



The objectives of this audit were to determine whether:

- Florida Housing ensures that its administrative and operational procurement processes comply with selected procurement control requirements of Chapter 287, Florida Statute; Chapter 67-49, F.A.C.; and procurement policies, procedures, and guidelines;
- Florida Housing’s controls ensure that procurement payment processes comply with the requirements of Chapter 287, Florida Statute; Chapter 67-49, F.A.C.; and procurement policies, procedures, and guidelines; and
- if necessary, to create or enhance current policies and procedures to ensure compliance with Florida Statute and F.A.C.

To achieve these objectives, the OIG interviewed pertinent Florida Housing staff and reviewed:

- Section 420.507(27), Florida Statutes, Housing, Powers of the Corporation;
- Chapter 287 Part I, Florida Statutes - Commodities, Insurance and Contractual Services;
- Chapter 67-49, F.A.C. - Procurement of Commodities or Contractual Services;
- Florida Housing Procurement Purchasing & Contracts: Guidelines for Success (Desk Procedure);
- Florida Housing Office of the Inspector Report No. 2014-13-Contract Management Process;
- State of Florida, Auditor General Report No. 2017-047; and
- State of Florida, Auditor General Report No. 2013-047.

## BACKGROUND

Section 420.507(27), Florida Statutes, authorizes Florida Housing “to establish guidelines for and to implement the purchase and procurement of materials and services for use by the Corporation”. These guidelines reflect the processes outlined in Chapter 67-49, F.A.C., Procurement of Commodities or Contractual Services, and the applicable provisions in Chapter 287, Florida Statutes which establishes the purchasing guidelines for the State of Florida.

Primary oversight of Florida Housing’s procurement process is performed by the Contract Administrator, who is organizationally situated within the Office of the General Counsel. Additional oversight is performed by Contract Managers, who are employees located in the various business units. Rule 67-49.012, F.A.C., Contract Administrator and Managers states the responsibilities of the positions:

- (1) The Corporation will designate at least one employee as a contract administrator who will be responsible for preparing solicitations for publication, for publishing notice of solicitations, review committee meetings, and board awards, preparing drafts of contracts, maintaining contract files, and serving as liaison with the contractor for solicitations and contracts under this rule.

(2) For each contract, the Corporation will designate at least one employee as a contract manager who will be responsible for enforcing performance of the contract terms and conditions and serve as a liaison with the contractor.

The internal document *Florida Housing Purchasing & Contracts: Guidelines for Success* further defines the responsibilities of these positions:

Contract Administrator – This position is described in Rule 67-49.012, F.A.C. The person in this position is responsible for preparing solicitations with relevant program areas; publishing notices of new solicitations, review committee meetings, and award notices; maintaining the official Corporation contract files; and serving as a liaison between contractors and the Corporation.

Contract Managers – These are staff members within the Corporation located in the various business units that represent Florida Housing from contract execution through closeout. They are responsible for monitoring contractor performance, accepting deliverables, approving payments, and resolving any disputes that may arise.

State of Florida procurement spending thresholds and requirements are tiered by the amount that is anticipated to be spent during the fiscal year on the desired commodity or service.

<b>Amount to be spent in a fiscal year</b>	<b>Requirement</b>
\$0.01 - \$14,999.99	Discretionary Purchase, subject to approval by appropriate staff. Non-competitive procurement.
\$15,000.00 - \$34,999.99	Program Area to obtain a minimum of two quotes. Non-competitive procurement.
\$35,000.00+	Competitive Procurement

## **Types of Procurement:**

### **Non-Competitive Procurement**

#### **Single Source**

A determination by Florida Housing's Executive Director that Commodities or Contractual Services required to be purchased through a competitive solicitation (over \$35,000.00 in a 12 month period) are most readily available from a single source, or that the best interests of the Corporation or the public are served by obtaining such Commodities or Services from a single source. Florida Housing's Board of Directors must approve this determination to exempt such Commodities or Contractual Services from competitive solicitation requirements. Single source purchases under \$35,000 do not require the Board's approval.

#### **Emergency Purchases**

Florida Housing's Executive Director may waive Rule 67.49, F.A.C. requirements and "permit emergency purchases of commodities and contractual services where a valid emergency exists and is documented in writing." A valid emergency is defined as, "Any circumstance caused by an unexpected turn of events beyond the control of the Corporation involving the security, integrity or the financial status of the Corporation or involving public health, welfare, safety, injury or loss..."

#### **State Term Contracts**

The Florida Department of Management Services, Division of State Purchasing enters into contracts with vendors for commodities and services that are frequently used by multiple state agencies. These contracts are known as state term contracts. Florida Housing may choose to purchase a commodity or service on state term contract, rather than issue a competitive solicitation of its own.

#### **Alternate Contract Sources**

An alternate contract source is a contract with a federal, state, or local government that has been approved by the Department of Management Services, based on a determination that the contract is cost-effective and in the best interest of the state, for use by one or all Florida agencies for purchases, without the requirement of competitive procurement.

### **Competitive Procurement**

#### **Request for Qualifications (RFQ)**

Per Rule 67-49.001(12), F.A.C., a RFQ is:

A written solicitation requesting competitive sealed qualifications. The Request for Qualifications is used when the Corporation does not have a specific immediate need for a particular service, but desires to have qualified individuals or firms under contract that can be assigned duties as the need arises over a period of time. The Request for Qualifications includes general information, applicable laws and rules, functional or general specifications, statement of work, instructions and evaluation criteria.

### **Request for Proposals (RFP)**

Section 287.057(1)(b), Florida Statute states that, "...an agency shall use a request for proposals when the purposes and uses for which the commodity, group of commodities, or contractual service being sought can be specifically defined and the agency is capable of identifying necessary deliverables."

### **Invitation to Bid (ITB)**

Per Rule 67-49.001(7), F.A.C., an ITB is:

...a written solicitation requesting competitive sealed bids specifically defining the Commodity, service, group of commodities or group of services for which bids are sought. It includes instructions prescribing all conditions for bidding and shall be available to all prospective Bidders simultaneously.

### **Invitation to Negotiate (ITN)**

Per Rule 67-49.001(8), Florida Administration Code, an ITN is, "A written solicitation requesting competitive sealed responses to select one or more persons or business entities with which to commence negotiations for the procurement of commodities or contractual services."

## **Purchasing Card Procurement**

The Florida Housing purchasing card is a restricted use credit card issued to Florida Housing employees for official business use only. An employee cardholder is designated and authorized by Florida Housing to be the sole user of the assigned purchasing card to make purchases, within preset limits, on behalf of Florida Housing. Florida Housing's purchasing cards are regularly used by employees for purchases of contract or non-contract discretionary items.

## **OBSERVATIONS AND RECOMMENDATIONS**

### **Observation 1: Florida Housing does not have a formalized procurement policy.**

The purpose of a formal procurement policy is to document Florida Housing's purchasing processes and sourcing strategies to ensure that commodities and services acquired are the result of transparent, objective, time and cost-effective decision making in compliance with authoritative sources. A policy will also communicate Florida Housing's overall strategic direction, philosophy, and requirements for procurement, as directed by executive leadership and senior management.

The OIG **recommends** the formal adoption of a Florida Housing procurement policy incorporating appropriate elements of all applicable authoritative sources.

**Observation 2: Florida Housing does not have conflict of interest attestations for staff responsible for the contract award or management process.**

Currently, Florida Housing does not require employees taking part in the contract award and/or management process to attest in writing that they are independent of, and have no conflict of interest with the entities evaluated and selected or the contracts managed. Therefore, Florida Housing cannot adequately demonstrate that contract award or management process activities are conducted in an independent and impartial manner.

- Section 112.311(1), Florida Statutes states:

It is essential to the proper conduct and operation of government that public officials be independent and impartial and that public office not be used for private gain other than the remuneration provided by law. The public interest, therefore, requires that the law protect against any conflict of interest and establish standards for the conduct of elected officials and government employees in situations where conflicts may exist.

- Section 112.313(7), Florida Statutes states:

No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee.

- Section 287.057(19), Florida Statutes states:

In any procurement that costs more than the threshold amount provided for in F.S. 287.017 for CATEGORY TWO (\$35,000) and is accomplished without competition, the individuals taking part in the development or selection of criteria for evaluation, the evaluation process, and the award process shall attest in writing that they are independent of, and have no conflict of interest in, the entities evaluated and selected.

The OIG **recommends** that all employees participating in the contract award and/or management process attest in writing that they are independent of and have no conflict of interest with the entities evaluated and selected and/or the contracts managed.

**Observation 3: Florida Housing did not always document the Executive Director's approval required for certain procurements.**

During the review of selected procurements, it was noted that Florida Housing was not consistent in providing documentation of the Executive Director's approval for certain procurements. Therefore, Florida Housing may not be able to provide the documentation in support of the validation of the Executive Director's approval for these procurements.

Per Rule 67-49.0031, F.A.C. requires the following for Florida Housing's emergency purchases:

The Corporation's Executive Director may waive any requirement of this rule and permit emergency purchases of commodities and contractual services where a valid emergency exists and is documented in writing. Any circumstance caused by an unexpected turn of events beyond the control of the Corporation involving the security, integrity or the financial status of the Corporation, or involving public health, welfare, safety, injury or loss, shall be construed as a valid emergency.

The OIG **recommends** defining the procurement types for which the Executive Director's documented approval is prescribed and the method of documentation in the language of the recommended formalized procurement policy.

**Observation 4: Florida Housing does not have a requirement in policy to provide written justification for deviation(s) from a procurement Review Committee's recommendations.**

On February 1, 2019, RFQ 2019-03 was posted to Florida Housing's website soliciting competitive, sealed responses from qualified firms to provide public relations services. Florida Housing received response from four public relations firms. The Review Committee met, evaluated, and scored the proposals and concluded with a recommendation to enter into contract negotiations with the two highest scoring firms. At the May 10, 2019 Board Meeting, this recommendation was brought before Florida Housing's Board for approval. However, during the Board Meeting, Florida Housing staff requested to be permitted to enter into contract negotiations with all four firms. The stated justification was that the firms were "geographically diverse". The Board approved this request and subsequently all four firms were awarded contracts. In addition, review of expenditures related to RFQ 2019-03, indicates that the lowest scoring firm received the majority of work and related payments.

Florida Housing's RFQ 2019-03 states:

Florida Housing reserves the right to select for contract negotiation or for award a Response other than (or in addition to) that with the highest score in order to serve the best interests of Florida Housing and the public...Florida Housing is not required to use the services of any selected Contractor or to assign any work to such provider...

While Florida Housing's actions were within the guidelines of the RFQ language stated above, deviation from the Review Committee's recommendation could create the appearance of vendor preference.

The OIG **recommends** Florida Housing create and implement a policy requirement for written justification to document all deviations from a procurement Review Committee's recommendations. Additionally, this information should be presented to the Board to ensure transparency within the procurement process.

## ACKNOWLEDGEMENT

The Office of Inspector General would like to extend our appreciation to the management and staff of Florida Housing for their assistance and cooperation during this audit.

This audit was conducted in conformance with the International Standards for the Professional Practice of Internal Auditing, published by the Institute of Internal Auditors. The audit was conducted by David Merck, Systems Auditor, CIA, CISA, CIGA, CISSP-ISSMP, CAP, CPM and Jennifer Guillermo, Internal Investigator/Auditor, CFE, CIGI, under the supervision of Justin Evans, Director of Auditing, CIA, CFE, CIGA, CIGI, CPM. This report and other reports prepared by Office of Inspector General can be obtained from the Corporation's website, <http://www.floridahousing.org/AboutUs/OfficeOfInspectorGeneral>.



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The OIG **recommends** the formal adoption of a Florida Housing procurement policy incorporating appropriate elements of all applicable authoritative sources.

**Response to the Recommendation:**

Florida Housing's procurement policies are incorporated into Rule 67-49, F.A.C., and applicable procurement documents. Section 420.507(27), Fla. Stat., also permits us to establish guidelines for procurement. That said, the Office of the General Counsel has begun work on drafting a policy in response to this Observation.

**Observation 2: Florida Housing does not have conflict of interest attestations for staff responsible for the contract award or management process.**

Currently, Florida Housing does not require employees taking part in the contract award and/or management process to attest in writing that they are independent of, and have no conflict of interest with the entities evaluated and selected or the contracts managed. Therefore, Florida Housing cannot adequately demonstrate that contract award or management process activities are conducted in an independent and impartial manner.

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The OIG **recommends** that all employees participating in the contract award and/or management process attest in writing that they are independent of and have no conflict of interest with the entities evaluated and selected and/or the contracts managed.

**Response to the Recommendation:**

The Office of the General Counsel concurs and is working to develop/implement a form to address this issue.

**Observation 3: Florida Housing did not always document the Executive Director's approval required for certain procurements.**

During the review of selected procurements, it was noted that Florida Housing was not consistent in providing documentation of the Executive Director's approval for certain procurements. Therefore, Florida Housing may not be able to provide the documentation in support of the validation of the Executive Director's approval for these procurements.

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The OIG **recommends** defining the procurement types for which the Executive Director's documented approval is prescribed and the method of documentation in the language of the recommended formalized procurement policy.

**Response to the Recommendation:**

While the intent of the quoted rule is to ensure that the *emergency* is documented in writing (e.g., via Executive Order from the Governor), the Office of the General Counsel concurs and the procurement types requiring the Executive Director's written approval will be addressed in an updated version of the *Purchasing & Contracts: Guidelines for Success* document.

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While Florida Housing's actions were within the guidelines of the RFQ language stated above, deviation from the Review Committee's recommendation could create the appearance of vendor preference.

The OIG **recommends** Florida Housing create and implement a policy requirement for written justification to document all deviations from a procurement Review Committee's recommendations. Additionally, this information should be presented to the Board to ensure transparency within the procurement process.

**Response to the Recommendation:**

The Office of the General Counsel concurs to the extent that the deviation occurs internally by a Corporation employee. The requirement to document all deviations from a Review Committee recommendation will be addressed in an updated version of the *Purchasing & Contracts: Guidelines for Success*.

