



PROCUREMENT PRACTICES AT PUBLIC HOUSING AGENCIES



LEAD THE WAY

PHA GOVERNANCE AND
FINANCIAL MANAGEMENT

A Training for Board Members and Staff



Table of Contents

Procurement Regulations and Agency.....3
 Procurement Policies and Procedures3

Roles and Responsibilities4
 Board of Commissioners4
 Sample Board Resolution5
 Executive Director6
 Contracting Officer.....6
 Public Housing Agency6
 Procurement Planning at PHAs8
 Methods of Procurement8

Other Administrative Requirements 11
 Terms of Contracts 11
 Federal Labor Standards and Wage Rates 11
 Actions Requiring HUD Approval 12

Procurement Regulations and Agency

All public housing agencies (PHAs) must have written, up-to-date procurement policies and procedures that follow applicable federal, state, and local laws and regulations in place. They must maintain a contract administration system and a written Code of Standards of conduct governing performance in the award and administration of contracts. In addition, PHAs are required to have an administrative process to manage all procurement and contracting activities. Typically, the Code of Standards is outlined in the procurement policy. It applies to not only the PHA's employees, but also to all board members and their relatives and partners. Other sources of PHA procurement regulations include PIH notices, as well as state and local laws. The PHA should follow the more stringent of the federal, state, and local laws.

Procurement Policies and Procedures

A PHA's procurement policies and procedures are developed by the PHA and approved by the board of commissioners. The purpose of these guidelines is to ensure that a PHA is acting legally and with integrity in its daily operations by providing regulatory and administrative oversight of all procurement activities.

Procurement Policy: The procurement policy identifies specific regulatory aspects of the procurement process. It reflects the regulatory principles outlined in the regulations – PHAs typically use the sample provided by HUD in the Procurement Handbook (see box). The policy should itemize any applicable state and local requirements. The handbook does not state that the board must approve the policy. However, it is standard practice, as per the Annual Contributions Contract (ACC) requirements, that the board approve the policy.

Procurement Procedures: Procurement procedures are the standard operating procedures that implement the policy set by the board. The procedures are developed/adopted by the PHA's executive director/CEO – board approval is not required for these procedures. These procedures are typically in the form of a management guide that outlines the internal administrative steps undertaken at the PHA for all procurement actions. It outlines such procedures as:

- Person designated for issuing purchase orders
- The process for deliveries of equipment and supplies
- Person designated for accepting the delivery of equipment and supplies
- Person designated for paying for services delivered

Roles and Responsibilities

Board of Commissioners

The board must be cognizant of the basic provisions noted in the PHA's procurement policy, including the general procurement activities undertaken through the Capital Fund Program (CFP) and through the regular operating budget. The responsibilities of the board include:

- Approving the procurement policy
- Avoiding direct financial gain from any operational activities at the PHA
- Avoiding conflicts of interest
- Monitoring procurement activities with regular meetings
- Approving contracts and agreements following threshold limits noted in the procurement policy or procedures
- Inquiring and following up on administrative inconsistencies or wrongdoing to prevent fraud and mismanagement at the PHA
- Ensuring, through the review of the personnel policy and position descriptions, that duties are separated to the point that adequate internal controls are maintained at the PHA
- Reviewing the Independent Public Audit for problems with the procurement function
- Always being alert for any indications of fraud and mismanagement

BOARD OF COMMISSIONERS

- Provides general oversight of procurement activities
- Not directly involved in vendor selection
- May approve contracts/agreements that exceed a threshold or address a condition specifically outlined under the PHA's procurement policies and/or procedures

While the board does not have direct administration of the procurement functions at the PHA, they are responsible for monitoring all procurement awards through regular meetings. In particular, the board should inquire about administrative inconsistencies that do not follow the Standard Operating Procedures. As part of the procurement policies and procedures, the board can set a threshold that requires its concurrence on certain purchases. However, the board should not micromanage a PHA's procurement activities.

Sample Board Resolution

RESOLUTION NO. 57 OF 2011

A Resolution – Authorizing the Executive Director or his Designee to enter into an Electrical Contract with Merit Electrical Group, Inc. for Switchboard Replacement at the Bidwell High-rise.

WHEREAS, the Housing Agency has determined that it is in the best interests of the Agency and the residents of Bidwell High-rise to replace the existing electrical switchboard; and

WHEREAS, on May 18, 2011, the Housing Agency tasked the Architectural/Engineering (A/E) firm of D7D Engineering to design the electrical work required to replace the existing switchboard and to provide the bidding documents necessary to produce a contractor to perform the work; and

WHEREAS, on October 31, 2011, the Housing Agency issued an Invitation for Bids (“IFB”) for the Switchboard Replacement at the Bidwell High-rise; and

WHEREAS, on November 28, 2011 the Housing Agency received seven (7) bids for the electrical construction work in response to the Invitation for Bids; and

WHEREAS, Merit Electrical Group, Inc. is the lowest responsive and responsible bidder with a bid amount for \$84,000.00 which is 80% of the Independent Cost Estimate (ICE) of \$106,242.50; and

WHEREAS, this procurement was performed in accordance with applicable Federal regulations and the procurement policies and procedures of the Housing Agency

NOW, THEREFORE, BE IT RESOLVED by the Housing Agency

Section 1. That the Executive Director or his designee is hereby authorized to enter into an Electrical Construction Contract with Merit Electrical Group, Inc. in the amount of \$84,000.00 for Switchboard Replacement as the Bidwell High-rise.

Section 2. That the contract will be paid from MtW Funds.

“Ayes”: Reverend Ricky V. Burgess, Mr. Frederick Frank, Ms. Beatrice Hogan, and Ms. Doris Carson Williams.

“Nayes”: None.

Above is a sample board resolution to enter into an electrical construction contract. Locate and highlight the important aspects of this resolution, including:

1. Scope of work defined
2. Date the bid was issued
3. Number of bids received
4. Bid cost compared to estimate
5. Method of paying for contract

Executive Director

The executive director, sometimes called the CEO, is appointed by the board to conduct procurement activity as the Contracting Officer. The executive director is the only person designated to obligate funds and to execute contracts, purchase orders, intergovernmental agreements, and change orders. This person analyzes bids and proposals to ensure fair and equitable treatment for all parties. The executive director will also grant or deny protests in writing.

EXECUTIVE DIRECTOR

- Has full authority to procure and execute contracts on behalf of the PHA
- May delegate authority to staff if approved by the board per official resolution
- Delegation must specify monetary limits and types of actions allowed

Contracting Officer

The Contracting Officer, in most cases, is the executive director. Therefore, any delegations of authority must be clearly outlined and approved by the board, particularly for project-based developments under Asset Management.

Public Housing Agency

It is the responsibility of the PHA to ensure that subcontract awards are made to responsible contractors with the ability to perform successfully under the terms and conditions of a proposed procurement. The PHA must also:

Maintain sufficient records to detail the history of a procurement contract. Clear and concise records of every action should be properly documented. Then, if the PHA is audited, it can justify the award.

Settle all contractual and administrative issues in accordance with good administrative practice and sound business judgment. This includes all protests, disputes, and claims.

Implement protest procedures to handle and resolve disputes relating to procurements. Protest Procedures should be addressed in both the procurement policies and procedures. PHAs have the legal authority to administer their own programs. Federal agencies will not pass judgment on a PHA's determination unless the matter is primarily a federal concern. HUD's review of a protest is limited to the assessment of violations of federal law or regulation or a PHA's violation of their own Protest Procedures for failure to review a complaint or protest.

Implement a contract administration system that ensures that contractors hired by the PHA perform in accordance with the terms, conditions, and specifications of the contract. A contract administration system can be used for all contracts awarded under:

- Small Purchase Procedures (SPP)
- Invitation for Bids (IFB)
- Request for Proposals (RFP)
- Request for Qualifications (RFQ)

This system relates to the staff assignment and internal coordination needed to administer all procurement activities at the PHA. It helps the PHA answer critical questions such as:

- Is the PHA getting a good value for their payment?
- Are the goods received acceptable?
- Are compliance schedules being met?

PHAs who have had problems administering Architecture/Engineering (A/E) and other professional-type consultants in the past should have specific performance criteria included in their contracts.

Ensure open competition according to the Code of Federal Regulations (2 CFR 200.319(a)), “procurement transactions must be conducted in a manner providing full and open competition...” Activities that might restrict open competition include:

1. Placing unreasonable requirements on firms in order for them to qualify to do business
2. Requiring unnecessary experience and excessive bonding
3. Noncompetitive pricing practices between firms or between affiliated companies
4. Noncompetitive contracts to consultants that are on retainer contracts
5. Organizational conflicts of interest
6. Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement
7. Any arbitrary action in the procurement process.

When you have a concern about procurement, ask yourself, “Did everyone have an opportunity to participate in a fair manner?”

Procurement Planning at PHAs

For each procurement action planned at your PHA, it is important to plan well ahead of time. Good planning determines the procurement method for what is needed, ensures that goods and services are obtained when needed, and enables economy of buying off-season. It will also help your PHA develop a schedule for each action. Planning should include determining your short-term and long-term needs per your physical needs assessment (PNA), the time restraints the activity is under (e.g., urgency, type and size of the job, and market conditions), and the source and availability of funds for the activity, whether they be from operating funds, capital funds, or other funds.

There are **ten basic procurement steps** that PHAs must undertake with all procurement activities. These steps include:

1. Develop a Statement of Work (SOW). An SOW is typically used for service contracts (e.g., accounting or legal services) and establishes a baseline for evaluation factors.
2. Complete an Independent Cost Estimate (ICE). An ICE is the PHA's estimate of the cost of goods and services being sought. It is used to evaluate the contractor's reasonableness.
3. Determine the rationale for the procurement method.
4. Solicit and receive quotes/bids/proposals.
5. Determine responsive/responsible bidder, as applicable.
6. Determine price reasonableness.
7. Award the contract.
8. Implement the contract administration system.
9. Close out the contract.
10. Maintain records for minimum of three years.

Methods of Procurement

There are four primary methods of procurement, described below.

Small Purchase Procedures

Small Purchase Procedures (SPPs) are normally used for purchases equal to or less than \$100,000 or based on PHA's small purchase threshold. It is less formal than the other types of procurement procedures. SPPs can be used to procure all types of procurements, such as requests for bids or competitive proposals; however, informal procedures are not recommended for formal requests for proposals due to the evaluation process involved. Federal regulations state that offers shall be obtained from an "adequate number of qualified sources." HUD recommends a minimum of three qualified sources; however, two is the minimum. If one offer is received under SPP, it becomes a single source. However, no HUD approval is required to award the contract since the procedure is not formal.

Steps to an SPP include:

1. Develop an Independent Cost Estimate for the needed work of materials.
2. Solicit three quotes.
3. Compare the quotes to the cost estimate.
4. Negotiate the price.
5. Execute a purchase order.

Micro Purchases are a subcategory of SPP for procurements costing less than \$2,000. For PHAs to use this category, it must be outlined in the PHA's procurement policies. Under this new category, implemented with the revised HUD Procurement Handbook, an ICE and a wage rate are not required. Only one quote is required if the price is considered reasonable.

Sealed Bids

Sealed bids are normally used for construction contracts that are less than \$100,000. This procurement method incorporates the qualifications into the request itself, and is awarded based on price alone. To issue and award a sealed bid, PHAs typically use the following process:

1. Develop a cost estimate for the needed work or materials.
2. Draft a request for proposals (RFP).
3. Publicly open the bids as they are received.
4. Determine the lowest responsible and responsive bidder.
5. Execute a fixed price contract with the selected bidder.

An invitation for bids (IFB) is a formal type of procurement. The issuance of IFB is the procurement method used for acquiring tangible items such as equipment and supplies, and for construction activities.

Competitive Procedures

Competitive procedures can be used when sealed bids or small purchases are not practical. This procurement method is useful when there are unclear or incomplete specifications in the scope of work. It is awarded based on the specifications offered by the bidder. There are two types of competitive procedures: 1) Price Considered, where price is included in the assessment of the proposal; and 2) Price Not Considered, where the assessment is based solely on the technical merits of the proposal. Price Not Considered is typically used for A/E and developers. To issue and award a competitive bid, PHAs typically use the following process:

1. Develop a cost estimate for the needed work or materials.
2. Draft an RFP or Competitive-based Proposal (CBP).
3. Receive proposals, but don't open them publicly.
4. Rate the proposals based on the technical merits and price of the proposal (when price is considered).
5. Choose the highest-rated proposal.
6. Negotiate the price with highest-ranked firm, via the Contracting Officer.
7. Execute either a fixed price or cost reimbursement contract with the selected firm.

Non-Competitive Procedures

Non-competitive procedures are used for emergencies and when competition is lacking. A cost analysis must be performed in all cases, due to the lack of competition. All technical and cost aspects may be negotiated with the sole provider. Types of noncompetitive procurement methods include:

Sole source

- PHA solicits an offer from one source through a Non-competitive-based Proposal (Non-CBP) since it knows there is no competition in the open market
- The item or service is available from only one entity

Single source

- PHA solicits offers from multiples sources through a Competitive-based Proposal (CBP) in the open market, but receives only one offer
- PHA was not aware of lack of competition in the open market

Emergencies and Public Exigencies

- Must be a justifiable condition where the health and safety of the residents is at stake and must be corrected immediately
- No HUD approval is required, in order to facilitate a quicker response

Example of Single Source

Legal services for a PHA may be difficult to obtain in smaller communities. The PHA may initially issue an RFP as a CBP, but must process as a Non-CBP if only one response is received. If there is no response to the RFP, the PHA may consider performing a sole source by targeting one firm willing to negotiate. If it is a formal IFB, HUD approval must be obtained before awarding the contract. If it is informal, the PHA may proceed to award without approval from HUD, but it must document the procedure.

Non-competitive bid procedures require a justification. The justification must describe the action required, the history of prior purchases, the HUD exception under which the activity applies (24 CFR 85.36(d)(4)(i)(A) through (D)), a statement of the unique circumstances requiring the award under this method of procurement, any efforts made to achieve competition (past and future), and approval by the Contracting Officer of the executive director or board, as applicable, per the PHA's procurement procedures.

Other Administrative Requirements

Terms of Contracts

All contracts must have a finite performance period, including any options to be exercised, each outlined with the maximum value for the service/materials and/or the limit on total quantities/ services being acquired (Section 10-8 of the Procurement Handbook). Specifically:

Contracts shall not exceed five years, including options for renewal or extension.

- Any contracts over five years, including options, must be approved by HUD (Section 12.2 of the Procurement Handbook).
 - HUD has determined that contracts beyond five years inherently restrict the competition and must be re-bid to provide opportunities to other entities and to verify the price being paid for the service.
 - The HUD Field Office may approve contract extensions beyond five years if there is no alternative or if the PHA can verify that state or local law allows that contracts can exceed the five-year limit.

All options must be evaluated at the time of the original award of the contract and assessed by the PHA prior to activating the option.

- Options to extend a contract can only be exercised if the original contract outlined such options; otherwise, the PHA must re-bid the solicitation.

Federal Labor Standards and Wage Rates

For construction and maintenance contracts over \$2,000, The Davis-Bacon and Related Acts wages guidelines apply. The Davis-Bacon and Related Acts apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Under Davis-Bacon, PHAs must pay workers applicable wages based on the established classifications of work. PHAs must also post wages in the job site and other public places and interview employees. Interviews ensure that work performed and salaries paid to workers are consistent with job classification wages reported in the payrolls.

Service contracts are exempt. These might include extermination, security guard services, dumpster/trash pickup, alarm systems, routine servicing and testing of HVAC, building inspections, office equipment maintenance, and vehicle service and repairs.

More information can be found on www.wdol.gov.

Actions Requiring HUD Approval

The following actions require HUD approval, according to the regulations in 24 CFR 85.36(g)(2):

- Any procurement procedures or operational actions which fail to comply with the established regulations
- Formal procurements exceeding the \$100,000 Federal Simplified Acquisition Threshold or the limit specified in the PHA's procurement policies where:
 - Only one bid or offer is received
 - The contract is awarded without competition
 - The contract or RFP specifies a "brand" name
 - The contract is awarded to a firm other than the apparent low bidder under an IFB
- A contract modification under any procurement type that changes the Scope of Work or increases the contract amount by more than the \$100,000 Federal Simplified Acquisition Threshold or the limit specified in the PHA's procurement policies

The nature of these procurement measures is to limit competition. Therefore, HUD has an interest in assessing their basis to be sure that the justification is legitimate. It is the responsibility of the PHA to contact HUD to obtain approval for these methods.

Key Procurement Questions for the Board to Ask

- Who is the official Contracting Officer at the PHA? Was he/she approved through a board resolution?
- Is there an up-to-date procurement policy at the PHA?
- Do the procurement procedures in place reflect the operation of the PHA?
- Based on the regular board meetings, is the PHA following the regulatory requirements outlined in the procurement policy and the procurement procedures for operational and capital improvements?
- Are fair and open procurements undertaken at the PHA?
 - Are formal procurements publicly advertised?
 - Are contracts awarded to the lowest bidder?
 - Are non-competitive procurements properly justified?