternative delivery method contracts; or
 - iv. The overall capital plan for a property ground leased by the Trust.
 - 1. Such a capital plan will address the general scope of the necessary capital projects and the timeline for delivering

such renovations; it will be updated every five years or as necessary to provide for ongoing capital improvements to be done at a development.

- c. Board approval is never necessary for emergency or exigent contracts.
- d. The Trust shall provide an annual report of all contracts it has entered in the previous year to the Board.

4. *Amendments to the procurement policy*

- a. The Trust may amend this Procurement Policy from time to time.