

U.S. Department of Housing and Urban Development

TRAINING GUIDEBOOK

Southwest and Mountains & Plains Networks Public Housing Agency Procurement Training



2019

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Chapter 1: Introduction

A. Purpose and Application of This Course Book

The purpose of this course book is to train Public Housing Agencies (PHAs) on procurement practices based on all relevant guidance in an easy-to-use format with helpful examples.

The Handbook provides both required (these will be referenced with “shall” or “must”) and recommended (referenced as “should” or “may”) procurement practices applicable to PHAs.

Appendix 5 is a glossary of common terms used throughout this document.

This course book will highlight areas of greatest importance to general PHA staff. However, procurement professionals are advised to become thoroughly familiar with the HUD Handbook, 24 CFR §200.317–200.326, mandatory HUD forms that are part of the procurement and contracting processes, and state and local procurement laws. Other regulations which may affect PHA procurement include the following:

- 24 CFR Part 135—Economic Opportunities for Low- and Very Low-Income Persons, which implements Section 3 of the Housing and Urban Development Act of 1968
- 24 CFR 905, Subpart F—Development Requirements
- 24 CFR Part 943—PHA Consortia and Joint Ventures
- 24 CFR Part 963—Public Housing—Contracting with Resident Owned Businesses
- 24 CFR Part 964—Tenant Participation and Tenant Opportunities in Public Housing
- 24 CFR Part 965—PHA-owned or Leased Projects—General Provisions (see Subpart A on pre-emption of state prevailing wage requirements)
- 24 CFR Part 905—Public Housing Modernization (see 905.308 on wage provisions and 905.316 on contracting requirements)
- 24 CFR Part 990—The Public Housing Operating Fund Program (see Section 990.170 on utilities)

The HUD Handbook does not apply to the following:

- Tribally designated housing entities or Indian housing authorities
- Section 8 Housing Choice Voucher Program (which is exempted from 24 CFR 85.36)

- Income generated by the Central Office Cost Center through reasonable fee-for-service arrangements (e.g., management fees, bookkeeping fees, etc.)

B. Source Requirements

PHAs are considered “local governments” receiving public housing assistance funds and are therefore governed by Part 85 of Title 24 of the Code of Federal Regulations (24 CFR Part 85). However, the controlling regulation governing procurement activity can be found at 2 CFR §200.317–200.326 and provides for full and open competition. In addition, PHAs must adhere to applicable state and local procurement laws based on their location. PHAs must follow the strictest law that applies, whether federal, state, or local.

All forms referenced in this course book may be found online at www.hud.gov/program_offices/administration/hudclips

C. Consistency with Good Business Practices

The PHA procurement process is founded on several important principles:

- Allow for a fair and open competitive process for the PHA’s business
- Assist the PHA in being a good steward of public funds
- Provide clarity in business dealings
- Provide the best value product or service for the agency
- Comply with all applicable laws, HUD regulations, and PHA policies
- Avoid ethical pitfalls

D. Public Access to Procurement Information

The PHA procurement process will include some information that is considered public and should be released in accordance with PHA procurement policy and state laws and regulations. Other information is confidential, including proprietary business information, detailed pricing, technical data, and the PHA’s pre-decided information such the amount the PHA intends to spend.

State laws vary regarding freedom of information. The PHA’s contracting personnel should consult with the PHA’s legal counsel when developing the agency’s policy and whenever there are any questions regarding the release of information. The PHA should make participants in procurement solicitations aware of information that may be made public.

Questions

Chapter 1

1. The HUD Procurement Handbook for Public Housing Agencies (PHAs) does not apply to which of the following:
 - a. Tribally Designated Housing Entities or Indian Housing Authorities
 - b. Section 8 Housing Choice Voucher Program
 - c. Income generated by the Central Office Cost Center
 - d. All of the above
2. Regarding procurement requirements, PHAs must follow only their local laws.
 - a. True
 - b. False
3. The overall objective of the PHA procurement process is to:
 - a. Provide the best value product or service for the agency
 - b. Comply with all applicable laws, HUD regulations and PHA policies
 - c. To maintain private business dealings
 - d. Both a and c
 - e. Both a and b

CHAPTER 1: INTRODUCTION

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Chapter 2: Procurement Authority and Administration of Procurement Function

A. Procurement Policy

Public Housing Agencies (PHAs) are required to establish and follow a written procurement policy that is consistent with 2 CFR §200.317–200.326.

What does a written procurement policy look like?

The policy shall:

- Require establishment of procedures to carry out a compliant and consistent approach;
- Confer authority to the Executive Director as the Contracting Officer (CO) (per the Annual Contributions Contract with HUD) and identify the CO's authority to delegate responsibilities to other staff; and
- Include policies that specifically address other delegation considerations (e.g., ability to re-delegate or delegate authority further, limit the dollar value of contracts and types of contracts, etc.).

Contents of a typical procurement policy will include descriptions and definitions and address the following:

- Authority governing procurement functions for the PHA (including federal regulations but may include reference to state and local laws)
- Staff responsibilities and authorities
- Threshold for the Executive Director's authority to commit the PHA to a purchase
- Description of the types and circumstances under which a purchase must go before the Board for approval
- Procurement-process requirements for different threshold amounts
- Types of contracts and required clauses
- Ethics in contracting and avoidance of conflicts of interest
- Templates and forms (if the PHA chooses) to be used (such forms may be placed more effectively under Procedures rather than the Policy)

B. Contracting Officer

A person that holds the authority for procurement activities is the **Contracting Officer** (CO) when he or she or they perform(s) that function, regardless of any other job or position the CO(s) may hold.

The CO's responsibilities are:

- Use sound judgement in accomplishing the PHA's procurement activity;
- Ensure businesses and contractors are treated fairly, impartially, and equitably;
- Ensure contract actions are compliant with all applicable federal, state, and local laws and the PHA's approved procurement policy; and
- Seek the best value and greatest overall benefit to the PHA.

C. CO Signature and Obligation of Funds

Each contract or procurement action (e.g., new contract, modification, interagency agreement, purchase order, etc.) that obligates the PHA to pay a vendor or contractor must be signed by an authorized individual who is expressly delegated authority by the PHA to make the obligation.

What does appropriate use of this authority look like?

- The CO's signature on PHA contracts is a legal commitment to bind the PHA.
- A signed contract requires the PHA to perform certain actions (e.g., monitoring contractor performance and accepting and/or rejecting contractors' requests for changes in performance, specifications, or price).

Note of Caution: The PHA may be liable for and bound by the acts of an employee who is not the CO but who appears to potential contractors to have that authority.

For example: Though not expressly approved to do so, a maintenance person goes to a supply house and buys some materials. This happens when the materials are needed, but the maintenance person cannot locate anyone with procurement authority to approve. In such cases, the procurement is most likely a good decision, though the PHA needs to identify and approve such actions in its procedures.

CHAPTER 2: PROCUREMENT AUTHORITY AND ADMINISTRATION OF PROCUREMENT FUNCTION

The PHA should be wary of situations that could be misinterpreted as committing the PHA to purchase a good or service. In those situations, PHAs should consider using clarifying language, such as: “This request for price quotation is not an offer to buy and should not be assumed as such.”

D. Staffing and Training

PHAs must ensure any employee who is given procurement authority and responsibility is provided training that corresponds to his or her duties. PHAs shall regularly review their procurement operations and policy guidance to incorporate any new laws, regulations, market conditions, or buying needs of the PHA.

CHAPTER 2: PROCUREMENT AUTHORITY AND
ADMINISTRATION OF PROCUREMENT FUNCTION

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Questions

Chapter 2

1. PHAs are required to establish and follow a written procurement policy. Which of the following are key elements to a procurement policy?
 - a. Establish procedures
 - b. Delegate authority
 - c. Contain policies
 - d. All of the above
2. The Contracting Officer is always the Executive Director of a PHA.
 - a. True
 - b. False
3. The PHA is obligated to pay the bill when the custodian purchases snacks for the vending machine because the Executive Director's administrative assistant requested snacks.
 - a. True
 - b. False

CHAPTER 2: PROCUREMENT AUTHORITY AND
ADMINISTRATION OF PROCUREMENT FUNCTION

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Chapter 3: General Requirements

A. Procurement Planning

Planning is critical to ensuring that procurement activity functions properly for all parties involved and results in a fair competition that provides the agency the best goods and services at reasonable and fair costs.

Intergovernmental agreements can be a useful tool for an agency to obtain needed goods and services economically and efficiently.

1. Intergovernmental Agreement

An **intergovernmental agreement** is an agreement with a state or local government agency (including other Public Housing Agencies [PHAs]) that can help reduce the amount of time needed to acquire a service or good. The PHA takes advantage of various methods of cooperative procurements that will allow the PHA to benefit from volume discounts in pricing. (Chapter 15 provides details of benefits and requirements of these types of arrangements.)

2. Independent Cost Estimates

An **Independent Cost Estimate (ICE)** is the PHA's estimate of the cost to acquire goods or services under a procurement or contract. The PHA can calculate the ICE itself or through a retained contractor (i.e., an architect for a construction project). The ICE provides a benchmark to use when evaluating the reasonableness of a contractor's proposed pricing.

The Contracting Officer (CO) is responsible for developing the ICE but may do so with the input of other staff (e.g., budget and finance staff and end users) or by using outside consultants. The method used may depend on the complexity of the procurement.

The CO will typically prepare the ICE prior to issuing the solicitation of offers; but, in any case, the ICE must be fully prepared and in the file prior to the receipt of quotes. The ICE may help the CO determine the best contracting method to use.

3. When is an ICE Required?

An ICE is required as follows:

Purchase Type	Purchase Amount	ICE Requirement
Micro-purchases	Below \$10,000 for goods and services and below \$2,000 for construction	Not needed
Above micro-purchase and below small-purchase threshold	Above \$10,000 for goods and services and above \$2,000 for construction but below \$250,000	Minimal documentation. ICE may be needed to determine appropriate procurement
Above small-purchase threshold	Greater than \$250,000	ICE is required. Can be broken into categories: <ul style="list-style-type: none"> • Labor • Materials • Direct costs • Overhead • Profit

4. Questions Answered in the ICE

- How was the estimate made?
- What assumptions were used in making the estimate?
- What information and/or tools were used to make the estimate?
- Where was the ICE cost information obtained?
 - For example, from the retained consultant or architect, from similar past procurements by the PHA or another PHA or governmental agency, via Internet search, from previous offers received but not awarded, etc.?

5. Important Points to Remember

- A budget amount is *not* an ICE. Rather, an ICE is a statement of perceived eventual costs based upon the identified resource.
- The pricing listed in the ICE needs to correspond to the solicitation that is issued.

Example: Pricing was requested on a per-unit basis for specific sized units for turnaround painting and cleaning services. The ICE would list estimated costs for each such unit size identified with stated justification as to where the estimated costs were derived.

- For smaller or non-complex procurements, the ICE may be a simple estimated total cost; i.e., an estimated cost for a vehicle may be reflected as a lump sum.

- Level of detail will depend on the dollar value and complexity of the procurement. Work designed and customized for the PHA will require more extensive estimation and detail in the ICE.
- For construction or complex projects, the ICE may be best broken into major categories (e.g. labor, materials, other direct costs such as travel, overhead, and profit).
- Without a fully completed ICE document in its procurement files, the PHA may not obtain the best reasonable price and may receive an audit finding.

6. What is the ICE Used For?

The ICE is used to:

- Project costs and reserve funds as part of the acquisition planning process;
- Assist in the Cost Price Analysis to determine whether costs offered are fair and reasonable;
- Determine whether solicitation assumptions are equivalent to assumptions used by the PHA;
- Assist in decisions related to project viability, structure, and resource requirements;
- Conduct an analysis of alternatives if needed;
- Inform design tradeoff decisions;
- Conduct in-process reviews of projects; and
- Satisfy public law and oversight requirements.

The ICE may also assist in determining the method of procurement.

Example: The PHA has a need to procure refrigerators for replacement on an ongoing basis. Based on past usage, the PHA estimates that it will need to replace approximately 80 units per year. Using past prices, the PHA formulates an ICE with a per-unit cost of \$580 and a total estimated total cost of \$46,400 for the coming year.

Based on state procurement law, the PHA's Small Purchase Threshold listed in the Procurement Policy is \$50,000. Since the PHA does not want to repeat the competitive solicitation process every year, the PHA intends to include an escalation clause within the solicitation documents that will allow the PHA to give periodic increases to the supplies based on the Producer Price Index. Though the estimated annual costs are initially below \$50,000, the

escalation will increase future costs to an annual amount exceeding \$50,000. Consequently, the PHA must then conduct a formal advertised Invitation for Bids because, pursuant to state law, the PHA must conduct a formal advertised solicitation for all total expenditures above \$50,000.

B. Individual Procurement Plans

Individual Procurement Plans (IPPs) are required for all larger and more-complex procurements to establish deadlines that ensure timely delivery, performance, and compliance with procurement requirements established by HUD regulation and local statutes and codes. The CO will determine the scope of the IPP.

An IPP may contain but is not limited to descriptions of the following elements:

- Purpose of the project (i.e., background, goals, etc.)
- Goods, services, or construction to be procured.
- Parties in the organization who are responsible for procurement and contract administration
- Methods and criteria used in the procurement
- Contract type and standards
- Contract administration and monitoring processes
- Necessary approvals for each procurement step

C. Documentation

PHAs must maintain written records to document each procurement activity in a file. The documentation must be sufficient to defend the process in the event a protest is filed. Good file records also allow the PHA to streamline future purchases for similar goods and services.

Procurement files include the following:

- A description of the CO's rationale for choosing the method of procurement used
- A copy of all documents pertaining to the solicitation
- A description of the reason for contract pricing arrangement (if not obvious, based on good and/or service)
- All supporting information regarding selection of winning contractor and rejection of any offers
 - For RFPs and RFQs, this will include the source-election panel; evaluation report; cost and price analysis; and

CHAPTER 3: GENERAL REQUIREMENTS

written correspondence, including emails pertaining to the procurement.

- A description of the basis for contract price
- Descriptions of any contract administration issues and/or actions

The PHA must retain all significant and material documentation concerning each procurement for a period of 3 years after the final payment and closure of all matters pertaining to the contract.

The PHA is subject to audit by HUD and the Office of the Inspector General. Such reviews will include all documents, papers, records, etc., for any financial assistance provided by HUD.

Record-retention requirements include information required to be held by the contractor. The PHA's competitive solicitation and subsequent contract must include language covering the contractor's responsibility to maintain required records.

D. Funding, Payment, and Internal Controls

The PHA must ensure inspection of work is performed in a timely manner and that correct contractor invoices for work accepted are paid promptly. Some state and local laws impose requirements for prompt payment and include provisions that can result in penalties for late payments. The CO must be aware of any applicable laws for his or her jurisdiction and must ensure compliance. No PHA can pay any late payment interest or penalties with federal funds.

The PHA must establish and implement internal controls to provide sufficient oversight of ordering, receiving, inspecting, and paying for goods and services. The PHA must document these controls in written procedures and refer to them within the procurement policy.

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Questions

Chapter 3

1. When is an Independent Cost Estimate (ICE) always required?
 - a. Above the micro-purchase threshold
 - b. Above micro-purchases and below small purchases
 - c. Above small purchase threshold
 - d. All of the above
2. For how long must a PHA retain all significant and material documentation concerning each procurement?
 - a. Varies depending on the size of the procurement
 - b. 3 years
 - c. 5 years
 - d. Indefinitely
3. As long as the PHA includes additional funding in the budget for a project in the event that payments are delayed and any vendors assess late payment fees, the PHA may pay those late fees with HUD funds.
 - a. True
 - b. False

CHAPTER 3: GENERAL REQUIREMENTS

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Chapter 4: Ethics in Public Contracting

Ethics in public contracting is one of the primary reasons for establishing clear rules around procurement. Adherence to procurement policies and procedures ensures that Boards of Commissioners, staff, vendors, and contractors establish a framework for fair and competitive business practices, cost efficiencies, and avoidance of impropriety.

The following principles are discussed in this chapter:

- Conflict of interest
- Gratuities, kickbacks, and confidential information
- Sanctions for ethical violations

A. Conflict of Interest

Authorities: 2 CFR §200.318 (c)(1) and Section 19 of the Annual Contributions Contract (ACC)

1. What is Conflict of Interest?

Conflict of interest involves a situation in which a person is in a position to derive personal benefit from actions or decisions made in his or her official capacity.

2. What is the Rule?

No Public Housing Agency (PHA) employee, officer, or agent shall participate in selection, award, or administration of a contract supported by federal funds if a conflict of interest—financial or otherwise, real or apparent—would be involved.

- The PHA, its contractors, or subcontractors cannot enter into a contract or arrangement with certain individuals for at least **1 year** after they have ended their relationship with the PHA. This applies to:
 - An employee of the PHA in a position to formulate or influence policy (or member of his or her immediate family); and
 - A public official, member of the local governing body, or state or local legislator (or member of his or her immediate family) who exercises functions or responsibilities regarding PHA projects.

No employee, office, or agent can sell supplies, services, or construction to the PHA for **1 year** after her or she leaves the PHA.

3. What Does Conflict of Interest Look Like in a PHA?

Some examples of conflict of interest:

- A member of the Board of Commissioners owns a plumbing business. The Commissioner is in a position of influence within the PHA and bids on a contract to do work for the PHA.
- The PHA director's brother is a door vendor. The brother bids on a PHA solicitation for doors
- The Maintenance Director owns stock in a company that sells a particular type of stove. He recommends to the PHA that all units should be equipped with that stove.
- The Contract Administrator needs a bathroom remodel in her home. She reaches out to one of the contractors working in one of the PHA projects to have them do the work at a special or discounted rate.
- A Property Manager quits her job at the PHA to become a public housing consultant. Six months later, she responds to an RFP by the PHA for consulting services and is awarded the contract.

B. Gratuities, Kickbacks, and Use of Confidential Information

Authorities: 2 CFR 200.318 (c)(1) and Section 19 of the ACC

1. What are Gratuities?

Gratuities are gifts, favors, or anything of monetary value including an offer of employment.

2. What is the Rule?

No PHA officers, agents, current or former employees can solicit or accept gratuities or favors from PHA contractors or potential contractors within 1 year of ending employment.

3. What Does Accepting Gratuities Look Like in a PHA?

Some examples of gratuities:

- The PHA Director accepts football game tickets from the air conditioning repair company that the PHA currently uses.
- The Contract Administrator receives a gift card to a restaurant by a vendor that would like to bid on a PHA contract.
- The Property Manager has her home lawn mowed at a discount by the same landscaping contractor that the PHA uses.

4. What is a Kickback?

A **kickback** is a payment made to someone who has facilitated a transaction.

5. What is the Rule?

No payment, gratuity, or offer of employment can be made by or on behalf of a contractor or sub-contractor or any associated person as a way to influence the outcome of an award.

6. What Does a Kickback Look Like in a PHA?

Some examples of kickbacks:

- A contractor performs free or discounted work for a Board member in exchange for being awarded a PHA contract.
- The appliance vendor promises the PHA Director a cut of the profit for every appliance she sells to the PHA.

7. What is Confidential Information?

The following is considered **confidential information**:

- The contents of a quote, bid, or proposal (prior to the submission deadline)
- PHA-generated information on cost estimates
- PHA information related to specific procurement requirements prior to publication of a solicitation
- Any other information that, when disclosed, would have a direct bearing upon the contract award or the competitive process

8. What is the Rule?

No current or former PHA employee, office, or agency can knowingly use confidential information for actual or anticipated personal gain or anticipated gain of any other person.

9. What Does Confidential Information Look Like in a PHA?

Some examples of confidential information:

- A PHA employee shares the amount of a PHA-generated cost estimate for roofing with a contractor who is thinking of bidding on the project.
- An administrative assistant for the PHA who is working with the procurement department gives a copy of an upcoming solicitation to a vendor prior to publication.
- A maintenance worker allows a prospective bidder access to a site prior to the onsite pre-bid conference.

10. Prohibition Against Contingent Fees

Hiring anyone to solicit or secure a PHA contract pursuant to a promise of a commission, percentage, or brokerage fee is prohibited. This applies to current and former employees or officials hired on a contingency basis to secure contracts on behalf of others.

An example of contingent fees:

- A former Operations Manager is hired as a consultant to write an RFP response for an accounting firm seeking to work for the PHA. The accounting firm promises to pay him 5% of the first year's contract if it wins the contract.

C. Sanctions for Ethics Violations

- The Executive Director and the Board establish sanctions.
- In addition to establishing its own sanctions, the PHA must enforce state and local laws and required sanctions.
- Examples of sanctions for violations include:
 - Oral or written warnings or reprimands;
 - Suspension with or without pay for specified periods of time;
 - Termination of employment; or
 - Dismissal from the official or agency position.
- The value of anything received pursuant to a conflict of interest is recoverable by the PHA.
- HUD can pursue any remedy made available through the ACC and federal regulations.

Questions

Chapter 4

1. If a conflict of interest—real or apparent—exists, an individual must not participate in the procurement or contract-management process.
 - a. True
 - b. False
2. The Property Manager has her kitchen and bathroom faucets replaced at a discount by the same plumbing contractor that the PHA uses. This is an example of which of the following:
 - a. A kickback
 - b. A gratuity
 - c. A conflict of interest
 - d. All of the above
3. An appliance vendor promises the PHA Director a cut of the profit for every appliance it sells to the PHA. This is an example of which of the following:
 - a. A kickback
 - b. A gratuity
 - c. A conflict of interest
 - d. All of the above
4. A construction company hires a consultant to help write a proposal to complete a large renovation for the PHA. The construction firm promises a fee of 2 percent of the value of the contract to the consultant if it wins the project. This is good business and is irrelevant in the PHA's evaluation of bids.
 - a. True
 - b. False
5. The assistant to the PHA's Director of Development takes questions from potential bidders on the requirements in a published IFB. The assistant tells one potential bidder that the PHA has determined the overall value of the work solicited is \$1.2 million. Has the assistant violated procurement rules by providing confidential information?
 - a. Yes
 - b. No

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Chapter 5: Small Purchase Procedures

Small purchase procedures are designed to give Public Housing Agencies (PHAs) the flexibility that is needed to make purchases that support day-to-day operations of the agency. Aside from micro-purchases, it is the least-constraining class of purchases. The current threshold per federal regulations is less than \$250,000 for small purchases and greater than \$10,000 for micro-purchases.

PHAs may be bound by local and state procurement laws that may have lower thresholds to which they must adhere. However, in no case may the PHA's threshold exceed federal limits.

Authority: 2 CFR §200.320(b)

A. Micro-purchases

Maximum threshold: \$10,000

Method of procurement: The PHA may award without soliciting multiple quotes.

Selection: The price must be reasonable based on past experience, price lists, catalog prices, or prior purchases.

Documentation Required:

The Contracting Officer's (CO) signature verifies that costs are appropriate. For example, the CO signs off on the purchase order (see Section F below), indicating that the price obtained is reasonable.

Documentation must be available for 3 years after final payment.

B. Small Purchases

Maximum threshold: \$250,000 is the federal maximum, but local and state governments may have a lower threshold to which the PHA must adhere

Method of procurement: The PHA must solicit and receive at least three quotes from qualified sources. (Quotes may be made via phone, or email; via eProcurement; or in writing.)

Selection methods: Selection may be made in writing (either hard copy or email), orally,

by fax, by letter, through electronic means (i.e., the Internet), through paid advertisement, or by displaying the solicitation in a public place.

Documentation Required

- The CO must have documentation that indicates that quotes were obtained and price reasonableness.
- If only one quote is received, the CO needs to include:
 - A statement indicating that the price was reasonable based on market research or prior purchases; and
 - An explanation as to the absence of competition (also see Section 8.5 of Chapter 8 of the HUD Procurement Handbook).
- When considering “price and other factors,” competitive proposal procedures, such as Requests for Proposals, are not allowed for quotes unless all “factors” are published with the “relative importance” of each factor. However, the CO can use information such as knowledge of and previous experience with the supply or service being purchased, the vendor’s past performance with the PHA, or customer surveys (i.e., an evaluation of responsiveness and responsibility).
 - Documentation must include an explanation supporting the rejection of award on other factors unrelated to price.
- Documentation must be maintained by the PHA and available for 3 years after the final payment.

C. Petty Cash

Petty cash funds are used for very small, one-time purchases. If a PHA elects to have a petty cash fund, it must comply with 2 CFR §200.317–200.326 and shall include the following in its policies:

- Determine the maximum amount of money to be kept in the fund.
- Establish a maximum purchase amount.
- Appoint a staff person(s) to administer the fund.
- Define documentation needed to support purchases, e.g., receipts.
- Develop a method for tracking purchases.
- Establish when funds are replenished, i.e., when the account falls below a certain threshold.

D. Use of Indefinite-Delivery Contracts

Indefinite-delivery contracts are sometimes referred to as blanket purchasing agreements (BPAs). They can be used when PHAs need to make frequent small purchases to address a recurring need, e.g., cleaning supplies or spare parts. These types of contracts are appropriate when a repetitive need exists, but the exact items, quantities, and delivery requirements are unknown. BPAs allow the PHA to order supplies or services from a set competed price list without having to solicit quotes every time the goods or services are needed.

1. Selecting Vendors

For small purchases, vendors for BPAs are typically selected through a competitive quote process. The PHA evaluates quotes for price, quality, and conformance of goods to be provided. However, BPAs can be solicited using an Invitation for Bids (IFB) (see Chapter 6) or Request for Proposals (RFP) or Request for Qualifications (RFQ) process (see Chapter 7) if the PHA is considering factors other than price.

The PHA may have under contract more than one vendor for the same products, allowing for maximum competition.

2. Things to Remember

- Though a BPA is technically a contract, each order placed under a BPA (for example, purchase orders) is the contract form for each order
- BPAs will have a maximum, not-to-exceed (NTE) amount listed thereon, expressed either in quantities or in dollars.
- PHAs will designate which employees and under what conditions orders are placed.

E. Bid-splitting

PHAs may not break purchases into small amounts to qualify under the small purchase or micro-purchase thresholds. This is called **bid-splitting** or **unbundling**.

For example: A PHA has to purchase 40 new refrigerators. The PHA estimates from experience that the refrigerators will cost \$32,000. To be compliant, the PHA would solicit and receive a minimum of three quotes from three qualified vendors because this total cost would qualify as a small purchase. The PHA would be in violation of the rule if, instead, the PHA placed multiple orders with multiple firms to keep each order under the micro-purchase threshold and thereby avoid soliciting competitive quotes or bids.

F. Purchase Orders

Once a vendor has been selected, the PHA can generate a **purchase order** specifying the type, quantity, quality, timeframe, and price for a product or service. A contract is formed when the PHA issues the purchase order and the vendor accepts it or deliveries the goods or services listed thereon.

1. Elements of a Purchase Order

Purchase Order Element	Purpose
<ul style="list-style-type: none"> • Purchase order number 	<ul style="list-style-type: none"> • Assists both the PHA and the vendor in tracking the order
<ul style="list-style-type: none"> • Scope of work/service 	<ul style="list-style-type: none"> • Encompasses deliverables, quantity, quality, and other specifications
<ul style="list-style-type: none"> • Price 	<ul style="list-style-type: none"> • Includes price per unit, fee, etc.
<ul style="list-style-type: none"> • Delivery 	<ul style="list-style-type: none"> • Delineates how delivery is to be made, timeframe for delivery, how item(s) is packaged for delivery, etc.
<ul style="list-style-type: none"> • Method of Payment 	<ul style="list-style-type: none"> • Specifies (typically) receipt of payment within 30 days of receipt of a correct invoice
<ul style="list-style-type: none"> • Inspection 	<ul style="list-style-type: none"> • Includes who inspects and what are the criteria for acceptance
<ul style="list-style-type: none"> • Acceptance 	<ul style="list-style-type: none"> • Includes how acceptance is indicated

G. Required Forms and Mandatory Contract Clauses

1. Required Contract Clauses for Small Purchases

Appendix 1 contains Table 5.1, which lists clauses regarding Environmental Protection Agency requirements, ownership of data and patent rights, energy efficiency, and termination for cause and for convenience (most typically for contracts of \$10,000 or more) that must be included in all small purchase contracts, except those for construction. The PHA can incorporate this language into the body of its contract, including a purchase order, or attach Table 5.1 to the contract, including a purchase order, as an appendix.

2. Required Forms for Small Purchases for Construction or Maintenance Exceeding \$2,000

In addition to the clauses in Appendix 1, PHAs must include the following forms with the contract. The forms may be incorporated by reference, included in the body of the PHA contract or attached to the contract.

CHAPTER 5: SMALL PURCHASE PROCEDURES

Form	Title
HUD-5370-EZ or HUD-5370 if the PHA prefers	General Conditions for Small Construction/Development Contracts (attach Davis-Bacon wage decision)
Section II of form HUD-5370-C	For Maintenance Contracts—General Conditions for Non-Construction Contracts (attach applicable HUD maintenance wage decision)

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Questions

Chapter 5

1. What is the current threshold for micro-purchases (except construction)?
 - a. \$3,000
 - b. \$5,000
 - c. \$7,000
 - d. \$10,000
2. When a procurement is considered a micro-purchase, the PHA is required to solicit quotes.
 - a. True
 - b. False
3. What is the current federal threshold for small purchases?
 - a. \$75,000
 - b. \$150,000
 - c. \$250,000
 - d. \$375,000
4. When a procurement is a small purchase, which types of documentation are required?
 - a. Independent Cost Estimate (ICE)
 - b. Evidence of bids/quotes
 - c. Evaluation factors (if an RFP)
 - d. a and b only
 - e. b and c only
 - f. a, b, and c
5. Petty cash funds must comply with federal regulation.
 - a. True
 - b. False
6. The PHA believes a purchase of 25 new gas ranges will cost less than \$10,000. When multiple quotes are received, all exceed \$10,000, but all are less than \$250,000. What does the PHA do next?
 - a. Select the lowest quote
 - b. Divide the purchase requirements into two groups of ranges—12 and 13—to ensure that quotes are under the \$10,000 threshold
 - c. Collect additional documentation to retain in the procurement files justifying the costs
 - d. Prepare an ICE
 - e. a and b
 - f. c and d

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Chapter 6: Sealed Bids

Sealed bids are used for purchases that exceed the small purchase threshold. However, at the Public Housing Agency's (PHA) discretion, sealed bids may be used for lesser amounts. The solicitation process for sealed bids is designed to assist the PHA in obtaining the best price from a qualified vendor, typically for goods, some maintenance services, and construction.

Authority: 2 CFR 200.320 (c)(i)

A. Invitation for Bids

Solicitations pursuant to an Invitation for Bid (IFB) contain similar elements and follow a specific process.

1. IFB package:
 - a. Cover page with table of contents and other elements:
 - i. PHA name, address, and phone number
 - ii. Deadline for submission
 - iii. Contact person
 - iv. IFB number
 - b. Bid form:
 - i. This form is used to submit bids and includes space for information about the bidder, description of the required goods or services, and a place to submit price.
 - c. Specification and statement of work:
 - i. HUD-5369, Instructions to Bidders for Contracts (Construction)
 - ii. HUD-5369-B, Instruction to Offerors Non-Construction (Non-construction)
 - iii. HUD-5369-A, Representations, Certifications, and Other Statements of Bidders (Construction)
 - iv. HUD-5369-C, Certifications and Representation of Offerors Non-Construction Contract (Non-construction)
 - v. HUD-5370, General Conditions of the Contract for Construction—Public Housing Programs (Construction)
 - vi. HUD-5370-C General Conditions for Non-Construction Contracts (Section I, for Non-construction, Maintenance and Non-maintenance)

CHAPTER 6: SEALED BIDS

vii. HUD-5370-C General Conditions for Non-Construction Contracts (Section II, for Non-construction, with Maintenance)

viii. Include the Davis-Bacon HUD wage decision for construction and Maintenance Wage Rate Decision for maintenance work

2. Method of Solicitation and Time Period

IFBs can be solicited in various ways including advertising in newspapers and trade journals and using e-procurement.

Typically, the IFB solicitation is advertised at a minimum once per week for 2 consecutive weeks.

3. Bidder Registration

PHAs must develop a registration process for potential bidders that receive the bid documents that captures contact information. This allows the PHA to notify potential bidders of any changes to the IFB or the process.

4. Pre-bid Conferences

Pre-bid conferences are not required as part of the IFB process but can be used for PHAs to clarify expectations to potential bidders related to the solicitation process and goods and services being sought. Although PHAs are not required to hold pre-bid conferences, if the PHA holds one, it is up to the PHA whether to make attendance mandatory; however, agencies are discouraged in doing so because mandatory attendance at a pre-bid conference will often serve to discourage competition.

Any changed information provided by the PHA at the conference must be provided to all potential bidders by issuance of a publicized addendum delivered to all firms on the registration list.

5. Addenda to Bid Packets

If the PHA determines that changes are required to an IFB packet after issuance, the PHA will publish an addendum that typically contains, at a minimum, the IFB number, title, and the new information. The amendment must be noted on the solicitation log and delivered to each prospective bidder that received the IFB packet.

B. Bid Opening

Bids received prior to the deadline must be date- and time-stamped upon receipt. Late bids must be date- and time-stamped and set aside unopened. These bids can be opened pursuant to HUD-5369, Item 5 or Form HUD-5360-B, Item 6 if the bidder can prove that the bid was mishandled by the postal service or the PHA upon receipt.

Bids are opened publicly on the date and time noted in the solicitation. The PHA staff—typically the Contracting Officer (CO)—will read the bidders’ names and prices aloud but will not identify an awardee until after the bids have been evaluated.

C. Contract Award

IFBs are evaluated and awarded based upon three factors: **price**, **responsiveness**, and **responsibility**.

1. Price: Base Bids, Deduct Alternates, and Price Evaluation

- **Base bid:** The base bid is the price given by the bidder for the scope of work delineated in the IFB.
- **Deductive alternate:** The deductive alternative is the base bid minus certain elements of the scope of work that, if necessary, may be deducted to reduce the bid cost.

a. Example

A PHA needs to rehabilitate several housing units but has a limited amount of funds available. The PHA would issue an IFB and receive firm-fixed bids for the work and may specify within the work specifications an amount of work known to have a value greater than the funds available.

The PHA will list a base bid for all the work, then may list deductive alternates in inverse order of importance (meaning, the least important work is listed first, then other work is similarly listed within following deductive alternates). A PHA may *not* list or use additive alternates.

When bids are opened, all pricing—both the firm-fixed bids and the deductive—are read aloud. Then, after the bid-opening has finished, the PHA will, in confidence (i.e., out of the public eye), evaluate the bid amounts proposed and apply deductive alternates *in the order listed* until the PHA has arrived at an amount within its available funds.

	Bidder A	Bidder B	Bidder C
Base Bid	\$100,000	\$110,000	\$120,000
Deductive Alternative (DA) #1	\$10,000	\$15,000	\$20,000
DA #2	\$5,000	\$10,000	\$20,000
DA #3	\$5,000	\$8,000	\$10,000

2. Responsiveness and Responsibility

Authority: 2 CFR §200.318(h)

a. Responsiveness

The PHA (bid evaluator/CO) must ensure that the low bid submitted addresses the minimum requirements of the IFB in a satisfactory manner (i.e., the bid demonstrates **responsiveness**).

b. Responsibility

Generating the lowest bid is not the only requirement in the selection process. The bidder must be deemed **responsible** by meeting the following criteria:

- Have adequate financial resources
- Have organizational capacity and accounting and operational controls and skills
- Have required equipment and facilities or ability to obtain them
- Have the ability to comply with timeframe for deliverables
- Have a satisfactory performance record
- Be qualified to receive award under U.S. Department of Housing and Urban Development (HUD), state, and local regulations and not debarred or under HUD–imposed Limited Denial of Participation (LDP) or be debarred as listed within the GSA System for Award Management (SAM)

It is up to the bidder to demonstrate responsibility that it either currently has or has the ability to obtain required skills, equipment, or capacity to fulfill the contract.

The bid evaluator/CO will determine responsibility by reviewing factors, including the following:

- Financial data—audits and financial statements
- Other work the bidder has in progress that could affect the delivery schedule
- References from previous clients, including performance, integrity in business dealings, and compliance with wage rates and other government regulations

- PHA satisfaction with prior work performed
- Evidence that bidder has or can access required equipment, facilities, skills, etc.
- Confirmation that there are no suspensions or debarments

3. Other Issues

- **Equal bids:** If two bidders propose the same price and are deemed equally responsive and responsible, the PHA will decide the award by a “random means of selection,” such as by drawing lots or flipping a coin.
- **Minor informalities:** The CO may waive or allow bidders to correct insignificant mistakes in the bid but not for any mistakes that would affect the pricing or other terms of the bid.
- **Rejection of bids:** The PHA must clearly document the reasons for rejecting a bid and preserve documentation of the evaluation process in the event there is an appeal.
 - The CO can reject a bid if the price is unreasonable. This applies not only to the total cost of the work but to individual components of the bid.
- A **materially unbalanced bid** is one in which there is a reasonable doubt that award to the bidder submitting the mathematically **unbalanced bid** will result in the lowest ultimate cost to the government, for example, if a bidder front-loads the costs of an item or services and then lowers the prices only after a certain amount has been purchased.
- **Selection of the lowest responsive and responsible bidder:** A contract is awarded to the responsive and responsible bidder that submits the lowest cost. Unsuccessful bidders are notified of the results (i.e., who bid and how much) and are offered a debriefing and the right to protest.

4. Bonds and Guarantees (Typically Construction Only)

a. Types of Bonds

Three types of bonds apply to sealed bid construction contracts. Bonds are a guarantee of payment to the PHA by an insurer should a certain event occur that is adverse to the PHA, such as a winning bidder retracting its bid or a contractor not completing the work required by the contract.

- **Bid bonds or guarantees** ensure that, if awarded the contract, the bidder will accept and perform the work, not withdraw, and execute the contract on a timely basis.

CHAPTER 6: SEALED BIDS

- A bid bond must be included in the bid package that bidder submits.
- If the bidder does not fulfill the requirements, it may lose the guarantee and the bid will go to the next lowest responsive and responsible bidder.
- The guarantee can be paid by check, bank draft, or U.S. Government Bonds at par value.
- If a bid bond is requested with the solicitation but not submitted, the PHA must reject the bid for being non-responsive.
- If the low bidder does not provide adequate payment and performance bonds prior to the contract award, the bid guaranty is forfeited. The award of a bid is premised on the assurance that the bidder can produce acceptable payment and performance bonds.
- **Performance bonds** guarantee that, if the contractor is unable to complete the work, the surety company will pay to have the work completed. If the bidder presents a performance bond by way of letter of credit or funds in escrow, the PHA would be able to access those funds to complete the work if the contractor fails to perform on the contract.
- **Payment bonds** ensure that the contractor will pay its subcontractors and suppliers.
 - When subcontractors and suppliers are not paid, they are entitled to file mechanic's liens on the property they have worked on. A payment bond prevents mechanic's liens from being filed on PHA-owned property because it ensures that subcontractors and suppliers will be paid. Clause 24 of Form HUD-5370 expressly forbids contractors from placing liens on any PHA-owned property.
 - Payment bonds and performance bonds can be combined into one document.

Questions

Chapter 6

1. Sealed bids are typically used for purchases above the small purchase threshold.
 - a. True
 - b. False
2. What are key elements in an Invitation for Bids (IFB) package?
 - a. Bid form
 - b. Statement/scope of work
 - c. Method of solicitation
 - d. All of the above
3. PHAs must hold pre-bid conferences and make attendance mandatory for all bidders.
 - a. True
 - b. False
4. What are the primary factors in evaluating a response to an IFB? Select all that apply.
 - a. Price
 - b. Appearance of completed response package
 - c. How quickly the IFB response package was submitted
 - d. The responder is well known to the PHA
 - e. Responsiveness and responsibility of the apparent low bidder
5. Generating the lowest bid is the only requirement in the selection process.
 - a. True
 - b. False

CHAPTER 6: SEALED BIDS

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Chapter 7: Competitive Proposals

Competitive proposals are used primarily for purchases that exceed the small purchase threshold, but they can be used for small purchases as well. When the competitive proposal method of procurement is chosen over sealed bids, the justification must be documented. Competitive proposals allow for the following:

- Consideration of technical factors other than price
- Discussion with offerors (proposers)
- Negotiation of price and terms
- Revision of proposals prior to final selection
- Withdrawal of offer allowed by the Public Housing Agency (PHA) up until point of award

Authority: 2 CFR §200.320(d)

A. Competitive Proposals

1. When Are Competitive Proposals Used?

Competitive proposals are used:

- When the requirements cannot be described specifically enough to allow an offeror to estimate the total cost of a project;
- When the requirement is such that the PHA has to evaluate factors other than price, such as education, skills, and prior experience of the offeror (which is important when procuring services such as attorneys, architects, consultants, etc.); and/or
- The PHA wants to consider various approaches to the work.

2. Method of Solicitation

The PHA must use the appropriate solicitation method to assist in creating full and open competition among qualified vendors:

- Advertising in newspapers or other print medium
- Advertising in trade journals or publications
- E-procurement

Solicitation advertisements should run for at least once a week for 2 consecutive weeks. State or local regulations may have additional advertising requirements.

3. Components of a Typical Solicitation

- Cover page
 - Contains solicitation name and number, responsible department, contact person, deadline for submission
- Table of contents
- Introduction
 - Contains a brief description of PHA operations, statement describing the reason for procurement, and PHA goals
- Statement of work (SOW)
 - Describes the nature of the work, deliverables, timeframes and milestones, performance standards, and reporting requirements
- Submission requirements
 - Includes pricing instructions, a description of how the response should be structured and formatted, and a list of any required forms
- Evaluation factors
 - Describes how solicitations will be scored, what the PHA is looking for, and how factors are weighted
- Attachments
 - Includes mandatory forms, including HUD 5369-B, Instructions to Offerors-Non-Constructions, and (optional, but recommended) HUD-5370-C, General Conditions for Non-Construction Contracts (Sections I and II, as applicable)

4. Amending and Canceling a Solicitation

Amendment or Cancellation	Steps
Amendments before the proposal date	<ul style="list-style-type: none"> • The Contracting Officer (CO) must notify in writing all potential offerors who obtained the solicitation. • Amendments may be posted on website or bulletin boards where procurement information is disseminated. • If any changed or added information is so substantial that it will affect the offeror's responses or if changes are made too close to the submittal deadline (i.e., less than 7 calendar days), the PHA shall extend the deadline for submission.

CHAPTER 7: COMPETITIVE PROPOSALS

Amendment or Cancellation	Steps
<p>Amendments after proposal due date</p> <ul style="list-style-type: none"> Technically not an “amendment”; rather a “notice” as a solicitation cannot be amended after the due date. 	<ul style="list-style-type: none"> The CO must notify all potential offerors who responded with a proposal.
<p>Amendments after determination of the competitive range.</p> <ul style="list-style-type: none"> Technically not an “amendment”; rather a “notice” as a solicitation cannot be amended after the due date. 	<ul style="list-style-type: none"> The CO delivers the “notice” to all offerors deemed in the competitive range. If the change would have affected criteria that determined the competitive range, the CO should provide the amendment to the other offerors and consider redetermining the competitive range.
<p>Canceling the Request for Proposal (RFP)</p>	<ul style="list-style-type: none"> If, after the submittal deadline, potential changes to an RFP are so substantial that new requirements are created, the CO must cancel and issue a new RFP.

5. Important Considerations

- Receiving proposals and confidentiality:
 - Date- and time-stamped
 - Unopened until deadline passes
 - Kept confidential (because they may contain trade secrets) and not opened publicly
 - ◆ Content of proposals only seen by authorized staff under the condition of confidentiality.
 - ◆ Names of offerors kept confidential until after award.
 - ◆ Evaluation Committee members and other staff involved must sign Certification of Non-disclosure (Appendix 2).
- Late submissions:
 - Not considered unless in conformance with exceptions within Section 6 of form HUD 5369-B

6. Evaluating Proposals

Proposal evaluation requires certain elements to ensure that the process is fair and transparent and that the selected offeror offers the best value to the PHA.

Evaluation criteria, weighting, and scales must be clear to the offeror and the evaluators.

a. Evaluation Factors, Non-price

The RFP must indicate which criteria the PHA will use to award the solicitation and how much weight it will give to each factor. Typical evaluation factors include:

- Understanding of work required;
- Technical approach that responds to the PHA's need;
- Quality of the work plan;
- Technical capabilities (i.e., staff, skills, equipment) and management plan (i.e., how will the work be performed, how will it be managed);
- Experience performing similar work; and
- Successful past performance of similar work.

b. Evaluation Factors, Price

A PHA can evaluate price in a solicitation using one of two methods:

- **Points Assigned to Price:** The PHA structures the solicitation such that points are awarded for price and non-price factors. For example, non-price factors can be worth up to 70 points and price factors up to 30 points.
- **Trade-off Method:** Price and other technical factors are considered. This is a two-part process:
 - First, technical factors are evaluated for each proposal and offerors are ranked.
 - Second, prices are evaluated.

The PHA then weighs which proposal is the most advantageous in terms of the proposed product or service and price.

c. Factors and Weighting Combined

The CO prepares an evaluation template for each solicitation that provides clear direction for the evaluators with respect to the criteria to be used to select the best proposal. Each factor is given a maximum point value. Below is an example of a template,

CHAPTER 7: COMPETITIVE PROPOSALS

including criteria, points, and the types of questions evaluators should ask while reviewing the proposals:

Factor	Point Value	Examples of Considerations for Scoring
Experience	10	Does the offeror have adequate and appropriate experience in the industry?
Technical Approach	30	Does the offeror demonstrate an understanding of the PHA's goals? Is the proposed solution likely to address the PHA's needs?
Capacity	10	Does the offeror have capable staff, skills, and equipment required for the job? Does the offeror have the capacity to perform the work within the required timeframe, taking other jobs completed into consideration?
Past Performance	20	Has the offeror provided the same or similar products or services successfully in the past? Are previous clients of the offeror similar in program size to the PHA soliciting the services?
Price	30	Is the offeror's price fair and reasonable for the industry and the market?
TOTAL	100	

The evaluation sheet must contain the criteria, point system and space for evaluators to provide justification for their scores.

d. Evaluation Committee

- The Evaluation Committee must be composed of people with knowledge of the subject matter of the solicitation and/or the industry.
- An odd number of three or more members is recommended to reduce the chance of voting ties.
- Potential members must disclose if they have a conflict of interest.
- Members must sign a Conflict of Interest Certification (Appendix 4) and a Non-disclosure Certification (Appendix 2).

e. Committee Tasks

Three distinct methods are used to evaluate Technical Factors. The Evaluation Committee only evaluates Technical Factors in a *subjective* manner, as the Proposed Costs are evaluated and scored in an *objective* manner separate from the Evaluation Committee. Hence, the Evaluation Committee will not view the proposed costs as a part of its evaluation.

CHAPTER 7: COMPETITIVE PROPOSALS

- Individual Review and Scoring:
 - ♦ Each appointed evaluator conducts an individual evaluation of each proposal using the evaluation form.
 - ♦ Each individual evaluator reviews and scores proposals typically without direct input from the other evaluators.
 - ♦ Proposals are reviewed and scored only according to requirements set forth in the RFP.
 - ♦ Proposals are evaluated individually against the criteria, not compared to one another.
 - ♦ Offerors are evaluated solely based on the content of their proposals. External knowledge by the reviewers shall not be considered.
 - ♦ Prior performance with the PHA—even if not mentioned in the proposal—can be considered.
 - ♦ The weakness of this method is that the evaluator does not receive the benefit of insight by the other evaluators. This method tends to take longer than the other methods.
- Group Review, Individual Scoring:
 - ♦ Proposals are reviewed by each individual in a group setting, thus allowing for discussion among evaluators while each individual completes his or her scoring sheet independently.
 - ♦ The strength of this method is the evaluators may obtain benefit from the thoughts of other evaluators but still make their own decisions when scoring.
- Consensus Review and Scoring:
 - ♦ Evaluators meet to discuss the proposal, and, using evaluation forms for each individual review, reach consensus as a committee and develop a new evaluation form that encompasses the views of the entire committee with respect to the proposal evaluation.
 - ♦ The weakness of this method is the opinions of some evaluators may “get lost” by the “consensus” of the committee.
 - ♦ Scoring of proposed costs is not completed subjectively by the Evaluation Committee but by another individual that has experience doing so, such as the CO or the Finance Manager

f. Ranking

Evaluators perform a numerical ranking of offerors based on totaling of the scores by each evaluator combined with the points assigned for proposed costs.

g. Negotiation

Evaluators participate in negotiation discussions with offerors if requested by the CO.

h. Evaluation Report

After the evaluation is complete, the PHA/CO prepares a report of the proposal process and the evaluation. The report typically includes the following:

- Narrative explaining the process and how scores were derived
- Methodology for ranking proposals
- Strengths and weaknesses of each proposal
- Documentation and justification for the award

All documentation related to the evaluation process—including individual evaluation forms and the consensus evaluation forms—must be maintained in a file. In the event of a protest or litigation, this document will have to be provided to the protester.

i. Determining the Competitive Range (if conducted)

Upon completion of the report by the Evaluation Committee, if a determination is made to implement the option of establishing a “competitive range,” the PHA may determine which of the proposals are in the “competitive range.” The CO’s review of the report includes the following:

- Which of the offerors has the capability to perform the technical requirements
- Which of the proposed services and costs are reasonable

The offerors that meet both standards are kept in the running if the CO feels that the offeror has a chance of receiving the award.

j. Classification of Proposals in the Competitive Range

Once the field has been narrowed, the CO will classify the proposals into three categories:

- *Acceptable*: The offeror can perform the requirements.
- *Potentially acceptable*: The technical section may contain some weaknesses that are minor and can be changed to make the proposal acceptable, so the offeror may be asked to provide

additional information. Once the information is received, the proposal is moved into the Acceptable or Unacceptable categories.

- *Unacceptable*: The proposal is flawed and substantially does not comply with the requirements.

7. Award without Conducting the Competitive Range Discussions and Negotiations

If, after initial evaluation, there is a clear winner, then the PHA may determine that no further negotiation is needed so long as the RFP clearly states that the contract could be awarded without negotiation. The CO can proceed to award the contract within the terms stated in the RFP.

8. Competitive Range Negotiations and Discussions (When There is No Clear Initial Winner)

The following is the process that the PHA follows once the competitive range has been established.

- The PHA delivers to all offerors deemed *not* in the competitive range a Notice informing them of their status and that, after the PHA has made a final award decision, they will be informed of their placement, the right to a debriefing, and the right to protest.
- The PHA delivers to all offerors deemed *within* the competitive range a Notice inviting each to take part in an oral interview (e.g., discussions) with the PHA Evaluation Committee at a certain date and time.
- During the oral interview the offeror and the PHA can ask questions of each other for the sake of clarification. The goal of the oral interview is for the offeror to better understand the PHA's needs (which will allow the offeror to better formulate a proposed cost) and for the PHA to better understand the offer (i.e., the proposal).
- Proposed costs can be discussed in a general sense (i.e., for the sake of clarification), but the PHA must not:
 - Inform the offeror whether its offer was higher or lower than other proposals; nor
 - Have any discussion that indicates any specific cost targets that the PHA desires the offeror to meet (responding with a proposed cost is entirely within the purview of the offeror based on the offeror's own business decision without any hints, prompting, or pressure from the PHA).

- “Best and Final Offer”: Once the oral interview is completed, the PHA establishes a deadline (usually 1 week) by which the offeror is allowed to:
 - Revise its proposal;
 - Submit a new proposal; and/or
 - Based on the oral discussions, submit a new proposed cost.

An offeror who fails to respond to the foregoing on time will typically have its initial offer used as the best and final offer for purposes of the competitive range evaluation.

9. Cost and Price Analysis

Cost and Price Analyses are always conducted for RFPs.

- **Price Analysis** is a comparison of the proposed costs with the Independent Cost Estimate (ICE) and with the “force of competition” (e.g., all offers received).
- **Cost Analysis** is a
 - Narrative justification as to the Critical Steps defined within Chapter 10; and
 - An analysis of profit and overhead as separate elements.

An analysis of reasonable profit includes addressing the following elements:

- Complexity of work
- Risk
- Contractor’s investment
- Amount of subcontracting
- Past performance
- Industry standard profit rates

10. Price Negotiation Memorandum

The CO must document by memo the negotiation process and justify the award decision. The memo could include a spreadsheet with the following information:

- Name of offeror
- Offered price
- Negotiation objectives
- Final negotiated cost or price

11. Contract Award

- Contracts must be awarded according to the terms of the solicitation.
- Notification: The awardee and the unsuccessful offerors are notified of the contract award in writing, including the following:
 - Name of all offerors, where each finished in the process (i.e., ranking), and proposed costs offered by each
 - A reminder of the right to a debriefing and the right to protest, each by a certain date
 - ♦ Debriefing explains how the offer was unsuccessful, but it does not reveal information about another offer that is protected (i.e., proprietary business information).

B. Procurement of Specific Services

1. Architecture and Engineering Contracts (A/E)

Note: Herein, Request for Qualifications (RFQ) and Qualifications-Based Selection (QBS) can be used interchangeably.

a. Qualifications-Based Selection

- The PHA uses an RFQ to solicit proposals.
- The PHA selects the highest-ranked respondent based on technical factors (cost is not a published factor) and then negotiates price with the top-rated firm only.
 - If an agreement cannot be reached, the PHA moves to the next-ranked respondent until the contract can be awarded
 - Once negotiations are terminated with a respondent, the PHA cannot go back to that one if it cannot reach an agreement with the next-ranked offeror
- The RFQ method can typically only be used for A/E services or for developer contracts
- Most states require the RFQ method to solicit A/E Services. However, HUD allows either the RFP or the RFQ method (*Note:* The RFP method allows receipt and evaluation of proposed costs, while the RFQ method does not.)
- An RFQ must include a clear scope of work (SOW) so that firms can be evaluated accurately on their qualifications and approach to the work. The SOW typically includes the following, at a minimum:
 - Project name and location

- Project outline (e.g., building type, use, size, occupancy, other facility characteristics)
- Description of functional and space needs (e.g., medical, mission critical, technical, research, or other specialized facilities; environmental requirements, energy efficiency, etc.)
- Required schedule, including phases and completion requirements
- Description or copies of work done on the project to date, if any
- Description of specific services requested
- List of expected deliverables and/or outcomes.
- For design work, a firm must be properly licensed for the location of the work (including a state license) and carry suitable insurance, including general liability, professional liability (errors and omissions), and workers compensation

b. A/E Evaluation Factors

Typical A/E evaluation factors include the following:

- Ability of firm to perform the work
- Capability to perform work in timely manner
- Past performance, including cost control, timeliness, quality of work, etc.
- Knowledge of local building codes and federal building alteration requirements
- Other factors important to the PHA

c. Methods of Soliciting and Contracting for A/E services.

Two widely used methods are employed for contracting for A/E services regardless of the procurement process used.

- Direct Approach/Service-specific Contract
 - Used when services are needed for a specific project or task (e.g., new construction, remodeling of a building, the development of modernization plans or the production of technical reports).
 - The PHA conducts the QBS competitive solicitation process, a cost is negotiated with the top-rated offeror, then the contract is awarded for a term limited to the one project named (meaning no additional jobs can be awarded pursuant to this QBS).

CHAPTER 7: COMPETITIVE PROPOSALS

- Forming a Pool of A/E firms for ongoing projects and awarded on an as-needed basis
 - Used when services are needed for a number of upcoming projects (e.g. new construction, remodeling of a building, the development of modernization plans or the production of technical reports).
 - The PHA conducts the RFQ competitive solicitation process, a cost is negotiated with the top-rated offeror for the current project needed, then the contract is awarded for a term limited to the one project named (meaning, no additional jobs can be awarded pursuant to this RFQ). However, the RFQ contains an option to award additional contracts to the top-rated firm(s) based on upcoming needs for a limited amount of time (not to exceed 5 years). Each additional project is awarded separately, and new evaluations of the proposals can be conducted if the needs of the PHA change from one project to the next. The award is actually an Indefinite Delivery Indefinite Quantity (IDIQ) contract, in that the PHA wants to contract with a firm to handle more than one specific project. The company becomes the PHA's resident A/E firm, but this means it could be precluded from competing on related A/E work if it would cause an organizational conflict of interest.

d. Other Considerations

- HUD-51915, Model Form of Agreement Between Owner and Design Professional is required when the small purchase threshold is exceeded; however, this form is recommended for all A/E contracts.
- Contract shall be a firm-fixed price with the total cost broken down by level of effort and reimbursable expenses, with profit and overhead identified as separate elements. It is *not* appropriate to execute a contract when any portion of the awarded contract amount is a percentage of the construction cost.
- If the PHA receives less than three proposals, it must analyze and place in the file the reasons for the inadequate response and either reject, rebid, or evaluate the proposals. If only one proposal was received and the PHA decides to contract with the offeror, the PHA must provide justification for doing so.

2. Legal Services

a. Authority and Applicable Regulations

- 2 CFR §200.318(a)
- PIH Notice 2006-9
- 2 CFR §200.403–200.405
- HUD Litigation Handbook 1530.1 REV-5

b. Methods of Procurement

- Small Purchase Procedures
 - *Warning:* This is not really a realistic option in that it does not adequately allow for consideration of the qualifications and experience of the firm.
- Sealed Bidding
 - Used when the number of hours can be quantified and firm fixed price can be awarded to lowest responsive and responsible bidder.
 - *Warning:* This is not really a realistic option in that it does not adequately allow for consideration of the qualifications and experience of the firm.
- Competitive Proposals
 - This is the preferred method when exceeding small purchase threshold because it considers technical quality and cost
 - This by far the preferred and most efficient method.
- Non-competitive proposals
 - Only used under specific circumstances related to sole source contracts per 2 CFR §200.320(f) and Chapter 8 of the Procurement Handbook.

c. Contracting for Legal Services

Time and Materials Contracts: These are pre-priced services where the PHA orders services in unit amounts, typically hours, until contract funds are expended.

- These contracts are only used if no other type of contract is appropriate.
- These contracts must include a “not to exceed” clause in the contract.

Employment: PHAs can hire an in-house attorney as an employee or can contract with an attorney or firm. In-house counsel retention is not covered by 2 CFR §200.317–200.326. In-house counsel cannot be awarded other PHA legal work (by the PHA or any other party) under procurement contracts during the time of his or her employment as such would be in violation of the ethics requirement that states that employees of a PHA cannot have a contract with the PHA.

- **Example:** Betty Smith serves as in-house counsel for a PHA and is, therefore, an employee of the PHA (though she still maintains an office with other staff for private legal work). The PHA requires legal services related to a RAD conversion. If she is qualified to do so, Betty Smith can do this work as a part of her role as an employee of the PHA. However, Ms. Smith does not personally have the experience and knowledge to provide the services in-house, so the PHA conducts an RFP for an attorney to assist with work pertaining to RAD conversions. Though Ms. Smith’s firm may have another attorney who has such experience and knowledge, because Ms. Smith is an employee of the PHA, her firm is prohibited from responding to the RFP with a proposal. (*Note:* Any in-house attorney who retains an ownership in an outside firm must ensure that he or she does not conduct private work while on duty with the PHA.)

3. Litigation Services and HUD Approvals

Depending on the amount of fees that a PHA is expected to spend on a legal matter, it must obtain approval from HUD. Fixed-price contracts for litigation with a value less than \$100,000 can be approved by the PHA.

Expected Fee for Litigation-related Matters	Level of Approval
> \$100,000	HUD Regional Counsel
> \$300,000	Regional Counsel and Headquarters Program Associate General Counsel

a. Contract Addendum—Legal-service Protocol

See Appendix 3 contains a HUD–approved addendum to an engagement letter that describes the protocol for the relationship with the legal-service provider. Be aware that most legal firms may modify this agreement to preserve attorney-client privilege.

4. Employment Contracts

Employment contracts are not considered procurements and are governed by a PHA's personnel policies. The hiring of independent contractors, however, does qualify as a procurement and is subject to 2 CFR §200.317–200.326.

- Executive Directors can be hired as employees or retained under an independent services contract.
- If the contract term is greater than 2 years, the PHA requires local HUD approval.
- HUD recommends that contracts be awarded for 2 years with three 1-year renewal options.

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Questions

Chapter 7

1. When are competitive proposals used?
 - a. When the requirements need to be further described to allow an offeror to estimate cost
 - b. To evaluate factors other than price
 - c. To consider various approaches to the work
 - d. All of the above
2. A detailed Statement of Work should be included in the solicitation for competitive proposals.
 - a. True
 - b. False
3. Use of the competitive proposal process always requires price negotiation.
 - a. True
 - b. False
4. A PHA publishes a Request for Proposals and provides a minimal description of the work. Potential proposers are invited to ask questions for clarification of statement-of-work requirements. The PHA receives a significant number of questions on a wide range of issues. What should the PHA do? Select all that apply.
 - a. Amend the RFP by answering questions and publicizing the Q&A
 - b. Potentially delay the proposal submission date to allow potential proposers to rework proposals based on answers to questions
 - c. Potentially cancel the procurement because the volume of questions indicates that the SOW was unclear
 - d. Provide no amendment and review proposals to determine whether any bidders really understood the work
5. Qualifications-Based Selection (QBS) is a procurement method used to solicit specific services. A QBS (select all that apply):
 - a. Uses technical factors to determine the highest-ranked respondent
 - b. Ranks respondents based on technical qualifications
 - c. Negotiates price after selecting the top-ranked respondent
 - d. Is used whenever the PHA determines it is the best method
 - e. Is typically used to solicit A/E services
6. Which of the following are not evaluation factors for competitive proposals? Select all that apply.
 - a. Quality of the work plan
 - b. Technical capabilities
 - c. Connections to the PHA or the PHA's community
 - d. Successful past performance

CHAPTER 7: COMPETITIVE PROPOSALS

7. The Evaluation Committee considers proposed costs in its evaluation of proposals.
 - a. True
 - b. False
8. All proposals are private information and not disclosed to anyone until after award has been completed to the top-rated firm.
 - a. True
 - b. False
9. The QBS method can typically only be used for A/E services or for developer contracts.
 - a. True
 - b. False
10. An RFQ should include a clear scope of work. Which of the following are elements of a good scope of work? Select all that apply.
 - a. Price
 - b. Project name and location
 - c. Schedule
 - d. Description of needs
 - e. Staff specified
 - f. None of the above
11. When procuring legal services, which of the following methods are allowed? Select all that apply.
 - a. Sealed bidding
 - b. Competitive proposal
 - c. Small purchase procedure
 - d. Noncompetitive proposal
 - e. Only b and c
 - f. Only a and d
12. Fixed price contract for litigation with a value less than \$100,000 must be approved by the HUD Field Office.
 - a. True
 - b. False

Chapter 8: Non-competitive Proposals

Non-competitive proposals are known as sole-source or single-source procurements. These procurements are rare compared to Micro or Competitive procurements. Non-competitive procurements will typically occur in one of four situations:

- Items or services are available from a single or sole source.

Example: A Public Housing Agency (PHA) completes a Request for Proposal (RFP) and award for Enterprise Software. Once the HUD–mandated 5-year contract limit has expired, the PHA still needs the firm to provide access and maintenance to the software as the PHA does not wish to purchase another software product. Under these conditions, the ongoing contract for the current software is appropriate.

Frequently, procurement of public utilities falls within this category.

- The public exigency or emergency for the requirement will not permit the type of delay that would be caused by competition.

Example 1: A vehicle crashes into the front entrance of a PHA high-rise building housing elderly residents. Though the long-term costs will be greater to repair all of the damage, it will cost \$16,000 to immediately repair the front entrance area to make it safe for use by the public. The \$16,000 would be a justified emergency procurement. The PHA would conduct a formal Invitation for Bid (IFB) (typically) for the long-term, non-emergency repairs needed.

Example 2: Wind shear hits a housing development consisting of 100 PHA units and damages most roofs. Immediately securing the damaged roofs would cost \$30,000 and completing long-term repairs would cost \$150,000. The PHA would be justified to secure the roofs for \$30,000 without competition and afterwards in a timely manner conduct a formal IFB for the long-term repairs.

- HUD expressly authorizes non-competitive proposals.

Example: HUD may approve agreement executed without competition for one PHA to manage another PHA’s Section 8 program as long as doing so “provides for greater economy and efficiency.”

- After a solicitation of a number of sources, competition is determined to be inadequate.

Example: A small PHA conducts an RFQ to retain an architect, specifically for upcoming capital fund projects. The PHA is located in a rural area, several hours driving distance from an urban center with architectural firms. When the PHA initially only receives one proposal (from a firm that has a tradition of doing business with firms in rural areas), the PHA extends the submittal deadline several times. The PHA also conducts additional outreach efforts to architectural firms to obtain more than the one proposal. However, despite those efforts, no additional firms submit a proposal. The PHA justifies to the file all efforts conducted in an attempt to obtain more than one proposal, including calling non-responding firms to inquire as to why they were not responding. Accordingly, the PHA is justified in considering and awarding to the one firm that responded.

Authority: 2 CFR §200.320(f)

A. Process

Many of the award processes for non-competitive proposals are the same as that for competitive ones.

- PHAs must evaluate the one firm for responsiveness and responsibility.
- For RFQs, cost is negotiated.
- Cost and price analysis are required, and the price must be justified as fair and reasonable.

B. HUD Approval

If the aggregated value is greater than \$250,000, PHAs are required to submit non-competitive contracts to HUD prior to award for review and approval in accordance with 2 CFR §200.324. However, the PHA may be exempted from doing so when HUD has accepted the PHA's self-certification option that its procurement policies comply with standards in 2 CFR §200.

C. Justification Documentation

The PHA must document clearly the justification for awarding a sole-source contract and must indicate the necessity and the circumstances of the procurement. Documentation must be in the contract file and include the following:

- Description of the need for a non-competitive procurement
- History of prior procurements of the same type item or service and whether they were competitive or non-competitive
- Specific exception applied from 2 CFR §200.320(f)(1):

CHAPTER 8: NON-COMPETITIVE PROPOSALS

- The item is only available from one source
- Public exigency or emergency
- The federal awarding agency or pass-through allows for a noncompetitive award in response to a request by the PHA
- Despite soliciting from numerous sources, the competition is still inadequate
- Unique circumstances that required the sole source
- Efforts to find other sources, including advertisements and outreach
- Statement as to what the PHA will do in the future to encourage more competition
- Signature of the Contracting Officer and any higher PHA official as required by PHA policy

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Questions

Chapter 8

1. PHAs may solicit sole-source or non-competitive procurements when they know which vendor/contractor they would like to work with.
 - a. True
 - b. False
2. Justification for awarding a sole-source contract must include which of the following? Select all that apply.
 - a. History of prior similar procurements
 - b. Documentation of a public exigency or emergency
 - c. Documentation that the vendor has been used in the past and completed excellent work
 - d. No other bids were received after the initial advertisement

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Chapter 9: Specifications and Statement of Work

Specifications and **statement of work** (SOW) are among the most important aspects of a procurement because they document the Public Housing Agency's (PHA) requirements, deliverables, and expectations. A detailed description of the work ensures that vendors understand what the PHA needs and allows them to determine whether they have the supplies, technical skills, and/or resources required and allows the vendor to price the offer accordingly.

Authority: 2 CFR §200.319(a)

A. Specifications

- **Specifications** are used to describe the PHA's requirements.
- Certain maintenance and construction-related solicitations may include specific supplies or equipment that must be used in performing the work.
- Specifications are placed within the ensuing contract as a requirement, and, during contract administration, they form the basis for how the PHA will evaluate and judge the contractor's efforts.
- Specifications are unique to each PHA and may be different when the PHA re-competes for the items or services from one year to the next

1. Types of Specifications

a. Functional or Performance Specification:

- Explains how the item will function
- Has less emphasis on design or exact measurements and more emphasis on results
- Can be inherently riskier than design specifications during the conduct of contract administration because the PHA must pay greater attention to actual or intended results rather than obvious milestone of completed work

Example: Functional specifications are most typically used for Requests for Proposals (RFPs) for professional services where the emphasis is placed on requiring the contractor to meet certain milestones and goals rather than telling the contractor how to conduct the required work. (The contractor will accomplish the work using its own approach, and typically

informs the PHA of this method within its proposal submittal. The PHA uses this to evaluate the proposal.)

b. Design Specifications

- This type of specification includes a description of the requirements with specific details such as dimensions, tolerance, materials, quality, method of installation, etc.
- The purest form of design specifications are construction drawings and project manuals.

Example 1: For a re-roofing project paid with capital funds, the PHA will issue a formal Invitation for Bid (IFB) with construction drawings and project manual attached (each typically formulated by a retained architect or engineer), thereby informing potential bidders of the PHA’s exact requirements. Bidders will respond with a firm-fixed fee bid to complete all required work. The firm-fixed fee almost always includes the contractor providing all the supplies, materials, equipment, and labor to complete the required work

Example 2: For a needed lawn-maintenance contract, the PHA will issue a competitive solicitation (quote, bid, or RFP) to retain a contractor. The PHA will issue detailed specifications stating all the PHA’s requirements (e.g., specific services required, the method to be used, and at what PHA sites; how often the services are to be provided; how the response is to be priced, e.g., per cut, per week; etc.). The firm responds with specific pricing as requested, typically on a “per-cut” basis so that the PHA can adjust the cut schedule based on weather or time of year.

c. Brand Name or Equal

- The PHA can provide detailed requirements with respect to quality and performance associated with a certain brand.
- The brand name may be used only for establishing design and quality standards that the PHA requires but must not be used in a way to restrict competition.
- The specification may state the brand name and model number but must be followed by the words “or equal.”
- PHA must describe in detail the “salient qualities” or “essential characteristics” of the named brand item that it requires so that the proposer can identify an “equal” product.”
- The brand name is to be used only if there is no other way to describe an item.
- Offerors should have an opportunity to present products of other brands that meet the specifications.

d. Caution When Drafting Specifications

- Even when standardizing inventory, PHAs must use the term “or equal” when using a description that involves a brand name.
- When using an architect to draft construction drawings, the architect must be reminded that any reference to a brand name must be followed by the term “or equal.”
- The PHA is encouraged to, if possible, avoid using a particular manufacturer’s specifications as the specifications for a procurement. This may limit competition to one manufacturer.
- Contractors, including architects and engineers, retained (i.e., paid) to assist in developing specifications, statements of work, or other bid documents cannot compete for the ensuing procurement.

Example 1: An architect is retained to provide the PHA with construction drawings and a project manual for a capital fund construction project. During the formal bidding phase conducted by the PHA, a construction firm that is owned by architect wishes to respond to the bid with a proposed cost. Because the firm is owned by the architect that provided the drawings and project manual for a fee, the firm cannot respond to the construction bid.

Example 2: The PHA retains an IT consulting firm to assist the PHA by writing specifications for the PHA’s RFP for an Enterprise software procurement. The IT consulting firm has ownership of a software that would meet the PHA’s needs. However, since the PHA paid the consulting firm for the consulting assistance pertaining to writing of the RFP, that firm is not eligible to respond to the RFP with an offer.

Exception: Any firm that shares potential specifications with a PHA at no charge can still respond to the formal solicitation for the software product, but, to avoid the appearance of impropriety, the PHA needs to solicit and use similar information from other potential providers. In any case, the PHA must avoid writing a specification that gives the appearance of being written for one product only.

B. Statement of Work

What is a **statement** or **scope of work** (SOW)?

- The SOW is used to describe requirements for services, including professional services such as consulting, architecture, accounting, and legal.

- The adequacy and detail of the SOW can influence the number of offerors and quality of the proposals.

1. Elements of the SOW

- PHA objectives
- Detailed work and task requirements
- Deliverables and criteria for acceptance of work
- Period of performance, delivery schedules
- Reporting and compliance
- Contact information for the PHA administrator
- Other—warranties, special skills, required licenses, testing procedures, etc.

The SOW is used as the basis for evaluation criteria during the procurement process. The SOW is the foundation for contract administration and is used as the standard to measure contractor performance and as the baseline document when negotiating modifications.

Questions

Chapter 9

1. Which of the following is not a type of specification in procurement?
 - a. Design
 - b. Brand name or equal
 - c. Functional of performance
 - d. Cost and quality

2. Which of the following is not a key element of the SOW?
 - a. Detail work and task requirements
 - b. Cost
 - c. Deliverables
 - d. Period of performance

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Chapter 10: Miscellaneous Requirements

This chapter discusses many important requirements that affect solicitation and contracting. These include the following:

- Contract pricing and types of contracts
- Limited denials of participation, debarments and suspensions
- Evaluating cost and price
- Protests
- Use of options
- Federal labor standards and wage rates

A. Contract Pricing and Types of Contracts

Prior to completing the procurement process—usually during the selection and contracting process—the Public Housing Agency (PHA) must decide which type of contract to use. Many PHAs include a copy of the sample contract as a part of the competitive solicitation so that the firm awarded is fully aware of what is expected (this is a best practice). Contracts generally fit into two broad categories: **fixed fee** or **cost reimbursement contracts**.

1. Selecting Contract Types

Several factors determine the type of contract used:

- Price competition
 - A fixed-price or -cost contract is typically the most beneficial for the PHA.
- Price and cost analysis (though the contract type is typically decided prior to issuance of the competitive solicitation)
 - Parties must evaluate variables that affect performance and possibly cost.
- Type and complexity of the requirement
 - The more complex the requirement, the more risk the PHA assumes.
- Urgency of the requirement
 - Urgency results in the PHA assuming more risk or offering incentives.
- Period of performance
 - A contract with a long period of performance may have economic adjustment factors to account for potential

changes in labor and materials charges (as long as such was published as a part of the competitive solicitation).

- Contractor's technical capability and financial responsibility
 - Greater capacity, financial responsibility, and risk assumed by the contractor is more advantageous for the PHA
- Adequacy of the contractor's accounting system
 - In other than fixed-price contracts, the contractor's accounting system and ability to track costs and accurately invoice the PHA is important.
- Concurrent contracts
 - If performance by the contractor depends on other contracts occurring concurrently, timing and pricing can be adjusted.
- Extent and nature of proposed subcontracting
 - Nature of risk to the prime contractor must be accounted for.
- Procurement history
 - When a contractor is hired to provide the same goods or services multiple times, the risk to the contractor decreases because the contractor gains experience in pricing and creating efficiencies.

2. Type of Contract

The type of contract varies according to:

- Degree and timing of the responsibility assumed by the contractor for the cost of performance; and
- Amount and nature of profit offered to the contractor for achieving or exceeding specified goals.

Prohibited contracts are those that do not represent a good value for the PHA:

- Cost-plus-percentage
 - Obligate the PHA to pay all costs, plus a commission, based on percentage of future costs. This gives the contractor incentive to increase costs because it is commission based.
- Cost-plus-percentage-of-construction-cost
 - Allow construction-related services to be based on construction costs and may incentivize architects, engineers, and other design professional to increase construction costs.

3. Typical Contract Types

Below are the most popular and potentially beneficial contract types for PHAs.

a. Firm Fixed-price Contract

What is a fixed-price contract?

- The PHA knows how much it will spend and can budget and control costs better.
- Contract administration is easier.
- The contractor bears the greater risk.
- This type of contract is most common, preferred, and advantageous for the PHA.

Example: The PHA conducts an Invitation for Bids (IFB) for a capital-fund construction project. The award is based on the responsive and responsible firm that submits the lowest cost—as long as proposed costs are within the PHA’s budget and are fair and reasonable. The contract will be awarded at the cost proposed with no negotiations (**Note:** Negotiations are not allowed for bids). The ensuing work will be provided at the awarded price except for any justified change orders.

What are the elements of a fixed-priced contract?

- Contract can be firm (i.e., not subject to adjustment except by appropriate contract modification) or firm with economic price adjustment.
- Contractor commits to performing requirements for a fixed cost or price.
- Uncertainty in pricing or availability of supplies or services can lead to price adjustment upon the occurrence of conditions specified in the contract.
- If an escalation is allowed, it must be set pursuant to an index published within the competitive solicitation.

Example: The PHA issues an IFB for as-needed plumbing services. The bidders return hourly bid pricing. The ensuing contract award is for the potential of multiple years, and it may not be reasonable for a plumbing business to hold its price for the entire term of the contract. The PHA would include an escalation clause within the IFB and the ensuing contract to potentially increase costs indexed or based on the annual increase of local State Prevailing Wage rates as researched and published by the state in which the PHA is domiciled.

b. Cost-reimbursement Contract

What is a cost-reimbursement contract?

- A cost-reimbursement contract provides for payment of eligible (i.e., allowed) incurred costs as may be provided for in the contract.
- Cost-reimbursement contracts include an estimate of total contract cost and a ceiling (i.e., an amount not to exceed [NTE]) that the contractor cannot exceed without approval.

When is it used?

- Cost-reimbursement contracts are used when costs cannot be predicted with certainty.
- The contractor must have an accounting system that can accurately track costs and impose cost controls as needed and that can report such to the PHA

Types of cost-reimbursement contracts:

- Cost contract (no fee)
 - Contractor receives no fee for the work, just reimbursement of proven costs.
 - Typically, this type of contract may be used with nonprofit organizations that do not receive fees or profit.
- Cost-plus-fixed-fee
 - Profit amount is pre-negotiated and fixed.
 - This type of contract may be used when there is risk or uncertainty in performing the work.
 - This type of contract does not incentivize contractor to control costs—a greatest risk to PHA.
 - There are two forms of cost-plus-fixed-fee:
 - ◆ Completion Form
 - Definite goal and specific end product are delineated.
 - The contractor delivers the end product within estimated fee and receives payment of entire fixed fee.
 - This type of contract is preferred when the scope of work is well-defined and the contractor can develop an accurate estimate.

- ◆ Term Form
 - This type of contract defines goals and mandates that the contractor devote a specified level of effort for a specified time period.
 - The Contracting Officer (CO) determines if the level of effort was satisfactory and pays fee at the end of the period.

Example: The PHA conducts a Request for Proposal (RFP) to retain a consultant to conduct training at the PHA (though the PHA is unsure if specific dates the training will be required to be provided). All offerors submit a firm-fixed fee for the actual training. The RFP states that all travel expense by the trainer will be reimbursed at reasonable cost. Once the PHA contracts with the top-rated firm for the firm-fixed training fee proposed, the PHA then pre-approves (i.e., prior to travel) the reasonable travel costs and amends the contract accordingly.

c. Indefinite Delivery Contracts

What is an indefinite delivery contract?

- Indefinite delivery contracts specify unit prices for supplies or services at estimated quantities and the time period during which orders may be placed.
- Ordering procedures identify who at the PHA is authorized to place orders.
- No further competition is required for orders placed at the contracted unit price.

There are three types of indefinite delivery contracts:

- Definite-quantity contracts
 - Delivery is of a definite quantity of supplies or services occurs during a fixed period.
 - Used when quantities are well defined and there is dependable availability of supplies and services.
- Requirements contracts
 - One contractor delivers all the PHA's purchase requirements for the supplies or services during a specified time period at a specified unit cost.
 - The PHA may not buy these supplies or services from another source during the specified time.
 - Used when the PHA can predict the time period but not the exact quantity of what it requires.

- Indefinite-quantity contracts
 - Delivery is by multiple awarded contractors or firms of indefinite quantity within minimum and maximum limits during a fixed period.
 - Used when the PHA cannot determine quantity, but specified unit costs are set.
 - Anticipated recurring needs.
 - The solicitation and contract must specify minimum and maximum quantities that can be ordered each time so that the contractor is prepared to deliver.

Example: The PHA issues an IFB for as-needed plumbing services. The bidders return hourly bid pricing. The ensuing contract award is for multiple years, and the award is typically to a “pool” of eligible firms. Each firm is placed in the “pool” based on cost (e.g., lowest cost first, next lowest cost second, etc.). Firms in the “pool” are rotated as-needed, based on availability: i.e., the first-listed (lowest cost) firm is always called first and the PHA only goes to the next-listed firm if the first-listed firm is not available to do the work as required; and so forth.

d. Time and Materials and Labor-Hour

What is a time and materials contract?

- Provides for acquiring supplies or services on an hourly basis.
 - Fixed hourly rates include wages, overhead, general and administrative expenses, and profit.
 - Materials are provided at a fixed agreed-upon rate.
 - Used when no other contract is suitable
 - Extent of work, duration, or costs cannot be reasonably estimated.
 - Has a price ceiling that the contractor exceeds at its own risk.
 - Typically more risky for the PHA than the contractor. The more the contractor works, the more fee the contractor receives, so there is no incentive to control cost or labor use. (The PHA must watch the work closely to ensure fairness and accuracy in billings.)

e. Letter Contract

This is a very risky contract type and is seldom used. It is strongly recommended to obtain prior HUD approval.

What is a letter contract?

- This is a written preliminary document that allows the contractor to begin work on a limited basis while contract terms are still being negotiated.
- The CO must determine that no other contract is suitable.
- This can result in any contract type.
- Even though it is a preliminary document, terms must be as complete as possible, must include wage rate requirements if applicable, price ceiling, etc.
- Document must include schedule for definitization.
 - Date for submission of contractor's price proposal
 - Date for start of negotiation
 - Target date for finalizing contract
- Letter contracts should not:
 - Commit the PHA to a contract for more funding than what is available; nor
 - Be entered into without competition unless there are exigent circumstances as stated in 2 CFR §200.319.

When is it used?

- Letter contracts should only be used for emergencies, work, or supplies that require urgency.

B. Contractor Responsibility, Including Limited Denial of Participation, Debarment, and Suspension

Prior to award, as part of the determination of responsibility, the PHA must decide whether the contractor is a firm that the PHA wishes to or can do business with, including a determination if the firm is suspended or debarred.

- **Responsibility:** The PHA shall not award any contract until the firm has been determined to be responsible. The firm must:
 - Have available adequate financial resources to perform the work;
 - Have available the necessary organization, experience, accounting, and operational controls or technical skills to perform the work;
 - Have available necessary production, construction and technical equipment and facilities;
 - Have the ability to comply with the required delivery or performance schedule;

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- Have a satisfactory performance record;
- Have a satisfactory record of integrity and business ethics; and
- Be otherwise qualified and eligible to receive the award.

The PHA will determine whether the contractor falls into one of the following categories:

- Limited Denial of Participation (LDP) (refer to 2 CFR §24.1110)
 - There is a temporary restriction on contractor
 - ◆ Reasons: failure to honor contract, work deficiencies, false certifications
 - The contractor is ineligible for participation in HUD programs (Multifamily or Public Housing) in which the violation occurred. The LDP is limited to the geographic jurisdiction of the office that imposed it.
 - The LDP is effective until the cause is eliminated and action is withdrawn or until sanction expires (up to 12 months).
 - The PHA must check the LDP and ensure that proof is in the file that the contractor or any of its employee is not listed thereon.
 - LDP site found at http://www.hud.gov/topics/limited_denials_of_participation
- Suspension
 - The contractor is disqualified from all federal programs.
 - There is a temporary, pending investigation.
 - There is evidence of criminal, fraudulent, serious misconduct.
 - The PHA must check the GSA System for Award Management (SAM) prior to selection to ensure that neither the contractor nor any person at the firm is suspended or debarred and ensure proof of such is in the file.
- Debarment
 - The contractor is disqualified from all federal programs.
 - Debarment is for a period of time depending on the violation.
 - There is a violation of contract, equal employment opportunity provisions, or labor law

- It is very important that a PHA never threatens a contractor with placement on the HUD LDP or the GSA SAM. Doing so is the sole purview of the federal government, not a PHA.
- SAM site found at <https://sam.gov/SAM/pages/public/index.jsf>

C. Evaluating Cost and Price

For every procurement above the micro-purchase threshold, the PHA must conduct a cost or price analysis to ensure that the PHA is purchasing goods or services that are priced reasonably and fairly based on market conditions. See Chapter 6 for discussion on price evaluation in competitive bidding.

- When conducting a Price Analysis, the PHA must always compare the price offered by offerors with the Independent Cost Estimate (ICE) that was completed prior to the solicitation. This allows the CO to determine:
 - Whether offerors understood requirements of the solicitation;
 - Whether the solicitation was clear; and
 - Whether proposed prices are reasonable based on industry standards and market conditions.
- Price analysis entails comparing costs received with the “Force of Competition”; i.e., comparing proposed costs received with all of the offeror’s costs.
- If proposed costs seem unusually high or low compared to the ICE, the PHA may need to verify the offer with the respondents to ensure that there was understanding of the requirements.

1. Method to Determine Cost Analysis

Cost analysis encompasses the following:

- An evaluation of separate price elements that make up the total proposal to determine whether the price is reasonable, allowable, and related to the requirements
- Required for sole-source and non-competitive procurements, including receipt of one offer only in response to a competitive solicitation
- Required for contract modifications and contract terminations
- Required for the award of an RFP or a cost-reimbursement contract

2. Required and Recommended Cost Analysis

A cost analysis is required by HUD if one or more of the following conditions exist:

- Sole source and noncompetitive proposals
- Insufficient number of bids and the PHA cannot establish price reasonableness through alternative means
- Contract modifications; i.e., change of scope that affects price
- Contract termination payments—negotiate final amount of cost settlement
- Construction contracts awarded using methods other than sealed bidding

3. Conducting a Cost Analysis

Proposed costs must meet three critical tests:

- Is it allowable?
 - Cost principles issued by the federal government determine whether a cost is allowable.
 - ♦ 2 CFR §200.400 lists allowable costs for contracts with state, local, or tribal governments; nonprofit organizations; and education institutions
 - ♦ FAR 48 CFR Chapter 1, Subpart 31.2 for profit-making entities (e.g., commercial business concerns) and certain nonprofit organizations listed in Appendix VIII to Part 200 - Nonprofit Organizations Exempted from Subpart E - Cost Principles of Part 200
 - Examples of typically unallowable expenses
 - ♦ Advertising (only certain types are allowable)
 - ♦ Alcoholic beverages
 - ♦ Entertainment
 - ♦ Fundraising or lobbying costs
 - ♦ Fines and penalties
 - ♦ Per-diem travel that exceeds federal travel regulation prescribed by the General Services Administration
- Is it allocable?
 - Costs must be logically related to the work required.
 - A cost is allocable if it pays for something that advances the project.

- For example, general office supplies may not be allocable in a painting contract, but paint supplies such as drop clothes and brushes are.
- Is it reasonable?
 - Reasonable costs are what a prudent business would pay in a competitive marketplace (e.g., the price analysis).
 - Compare proposed costs against:
 - ♦ Actual costs proposed by same offeror;
 - ♦ Costs proposed by other offerors (e.g., the “Force of Competition”);
 - ♦ Previous cost estimates for same or similar products;
 - ♦ Proposed methods and requirements of the solicitation; and
 - ♦ The PHA’s ICE.

4. Documentation Required

Procurement Type	Documentation Required
Sealed bids	<ul style="list-style-type: none"> • Bid tabulation sheet
Competitive bids	<ul style="list-style-type: none"> • If adequate competition, only need comparison of prices offered
No adequate completion, only one bid received, price varied significantly from ICE	<ul style="list-style-type: none"> • Cost analysis required • CO must explain lack of competition and/or price variance

a. PHA Audit of Contractor’s Records

- Used infrequently when cost analysis is required but usual means (e.g., comparison historical cost data) are not available.
- Review is limited to procurement action.
- Offeror cannot deny access and cannot withdraw its bid once it has been notified that it was selected.

What is reviewed in an audit?

- An audit reviews costs and determines if they should be accepted, questioned, or further documented.
- An audit analyzes a contractor’s accounting system to ensure it can adequately allocate costs.

D. Protests

Protests occur typically because a non-awarded firm asserts that the PHA did not conduct the competitive solicitation properly and, if the PHA had done so, the result would have been an award to its firm. PHAs are encouraged to resolve such disputes outside of a formal protest process or litigation. Each PHA must include its detailed protests procedures as a part of the documents issued for a formal (advertised) solicitation.

1. Procedures

- HUD forms 5369 and 5370 contain provisions regarding bid protests and contract disputes.
- PHAs are required to have written procedures for resolving protests.
- **Authority:** 2 CFR §200.318(k)

2. Elements

Elements of a protest procedure:

- Designate PHA staff to receive protests.
- Designate PHA staff to render decision.
- Identify a third-party person to hear any appeal of the protest decision.
- Delineate a time period in which protest must be submitted.
- Provide remedies if protest is decided in favor of protestor, i.e. revision or reissuance of solicitation, cancellation of contract award.
- Account for emergencies of unusual compelling circumstances, for example, instances where contract award will remain with the original offeror even though the protest is successful.
- Include procedure for denials in writing with basis for denial and notice of appeal rights (if any).
- Include appeal procedures such as the request and hearing of appeals, designation of appeal official, and legal grounds that must be met for reversal.

E. Options

An option is a contractual provision that allows the PHA to unilaterally extend the term of the contract. Supplies and services can be ordered at prices reflected in the original contract.

1. When Is It Used?

- When the PHA knows it will have a recurring need; and

- To have fixed prices on materials to facilitate budgeting and mitigate market fluctuations.

2. Procedures

An option to extend the term of the contract can only be used if there is language in both the original solicitation and the contract that allows for the extension and delineates the terms.

- Contracts cannot exceed 5 years, including options, according to federal regulation, but state and local laws may impose shorter terms.
- Contract extensions must contain a price for the agreed-upon goods or services.
- If the PHA includes an extension in the solicitation, the pricing of the extension must be included in the evaluation of the proposals (though publishing a government index will typically satisfy this requirement).
- Typically, 90 days prior to contract expiration, the PHA will notify contractors if they are likely to extend the contract. The notice is not binding, but it allows parties to prepare for extension or non-renewal. Only the renewal contract or modification is binding.
- Thirty days prior to contract expiration, the PHA will notify the contractor that it will extend the contract and issue a modification.
- An option cannot be exercised after the contract has expired since, at that point, there is nothing to extend.

3. Documentation

Prior to exercising an option, the PHA must document the contract file with the following:

- Proof that funds are available
- A statement reflecting that the option was included in the original contract
- An overview of market to show that option price is reasonable
- Other factors that support the extension

F. Labor Standards and Wage Rates

To ensure that fair wages are paid to laborers on construction projects, HUD mandates that PHAs pay wages in accordance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by U.S. Department of Labor (DOL) regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts

Covering Federally Financed and Assisted Construction”) in prime construction contracts that exceed \$2,000.

Maintenance Wage Rate Decisions, rather than Davis-Bacon Wage Rates, apply to contracts greater than \$2,000 for certain maintenance laborers and mechanics.

In addition, for all contracts exceeding \$100,000, overtime work rates apply for laborers that work more than 40 hours in a week.

Davis-Bacon wage rates apply to apprentices or trainees that are involved in construction contracts but do not apply if workers are part of a maintenance contract. In other words, in maintenance contracts, the contractor may compensate apprentices and trainees at less than the Davis-Bacon Wage Rates.

1. Authority

- HUD Handbook 1344.1, Rev. 2, Chg. 2
- DOL regulations applicable to Davis-Bacon–covered work (29 CFR Part 5)
- Procedures for Construction Contracts

2. Solicitations and Contracts

- If Davis-Bacon wages apply in a project, they must be included in the solicitation and in the contract.
- Davis-Bacon wage decisions can be obtained online at no charge at www.wdol.gov
- To obtain a Maintenance Wage Rate Decision, the PHA will complete and submit to the regional HUD Office of Labor Standards a fully completed HUD Form 4750. HUD then will return to the PHA a completed HUD Form 52158, Maintenance Wage Decision, which typically applies for a period of 1 year.

3. Reporting

DOL regulations require that construction contractors (both prime contractors and subcontractors) submit payroll reports and statements of compliance to the PHA each week.

- Form: DOL Payroll Form WH-347. Not required for maintenance contracts.

4. Compliance

- Contractor and subcontractors are required to pay wages as prescribed by the Davis-Bacon wage rate decision.
- Wages are paid on a weekly basis.

- The contractor is responsible for its own compliance and that of subcontractors.

5. Enforcement

PHA is responsible for enforcement of the applicable wage rates. This includes, for construction contracts:

- Posting wage rates;
- Conducting onsite interviews with laborers to ensure that rates are commensurate with work performed (see HUD Form 11);
- Receipt and review of certified payroll reports with each pay request;
- Retention of all records; and
- Ensuring worker safety on site.

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Questions

Chapter 10

1. Which of the following is not a factor used to determine the type of contract used?
 - a. Price competition
 - b. Urgency of the requirement
 - c. Location of contractor
 - d. Procurement history
2. Which of the following is not a typical contract type?
 - a. Cost-reimbursement
 - b. Cost-estimate
 - c. Indefinite delivery
 - d. Letter contract
3. Which of the following are types of indefinite delivery contracts? Select three.
 - a. Indefinite-quantity contract
 - b. Definite-quantity contract
 - c. Requirements contract
 - d. Requests contract
4. A Time and Materials contract should only be used when no other contract is suitable.
 - a. True
 - b. False
5. Which type of contract should be used only for extreme emergencies?
 - a. Time and Materials
 - b. Indefinite-delivery
 - c. Letter contract
 - d. Cost-reimbursement
6. Every procurement above the small purchase threshold must include a cost or price analysis.
 - a. True
 - b. False
7. Which of the following are critical tests proposed costs must meet? Select all that apply.
 - a. Allowable
 - b. Allocable
 - c. Responsible
 - d. Reasonable
 - e. Allowanced
8. The term of a contract can be extended no matter what so long as there is a need.
 - a. True
 - b. False

CHAPTER 10: MISCELLANEOUS REQUIREMENTS

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Chapter 11: Contract Administration

A. General

Contract Administration refers to all activity subsequent to awarding a contract to ensure that the Public Housing Authority (PHA) receives the supplies and services as required under the contract.

1. HUD Forms

Aside from the contract form that the PHA may use with its vendors, HUD has required forms that must be attached or incorporated by reference to each contract for goods and services. These forms have very specific language and processes regarding the rights and obligations of each of the parties.

Forms may be found at www.hud.gov/program_offices/administration/hudclips

Form	Contract Type
HUD-5370	Construction (formal IFB's)
HUD-5370-C, Section I	Non-construction, including Maintenance (formal Invitations to Bid [IFBs], Requests for Proposal [RFPs], and Requests for Qualifications [RFQs])
HUD-5370-C, Section II	Non-construction, Maintenance (informal quotes; formal IFBs/RFPs)
HUD-5370-EZ	Small construction/ development (informal quotes)

Note: “Formal” means advertised, and “informal” means not advertised.

B. Administering Construction Costs

The contractor is responsible for completing the work within contractually required timeframes. The PHA is responsible for monitoring the contractor to ensure work is completed as scheduled, on budget, and within acceptable quality standards.

Note: Though procurement guidance references construction contracts when addressing contract administration, many of the same principals apply to non-construction contracts.

1. Monitoring and Inspections

Construction contracts must be properly monitored to ensure that work is completed in accordance with the terms of the contract. Basic steps to help the PHA ensure compliance include the following:

- Pre-construction Conference
 - All key construction and contract administration issues should be discussed.
 - The PHA shall issue a “Notice to Proceed” that includes the contractor start date and scheduled completion date.
- Progress Meetings
 - These are regularly occurring meetings with the contractor and architect to discuss progress, delays, payments, etc. The PHA will hold these meetings weekly for large projects.
- Inspections
 - The PHA must ensure regular inspections (typically daily) of the work. A qualified third party (architect, engineer, etc.) retained by the PHA may complete these inspections, but the PHA is ultimately responsible for oversight.
 - The PHA inspector (whether staff or retained third party) must maintain a construction log detailing all issues pertaining to the work that the inspector observes, including contractor progress or phase of work completed, number of staff or subcontractors observed working on the job, weather conditions (in case a weather extension is later requested and approved by the PHA), any deficiencies in work observed, and safety concerns.

2. Fair Labor Standards

HUD Handbook 1344.1, Rev. 2, Chg. 2 as required by U.S. Department of Labor (DOL) regulations applicable to Davis-Bacon Act-covered work (29 CFR 5)

The PHA is responsible for administration and enforcement of labor standards as discussed in Chapter 10 (following HUD and DOL guidelines and requirements). This applies to construction and non-construction contracts.

3. Progress Payments

The PHA is responsible for making progress payments to the contractor based on the PHA-approved payment schedule. Some

state laws impose mandatory payment schedules that may differ from HUD's requirements.

- The PHA will require the contractor to prepare a construction progress schedule after issuing the Notice to Proceed. PHA may use HUD-5372, Construction Progress Schedule or another appropriate form.
- The PHA or a designated third party (often an architect) will review and approve the schedule. The review ensures that the schedule is reasonable and consistent with the contract. The designated third party then signs the schedule and forwards it to the PHA for approval.
- The PHA requires the contractor to prepare a schedule of payments on HUD-51000, Schedule of Amounts for Contract Payments.
- The PHA and the contractor will both have signed copies of the schedule for their respective files. As work is completed and accepted, the schedule will guide the payment process.

What should the PHA review prior to issuing a payment?

- Contractor's request is consistent with the PHA-approved schedule of amounts for contract payments.
- Request does not include the amount to be retained by the PHA (retention or retainage).
- Work has been completed in accordance with the construction documents.
- Form HUD-51001, Periodic Estimate for Partial Payment, is properly executed and all applicable supporting documentation was submitted.
- Contractor submitted required reports (e.g., payroll reports).

Generally, progress payments for work and materials delivered are made in 30-day intervals.

4. Delays and Time Extensions

The PHA may authorize justifiable time extensions for unforeseeable causes beyond the contractor's control. HUD approval is not necessary unless the PHA is subject to a HUD-established extension threshold that is shorter than the requested timeframe.

Time extensions are formalized in written modification to the contract.

Requests for time extensions should:

- Be submitted in writing within 10 calendar days of the start of the delay; and
- Explain how the delay was beyond the contractor's control. A delay for adverse weather must show that the conditions could not have been reasonably foreseen by the contractor and exceed typical weather conditions.

The PHA will send correspondence to the contractor acknowledging receipt of the request. The Contracting Officer (CO) and PHA staff will, in a timely manner, review the request and compare the details with the PHA's "Construction Log" information related to weather conditions and other possible causes for delay (e.g., fires, floods, vandalism, or court orders). The PHA may approve the request if the information provided by the contractor is accurate, justifies the delay, and the additional time requested is reasonable based on the facts.

5. Completion of Work and Closing

Completion of the work, similar to the start of the process, requires application of basic steps to ensure the process is properly closed.

- Notification
 - The contractor will provide written notification to the PHA when all work is completed.
- Final Inspection
 - The PHA will conduct a final inspection of all work within 10 days of receiving the written notification of completion.
- Post-inspection Meeting
 - The PHA Inspection Team and the contractor will meet after final review to discuss any deficiencies, incomplete work, or work not done in accordance with construction documents. The team will document items to be addressed by the contractor as a punch list or major deficiencies that require correction.

6. Final Payment

Following the final inspection, the contractor will provide the PHA with the following documents to facilitate final payment:

- Certificate of Occupancy from appropriate local agency (if applicable)
- One notarized original and two copies of the contractor's release certification that indicates:

- All work was completed in accordance with construction documents;
- The total amount due the contractor and separately stated amount for each, if any, unsettled claim against the PHA;
- Documentation showing the PHA is released of all claims other than those specifically stated in the contractor's releases;
- Wages paid to laborers were consistent with wage rate requirements and there are no outstanding claims for unpaid wages; and
- Assignment of all guarantees and warranties to the PHA.

The PHA will receive a notarized certificate and release from each construction subcontractor to document all work was completed in full compliance and all expenses that have been paid. The PHA must ensure all payroll and wages have been paid prior to issuing the final payment to the contractor.

7. Construction Warranties

The warranty period for all construction work will be at least 365 days from date of final acceptance. The period should be longer for complex equipment (e.g., boilers, air conditioning units, etc.) to provide sufficient time to identify any issues or deficiencies. A 2-year period for complex equipment is usually reasonable.

It is very important for the PHA to have a warranty inspection planned approximately 1 month before the expiration of any warranty so that any issues can be identified and reported during the warranty period. Failure to complete this step can result in unnecessary expense to the PHA.

If any deficiencies are found during the warranty period, the PHA must notify the contractor in writing. It is the contractor's responsibility to address any faulty equipment or poor workmanship.

C. Administering Non-construction Contracts

Oversight and monitoring of non-construction contracts will vary depending on the complexity of the work assigned. A carefully planned solicitation can be undermined by weak contract administration.

1. Post-award Conference

Complex projects should begin with a post-award conference soon after contract award to ensure that all parties understand the performance requirements. The CO must authorize any changes to the contract that result from this meeting. A formal modification to the contract must document any changes made.

This conference will be used to confirm key processes during contract execution:

- Establishing a system for receiving supplies, equipment and services
- Monitoring and inspecting supplies and services by the PHA
- Enforcing specifications and timelines
- Acceptance of supplies and services

Note: When the PHA fails to require the contractor to correct a particular defect because of a failure to inspect and enforce requirements, the PHA may waive its rights to future rejection based on that particular defect.

2. Monitoring and Inspecting Supplies and Services

To document receipt of supplies, a receiving report will typically contain the following:

- Contract number
- Item number and description
- Date and place of receipt
- Name of receiving official
- Date of inspection
- Name of inspection official
- Whether the item was accepted and if not, the reasons for rejection

3. Post-receipt Monitoring

Upon receipt of goods or services, the PHA must continue to monitor performance to ensure work is of sound quality and meets contractual standards. If the work does not meet the standards required, the PHA must document the file so that it retains the information about the contractor for future procurements and, if needed, can make recommendations to HUD regarding debarment and suspension.

4. Enforcing Specifications and Timelines

- The PHA must enforce the scope of work, specifications, and timelines contained in the contract. If it accepts deficient or late products, it may waive its right to enforce compliance or receive a remedy such as discounted pricing. It may waive the PHA's right to protest a similar deficiency in the future.
- The PHA has a right to inspect work prior to payment and acceptance. After inspection, the PHA can:
 - Reject the work;
 - Require correction;
 - Conditionally accept the work; or
 - If appropriate, make partial payment on acceptable work, withholding payment for unsatisfactory work.
- Acceptance of work is assumed to have occurred if, after a reasonable period of time, the PHA does not protest the delivery and/or makes a payment in full.

Example 1: The contractor has a contract to paint the exterior of 10 buildings; however, the contractor only completed nine buildings by the set completion date. If the PHA is confident that the last building will be painted within a reasonable amount of time, the PHA may pay the contractor for the nine painted buildings (minus the retainage, of course), then hold the payment of the last building until it has been completed appropriately.

Example 2: A contractor has a contract to paint the exterior of 10 buildings. The contractor claims that the painting of all buildings was done properly by the set completion date. The PHA found the painting of two of the buildings to be deficient and issued the contractor a punch list to correct the deficiencies. The contractor disputes the alleged deficient work cited by the PHA. The PHA is required to pay the contractor for the eight satisfactorily painted buildings not under dispute (minus the retainage, of course), then will hold the payment for the last two buildings until that work has been completed appropriately. A PHA is not allowed to hold payment for properly completed work "hostage" in an effort to get the contractor to agree with the PHA's position.

Example 3: The PHA orders 50 appliances, but two arrive damaged. The PHA notifies the supplier, but it is taking the contractor several weeks to correct the order and the N/30 payment period is fast approaching. The PHA is required to pay the contractor for the delivered items not under dispute, then will hold the payment of the last two appliances until they have been

received in good condition. A PHA is not allowed to hold payment for properly received items “hostage” in an effort to get the supplier to move faster to complete the replacement. If the supplier does not respond in a reasonable timely manner and if the PHA wishes, it can cancel the balance of the order and procure the last two appliances from another source.

D. Contract Modifications

It may become necessary to modify a contract to reflect a change in price, required effort, or period of performance. There are two types of modifications that shall be issued in writing:

- **Unilateral modification** is signed by the CO and typically covers an administrative modification (e.g., change in the address of the payment office). It is the sole right of the PHA (not the contractor) to issue a unilateral change order if the contractor will not cooperate by executing a bilateral modification.
- **Bilateral modification** (preferred method) is a mutually agreed-upon modification to contract changes and is signed by both the CO and the contractor.

1. Process for Modification or Change Orders

The CO issues change orders when contract terms such as price, materials, specifications, and timeframes must be modified.

Change orders will, at a minimum, include the following:

- Description of the proposed change
- Reference to specifications or drawings as needed
- Price changes
- Estimate of time
- Breakdown of price, including materials and labor

More specific guidance on rights and obligations with respect to changes can be found in the change’s clause in forms HUD-5370, HUD 5370-C, and HUD 5370-EZ.

2. Modification Register

The PHA shall maintain accurate records and documentation regarding contract modifications by including within the contract file a register that addresses the following:

- Number of the modification
- Brief description of each change
- Cost of proposed change

- Date submitted to HUD for approval (if applicable) and resulting date of HUD approval or denial
- Additional time required by contract based on modification

Note: PHAs must submit to HUD, for prior approval, any proposed modification that increases the contract by more than the federal small purchase threshold or in an amount of the federal small purchase threshold (unless exempted).

E. Contract Claims

Contract claims refer to disputes, breach of contract, mistakes, misrepresentation, or other causes for contract modifications that occur after contract execution. The contractor pursues these more often, but the PHA may initiate them as well.

PHAs are required to have a provision in their procurement policy that explains handling of claims and disputes.

The PHA shall make every effort to handle contract claims informally whenever possible, and in a timely manner (i.e., typically within 30 days). This will help avoid expensive delays and missed timelines.

The CO is responsible for the formal process of reviewing a claim and rendering a final decision. The CO will provide a copy of the final decision, recommended via certified mail, to the contractor. The decision will include the following:

- A description of the claim
- Reference to pertinent contract clauses
- Statement of factual areas of agreement or disagreement
- Statement of the CO's decision with supporting rationale
- Statement referencing the appeal rights as provided in the PHA's Procurement Policy

The PHA shall maintain records of actions that may result in a dispute or claim for damages for 3 years from the date of submission of the final expenditure report.

The PHA shall maintain records that include the following:

- Relevant correspondence
- Correspondence related to rejection or acceptance of goods and services
- Payment records

- Weather records that may have had an impact on contract performance
- Notes from architects or inspectors indicating deficiencies
- Photographic evidence
- Permit history
- Meeting minutes from PHA meetings with internal staff or with architects and others involved in the project or service delivery

F. Contract Terminations

There are two types of contract terminations:

- Termination for Convenience—The PHA no longer needs or desires the goods or services offered or no longer has the funds to pay for the goods or services.
- Termination for Default—The contractor has failed to perform as required by the contract.

A termination notice includes the following elements:

- Notification to the contractor of the termination (including type) with the citation from the contract authorizing the termination
- Indication whether the contract termination is partial or of the entire contract (including contractor's right to proceed under non-terminated portions of contract for partial terminations)
- Terminations for Default must include acts or omissions constituting the default and the contractor's appeal rights
- Effective date of termination

Regardless of the type of termination, notification requirements are identical. The CO sends a written notice via certified mail (with return receipt) to the contractor that includes the required information.

In addition to the termination notice to the contractor, copies of the termination notice should be sent to the contractor's surety and any assignee.

1. Termination for Convenience

Termination for Convenience occurs when the PHA no longer needs the supplies or services under contract or can no longer fund the procurement. The CO must negotiate a fair and prompt settlement with the contractor for lost profit pertaining to any contracted work that accounts for compensation for work already

completed and reimbursement for costs incurred for work to be done. A settlement would not be made for work that may not yet be contracted for in an option period or work not yet assigned pursuant to a not-to-exceed amount. In addition, once the PHA has terminated a contract for convenience, the PHA may not immediately or soon after retain another contractor to perform those same contracted services. This would indicate that the contract was not actually terminated for convenience but for cause. By immediately retaining another contractor, the PHA shows that it actually did still need the services and has money to pay for the services.

2. Termination for Default

Termination for Default occurs when the contractor fails to perform contractual obligations or the CO reasonably anticipates the contractor will fail to meet those obligations.

The CO must provide the contractor one or more written notifications of the failure to perform (commonly called a “Cure Notice”) and provide a reasonable timeframe to “cure” the deficiency. The CO may (and probably will) proceed with the default termination if the contractor is unable to address their failure to perform in a reasonable and timely manner.

Alternatives to Termination for Default include:

- Entering into arbitration or mediation if both parties agree;
- Allowing for a modified delivery schedule;
- Allowing the contractor to bring a sub-contractor to complete the work; and
- Executing a no-cost settlement agreement.

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Questions

Chapter 11

1. Who is responsible for monitoring the contractor to ensure work is completed as scheduled, on budget, and within acceptable quality standards?
 - a. HUD Field Office
 - b. PHA
 - c. Third-party monitor
 - d. An Inspector
2. Which of the following is not a basic step that is required as a part of overall monitoring and inspections to ensure construction contracts are properly monitored and work completed in accordance with the contract?
 - a. Pre-construction conference
 - b. Progress meetings
 - c. Post-award conference
 - d. Inspections
3. For a construction contract, the PHA is responsible for making progress payments to the contractor based on the contractor's requests for payment to continue work.
 - a. True
 - b. False
4. Can the PHA authorize time extensions to the contractor during a construction contract?
 - a. Yes, only after writing a justification to HUD
 - b. No, the contract cannot be adjusted or amended once it has been executed
 - c. Yes, for unforeseeable causes beyond the contractor's control
 - d. No, the contractor must stay on schedule as stipulated by the contract
5. Under a construction contract, a final inspection of all work should be conducted within how many days of receiving the written notification of completion?
 - a. 5 days
 - b. 7 days
 - c. 10 days
 - d. 15 days
6. A post-award conference is recommended for non-construction contracts. What is the purpose of a post-award conference? Select all that apply.
 - a. To ensure that both parties understand contractual performance requirements
 - b. To determine whether modifications to the contract are necessary and to execute any modifications.
 - c. To agree upon delivery and acceptance of supplies and services
 - d. To confirm how the PHA will notify the contractor of any work that is rejected

CHAPTER 11: CONTRACT ADMINISTRATION

7. Work is assumed to be acceptable if the PHA does not protest delivery or reject work products within a reasonable period of time.
 - a. True
 - b. false

Chapter 12: HUD Review Requirements

HUD review of a Public Housing Agency's (PHA) procurement activity is limited to those actions funded with federal program grant funds.

A. PHA Submissions for HUD Approval

The PHA must submit all required paperwork to HUD for review to ensure compliance with 2 CFR §200.317–200.326. For non-competitive proposals, specifically, the PHA must comply with instructions in Chapter 8.

B. Contract Actions Requiring Prior HUD Approval

Contract actions requiring prior approval from HUD are those expected to exceed federal small purchase threshold and are:

- Noncompetitive procurements;
- Brand name-only procurements; and
- Awarded other than to the apparent low bidder under a sealed bid
- Proposed contract modifications that increase the contract amount by more than the federal small-purchase threshold
- Use of the Qualification Based Selection (QBS) method of procurement for other than Architect/Engineering (A/E) services, joint venture partners or developers, or energy-service contracts (energy-service contracts are now typically procured pursuant to an RFP)
- For PHAs operating under the “old” ACC 53010 and 53011, any agreement or contract for professional, management, fee accountants, legal, or other professional services with any person or firm if the total period or term of the contract, including renewal option provisions, exceeds 2 years
- Procurements for legal or other non-personal services in connection with litigation, per HUD's Litigation Handbook, that exceed \$100,000
- Procurements that exceed the amount included in the HUD–approved Development Cost Budget or where HUD has required prior approval on a Notice of Deficiency or corrective action order under the Capital Fund Program
- Contracts that exceed 5 years, including options
 - To approve terms in excess of 5 years, Field Offices must determine there is no practical alternative.

- PHAs operating under the “old” ACC who enter into a transaction with any joint venture, subsidiary, affiliate, or other identity-of-interest entity
 - An identity of interest purchase is one in which there is a relationship between seller and purchaser that may not be arms-length. Section 515 of the old ACC specifies that such transactions must comply with the conflict-of-interest provisions that apply to the PHA. PHAs and their instrumentalities operating under the “new” ACC must comply with the conflict of interest provisions under Section 19 of the new ACC.
- Solicitations and contracts by any PHA whose procurement procedures or operations fail to comply with the procurement standards in 2 CFR §200.217–200.326.

C. Exemption from Pre-award Review

A PHA is exempt if:

- The PHA requests and HUD subsequently certifies that a Field Office review of the procurement system determines that the systems meet the standards 2 CFR §200.317–200.326 and HUD Handbooks
- The PHA self-certifies that its procurement system meets the standards under 2 CFR §200.317–200.326 and the essential requirements of HUD Handbooks.

Exemptions are granted for a 1-year period and may be automatically renewed each year unless the PHA is found to be noncompliant with 2 CFR §200.317–200.326 or the PHA requests that the exemption be rescinded.

Caution: By stating that the PHA “meets the standards of the CFR and the essential requirements of the Handbooks,” the PHA is essentially stating that it is 100 percent in compliance with *all* requirements stated in the CFRs and the Handbooks. This very broad claim could become problematic if there is an audit.

Questions

Chapter 12

1. A PHA must have a waiver from HUD to be exempt from HUD pre-award review of procurements. The HUD waiver is good for:
 - a. Only for one procurement
 - b. 6 months
 - c. 1 year
 - d. 2 years
2. When a waiver is not in place, which of the following procurement activities require HUD review? Select all that are true.
 - a. All procurements that exceed \$5,000
 - b. Brand-name-only procurements that exceed the small purchase threshold
 - c. Qualifications-Based Procurements for construction activity
 - d. Contracts awarded for more than 5 years
3. If a PHA requests a waiver to procurement regulations, the official who will approve or deny the waiver is:
 - a. HUD Field Office representative
 - b. HUD's Secretary
 - c. HUD's PIH Assistant Secretary

CHAPTER 12: HUD REVIEW REQUIREMENTS

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Chapter 13: State and Local Laws and Regulations Governing PHA Procurement

Public Housing Agencies (PHAs) must abide by federal law and regulations and governed by state and local requirements. PHAs must comply with state and local laws unless those requirements conflict with 2 CFR §200 procurement rules. In general, the most stringent rule or law will apply.

Example: The federal statutory limit on small purchases is \$250,000. The state law governing the PHA has a small-purchase limit of \$100,000. The PHA must follow the more stringent state law and adhere to a small purchase limit of \$100,000.

A. Application of State and Local Procurement Laws

There are instances when federal rules always apply to PHAs regardless of conflicting state or local procurement rules:

- Geographic preference:
 - 2 CFR §200.319(b) preempts state laws that impose geographic preference restrictions in the evaluation of offers unless expressly required or encouraged by federal law.
- State prevailing wage requirements:
 - Federal wage determinations (Davis-Bacon or HUD–Determined Maintenance Wage Rates) preempt any state prevailing wage rate whether the state wage rate is higher or lower than the applicable federally imposed wage rate (24 CFR §965.101).

Several HUD forms (HUD-5370, HUD-5370-EZ, and HUD-5370-C) contain appropriate federal preemption language in their labor-standards clauses.

B. State Law

PHAs are typically governed by two sets of state laws: “state-enabling legislation” and a separate set of state statutes that describe procurement requirements PHAs must follow.

- State-enabling legislation for public housing generally describes creation and operation of PHAs within the state. Some state public housing laws include operational requirements that must be followed, including procurement activity.

CHAPTER 13: STATE AND LOCAL LAWS AND REGULATIONS GOVERNING PHA PROCUREMENT

- When the state-enabling legislation is silent on procurement activity, the PHA will review the state procurement code to determine applicability and regulatory impact.
- Some states have passed very detailed “Procurement Codes” based on the American Bar Association’s (ABA) *Model Procurement Code for State and Local Governments* that provides detailed procedures to be followed.
- Other state statutes or codes may or may not apply to local government entities, including PHAs. It is important that each PHA is familiar with its specific state’s requirements.
 - Some states have passed laws regarding procurement requirements but specifically exempt contracts awarded with federal funds.
 - For example, in Florida in 1978, the State Attorney General issued an opinion that housing authorities in Florida were not required to follow state procurement statutes published for “state agencies.” Accordingly, housing authorities in Florida will comply with the requirements of 2 CFR §200.317–200.326.

C. Local Law

Local jurisdictions may have ordinances that govern specific construction practices and bonding requirements. These must be followed as long as they conform to federal requirements. Within some state statutes, such requirements are typically found within Sections titled “Public Works” and/or “Construction Bonds.”

PHAs must ensure that the most stringent applicable law (federal, state, or local) is followed when all three levels of government have procurement requirements, as long as state and local procurement requirements conform to federal requirements.

D. Guidance on State and Local Procurement Laws

PHAs must have a comprehensive understanding of the complex layering and structure of federal, state, and local laws pertaining to procurement and contracting activity in their location.

PHAs are encouraged to create an internal procurement resource center that includes all applicable laws and regulations and is updated regularly. The resource center would typically include the following references or documents:

- References to https://www.hud.gov/program_offices/administration/hudclips

CHAPTER 13: STATE AND LOCAL LAWS AND REGULATIONS GOVERNING PHA PROCUREMENT

- State-enabling legislation for your state
- State procurement laws, state procurement codes, or state statutes pertaining to contracting and procurement
- Local government laws on public contracts
- Current PHA Procurement Policy
- Federal requirements such as 2 CFR §200.317–200.326.

Prevailing wage rates should be checked and reissued for every competitive solicitation in which they are applicable:

- Most recent state or local prevailing wage rates
- Most recent Davis-Bacon rates for the area (www.wdol.gov)
- The current HUD Maintenance Wage Decision (HUD-52158) for the PHA.

It is a best practice to have PHA procurement policies reviewed by legal counsel or HUD Field counsel to ensure all applicable rules are applied. This review would be done prior to submitting the policy to the PHA Board for approval or adoption.

CHAPTER 13: STATE AND LOCAL LAWS AND REGULATIONS
GOVERNING PHA PROCUREMENT

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Questions

Chapter 13

1. A PHA only needs to comply with regulations in 2 CFR 200 with respect to procurement.
 - a. True
 - b. False
2. When local laws conflict with federal procurement regulations, the PHA can choose to comply with the regulation that is the least onerous.
 - a. True
 - b. False
3. When choosing between the federally imposed wage rate and a state-imposed wage rate, the PHA must comply with the one with the higher wage rates.
 - a. True
 - b. False

CHAPTER 13: STATE AND LOCAL LAWS AND REGULATIONS
GOVERNING PHA PROCUREMENT

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Chapter 14: Cooperative Business Relationships

To maximize efficiency in terms of both time and money, Public Housing Agencies (PHAs) often collaborate with other public and private entities with respect to procurement. When an entity procures a good or service using a process which complies with 2 CFR §200.317–200.326, it allows a PHA to depend on that procurement to select a vendor for the same good or service. This is known as “piggybacking,” and it means that the PHA does not have to conduct its own procurement process, but can, if appropriate, use the competitive solicitation process conducted by the other governmental agency.

A. Intergovernmental Agreements

There are four methods of implementing intergovernmental agreements:

- Contract directly with another government agency
- Joining together with another governmental agency to conduct a competitive solicitation
- Buying from GSA IT Schedule 70
- Contract directly with a firm that has properly competitively solicited a contract with a firm (i.e., piggybacking)

1. Requirements for Intergovernmental Agreements

Requirements for entering into collaborative procurement agreements are as follows:

- The agreement provides for greater economy, e.g., it saves money and provides efficiency (i.e., time savings) to the PHA.
- The agreement is for common supplies and services that are routine in nature
 - Note: “Common” means that the services are normally provided by the other governmental agency in its normal duties and responsibilities. “Routine” refers to something a PHA actually does.
- For piggyback procurements, the procurement process used by the initiating agency must comply with 2 CFR §200.317–200.326
- The agreement must be between the PHA and a state or local government agency, including another PHA.
- The agreement must meet competitive and non-competitive requirements of 2 CFR §200.

- The procurement file must contain a copy of the intergovernmental agreement and document:
 - Proof that cost and availability were evaluated prior to the agreement, either by the original agency or the PHA; and
 - Proof that cost and availability of the goods or services are compared annually to confirm that collaborative agreement provides good value to the PHA.

2. Examples of Intergovernmental Agreements

Some examples of intergovernmental agreements are as follows:

- Paying a city directly for the cost of additional police patrols
- Paying the city's Recreation Department to operate an after-school sports program for PHA residents
- Using the city's accounting office to conduct an internal audit at the PHA
- By agreement, sharing warehouse space with another governmental agency
- Purchasing supplies or services directly from a local or state government's contracted supplier for such (i.e., piggybacking)

Piggybacking Example: A PHA procures supplies from a major national supplier that was originally retained by a county government pursuant to a major competitive solicitation. The PHA shall have a file containing copies of:

- The original competitive solicitation documents issued by the other agency;
- Document showing the force of competition (ensuring competition was received);
- The awarded firm's original offer to the original agency (if available);
- A copy of the contract between the original governmental agency and the awarded firm; and
- All typical documentation required by a PHA to complete a procurement, including Independent Cost Estimate (ICE) and Cost Price Analysis (CPA), HUD Limited Denial of Participation (LDP), GSA System for Award Management (SAM), Rationale for Award, and PHA's contract with the vendor.

3. Intergovernmental Agreements Process

The process for entering into an intergovernmental agreement is as follows:

- First, a governmental agency (i.e., the initiating agency) solicits bids and contracts with a vendor.
- The PHA then enters into an agreement with the initiating agency so that it can order from that vendor either directly or through the initiating agency.
 - Note: This is not required unless state statutes require such, which virtually no state does.
- The PHA then can order supplies or services covered by the contract at the specified prices.

4. Typical Intergovernmental Agreement Elements

Intergovernmental agreements document the relationship between the initiating agency and the PHA regarding procurement of goods or services. Elements of the intergovernmental agreement include:

- Name of parties (the PHA and the initiating agency) and affiliation
- Effective date
- Purpose of the agreement
- Procedures for providing list of needed items or services
- Description of items or services to be purchased
- Lead party in the procurement
- Policies, rules that must be followed in the procurement
- Delivery terms
- Type of contract
- Warranty
- Fees to be paid to the lead agency, if any
- Procedures for dispute resolution with contractors
- Procedures for dispute resolution between the parties
- Procedures for modification and termination
- Provisions for meetings on specification issues
- Non-exclusivity clause, which allows the PHA to conduct other procurements for similar products
- Authorized signatures and titles

Note: PHAs cannot purchase under federal supply schedule contracts through the General Services Administration (GSA) except for purchases made from GSA IT Schedule 70, Information Technology, and Consolidated (formerly Corporate Contracts) Schedule contracts containing Information Technology Special Item Numbers (IT SINS).

B. Inter-entity Agreements for Joint Procurement Activity

There are instances when two or more non-federal entities, such as PHAs, enter into an agreement to conduct a joint solicitation and execute a single contract with a vendor. This may create efficiency and economies of scale in pricing. These agreements must conform to requirements in the Examples of Intergovernmental Agreements Section above.

C. Joint-venture Partners

PHAs may select joint-venture (JV) partners for administrative or management functions of public housing or the provision of supportive or social services.

Authority: 24 CFR §943.148(b)

1. Selection Methods

Methods of selecting joint-venture partners are as follows:

- Qualifications-Based Selection (QBS) using a Request for Qualifications (RFQ) and subject to negotiation of a fair and reasonable price
- If prior approved by HUD, using a sole source proposal, under certain conditions as follows:
 - The JV partner has unique resources that it makes available to the PHA that would not otherwise be available in the open market. The PHA must document the unique qualifications and the cost reasonableness of the JV.
 - The PHA seeks to contract with a resident group or PHA subsidiary to provide administration, management, supportive, or social services. The PHA must document the cost reasonableness.

2. Procurement Requirements of JV Partners

Authority: (24 CFR §943.150)

- A JV partner is not a grantee or subgrantee, so it is not bound by 2 CFR §200 in procurement of supplies or services except if the JV partner is a subsidiary, affiliate, or identity-of-interest party of the PHA, whereupon HUD may waive the requirements of 2 CFR §200 if it finds the entity has an acceptable procurement policy.
- A JV partner may contract with an identity of interest without further procurement if:

- The identity-of-interest party was specified in the JV partner Request for Proposal (RFP) or RFQ response;
- The PHA demonstrates that, in the selection of the JV partner, the provision of such goods or services was anticipated;
- Compensation to the identity of interest party is structured to prevent duplication of profit or expenses; and
- The PHA demonstrates selection is reasonable based on market cost and availability.

D. Consortia

Authority: 24 CFR Part 943, Subpart B

The 1998 Quality Housing and Work Responsibility Act created a new section 13 of the Housing Act of 1937 that allowed PHAs to form Section 13 consortia. These are partnerships between two or more PHAs that submit joint plans to combine all or part of their funding and program administration.

Consortia must comply with 2 CFR §200.

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Questions

Chapter 14

1. Which of the following is not a requirement for an intergovernmental agreement?
 - a. The procurement process used by the original agency must comply with federal regulations
 - b. The agreement must provide efficiency and result in cost savings for the PHA
 - c. The agreement is for unique supplies and services that will enable the PHA to save money
 - d. The agreement is for common supplies and services that are routine in nature
2. Section 13 consortia are partnerships between two or more PHAs that submit joint plans to combine all or part of their funding and program administration.
 - a. True
 - b. False

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Chapter 15: Opportunities and Contracting with Resident-owned, Small, Minority, and Other Disadvantaged Businesses

A. Training and Employment Opportunities

HUD encourages a policy of providing training and employment opportunities to residents of the low-income neighborhoods and developments they serve.

This includes:

- Contracting with residents and resident-owned businesses;
- Contracting with Resident Management Corporations (RMCs); and
- Establishing goals for contract awards to small and minority-owned businesses and minority-business enterprises (MBEs), women's business enterprises (WBEs), and businesses in labor-surplus areas

Authority: 24 CFR Part 135 (Section 3)

B. Section 3 of the Housing and Urban Development Act of 1968 (24 CFR §135)

Section 3 of the Housing and Urban Development Act of 1968 ensures that when HUD financial assistance creates employment, training, and business opportunities for low- and very-low-income persons—particularly those who are recipients of government assistance for housing or residents of the community in which the federal assistance is spent. Such persons have, “to the greatest extent feasible,” access and sometimes are given preference, to jobs that may be created as a result.

Section 3 applies to:

- Public Housing Agency (PHA) funds used for housing development, operations and capital fund programs;
- Certain Notification of Funding Availability (NOFA) and grant agreements; and
- Expenditure of Section 8 funds (but payments to Section 8 landlords do not apply).

Section 3 does not apply to contracts for supplies and materials unless the purchase includes installation of the items.

CHAPTER 15: OPPORTUNITIES AND CONTRACTING WITH RESIDENT-OWNED, SMALL, MINORITY, AND OTHER DISADVANTAGED BUSINESSES

The mandatory Section 3 contract clause can be found at 24 CFR §135.38 and in forms HUD-5370, HUD-5370-C, and HUD-5370-EZ.

1. Annual Reporting

PHAs must submit to the Assistant Secretary for Fair Housing and Equal Opportunity an annual report using the Section 3 Data Reporting System on form HUD-60002 Economic Opportunities for Low- and Very Low-Income Persons.

C. Resident-owned Businesses

PHAs are permitted, but not required, to use an alternative procurement process when contracting with resident-owned businesses for public housing services, supplies, or construction (24 CFR Part 963.12). This process is as follows:

- The PHA prepares an Independent Cost Estimate (ICE).
- The PHA selects the appropriate method of procurement.
- The PHA solicits a quote, bid, or proposal from one or more resident-owned businesses.
- The PHA receive offer(s) from one or more resident-owned businesses and ensure that:
 - The offeror submits the required certification described in 24 CFR Part 963.10(d) regarding previous contracts received under the alternative procurement process and total amount of such previous contracts is less than \$1,000,000;
 - The price is reasonable pursuant to a cost or price analysis;
 - The award is made to a responsive and responsible offeror; and
 - The procurement file is documented.

Though resident-owned firms at PHAs are not common, they do exist. Typical examples are janitorial firms or catering firms, which create opportunity for entry-level jobs. Resident-owned firms must, if required, have a business license and appropriate insurance coverage, but the PHA can help fund these requirements if suitable funds are available.

D. Contracting with a Resident Management Corporation

A PHA may enter into a contract with an RMC to provide property management services (24 CFR Part 964, Tenant Participation and Tenant Opportunities in Public Housing). Competitive bid

CHAPTER 15: OPPORTUNITIES AND CONTRACTING WITH RESIDENT-OWNED, SMALL, MINORITY, AND OTHER DISADVANTAGED BUSINESSES

requirements do not apply to the decision of a PHA to contract with an RMC for property management.

Contract requirements are as follows:

- The PHA must specify the functions for which the RMC will be responsible;
- The contract must be administered as any other contract for services would be; and
- The contract is subject to any collective bargaining agreement provisions.

PHA sole-source awards to an RMC must meet certain conditions to differentiate the RMC from a resident-owned business as follows:

- The RMC must be approved by duly elected resident council and a majority of the residents. If no resident council exists, the RMC must be approved by a majority of the residents
 - Voting members must be 18 years of age or heads of households (of any age) whose name appears on the lease.
- The RMC must be a validly incorporated nonprofit organization.
- The RMC must be governed by an elected Board of Directors and include representatives from each participating Resident Council.

Before making a sole-source award, the PHA must:

- Ensure that the RMC meets all criteria to qualify;
- Ensure that the RMC is capable of performing the proposed work; and
- Ensure that the price is reasonable.

The RMC is obligated to provide fidelity bond coverage and insurance or equal protection to the PHA and HUD against loss, theft, embezzlement, or fraudulent acts by the RMC or its employees.

In performing services, the RMC must comply with the requirements of 2 CFR Part 200. The RMC must be audited each year by a licensed certified public accountant (CPA) and submit the audit report to HUD and the PHA within 30 days.

E. Assistance to Small and Other Disadvantaged Businesses

PHAs are required to make every feasible effort to ensure that small businesses, MBEs, WBEs, and labor-surplus area businesses participate in PHA contracting. The requirements are included in Presidential Orders 11625, 12138, and 12432.

1. Business Type Definitions

- Small business
 - A small business is a business that 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. The size standards in 13 CFR Part 121 should be used to determine business size.
- Minority-owned business
 - A minority-owned business is a business that is at least 51% owned by one or more minority group members; or, in the case of a publicly owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include African Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.
- Women's business enterprise
 - A women's business enterprise is a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.
- Labor-surplus area business
 - A labor-surplus area business is a business that, 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 Part 654, Subpart A, and in the list of labor surplus areas published by the Employment and Training Administration).
- Section 3 business concern
 - A Section 3 business concern is a business that meets one of the following criteria:
 - ♦ Is 51% or more owned by Section 3 residents;

CHAPTER 15: OPPORTUNITIES AND CONTRACTING WITH RESIDENT-OWNED, SMALL, MINORITY, AND OTHER DISADVANTAGED BUSINESSES

- ◆ Includes at least 30% permanent, full-time employees that are currently Section 3 residents or were Section 3 residents within 3 years of the date of first employment with the business; and/or
- ◆ Provides evidence of a commitment to subcontract more than 25% of the dollar award of all subcontracts to be awarded to business concerns that meet the Section 3 qualifications set forth in the two bullets immediately preceding.

PHAs are encouraged to establish goals to measure the effectiveness of their efforts to contract with the businesses defined above without limiting competition.

Note: Some localities have adopted minority contracting set-aside policies or geographic limitations that may conflict with federal requirements for full and open competition. PHAs are prohibited from participating in such “set-asides.”

F. PHA Reporting

PHAs are required to report on their small and disadvantaged contracting progress semi-annually using Form HUD-2516 (Contract and Subcontract Activity Report).

The following steps may be helpful in increasing the number of bidders, increasing competition and engaging small and disadvantaged business:

- Study the existing barriers facing low-income persons and disadvantaged businesses
- Review and modify any PHA policies and procedures that may contribute to these barriers
- Communicate directly with disadvantaged firms and resident-owned businesses about contracting opportunities, standards required for quality work at a reasonable cost, and how to succeed in bidding.
- Maintain a list of disadvantaged and resident-owned firms and notify them of planned procurement activities along with all other firms on the PHAs bidder’s list
- Establish partnerships with other community agencies, governmental agencies, and educational institutions to work collaboratively in the effort to engage small and disadvantaged businesses

CHAPTER 15: OPPORTUNITIES AND CONTRACTING WITH RESIDENT-OWNED, SMALL, MINORITY, AND OTHER DISADVANTAGED BUSINESSES

- Consider partnering in a consortium or interagency agreement with other PHAs or units of local government to enhance capacity to achieve small and disadvantaged contracting goals

PHAs are most successful when they can cost-effectively meet their contracting needs by increasing competition and providing opportunities for resident-owned businesses and other small disadvantaged businesses.

Questions

Chapter 15

1. The purpose of HUD Section 3 is to ensure that no PHA activities are performed by residents who might have a personal interest in the work
 - a. True
 - b. False
2. Section 3 requirements apply to Section 8 landlords.
 - a. True
 - b. False
3. When PHAs contract with a Resident Management corporation, which of the following apply? Select all that are correct.
 - a. The PHA must competitively bid the contract
 - b. The PHA can sole-source the contract
 - c. The sole-source award must be approved by HUD
 - d. The sole-source award must be approved by the resident council
4. Assistance provided to small and disadvantaged businesses include which of the following? Select all that apply.
 - a. Partnering with other local agencies or PHAs to engage these firms and meet contracting goals
 - b. Understanding the barriers that these firms face in bidding on work
 - c. Providing general local PSA announcements as to procurement opportunities
 - d. Providing these firms with acceptable pricing for specific procurements

CHAPTER 15: OPPORTUNITIES AND CONTRACTING WITH RESIDENT-OWNED, SMALL,
MINORITY, AND OTHER DISADVANTAGED BUSINESSES

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Chapter 16: Public/Private Partnerships, HOPE VI, and Mixed-Finance Development

Public Housing Agencies (PHAs) routinely enter into partnerships with HOPE VI and Mixed-Finance development partners. Once they are selected and a contract is awarded, particular procurement rules apply to each partner, including the PHA. Appendix 5 contains definitions of commonly used terms related to these partnerships.

Authority: 24 CFR §905.604

Mixed-Finance development refers to development (through new construction or acquisition, with or without rehabilitation) or modernization of public housing where the public housing units are owned in whole or in part by an entity other than the PHA.

A. Application

- HOPE VI and Mixed-Finance procurement activity occurs whenever HUD or other federal funds are used in either development or operations of the public housing project (2 CFR §200.317–200.326).
- If public and private funds are co-mingled, additional requirements apply (2 CFR §200.317–200.326).

Note: 2 CFR §200.317–200.326 may not apply when the PHA does not spend HUD or other federal funds.

B. Selection of a Developer and/or Development Partner

Selection of a development partner can be made through the Qualifications-Based Selection (QBS) process as described in Chapter 7.

- Price is negotiated with the highest-ranked offeror based on responses to a Request for Qualifications (RFQ).
- Cost and price analysis must be completed prior to submission of proposals to determine estimate value for requested services.
- QBS cannot be used for the procurement of HOPE VI, Mixed-Finance program managers, and legal services.

Note: HUD does not approve procurement actions for the HOPE VI program unless specifically required by the grant agreement (typically in older agreements).

C. Procurement Requirements of the Selected Developer

A PHA development partner is not subject to 2 CFR §200.317–200.326 except where the PHA or its instrumentality exercises significant functions with respect to managing development of the proposed units.

What does it look like when the PHA or its instrumentality is exercising significant functions?

- The PHA or its instrumentality acts as the sole or managing partner in the ownership entity.
- The PHA or its instrumentality acts as the developer.

The following activities by the PHA or its instrumentality are not considered significant functions:

- Monitoring regulatory compliance for units receiving subsidy
- Coordinating communications with agencies regarding project financing and operations
- Providing Community and Supportive Services (CSS) services.
- Attending construction meetings and reviewing and approving draws
- Maintaining the property’s waiting list
- Reviewing and approving operating and capital budgets.

Entity	2 CFR §200.317–200.326 Applies
PHA	Yes
Developer/private entities	No
Developer with PHA partner exercising significant functions	Yes
City agency acting as developer	Yes

D. Other Required Efforts

PHAs and their partners must adhere to certain provisions to avoid even the appearance of impropriety.

- Conflict of Interest Provisions prohibit the PHA from obtaining supplies and services from persons or entities with certain conflicts.
- Other provisions are described in Notices of Funding Availability (NOFAs), Annual Contributions Contracts (ACCs), the HOPE VI Grant Agreement, 2 CFR Part 200, 24 CFR §905 Subpart F, and state- and local-level regulations.

CHAPTER 16: PUBLIC/PRIVATE PARTNERSHIPS, HOPE VI, AND MIXED-FINANCE DEVELOPMENT

The HOPE VI Grant Agreement includes requirements for PHAs to identify conflicts of interest.

- No person who is an employee, agent, consultant (excluding an independent contractor), officer, or elected or appointed official of the grantee who participates in any facet of the decision-making process may obtain a financial interest or benefit from the procurement. Relatives and family members of decision makers are excluded from benefiting from the procurement. This limitation continues for 1 year after the procurement.
- No person who is an employee, agent, officer, or elected or appointed official of the grantee and
 - Who exercises or has exercised any functions or responsibilities with respect to activities assisted under a HOPE VI Grant; or
 - Who is in a position to participate in a decision-making process or gain inside information with regard to such activities may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for 1 year thereafter.
- HUD may grant an exception to conflict-of-interest requirements on a case-by-case basis. The PHA must provide HUD with a written disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict, a description of how the public disclosure was made, and an opinion of the grantee's attorney that the interest for which the exception is sought does not violate state or local laws. HUD will approve or deny such requests in writing.

1. Identity of Interest

Identity of interest means any relationship (generally based on family ties or financial interests) between the seller and the purchaser (i.e., the prospective owner); the owner and/or the general contractor and the subcontractor, material supplier, or equipment lessor, or the owner and the lender that would reasonably give rise to a presumption that the parties to the transaction may operate in collusion in establishing the purchase price of the property, the cost of the rehabilitation work, or terms of financing.

Example: The developer partner conducts a public bid to retain a construction contractor, and the developer partner allows a member of her family to bid on the construction work, or the developer partner allows a construction company owned by the developer partner to bid on the construction work.

- PHAs must ensure that no partners participating in the development have a conflict of interest.
- If a partner and/or owner entity (i.e., an entity in which it has an identity of interest) wants to serve as the general contractor, it may award itself the construction contract only if it can demonstrate that its bid is the lowest bid submitted in response to a public request for bids or the PHA may seek a waiver.
- Required Identify of Interest Contract Clauses - There are 13 required clauses related to identity of interest in a contract (2 CFR Appendix II to Part 200). Because some of these clauses may directly affect negotiations with partners, they must be included in solicitation documents, providing notice to all potential offerors.

E. Procurement by Parties Other Than the PHA or the Developer

A HOPE VI or Mixed-Finance project typically involves many parties in addition to the PHA. The following guidelines apply to such PHA partners.

Entity	2 CFR §200.317–200.326 Applies
Private property managers properly procured by PHA	No
Program manager subcontracting duties directly	No
Program manager procuring provider for PHA	Yes
Resident groups acting as sub-grantees	Yes
Resident-owned businesses (governed by 24 CFR Part 963 Subpart B)	Yes

F. Resident Involvement

Qualified Resident Management Corporations (RMCs) may obtain a sole-source award for property management contracts only.

HUD encourages inclusion of residents on procurement selection panels as long as the PHA maintains majority membership on the panels and the resident panel member receive training in the procurement process.

- Residents serving on panels represent the PHA and are subject to conflict-of-interest provisions. PHAs may wish to obtain HUD guidance before finalizing selection panel members.
- Even when key local community partners (e.g., local planning and development office) are involved, PHA representation should constitute the majority of the panel. All panel members must comply with conflict of interest requirements.
- PHAs must not delegate procurement responsibility to another agency/entity.

G. Procurement by the PHA When Acting as Developer or with Ownership Interest

Generally, when the PHA or instrumentality is acting as the development entity or performs a significant role in actions and decision making of such an entity (as through a partnership with a private entity), requirements of 2 CFR §200.317–200.326 apply. HUD may make a case-by-case exception if such an entity presents an acceptable alternative procurement plan that adequately protects the public interest.

1. PHA Procurement of Instrumentalities

A PHA's procurement with its instrumentality is not subject to 2 CFR Part 200. However, the instrumentality must procure other members of the operational or development team subject to the same procurement rules as the PHA (i.e., 2 CFR Part 200).

H. Issues Arising in CSS Procurement Activity

When selecting an administrator for its CSS program, a PHA must comply with 2 CFR §200.317–200.326.

Social service providers that are nonprofit or governmental agencies may be sub-grantees if included in the grant application. Such sub-grantees do not have to be competitively procured. However, pursuant to the HOPE VI Grant Agreement, a PHA must gain HUD approval of the sub-grantee agreement with a social service provider.

Changes to the CSS portion of the HOPE VI program procurement requirements have occurred annually. These changes appear in the NOFA and the HOPE VI Grant Agreement for the applicable grant year. PHAs should consult the NOFA and the HOPE VI Grant Agreement for requirements that may apply to that specific year's grant awards.

I. Contracting with Sub-grantees

A PHA may decide to use sub-grantees to complete elements of the project, including development and CSS.

The PHA must ensure that sub-grantees are aware of federal statutes and regulatory requirements and any requirements of grant agreements and for monitoring them to ensure compliance.

Mandatory contract clauses and forms are:

- Applicable requirements of 2 CFR Appendix II to Part 200;
- The HOPE VI Grant Agreement;
- The ACC;
- Other contract provisions that may be applicable to the HOPE VI program;
- Mandatory Section 3 contract clause found at 24 CFR §135.38 that applies to all contracts covered by Section 3; and
- Forms HUD-5370, HUD-5370-C, and HUD-5370-EZ used where applicable.

J. Fees and Guarantees

1. Guarantees

PHAs must not provide completion, operating deficit, or other guarantees to investors from funds derived from public housing property. The PHA must have a non-HUD source to pay guarantees.

2. Developer Fees

HUD has developed cost-control and safe-harbor guidelines for acceptable development fees in HOPE VI and Mixed-Finance projects. HUD reserves the right to review and reject a negotiated fee if it does not meet the cost control guidelines.

3. Developer Fees to PHAs

A PHA acting as developer or co-developer of a HOPE VI project may be entitled to a fee, provided the fee is returned to the project. Only in cases where the project or subsequent phases of the project cannot benefit from the reinvested developer fee may the PHA use the developer fee for other low-income housing purposes. The PHA must disclose the fee and its use in the Program Income Certification described in Exhibit H of the Mixed-Finance ACC Amendment.

Questions

Chapter 16

1. Which of the following are significant functions with respect to managing development of proposed units that would make the PHA subject to procurement requirements of 2 CFR §200.317–200.326? Select all that apply.
 - a. The PHA monitors for regulatory compliance subsidized units
 - b. The PHA provides community and supportive services
 - c. The PHA acts as the developer
 - d. The PHA attends construction meetings and approves draws
2. Identity of Interest firms may serve as the general contractor and may award itself the construction contract without seeking other bids.
 - a. True
 - b. False
3. Conflict of Interest provisions apply to the purchase of services (such as construction services) but not to the purchase of supplies.
 - a. True
 - b. False
4. In addition to involving residents through the award of property-management contracts to qualified Resident Management Corporations (RMCs), residents may be involved in which of the following ways:
 - a. As individual panel members representing the PHA
 - b. As an RMC conducting the entire procurement process
 - c. Without regard to their other business arrangements and relationships to the PHA
5. Community and Supportive Services (CSS) partners:
 - a. Are private or nonprofit providers of services designed to help HOPE VI residents
 - b. Must always be selected through a competitive procurement
 - c. May be required to meet different requirements based upon the NOFA for the specific year of grant
6. To attract investment, PHAs may provide investors in property development a guaranteed return on their investment.
 - a. True
 - b. False

CHAPTER 16: PUBLIC/PRIVATE PARTNERSHIPS,
HOPE VI, AND MIXED-FINANCE DEVELOPMENT

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Chapter 17: Utility Purchasing, Energy Conservation Loans, and Energy Performance Contracting

This chapter focuses on Public Housing Agency (PHA) contracting related to Energy Conservation Loans, Energy Performance Contracting, and utility purchasing.

A. Energy Conservation Loans (Operating Subsidy Add-on)

An Energy Conservation Loan is defined as follows:

- A financing vehicle for the PHA to finance energy improvements
- The PHA receives a subsidy add-on to cover the cost of amortizing the improvement
- **Authority:** 24 CFR §990.185

The following HUD approvals are required:

- Comprehensive Energy Analysis (CEA) from a qualified vendor
- List of identified improvements
- Loan document

B. Energy Performance Contracting (Frozen Rolling Base Incentive)

A Frozen Rolling Base Incentive is when the PHA keeps 100 percent of the savings that result from the decreased consumption due to the energy efficiency measures installed, of which 75 percent must be used to pay off the debt and related project costs.

1. Third-party Energy Performance Contracts

The energy performance contractor must be procured in a manner that provides full and open competition compliant with the requirements of HUD policies and 2 CFR §200.317–200.326, typically by issuing a Request for Proposal (RFP).

For Third-party Energy Performance Contracts (EPCs), the appropriate office of HUD must approve:

- The CEA, which the PHA must procure from a qualified vendor;
- The RFP soliciting bids for the energy contractor prior to its advertisement and publication (HUD approval is dependent

CHAPTER 17: UTILITY PURCHASING, ENERGY CONSERVATION LOANS, AND ENERGY PERFORMANCE CONTRACTING

upon a determination that payments under the contract can be funded from the reasonably anticipated energy cost savings); and

- The final performance contract negotiated between the PHA and the Energy Performance contractor.

2. Self-managed Energy Performance Contracts

PHAs may seek to self-manage their EPC. PHA must be designated as a “standard” or “high” performer in the Public Housing Assessment System (PHAS). HUD will consider requests from PHAs designated as “troubled” on a case-by-case basis.

For self-managed EPCs, HUD must approve the following provisions of a detailed energy plan prepared by the PHA:

- Assessment of facility needs
- Statement of capabilities and internal project processes
- Assessment of the agency’s energy opportunities, including capital costs and estimated savings
- Financial cash-flow projections
- A project commissioning and preventative maintenance plan
- A measurement and verification plan
- A designated licensed (i.e., bonded) professional engineer familiar with performance contracting, commissioning, measurement and verification, and state and local codes
- Initial energy plan
- Detailed project plan

C. Utility Purchasing

- PHAs may achieve lower utility costs by purchasing energy directly from the utility providers at lower rates.
- In some deregulated markets, there may be multiple providers of a utility service. In such cases, a PHA must procure the utility service competitively or, if available, pursuant to a piggyback award.
- Regulated markets with only one provider mean there is no opportunity for competitive procurement; accordingly, such procurements must be justified pursuant to HUD policies regarding non-competitive proposals (see Chapter 8).

D. Procurement Regulations Pertaining to Energy Conservation Loans and Energy Performance Contracts

Energy Conservation Loans and Energy Performance Contracting are financing methods that result in energy savings over time. Both operate within the guidelines of all federal procurement regulations.

- In using these strategies, PHAs must adhere to applicable state and local procurement requirements and the PHA's procurement policy.
- Energy-improvement measures are treated as any capital program.
- In capturing the savings, PHAs must conform to requirements defined in the Operating Fund rule (24 CFR Part 990).

E. Resources

Additional information and expertise on Energy Conservation Loans, Energy Performance Contracting, and other energy-conservation measures can be found using the following resources:

- Relevant public housing notices and guidebooks:
 - *Energy performance contracting for public and Indian housing: A guide for participants* (1992), prepared by HUD and the U.S. Department of Energy. This guidebook, which outlines details of preparing, implementing, and managing an energy performance contract, is available online at <https://www.huduser.gov/portal/Publications/pdf/energy.pdf>
 - *Energy conservation for housing* (1998), a workbook prepared by HUD. Available online at https://www.hud.gov/sites/document?DOC_10601.PDF
 - *Guidance on energy performance contracts* (2011) prepared by HUD (PIH Notice 2011-36 (HA)). Available online at <https://www.hud.gov/sites/documents/PIH2011-36.PDF>
 - Training materials for streamlining Energy Performance Contracting can be found at https://www.hud.gov/program_offices/public_indian_housing/programs/ph/phecc/epformance
- Any successor or related notices, handbooks, or guidebooks
- The local HUD field office
 - Engage HUD early and throughout the project to obtain a timely review and approval of required key documents in the process. The local HUD field office will be able to

CHAPTER 17: UTILITY PURCHASING, ENERGY CONSERVATION LOANS, AND ENERGY PERFORMANCE CONTRACTING

provide information on other PHAs using performance contracting and sources of technical assistance in the area.

- Qualified consultants
 - The services of a qualified consultant may be retained if the PHA lacks the expertise internally. Such consultants must be procured competitively in accordance with the HUD Procurement Handbook, typically by issuing and awarding an RFP. Consultant fees can be paid from the savings generated or the capital budget.
 - **Note:** A consultant individual or firm may not later be included or compete in a solicitation for the energy performance contract.
- Other federal and private energy-conservation programs or local utility providers
- Other PHAs that have successfully implemented these utility-conservation measures
 - HUD’s energy website related to “success stories” can be helpful.

Questions

Chapter 17

1. Before initiating an Energy Conservation Loan, a PHA must have HUD review and approve which of the following? Select that apply.
 - a. A Comprehensive Energy Analysis
 - b. A loan document
 - c. A list of identified improvements
 - d. A list of identified energy consultants
2. Under an Energy Performance Contracting (Frozen Rolling Base Incentive), the PHA keeps 100 percent of the savings that result from the decreased consumption due to the energy efficiency measures installed. Of the savings, which percent must be used to pay off the debt and related project costs?
 - a. 66%
 - b. 50%
 - c. 75%
 - d. 90%
3. PHAs may seek to self-manage their Energy Performance Contracts; however, they must be designated as a Standard or High Performer.
 - a. True
 - b. False

CHAPTER 17: UTILITY PURCHASING, ENERGY CONSERVATION LOANS,
AND ENERGY PERFORMANCE CONTRACTING

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Answer Key

Chapter 1

1. The HUD Procurement Handbook for Public Housing Agencies (PHAs) does not apply to which of the following:
 - a. Tribally Designated Housing Entities or Indian Housing Authorities
 - b. Section 8 Housing Choice Voucher Program
 - c. Income generated by the Central Office Cost Center
 - d. All of the above**
2. Regarding procurement requirements, PHAs must follow only their local laws.
 - a. True
 - b. False**
3. The overall objective of the PHA procurement process is to:
 - a. Provide the best value product or service for the agency
 - b. Comply with all applicable laws, HUD regulations and PHA policies
 - c. To maintain private business dealings
 - d. Both a and c
 - e. Both a and b**

Chapter 2

1. PHAs are required to establish and follow a written procurement policy. Which of the following are key elements to a procurement policy?
 - a. Establish procedures
 - b. Delegate authority
 - c. Contain policies
 - d. All of the above**
2. The Contracting Officer is always the Executive Director of a PHA.
 - a. True**
 - b. False
3. The PHA is obligated to pay the bill when the custodian purchases snacks for the vending machine because the Executive Director's administrative assistant requested snacks.
 - a. True
 - b. False**

Chapter 3

1. When is an Independent Cost Estimate (ICE) always required?
 - a. Above the micro-purchase threshold
 - b. Above micro-purchases and below small purchases
 - c. Above small purchase threshold
 - d. All of the above**

ANSWER KEY

2. For how long must a PHA retain all significant and material documentation concerning each procurement?
 - a. Varies depending on the size of the procurement
 - b. 3 years**
 - c. 5 years
 - d. Indefinitely
3. As long as the PHA includes additional funding in the budget for a project in the event that payments are delayed and any vendors assess late payment fees, the PHA may pay those late fees with HUD funds.
 - a. True
 - b. False**

Chapter 4

1. If a conflict of interest—real or apparent—exists, an individual must not participate in the procurement or contract-management process.
 - a. True**
 - b. False
2. The Property Manager has her kitchen and bathroom faucets replaced at a discount by the same plumbing contractor that the PHA uses. This is an example of which of the following:
 - a. A kickback
 - b. A gratuity
 - c. A conflict of interest
 - d. All of the above**
3. An appliance vendor promises the PHA Director a cut of the profit for every appliance it sells to the PHA. This is an example of which of the following:
 - a. A kickback**
 - b. A gratuity
 - c. A conflict of interest
 - d. All of the above
4. A construction company hires a consultant to help write a proposal to complete a large renovation for the PHA. The construction firm promises a fee of 2 percent of the value of the contract to the consultant if it wins the project. This is good business and is irrelevant in the PHA's evaluation of bids.
 - a. True
 - b. False**
5. The assistant to the PHA's Director of Development takes questions from potential bidders on the requirements in a published IFB. The assistant tells one potential bidder that the PHA has determined the overall value of the work solicited is \$1.2 million. Has the assistant violated procurement rules by providing confidential information?
 - a. Yes**
 - b. No

Chapter 5

1. What is the current threshold for micro-purchases?
 - a. \$3,000
 - b. \$5,000
 - c. \$7,000
 - d. \$10,000**
2. When a procurement is considered a micro-purchase, the PHA is required to solicit quotes.
 - a. True
 - b. False**
3. What is the current federal threshold for small purchases?
 - a. \$75,000
 - b. \$150,000
 - c. \$250,000**
 - d. \$375,000
4. When a procurement is a small purchase, which types of documentation are required?
 - a. Independent Cost Estimate (ICE)
 - b. Evidence of bids/quotes
 - c. Evaluation factors (if an RFP)
 - d. a and b only
 - e. b and c only
 - f. a, b, and c—An ICE is required for a small purchase, but not for a micro-purchase.**
5. Petty cash funds must comply with federal regulation.
 - a. True**
 - b. False
6. The PHA believes a purchase of 25 new gas ranges will cost less than \$10,000. When multiple quotes are received, all exceed \$10,000, but all are less than \$250,000. What does the PHA do next?
 - a. Select the lowest quote**
 - b. Divide the purchase requirements into two groups of ranges—12 and 13—to ensure that quotes are under the \$10,000 threshold
 - c. Collect additional documentation to retain in the procurement files justifying the costs
 - d. Prepare an ICE
 - e. a and b
 - f. c and d

Chapter 6

1. Sealed bids are typically used for purchases above the small purchase threshold.
 - a. True**
 - b. False

ANSWER KEY

2. What are key elements in an Invitation for Bids (IFB) package?
 - a. Bid form
 - b. Statement/scope of work
 - c. Method of solicitation
 - d. All of the above**
3. PHAs must hold pre-bid conferences and make attendance mandatory for all bidders.
 - a. True
 - b. False**
4. What are the primary factors in evaluating a response to an IFB? Select all that apply.
 - a. Price**
 - b. Appearance of completed response package
 - c. How quickly the IFB response package was submitted
 - d. The responder is well known to the PHA
 - e. Responsiveness and responsibility of the apparent low bidder**
5. Generating the lowest bid is the only requirement in the selection process.
 - a. True
 - b. False**

Chapter 7

1. When are competitive proposals used?
 - a. When the requirements need to be further described to allow an offeror to estimate cost
 - b. To evaluate factors other than price
 - c. To consider various approaches to the work
 - d. All of the above**
2. A detailed Statement of Work should be included in the solicitation for competitive proposals.
 - a. True**
 - b. False
3. Use of the competitive proposal process always requires price negotiation.
 - a. True
 - b. False**
4. A PHA publishes a Request for Proposals and provides a minimal description of the work. Potential proposers are invited to ask questions for clarification of statement-of-work requirements. The PHA receives a significant number of questions on a wide range of issues. What should the PHA do? Select all that apply.
 - a. Amend the RFP by answering questions and publicizing the Q&A**
 - b. Potentially delay the proposal submission date to allow potential proposers to rework proposals based on answers to questions**
 - c. Potentially cancel the procurement because the volume of questions indicates that the SOW was unclear**

ANSWER KEY

- d. Provide no amendment and review proposals to determine whether any bidders really understood the work
5. Qualifications-Based Selection (QBS) is a procurement method used to solicit specific services. A QBS (select all that apply):
- a. Uses technical factors to determine the highest-ranked respondent**
 - b. Ranks respondents based on technical qualifications**
 - c. Negotiates price after selecting the top-ranked respondent**
 - d. Is used whenever the PHA determines it is the best method
 - e. Is typically used to solicit A/E services**
6. Which of the following are not evaluation factors for competitive proposals? Select all that apply.
- a. Quality of the work plan
 - b. Technical capabilities
 - c. Connections to the PHA or the PHA's community**
 - d. Successful past performance
7. The Evaluation Committee considers proposed costs in its evaluation of proposals.
- a. True
 - b. False**
8. All proposals are private information and not disclosed to anyone until after award has been completed to the top-rated firm.
- a. True**
 - b. False
9. The QBS method can typically only be used for A/E services or for developer contracts.
- a. True**
 - b. False
10. An RFQ should include a clear scope of work. Which of the following are elements of a good scope of work? Select all that apply.
- a. Price
 - b. Project name and location**
 - c. Schedule**
 - d. Description of needs**
 - e. Staff specified**
 - f. None of the above
11. When procuring legal services, which of the following methods are allowed? Select all that apply.
- a. Sealed bidding**
 - b. Competitive proposal**
 - c. Small purchase procedure**
 - d. Noncompetitive proposal**
 - e. Only b and c

ANSWER KEY

- f. Only a and d
- 12. Fixed price contract for litigation with a value less than \$100,000 must be approved by the HUD Field Office.
 - a. True
 - b. False**

Chapter 8

- 1. PHAs may solicit sole-source or non-competitive procurements when they know which vendor/contractor they would like to work with.
 - a. True
 - b. False**
- 2. Justification for awarding a sole-source contract must include which of the following? Select all that apply.
 - a. History of prior similar procurements**
 - b. Documentation of a public exigency or emergency**
 - c. Documentation that the vendor has been used in the past and completed excellent work
 - d. No other bids were received after the initial advertisement

Chapter 9

- 1. Which of the following is not a type of specification in procurement?
 - a. Design
 - b. Brand name or equal
 - c. Functional performance
 - d. Cost and quality**
- 2. Which of the following is not a key element of the SOW?
 - a. Detail work and task requirements
 - b. Cost**
 - c. Deliverables
 - d. Period of performance

Chapter 10

- 1. Which of the following is not a factor used to determine the type of contract used?
 - a. Price competition
 - b. Urgency of the requirement
 - c. Location of contractor**
 - d. Procurement history
- 2. Which of the following is not a typical contract type?
 - a. Cost-reimbursement
 - b. Cost-estimate**
 - c. Indefinite delivery

ANSWER KEY

- d. Letter contract
- 3. Which of the following are types of indefinite delivery contracts? Select three.
 - a. Indefinite-quantity contract**
 - b. Definite-quantity contract**
 - c. Requirements contract**
 - d. Requests contract
- 4. A Time and Materials contract should only be used when no other contract is suitable.
 - a. True**
 - b. False
- 5. Which type of contract should be used only for extreme emergencies?
 - a. Time and Materials
 - b. Indefinite-delivery
 - c. Letter contract**
 - d. Cost-reimbursement
- 6. Every procurement above the small purchase threshold must include a cost or price analysis.
 - a. True**
 - b. False
- 7. Which of the following are critical tests proposed costs must meet? Select all that apply.
 - a. Allowable**
 - b. Allocable**
 - c. Responsible
 - d. Reasonable**
 - e. Allowanced
- 8. The term of a contract can be extended no matter what so long as there is a need.
 - a. True
 - b. False**

Chapter 11

- 1. Who is responsible for monitoring the contractor to ensure work is completed as scheduled, on budget, and within acceptable quality standards?
 - a. HUD Field Office
 - b. PHA**
 - c. Third-party monitor
 - d. An Inspector
- 2. Which of the following is not a basic step that is required as a part of overall monitoring and inspections to ensure construction contracts are properly monitored and work completed in accordance with the contract?
 - a. Pre-construction conference
 - b. Progress meetings

ANSWER KEY

- c. Post-award conference**
 - d. Inspections
3. For a construction contract, the PHA is responsible for making progress payments to the contractor based on the contractor's requests for payment to continue work.
- a. True
 - b. False**
4. Can the PHA authorize time extensions to the contractor during a construction contract?
- a. Yes, only after writing a justification to HUD
 - b. No, the contract cannot be adjusted or amended once it has been executed
 - c. Yes, for unforeseeable causes beyond the contractor's control**
 - d. No, the contractor must stay on schedule as stipulated by the contract
5. Under a construction contract, a final inspection of all work should be conducted within how many days of receiving the written notification of completion?
- a. 5 days
 - b. 7 days
 - c. 10 days**
 - d. 15 days
6. A post-award conference is recommended for non-construction contracts. What is the purpose of a post-award conference? Select all that apply.
- a. To ensure that both parties understand contractual performance requirements**
 - b. To determine whether modifications to the contract are necessary and to execute any modifications.
 - c. To agree upon delivery and acceptance of supplies and services**
 - d. To confirm how the PHA will notify the contractor of any work that is rejected**
7. Work is assumed to be acceptable if the PHA does not protest delivery or reject work products within a reasonable period of time.
- a. True**
 - b. false

Chapter 12

1. A PHA must have a waiver from HUD to be exempt from HUD pre-award review of procurements. The HUD waiver is good for:
- a. Only for one procurement
 - b. 6 months
 - c. 1 year**
 - d. 2 years
2. When a waiver is not in place, which of the following procurement activities require HUD review? Select all that are true.
- a. All procurements that exceed \$5,000
 - b. Brand-name-only procurements that exceed the small purchase threshold**

ANSWER KEY

- c. **Qualifications-Based Procurements for construction activity**
- d. **Contracts awarded for more than 5 years**

3. If a PHA requests a waiver to procurement regulations, the official who will approve or deny the waiver is:
- a. **HUD Field Office representative**
 - b. HUD's Secretary
 - c. HUD's PIH Assistant Secretary

Chapter 13

1. A PHA only needs to comply with regulations in 2 CFR 200 with respect to procurement.
- a. True
 - b. **False**
2. When local laws conflict with federal procurement regulations, the PHA can choose to comply with the regulation that is the least onerous.
- a. True
 - b. **False**
3. When choosing between the federally imposed wage rate and a state-imposed wage rate, the PHA must comply with the one with the higher wage rates.
- a. True
 - b. **False**

Chapter 14

1. Which of the following is not a requirement for an intergovernmental agreement?
- a. The procurement process used by the original agency must comply with federal regulations
 - b. The agreement must provide efficiency and result in cost savings for the PHA
 - c. **The agreement is for unique supplies and services that will enable the PHA to save money**
 - d. The agreement is for common supplies and services that are routine in nature
2. Section 13 consortia are partnerships between two or more PHAs that submit joint plans to combine all or part of their funding and program administration.
- a. **True**
 - b. False

Chapter 15

1. The purpose of HUD Section 3 is to ensure that no PHA activities are performed by residents who might have a personal interest in the work
- a. True
 - b. **False**

ANSWER KEY

2. Section 3 requirements apply to Section 8 landlords.
 - a. True
 - b. False**
3. When PHAs contract with a Resident Management corporation, which of the following apply? Select all that are correct.
 - a. The PHA must competitively bid the contract
 - b. The PHA can sole-source the contract**
 - c. The sole-source award must be approved by HUD
 - d. The sole-source award must be approved by the resident council**
4. Assistance provided to small and disadvantaged businesses include which of the following? Select all that apply.
 - a. Partnering with other local agencies or PHAs to engage these firms and meet contracting goals**
 - b. Understanding the barriers that these firms face in bidding on work**
 - c. Providing general local PSA announcements as to procurement opportunities**
 - d. Providing these firms with acceptable pricing for specific procurements

Chapter 16

1. Which of the following are significant functions with respect to managing development of proposed units that would make the PHA subject to procurement requirements of 2 CFR §200.317–200.326? Select all that apply.
 - a. The PHA monitors for regulatory compliance subsidized units
 - b. The PHA provides community and supportive services
 - c. The PHA acts as the developer**
 - d. The PHA attends construction meetings and approves draws
2. Identity of Interest firms may serve as the general contractor and may award itself the construction contract without seeking other bids.
 - a. True
 - b. False**
3. Conflict of Interest provisions apply to the purchase of services (such as construction services) but not to the purchase of supplies.
 - a. True
 - b. False**
4. In addition to involving residents through the award of property-management contracts to qualified Resident Management Corporations (RMCs), residents may be involved in which of the following ways:
 - a. As individual panel members representing the PHA**
 - b. As an RMC conducting the entire procurement process
 - c. Without regard to their other business arrangements and relationships to the PHA

ANSWER KEY

5. Community and Supportive Services (CSS) partners:
 - a. Are private or nonprofit providers of services designed to help HOPE VI residents**
 - b. Must always be selected through a competitive procurement
 - c. May be required to meet different requirements based upon the NOFA for the specific year of grant
6. To attract investment, PHAs may provide investors in property development a guaranteed return on their investment.
 - a. True
 - b. False**

Chapter 17

1. Before initiating an Energy Conservation Loan, a PHA must have HUD review and approve which of the following? Select that apply.
 - a. A Comprehensive Energy Analysis**
 - b. A loan document
 - c. A list of identified improvements**
 - d. A list of identified energy consultants
2. Under an Energy Performance Contracting (Frozen Rolling Base Incentive), the PHA keeps 100 percent of the savings that result from the decreased consumption due to the energy efficiency measures installed. Of the savings, which percent must be used to pay off the debt and related project costs?
 - a. 66%
 - b. 50%
 - c. 75%**
 - d. 90%
3. PHAs may seek to self-manage their Energy Performance Contracts; however, they must be designated as a Standard or High Performer.
 - a. True**
 - b. False

ANSWER KEY

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Appendix 1

Mandatory Contract Clauses for Small Purchases Other Than Construction

MANDATORY CONTRACT CLAUSES FOR SMALL PURCHASES OTHER THAN CONSTRUCTION

The following contract clauses are required in contracts pursuant to **24 CFR 85.36(i) and Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act**. HUD is permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy. The PHA and contractor is also subject to other Federal laws including the U.S. Housing Act of 1937, as amended, Federal regulations, and state law and regulations.

Examination and Retention of Contractor's Records. The PHA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until three years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

Right in Data and Patent Rights (Ownership and Proprietary Interest). The PHA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials, and documents discovered or produced by Contractor pursuant to the terms of this Contract, including, but not limited to, reports, memoranda or letters concerning the research and reporting tasks of the Contract.

Energy Efficiency. The Contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under this contract is performed.

Procurement of Recovered Materials

(a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

(b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

Termination for Cause and for Convenience (contracts of \$10,000 or more).

(a) The PHA may terminate this contract in whole, or from time to time in part, for the PHA's convenience or the failure of the Contractor to fulfill the contract obligations (cause/default). The PHA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the PHA all information, reports, papers, and other materials accumulated or generated in performing the contract, whether completed or in process.

(b) If the termination is for the convenience of the PHA, the PHA shall be liable only for payment for services rendered before the effective date of the termination.

(c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (cause/default), the PHA may (1) require the Contractor to deliver to it, in the manner and to the extent directed by the PHA, any work described in the Notice of Termination; (2) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the PHA; and (3) withhold any payments to the Contractor, for the purpose of set-off or partial payment, as the case may be, of amounts owned by the PHA by the Contractor. In the event of termination for cause/default, the PHA shall be liable to the Contractor for reasonable costs incurred by the Contractor before the effective date of the termination. Any dispute shall be decided by the Contracting Officer.

Appendix 2

Certification of Nondisclosure

**CERTIFICATION OF NONDISCLOSURE
(FOR USE IN COMPETITIVE PROPOSALS METHOD OF PROCUREMENT)**

As a condition of serving as an evaluator of offers under _____ [*insert solicitation number or other identification, e.g., task order number*], I hereby certify that I will:

- (1) Use the information¹ provided to me for the intended evaluation purposes only and will not disclose this information to any individual outside of the evaluation panel, including my supervisor or manager, without the express authorization of the evaluation panel chairperson or the Contracting Officer;
- (2) Not solicit or accept any information other than that provided to me by the evaluation panel chairperson or the Contracting Officer;
- (3) Report to the evaluation panel chairperson or the Contracting Officer any attempt by other parties to obtain from or provide to me any information described in this certification;
- (4) Honor any authorized restrictive legends placed on the information by prospective contractors or subcontractors or by the PHA and apply them to any reproductions or abstracts I may make or order to be made; and,
- (5) Return all copies of the information whether originally provided to me by the HA or made or ordered by me in the course of my evaluation, and any abstract thereof, to the evaluation panel chairperson.

I understand that my unauthorized release of information may result in the termination of my participation in this procurement and/or administrative, civil and criminal penalties. I also understand that this certification will be made part of the source selection record and the official contract file and does not relieve me of the responsibility for any other disclosure or certification required by law, regulation or other directive.

Typed or Printed Name

Signature

Date

¹ Information includes but is not limited to the acquisition strategy, acquisition

timeline, source selection criteria, evaluation plan, identity and number of offers, contents of offers, evaluation results and other documentation resulting from the evaluation process.

Appendix 3

Legal Services Contract Protocol

LEGAL SERVICES CONTRACT PROTOCOL

The Department urges inclusion of the following provisions into all legal services contracts executed and/or administered by Public Housing Agencies, unless no federally provided funds will be used to administer the contract.

* * * *

ADDENDUM TO ENGAGEMENT AGREEMENT

1. The [name of Public Housing Agency] (PHA) and [name of legal service individual or firm] (LSP) engaged to provide professional legal services to the PHA in connection with [briefly and precisely describe the nature, scope and limits of the legal services to be provided by the LSP] agree that the provisions of this Addendum to the Engagement Agreement are hereby incorporated into PHA and LSP's engagement agreement as if they had been set forth at length therein.

2. During the pendency of the legal services engagement, LSP shall not, without HUD approval, represent any officer or employee of PHA, in her/his individual capacity, in connection with potential civil liability or criminal conduct issues related to PHA operations.

3. LSP has an obligation not to, and shall not, interfere with, disrupt, or inappropriately delay or hinder any authorized monitoring, review, audit, or investigative activity of HUD (including the Office of Inspector General), the General Accounting Office (GAO), or the officers and employees of HUD and GAO. Any and all representation by LSP cannot be inconsistent with the foregoing obligation. Specifically, LSP shall not deny access to HUD, GAO, or the officers and employees of HUD and GAO, to PHA records in response to document demands by HUD, GAO, or the officers and employees of HUD and GAO, notwithstanding possible discovery privileges that

would otherwise be available to PHA. HUD requires public housing agencies to provide HUD, GAO, or the officers and agents of HUD and GAO, with “full and free” access to all their books, documents, papers and records. See 24 CFR. §85.42(e)(1); HUD Handbook 7460.7 REV-2, §1-2(B)(2).

4. PHA and LSP shall make available for inspection and copying, by HUD (including the Office of Inspector General), GAO, and the officers and employees of HUD and GAO, all invoices, detailed billing statements, and evidence of payment thereof relating to LSP’s engagement. Such records constitute “PHA records” and are subject to section 3, above.

5. If HUD or PHA determines that LSP is violating any provision of this Addendum to the Engagement Agreement, it shall timely notify LSP of such violation. LSP will have 48 hours following its receipt of the notice of violation to cease and desist from further violation of the addendum. If LSP fails to adequately cure the noticed violation within 48 hours: (A) HUD, in its discretion, may demand that PHA terminate the professional legal services engagement for breach, or, henceforth, satisfy all costs associated with the engagement with non-Federal funds; and/or (B) PHA, in its discretion, may terminate the professional legal services engagement for breach. Additionally, HUD may sanction LSP pursuant to 24 CFR. Part 24.

6. Should any part, term, or provision of this Addendum to the Engagement Agreement be declared or determined by any court of competent jurisdiction to be illegal or invalid, the validity of the remaining parts, terms, and provisions shall not be affected.

Date: [Enter date]

[Enter name of PHA Exec. Dir.]

[Enter name of LSP key partner]

Appendix 4

Sample Conflict of Interest Policy

Sample Conflict of Interest Policy*

[*Organization Name*]

Policy on Conflicts of Interest And Disclosure of Certain Interests

This conflict of interest policy is designed to help directors, officers, and employees of the [*Organization Name*] identify situations that present potential conflicts of interest and to provide [*Organization Name*] with a procedure that, if observed, will allow a transaction to be treated as valid and binding even though a director, officer, or employee has or may have a conflict of interest with respect to the transaction. In the event there is an inconsistency between the requirements and the procedures prescribed herein and those in federal or state law, the law shall control. All capitalized terms are defined in Part 2 of this policy.

1. Conflict of Interest Defined. For purposes of this policy, the following circumstances shall be deemed to create Conflicts of Interest:
 - A. Outside Interests.
 - (i) A Contract or Transaction between [*Organization Name*] and a Responsible Person or Family Member.
 - (ii) A Contract or Transaction between [*Organization Name*] and an entity in which a Responsible Person or Family Member has a Material Financial Interest or of which such person is a director, officer, agent, partner, associate, trustee, personal representative, receiver, guardian, custodian, conservator, or other legal representative.
 - B. Outside Activities.
 - (i) A Responsible Person competing with [*Organization Name*] in the rendering of services or in any other Contract or Transaction with a third party.
 - (ii) A Responsible Person's having a Material Financial Interest in; or serving as a director, officer, employee, agent, partner, associate, trustee, personal representative, receiver, guardian, custodian, conservator, or other legal representative of, or consultant to; an entity or individual that competes with [*Organization Name*] in the provision of services or in any other Contract or Transaction with a third party.

C. Gifts, Gratuities and Entertainment. A Responsible Person accepting gifts, entertainment, or other favors from any individual or entity that:

- (i) does or is seeking business with, or is a competitor of [Organization Name]; or
- (ii) has received, is receiving or is seeking to receive a loan or grant, or to secure other financial commitments from [Organization Name];
- (iii) is a charitable organization;

under circumstances where it might be inferred that such action was intended to influence or possibly would influence the Responsible Person in the performance of his or her duties. This does not preclude the acceptance of items of nominal or insignificant value or entertainment of nominal or insignificant value that are not related to any particular transaction or activity of [Organization Name].

2. Definitions.

- A. A *Conflict of Interest* is any circumstance described in Part 1 of this Policy.
- B. A *Responsible Person* is any person serving as an officer, employee or member of the board of directors of [Organization Name].
- C. A *Family Member* is a spouse, domestic partner, parent, child, or spouse of a child, brother, sister, or spouse of a brother or sister, of a Responsible Person.
- D. A *Material Financial Interest* in an entity is a financial interest of any kind that, in view of all the circumstances, is substantial enough that it would, or reasonably could, affect a Responsible Person's or Family Member's judgment with respect to transactions to which the entity is a party. This includes all forms of compensation. (The board may wish to establish an amount that it would consider to be a "material financial interest.")
- E. A *Contract or Transaction* is any agreement or relationship involving the sale of purchase of goods, services, or rights of any kind, the providing or receipt of a loan or grant, the establishment of any other type of pecuniary relationship or review of a charitable organization by [Organization Name]. The making of a gift to [Organization Name] is not a Contract or Transaction.

3. Procedures.

- A. Before board or committee action on a Contract or Transaction involving a Conflict of Interest, a director or committee member having a Conflict of Interest and who is in attendance at the meeting shall disclose all facts material to the Conflict of Interest. Such disclosure shall be reflected in the minutes of the meeting.
- B. A director or committee member who plans not to attend a meeting at which he or she has reason to believe that the board or committee will act on a matter in which the person has a Conflict of Interest shall disclose to the chair of the meeting all facts material to the Conflict of Interest. The chair shall report the disclosure at the meeting and the disclosure shall be reflected in the minutes of the meeting.
- C. A person who has a Conflict of Interest shall not participate in or be permitted to hear the board's or committee's discussion of the matter except to disclose material facts and to respond to questions. Such person shall not attempt to exert his or her personal influence with respect to the matter, either at or outside the meeting.
- D. A person who has a Conflict of Interest with respect to a Contract or Transaction that will be voted on at a meeting shall not be counted in determining the presence of a quorum for purposes of the vote. The person having a conflict of interest may not vote on the Contract or Transaction and shall not be present in the meeting room when the vote is taken, unless the vote is by secret ballot. Such person's ineligibility to vote shall be reflected in the minutes of the meeting. For purposes of this paragraph, a member of the board of directors of [*Organization Name*] has a Conflict of Interest when he or she stands for election as an officer or for re-election as member of the board of directors.
- E. Responsible Persons who are not members of the board of directors of [*Organization Name*] or who have a Conflict of Interest with respect to a Contract or Transaction that is not the subject of board or committee action, shall disclose to the Chair or the Chair's designee any Conflict of Interest that such Responsible Person has with respect to a Contract or Transaction. Such disclosure shall be made as soon as the Conflict of Interest is known to the Responsible Person. The Responsible Person shall refrain from any action that may affect [*Organization Name*]'s participation in such Contract or Transaction.

In the event it is not entirely clear that a Conflict of Interest exists, the individual with the potential conflict shall disclose the circumstances to the Chair or the Chair's designee, who shall determine whether there exists a Conflict of Interest that is subject to this policy.

4. Confidentiality. Each Responsible Person shall exercise care not to disclose confidential information acquired in connection with such status or information the disclosure of which might be adverse to the interests of [*Organization Name*]. Furthermore, a Responsible Person shall not disclose or use information relating to the business of [*Organization Name*] for the personal profit or advantage of the Responsible Person or a Family Member.

5. Review of Policy.
 - A. Each new Responsible Person shall be required to review a copy of this Policy and to acknowledge in writing that he or she has done so.

 - B. Each new Responsible Person shall annually complete a disclosure from identifying any relationships, positions, or circumstances in which the Responsible Person is involved that he or she believes could contribute to a Conflict of Interest arising. Such relationships, positions, or circumstance might include service as a director of or consultant to a not-for-profit organization, or ownership of a business that might provide goods or services to [*Organization Name*]. Any such information regarding business interests of a Responsible Person or a Family Member shall be treated as confidential and shall generally be made available only to the Chair, the Executive Director, and any committee appointed to address Conflicts of Interests, except to the extent additional disclosure is necessary in connection with the implementation of this Policy.

 - C. This policy shall be reviewed annually by each member of the board of directors. Any changes to the policy shall be communicated immediately to all Responsible Persons.

[Organization Name]

Conflict of Interest Information Form

Name: _____ Date: _____

Please describe below any relationships, positions, or circumstances in which you are involved that you believe could contribute to a Conflict of Interest (as defined in [Organization Name]'s Policy on Conflicts of Interest) arising.

I hereby certify that the information set forth above is true and complete to the best of my knowledge. I have reviewed, and agree to abide by, the Policy of Conflict of Interest of [Organization Name] that is currently in effect.

Signature: _____ Date: _____

Appendix 5

Glossary

APPENDIX 6 GLOSSARY

- I. GENERAL TERMS
- II. TERMS RELATED TO PUBLIC/PRIVATE PARTNERSHIPS, HOPE VI, AND MIXED-FINANCE DEVELOPMENT

I. GENERAL TERMS

Acceptance – The act of an authorized representative of the HRHA acknowledging that the supplies or services delivered to or received by the HRHA conform to contract requirements.

Annual Contributions Contract (ACC) – Entered into between HUD and the HRHA, 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 bids (2 CFR 200.319).

Architect/Engineer (A/E) – Person (or firm) 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.

Competitive Proposal – A method of procurement using the solicitation, evaluation, and negotiation of proposals instead of sealed bids. The competitive proposal method is used for HRHA Procurement Policy requirements exceeding the HRHA's Small Purchase Threshold when conditions are not appropriate for sealed bids. Note: Under the Qualifications-Based Selection (QBS) method only, a Request for Qualifications (RFQ) is used in place of the Request for Proposals (RFP).

Competitive Range – Those proposals submitted in response to a Request For Proposal that, after technical evaluation by the HRHA's selection panel and considering the proposed costs/prices, have a reasonable chance of being awarded the contract.

Contract – A mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the HRHA to pay for them. It includes all types of commitments that obligate the HRHA to an expenditure of funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include: contract awards and notices of awards; job orders or task letters issued under basic ordering agreements, equipment contracts, or definite- or indefinite – quantity contracts; letter contracts; orders, such as purchase orders, under

which the contract becomes effective by written acceptance or performance; bilateral 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.*

Contracting Officer – The Executive Director or an official authorized by the Executive Director to enter into and/or administer Contracts and make related determinations and findings. For the purpose of this policy, the term includes any HRHA employee designated and authorized to perform the duties of a Contracting Officer.

Contract Administration – All the actions taken with regard to a Contract after its award. Administration includes monitoring the Contractor's performance to ensure compliance with the contract requirements, and terms and conditions.

Contract Modification – Any written alteration to a Contract executed by the Contracting Officer.

Contractor – An Offeror who is awarded a Contract.

Contract Pricing Arrangements – The arrangement, as reflected in the Contract, for how the Vendor will be paid for services. While there are two basic Contract Pricing Arrangements – firm fixed-price and cost-reimbursement – there are multiple variations on these models, from indefinite quantity contracts (where the exact number of deliverable items is not known at the time of contract award but where minimum and maximum quantities are stated) to cost-plus- fixed-fee (where costs are reimbursed, up to an estimated amount, plus a specified fee).

Cost-Reimbursement Contract – The Contractor is reimbursed for allowable costs of performance up to a total estimated amount specified in the Contract. The Contract may provide for the payment of a fee (i.e., a type of profit) in addition to costs.

Federal Small Purchase Threshold – The maximum dollar amount for individual small purchases. The threshold is currently set at \$150,000 by federal law (41 U.S.C. 403(11)). The HRHA may establish a lower threshold.

Firm Fixed Price Contract – The Contractor is paid a firm fixed-price for all required work regardless of the Contractor's actual costs of performance (see HUD Handbook 7460.8 REV 2 Chapter 10, Section 10.1, for detailed guidance on fixed-price contracts).

Independent Cost Estimate (ICE) – An estimate prepared by the HRHA prior to obtaining offers. The degree of analysis will depend on the size and complexity of the purchase.

Inspection – The examination and/or testing of supplies and services to determine conformance with the contract requirements.

Intergovernmental or Interagency Agreement – An agreement between the HRHA and a federal, state, or local government agency (including other PHAs) for the provision of supplies or services. (In recent years, the terms Cooperative Agreement, Intergovernmental Agreement, Consortium Agreement, or Memorandum of Agreement have been used interchangeably and are treated the same).

Invitation for Bids (IFB) – Solicitation type used under the sealed bidding method of procurement. This document explains the intended purchase and invites bids from potential Contractors.

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.

Micro Purchase Threshold – Small purchases under \$10,000 or \$2,000 in the case of acquisitions for construction subject to the Davis Bacon Act.

Negotiation – Discussions with Offerors in the competitive range regarding technical and/or price proposals when awarding a Contract using the Competitive Proposals Method of procurement or when issuing modifications to existing contracts or other required discussion with Offerors for the other methods of procurement.

Non-competitive Proposals – Procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. This includes emergency purchases over the micro-purchase threshold (>\$10,000).

Offer – A response to a solicitation that, if accepted, would bind the Offeror to perform the resultant Contract. Responses to invitation for bids (Sealed Bidding) are offers called “Bids” or “Sealed Bids”, responses to Requests For Proposals (negotiation) are offers called “Proposals”; however, responses to requests for quotations (small purchases) are “quotations,” not offers. Small Purchases become binding Contracts once the Vendor accepts the order (e.g., by signature or substantial performance of the order). Offers submitted under the Qualification Based Selection method are called “qualifications”.

Offeror – The general term for the person or 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 and services (including construction) with the HRHA’s federal program grant funds through purchase, lease, or other means. Procurement begins at the point when the HRHA’s needs are established and includes the description of requirements to satisfy the HRHA’s needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling the HRHA’s needs by contract.

Proposal – The offer submitted by a potential Contractor in the competitive or noncompetitive proposals method of procurement.

Qualification Based Selection (QBS) – A form of procurement of architect-engineering (A/E) or development services by competitive proposals in which price is not requested in the Request for Qualifications (RFQ) or used as an evaluation factor. Instead, technical qualifications only are reviewed negotiations are conducted with the best-qualified firm. Only A/Eservices and development partners may be procured by this method.

Quotation – The price or cost submitted by a Vendor in the Small Purchase method.

Request for Proposals (RFP) – Solicitation method used under both the competitive or noncompetitive 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 the HRHA, which may not necessarily be primarily determined based on price.

Responsible Bidder – A bidder who is able to comply with the required or proposed delivery or performance scheduled; has a satisfactory performance record; 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; has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and is otherwise qualified and eligible to receive an award under applicable laws and regulations, including the fact that the bidder is not suspended, debarred or under a HUD-imposed Limited Denial of Participation.

Responsive Bid – A bid that conforms exactly to the requirements in the Invitation for Bids (IFB).

Sanctions – Measures that may be invoked by HUD to exclude or disqualify Contractors, HRHA staff or agents acting on behalf of the HRHA from participation in HUD programs (such as limited denial of participation (LDP) or debarment), or measures the HRHA may take regarding employees, officers, agents, or other who violate the ethical standards of the policies of the HRHA (such as dismissal, reassignment, removal from position, etc.). In the cases of violations, HUD would exercise any available remedy under the Annual Contributions Contract, federal regulations and statutes, and grant agreements, including the U.S. Housing Act of 1937 as amended, 2 CFR 200 , and sections 17 and 19 of the Annual Contributions Contract.

Sealed Bids – A method of procurement inviting sealed bids; this method required: specifications that are clean, accurate, and complete; a public bid opening; and evaluation of bids and award of the contract based on the lowest price submitted by a responsive and responsible Contractor. Sealed bids is the preferred method for construction (2 CFR 200.320 (c)).

Small Purchase Procedures – A simplified method for acquiring supplies, materials, and services (including construction) that do not exceed the HRHA's small purchase threshold under State and Federal law.

Small Purchase Threshold – The per purchase dollar limit established by the HRHA for small purchases. The threshold is set in the HRHA's procurement policy. The threshold may not exceed the State and Federal small purchase threshold.

Solicitation – The general term for the HRHA's 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 a solicitations. The provisions include such information as to how to prepare an offer, bonding requirements, date and time for submission of offers, etc. Provisions required by HUD, as applicable, are included on forms HUD-5369, Instructions for Bidders and HUD-5369-A, B and C., Representations, Certifications, etc., and HUD-5369-B for solicitations above the Federal Small Purchase Threshold.

Specification or Scope – Description of the technical requirements of a Contract.

Statement of Work (SOW) – Written description of work to be performed that establishes the standards sought for the supplies or services furnished under the Contract; typically used for service contracts.

Termination for Cause – Termination of a Contract on a unilateral basis when the Contractor fails to perform, fails to make progress so as to endanger performance, or commits a default as specified in the contract.

Termination for Convenience – Termination of a Contract by the HRHA on a unilateral basis when the product or service is no longer needed or when it is in the best interest of the HRHA.

Vendor – The term often used for an Offeror or Contractor when talking about small purchasing.

Vendor List – List of persons or entities qualified to do business with the HRHA.

II. TERMS RELATED TO PUBLIC/PRIVATE PARTNERSHIPS, HOPE VI, AND MIXED-FINANCE DEVELOPMENT

Community and Supportive Services (CSS) - That portion of a HOPE VI revitalization plan that addresses the service needs of residents of the severely distressed public housing including activities undertaken by the PHA, community partners, and sub-grantees. Under the terms and conditions of a HOPE VI grant, PHAs are obligated to provide (either directly or through partnership and/or contractors) a range of services designed to help HOPE VI residents and residents relocated from the distressed site make effective progress toward self-sufficiency.

CSS Partner -- A community entity or social service provider offering supportive services to residents of a HOPE VI site or relocated residents as part of the overall implementation of the HOPE VI grant. PHAs are encouraged to form CSS partnerships during the grant application development process. When specific nonprofit service providers are named as CSS partners in the grant application, they may qualify as sub-grantees rather than contractors. For-profit providers or entities selected for CSS roles after grant award must generally be competitively procured.

Development Partner -- A for-profit or nonprofit partner of the PHA or a development affiliate of the PHA, carrying out the physical revitalization of a mixed-finance project site, bearing financial risk. A Development Partner is an entity with whom the PHA enters into a partnership or other contractual arrangement in order to provide for the mixed-finance development of public housing units. The Development Partner has primary responsibility with the PHA for the development of the housing units and/or non-residential structures under the terms of the approved mixed-finance proposal. The Development Partner other than a PHA Instrumentality must also be procured in accordance with **24 CFR 85.36**.

Instrumentality -- An entity formed in accordance with applicable law, and whose assets, operations and management are legally and effectively controlled by the PHA, and that utilizes Public Housing Funds and assets for the purpose of creating public and affordable housing.

Mixed-Finance -- The combined use of Federal public housing funds and privately financed sources of funds for the development of public housing units under **24 CFR Part 941 Subpart F**.

NOFA --The notification of funding availability that invites applications from PHAs for a HOPE VI grant and describes the conditions for grant award in any given grant cycle.

Owner Entity -- This is the entity that will own the public housing units in a mixed-finance development. The owner entity may be a partnership that includes a PHA affiliate. It may also be a separate entity altogether, i.e., one not owned by the PHA or a PHA affiliate.

Operating Subsidy-Only Projects -- The term "Operating Subsidy-Only Project" refers to the development of public housing replacement units financed without the use of HUD public housing capital assistance or HOPE VI funds, but for which HUD agrees to provide operating subsidies under Section 9(e) of the U.S. Housing Act of 1937 (the "Housing Act"). The PHA must procure developers and/or owners of an Operating Subsidy-Only Project using the competitive procurement process required by 24 CFR 941.606(n)(1)(ii) and 24 CFR 85.36. For additional information, refer to PIH Notice 2004-5.

Program Manager -- An entity a PHA procures in accordance with **24 CFR 85.36** to represent its interests and to assume responsibility for coordinating all participants including the PHA, HUD, third party consultants and financing sources. A program manager may also assist the PHA in its negotiations with a developer.

Sub-grantee -- A nonprofit entity, commonly a service provider named in a HOPE VI grant application, playing an integral role in grant implementation, and not procured. A sub-grantee may also be a governmental entity that does development work on behalf of the PHA.

