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CHAPTER 1 Introduction

ONLINE RESOURCES

Additional resources and references for this course are available at <http://NMAreferences.com>. Click the Procurement and Section 3 link at the top of the web page to jump directly to the references. No login information is required.

LEARNING OUTCOMES OF THIS SEMINAR

Upon completion of this Procurement & Section 3 seminar, you should be able to:

- Recognize federal procurement requirements and mandatory references in order to establish procurement policies that are compliant with federal regulations.
- Identify HUD guidance in order to establish discretionary procurement policies.
- Establish and apply best practices at a public housing authority (PHA) based on mandatory requirements and HUD guidance.
- Identify the various methods of procurement and contracting available to the PHA.
- Recognize ethical principles and the importance of adhering to the highest ethical standard.
- Apply good contract management principles.
- Identify requirements and process of monitoring contractors' performance in order to assure compliance with performance requirements and contract terms.

LEARNING OUTCOMES OF THIS CHAPTER

Upon completion of this chapter, you should be able to:

- Identify the purpose and background of HUD's procurement requirements
- Explain mandatory procurement references for inclusion in the PHA's procurement policy
- Identify discretionary references for consideration for the PHA's procurement policy
- Describe the importance of the consistency of procurement policies with good business practices
- Recognize elements of public access to procurement information

Section 1 Introduction

Because public housing authorities (PHAs) are stewards of public funds, all PHA business must be conducted in a manner that will withstand public scrutiny.

PHAs are considered “local governments” receiving public housing assistance funds. 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.

Procurement is simply a word for buying and acquiring. Procurement can be for goods or services. It is crucial for PHAs to be vigilant in trying to obtain the best quality products and services for the best price, while promoting serviceability, efficiency, and stability of the PHA’s developments.

The purpose of this seminar is to train PHAs on procurement practices based on all mandatory requirements and relevant guidance. This seminar provides both required (these will be referenced with “shall” or “must”) and recommended (referenced as “should” or “may”) procurement practices applicable to PHAs.

Section 2 HUD References

MANDATORY REFERENCES

The content of this seminar is based on the following references:

- 2 CFR 200.317-200.326
 - <https://www.ecfr.gov/>
- HUD Handbook 7460.8 REV-2
 - https://www.hud.gov/sites/documents/DOC_10725.PDF
- Mandatory HUD forms that are part of the procurement and contracting processes.
 - All forms referenced in this book may be found online at www.hud.gov/program_offices/administration/hudclips

The Contracting Agent should be thoroughly acquainted with any of the following that affect PHA procurement:

- State and local procurement laws
- 24 FR 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 Part 965—PHA-owned or Leased Projects—General Provisions (see Subpart A on preemption 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)
- https://www.hud.gov/program_offices/administration/hudclips/forms/hud5a#4

A glossary of common procurement terms can be found in Chapter 15.

Mandatory and Discretionary References

The following references are mandatory and binding unless otherwise indicated in the document:

- Statutes
- HUD regulations
- Current PIH Notices
- HUD handbooks
- Forms required by HUD regulations
- Opinions or rulings by HUD’s Office of General Counsel

A “shall” and “must,” mean that an action or item is mandatory and is required by statute or regulation. A “may not” means that an action or item is prohibited (not allowed).

“Should” and “may,” mean that the action or item serves to provide guidance and/or best practices but is not mandatory.

The following HUD references are nonbinding—i.e., PHAs are advised, but not required, to follow them, unless the guidance provided is based on mandatory references.

- Guidebooks
- Notices that have expired
- Handbooks that have expired
- Recommendations from individual HUD staff

Background

On December 19, 2014, the Office of Management and Budget (OMB) published in the Federal Register a joint interim final rule streamlining, consolidating, and clarifying uniform administrative requirements, cost principles, and audit requirements for all federal award-making agencies, including HUD.

- The rule became effective on December 26, 2014.

2 CFR Part 200

Part 200 is the section of the Code of Federal Regulations, Title 2, that includes the administrative requirements for grantees (including public housing authorities) receiving federal funds. This means that if the PHA receives public housing operating subsidy, HOME funds, Community Development Block Grant Funds (CDBG), Capital Funds, and any other federally funded program subsidy, the PHA is subject to the requirements of part 200.

This important reference includes several parts:

- Acronyms and Definitions
- General Provisions
- Pre-Federal Award Requirements and Contents of Federal Awards
- Post Federal Award Requirements
- Cost Principles
- Audit Requirements

Part 200 provides guidance on a variety of tasks, including development of a procurement policy and system, important parts of a contract administration system, general guidance on the standard of conduct for PHA employees involved in procurement of goods and services, requirements for price and cost analysis.

NOTE: Many internal PHA documents related to procurement need to be updated to reference the 2 CFR Part 200 regulation location if any still reference 24 CFR Part 84 and 85.

OMB clarified the methods for collection, transmission, and storage of data in 2 CFR 200.335 to further explain and promote the collection of data in machine-readable formats. A machine-readable format is a format that can be easily processed by a computer without human intervention while ensuring no semantic meaning is lost (44 U.S.C. 3502(18)).

OMB added prohibitions on certain telecommunication and video surveillance services or equipment.¹

HUD Handbook 7460.8

HUD's procurement handbook was revised in March 2007 and includes several samples that PHAs may use in their entirety or modify to support the PHA procurement policy.

The revised handbook incorporates changes in federal laws and regulations and was written to align HUD guidance on asset management and project-based management of public housing. The handbook only applies to public housing agencies (PHAs) in their operation of public housing, including any development or capital improvement activities.

The 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)

1. OMB is adding a new section, 2 CFR 200.216 Prohibition on certain telecommunication and video surveillance services or equipment. Further, OMB added a new 2 CFR 200.471 Telecommunication and video surveillance costs to provide clarity that the telecommunications and video surveillance costs associated with 2 CFR 200.216 are unallowable. A new definition for telecommunication and video surveillance costs, which is described in 2 CFR 200.471, has also been added to 2 CFR for clarity.

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

An anticipated update and revision of HUD Procurement Handbook 7460.8 REV 2 has not yet been issued.

OMB Circulars A-87 and A-102

These OMB Circulars provide additional guidance on cost principles for state, local, and Indian tribal governments as well as grants and cooperative agreements.

- OMB Circular A-87 (05/10/2004)
- OMB Circular A-102 (10/07/1994) (further amended 08/29/1997)
- Notice PIH 2022-10 (issued 04/18/2022)

OMB Final Guidance for Grants and Agreements

Mentioned above, the Office of Management and Budget published guidance on August 13, 2020, revising sections of OMB Guidance for Grants and Agreements, to set the stage for enhanced result-oriented accountability for grants. This guidance added and standardized some procurement terms, which are included in Chapter 15.

DISCRETIONARY REFERENCE

HUD Procurement Guidebook

In August 2020, HUD posted a revised HUD Procurement Guidebook on its HUD Exchange site.

As noted above, a guidebook is a discretionary reference, whereas a handbook is a mandatory reference that accompanies or explains regulations in greater detail.

The new Procurement Guidebook is found at <https://files.hudexchange.info/resources/documents/PHA-Procurement-Training-Guidebook.pdf>. Information in the guidebook is incorporated in this seminar.

Section 3 Doing Good Business Right

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

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 information the PHA has decided on prior to the solicitation, such as 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.

Section 4 Chapter 1 Self-Graded Quiz

1. State and local laws should not be considered in the development of the PHA procurement policy.
 - a. True
 - b. False
2. The federal regulation that governs PHA procurement actions is:
 - a. 24 CFR 5.609
 - b. HUD Procurement Training Guidebook
 - c. 2 CFR Part 200
3. Lack of knowledge of procurement rules is sufficient justification for not adhering to HUD's procurement requirements or PHA procurement policy.
 - a. True
 - b. False
4. The HUD Procurement Handbook for Public Housing Agencies 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. Funds donated by local charity
 - d. All of the above
5. 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

Notes

CHAPTER 2 Procurement Authority and Administration of Procurement Function

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Apply the required elements of the PHA's procurement policy
- Recognize the definition, roles and responsibilities of the PHA's contracting officer
- Identify the requirements and process for the contracting officer's signature and obligation of funds
- Explore procurement staffing
- Provide best practice procurement training to staff

Section 1 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 as well as any applicable state and local laws and regulations.

The purpose of the procurement policy is to provide for fair and equitable treatment of all persons and firms involved in purchasing by the PHA. Everyone has the right to do business with the PHA unless they have been debarred or suspended. The procurement policy also ensures that supplies, services, and construction are procured efficiently, effectively, and at the most favorable prices available.

The PHA procurement policy should be created with these main factors in mind:

- Promote competition in contracting.
- Provide safeguards and integrity.
- Ensure the PHA purchasing actions are in full compliance with applicable federal standards, HUD regulations, and state and local laws.

Without a procurement policy (or with a policy that is inadequate and/or outdated), PHA's are likely to have difficulty supporting their arguments in cases of bid protests, contract disputes, or legal challenges.

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/CEO 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.).

Section 1: Procurement Policy

Notes

Each procurement policy/statement should cover the following:

- **Statement of policy** including the state and federal laws which are referred to in the policy.
- **General provisions** including the application of the policy and manner in which public access to procurement information is provided.
- **Procurement authority and administration** including designating the Executive Director/CEO or their designee as Contracting Officer and establishing levels of expenditure authority.
 - The delegation of authority should specify the PHA positions/job classifications that have purchasing authority and the dollar level of that authority.
 - **Example:** Housing Site Managers may procure items under micro purchase process up to \$500 and may enter into contracts up to the PHA small purchase threshold.
- **Procurement methods** the housing authority will use and the conditions for use of each of the methods included in the policy; e.g., micro purchases, small purchases, sealed bidding, qualification-based selection.
- **Contractor qualifications** including a statement that the housing authority will only do business with responsible contractors or vendors.
- **Types of contracts** including a description of the contract clauses the housing authority may use in the best interests of the PHA.
- **Specifications** including a statement that specifications will be prepared to promote overall economy for the purpose intended and to encourage competition in all solicitations as appropriate
- **Records retention** to detail the significant history of all procurements.

Section 1: Procurement Policy

Notes

- **Appeals and remedies** including information on steps a vendor or contractor may take to resolve contractual issues without litigation
- **Assistance to small and other businesses** including the laws, e.g., Section 3, that the housing authority will address to ensure that Section 3, small, minority, and/or women owned businesses are used
- **Statement of ethics** including any state requirements covering conflict of interest or treatment of gratuities or contingent fees
- **Templates and forms** to be used (such forms may be placed under procedures rather than the policy)

The Board of Commissioners must approve the Procurement Policy. Approval date and resolution number (if applicable) should be shown on the policy. Any amendments to the policy must also be approved and noted in the policy.

While HUD does not have to approve the procurement policy, the PHA must submit the policy. Any discretionary change to the PHA's procurement policy would be a supporting document to the PHA Plan and undergo the PHA plan and public hearing process.

If the PHA would like to be exempt from prior HUD approval of some individual procurement actions, the PHA:

- Can ask HUD to review/approve the procurement policy; or
- Self-certify that their procurement policy and system meet all requirements

Section 1: Procurement Policy

Notes

In either situation, these exemptions (HUD approval or self-certification) are effective for one year; the exemptions can be automatically renewed unless the PHA is found to be not in compliance with requirements. For example, if an independent audit report included significant recommendations for changes in the PHA's procurement system or if HUD is involved with an appeal that results in HUD identifying an area of noncompliance in the PHA's procurement system.

The self-certification or the approval notice from HUD should be filed with the PHA's procurement policy.

PROCEDURES

The PHA may choose to develop a procurement policy that includes working procedures (standard operating procedures) or may choose to separate the policy document from the working procedures. As procurement has become increasingly decentralized under asset management, it is likely that additional authority and functions for onsite procurement will be transferred to asset management projects (AMPs) and procedures may need to be revised and updated from time to time. The advantage of keeping procedures separate from policy is that the Board does not have to approve procedures and procedures do not have to undergo the PHA plan and public hearing process; therefore, procedures can be often and easily updated.

Section 1: Procurement Policy

*Notes***Sample Procurement Policy Excerpt –
Purchase Amount and Procurement Method**

The table below is an example of a PHA's procurement policy regarding purchase amount and procurement method.

Purchase Amount	Procurement Method
Less than \$3,000	Micro purchase. One reasonable price quote. Purchases of this nature should be equally distributed among qualified vendors, if practical, to assure competition.
\$3,000 to \$50,000	Three quotes (fax, written, or e-mail). Oral quotes may be obtained for building materials and supplies but not for services. Purchases of this nature should be equally distributed among qualified vendors, if practical, to assure competition.
Over \$50,000	Formal advertisement and sealed bid or competitive proposal.

Your PHA may also decide to use e-procurement, provided it complies with related federal procurement requirements.

HUD Handbook 7460.8 includes a sample procurement policy that can be edited to fit the PHA requirements.

Section 2 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.

In a small housing authority, the Executive Director/CEO may serve as contracting officer; in a large PHA, the contracting officer may be a full-time position.

The CO's responsibilities are:

- Use sound judgment 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.

Under project-based management (PBM) it is especially important that any procurement tasks and authority delegated to site staff is identified in writing and that the staff is fully trained in procurement requirements, the PHA's policy and that they understand they are obligating the PHA by their procurement actions.

A sample job description for a purchasing supervisor (who reports to the contracting officer) can be found in Exhibit 2-1 at the end of this chapter.

CONTRACTING AUTHORITY AND PHA PROCUREMENT POLICY

Contracting authority flows from the Board of Commissioners through the Executive Director/Chief Executive Officer to their designee as contracting officer.

The Executive Director or their designee may sign contracts up to the amount of their authority, which should be listed in the Procurement Policy.

The chairperson may have authority to sign contracts or procurements beyond the Executive Director's authority.

At some level of amount of funds to be spent, contracts should require Board of Commissioners authorization prior to execution.

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.

- 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).

Section 2: Contracting Officer

Notes

Note of Caution: Only designated contracting officers may obligate funds on behalf of the PHA. Therefore, each contract, modification, purchasing agreement, purchase order or other purchase should have the CO's signature. 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.

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."

Section 3 Procurement Staffing and Training

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

HUD's model for public housing of project-based accounting, budgeting and management applies to large PHAs (250+ public housing units). Operating subsidy is calculated for each project and delivered into each project's operating budget monthly.

Public housing property services can be arranged such that they are:

- Provided at the project level.
- Shared between projects.
- Provided centrally to the project (i.e., allocated or prorated).
- Provided by contract to the projects (either by a third party or the central office, such as centralized maintenance staff who are paid on a fee-for-service basis).

However, PHAs cannot charge projects for the cost of any centralized procurement staff. Procurement has become more decentralized—in many PHAs, property managers have more procurement authority and responsibility than ever before. Thus, the need for training is more widespread across the agency and continuous than when procurement was exclusively or largely centralized.

Section 4 Chapter 2 Self-Graded Quiz

1. The Executive Director is always acting as the Contracting Officer of a PHA.
 - a. True
 - b. False
2. HUD's project-based and asset management requirements have no impact on the PHA's procurement policies.
 - a. True
 - b. False
3. The PHA must develop a written procurement policy that is consistent with:
 - a. 2 CFR Part 200
 - b. State law
 - c. The annual contributions contract (ACC)
 - d. All of the above
4. In developing the procurement policy, the PHA should consider:
 - a. Statement of ethics
 - b. Procurement authority
 - c. Delegation of authority
 - d. All of the above
5. The PHA's Board of Commissioners should be knowledgeable about the rules and regulations in the PHA's procurement policy.
 - a. True
 - b. False
6. The PHA may self-certify that their procurement process and system is fully compliant with applicable regulations.
 - a. True
 - b. False

Section 5 Exhibits

Exhibit 2-1: Sample Job Description – Purchasing Supervisor

Our Housing Agency

Date Adopted: 1/1/99

Date Revised: 7/1/00

CLASS SPECIFICATION

Purchasing Supervisor

Code Number: _____

GENERAL PURPOSE

Under general direction, plans, coordinates, reviews, supervises and participates in the activities and programs of the purchasing section, including the centralized procurement, inventory control, warehousing, mail and reprographics functions; coordinates and oversees the work of contractors and staff engaged in delivery of mail and other messenger/delivery services; and performs related duties as assigned.

DISTINGUISHING CHARACTERISTICS

This single incumbent class is accountable for planning, laying out, supervising, reviewing and participating in the work and operations of the agency's purchasing section, including the procurement, inventory control, warehousing, mail and reprographics functions. The duties and responsibilities are complex and carried out with considerable independence within a framework of established policies, procedures and guidelines.

ESSENTIAL DUTIES AND RESPONSIBILITIES

The duties listed below are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to this position.

Plans, organizes, controls, integrates and evaluates the work of assigned staff; with staff, develops, implements and monitors work plans to achieve section or unit goals and objectives; contributes to the development of the annual section budget(s); supervises and participates in developing, implementing and evaluating plans, work processes, systems and procedures to achieve annual goals, objectives and work standards.

Plans and evaluates the performance of assigned staff; establishes performance requirements and personal development targets; regularly monitors performance and provides coaching for performance improvement and development; recommends compensation and provides other rewards to recognize performance; subject to management concurrence, recommends disciplinary action, up to and including termination, to address performance deficiencies, in accordance with agency personnel policies and memoranda of understanding.

Provides day-to-day leadership and works with staff to ensure a high performance, customer service oriented work environment which supports achieving the section's and the agency's mission, objectives and core values.

Supervises, participates in and reviews the work of employees engaged in procurement, inventory control, warehousing, distribution and delivery of supplies and material, including tools, parts and material used in the maintenance and repair of agency housing units; supervises the delivery of mail, supplies and material to the agency's various locations and facilities; oversees, coordinates and participates in the requisition and purchase order processing for supplies, material, equipment, furniture and services; prepares and/or approves purchase orders and requisitions for section expenditures.

Plans, coordinates supervises and participates in the work of staff and contractors responsible for delivery of mail, messenger and other delivery services.

Maintains and ensures adherence to the agency's procurement and inventory control procedures and standards.

OTHER DUTIES

Drafts purchasing policies and procedures for approval; analyzes, recommends and implements new and revised work processes and procedures to improve the efficiency and effectiveness of section operations and service to its internal customers.

Provides information and assistance to other sections on purchasing and procurement issues.

Performs special studies, analyses and projects as assigned. Assists the Department Manager in managing and administering section activities.

DESIRED MINIMUM QUALIFICATIONS

Knowledge of:

Principles and practices of governmental procurement, purchasing, warehousing and inventory control; laws and regulations relating to procurement and purchasing in public agencies; principles and practices of business data processing particularly related to the procurement and inventory control functions; uses and operations of spreadsheet and other standard business software; agency administrative regulations, personnel policies and Memoranda of Understanding; principles and practices of effective supervision.

Ability to:

Operate a computer and standard business software, including general ledger and inventory control software; analyze and make sound recommendations on complex data and operations; understand, interpret, explain and apply agency, state, and federal laws and regulations governing agency purchasing and related activities; develop and implement procurement and inventory control policies and procedures; perform mathematical calculations and analyses; prepare clear, concise and comprehensive reports and written materials; exercise sound independent judgment within general policy guidelines; establish and maintaining effective working relationships with all levels of agency management, employees, vendors, and contractors.

Training and Experience:

A typical way of obtaining the knowledge, skills and abilities outlined above is graduation from a recognized four-year college or university with a major in business administration or a closely related field; and at least two years of progressively responsible professional procurement, purchasing and inventory control experience; or an equivalent combination of training and experience. Experience in a governmental purchasing operation is preferable.

PHYSICAL AND MENTAL DEMANDS

The physical and mental demands described here are representative of those that must be met by employees to successfully perform the essential functions of this class. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Physical Demands

While performing the duties of this class, employees are regularly required to sit; talk or hear, in person and by telephone; use hands repetitively to finger, handle, feel or operate computers and other standard office equipment; and reach with hands and arms. Employees are frequently required to walk and stand and regularly lift up to 10 pounds, and occasional up to 50 pounds. Specific vision abilities required by this job include close vision and the ability to adjust focus.

Mental Demands

While performing the duties of this class, employees are regularly required to use written and oral communication skills; read and interpret data, information and documents; analyze and solve problems; observe and interpret situations; use math and mathematical reasoning; learn and apply new information or skills; perform highly detailed work on multiple tasks with frequent interruptions; and interact with agency managers, employees, vendors and contractors.

WORK ENVIRONMENT

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this class. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. Employees work under typical office conditions.

Exhibit 2-2: Sample Job Description – Contract Analyst

Date Adopted:

Date Revised:

CLASS SPECIFICATION

Contracts Analyst

Code Number:

GENERAL PURPOSE

Under general direction, prepares and conducts solicitations and coordinates the placement of contracts for a wide range of professional, maintenance and other services and for designated recurring purchases, in accordance with agency standards and policies and all applicable legal requirements; administers contracts; may assist in administering the agency's risk management programs; and performs related duties as assigned.

DISTINGUISHING CHARACTERISTICS

Contracts Analyst is the journey level class in the contracts class series. Incumbents in this class independently perform the full range of procurement and contracting processes, from solicitation of bids to administration and monitoring of contracts, for a variety of professional, maintenance and other services and for designated recurring purchases. Incumbents are responsible for ensuring that agency procurement processes meet all applicable legal requirements and they play a significant role in establishing and administering customer- and community-responsive, cost effective and high quality procurement standards and procedures. Contracts analyst is distinguished from contracts compliance assistant by incumbents' responsibility for independently performing the full range of specialized and technical procurement and contracting duties.

ESSENTIAL DUTIES AND RESPONSIBILITIES

The duties listed below are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to this class.

Based on information provided by requesting sections and staff and research conducted, develops detailed product and/or service specifications and establishes contract terms; confers with sections to resolve questions regarding intent and expected use of goods and services, specification definitions and scope of work statements.

Develops formal and informal bids, RFQs and RFPs, ensuring that all applicable legal and contractual provisions are included to safeguard the agency's interests; prepares invitations to bid and bid solicitations, including addenda and supporting materials; prepares and distributes notifications to vendors on agency mailing lists, MBE/WBE/DVBE firms and others and places advertisements in news papers; conducts pre-bid and pre-proposal conferences; coordinates and participates in formal public bid openings; coordinates and participates in evaluation of bids by evaluation committees, including the development of evaluation criteria and materials; performs or assists in performing price/cost analyses and assessing the quality and suitability of proposed services and/or other purchases; recommends modifications or alternatives when appropriate; summarizes bid responses and prepares bid process documentation; selects, recommends or participates in the selection of contractors and vendors; drafts reports for agency and housing authority approval of contract awards, when required.

Drafts contracts, utilizing appropriate contractual instruments for award of contracts based on type of procurement, ensuring all legal requirements are incorporated and enforced; negotiates or participates in the negotiation of contract terms and provisions; coordinates the review of contract documents with legal counsel; coordinates the execution and distribution of executed contract copies; maintains contract files.

Ensures contractor compliance with contract provisions, including the maintenance of required insurance; develops contract amendments and extensions, as required; monitors contractor performance and takes or recommends necessary remedial action, up to and including contract termination, to enforce compliance with contract provisions in the agency's best interests; conducts research with vendors and others to resolve disputed invoices or invoices which do not meet agency rules and parameters.

Participates in administering the agency's risk management programs; develops and conducts periodic solicitation for the retention of insurance brokers; works with brokers and coordinates solicitation and review proposals for various insurance coverages; investigates liability claims within deductible levels and performs final claims adjudications; coordinates adjudication and settlement of claims exceeding deductible levels with insurance carriers and legal counsel; represents the agency in hearings and litigation of claims in small claims court.

Conducts research and confers with other sections and staff to answer questions regarding application of regulations to planned work/services and/or costs incurred and to resolve problems relating to changes in scope of work and problems with contractors and vendors; provides advice and technical support to other sections on solicitation, contracting and contract administration matters.

Coordinates and assists in the relocation of public housing tenants to allow for maintenance and rehabilitation activities, including the coordination of unit cleaning and other services by contractors and vendors; works with tenants to schedule moves and arranges moving assistance in unique situations when warranted.

OTHER DUTIES

Maintains contract records and tracks expenditures against contract limits; drafts contractor and vendor correspondence and documents.

Conducts tenant meetings on relocation issues; responds to tenant and contractor questions and inquiries.

Participates in developing the Annual Risk Control Work Plan to identify risks and exposures and delineate proactive preventative and control activities; drafts and assembles the annual report of control and mitigation actions taken, for transmittal to insurance carriers; advises the agency's safety officer, maintenance staff and others regarding employee and client training needs, material and repair priorities to minimize exposure to risk and other related matters.

Participates in the development of procurement and contracting policies and procedures. Projects expenditures and participates in developing section budget requests and documents.

Participates in administering regulatory requirements for payment of prevailing wages by agency maintenance contractors and vendors.

Performs special assignments and projects as required.

DESIRED MINIMUM QUALIFICATIONS

Knowledge of:

Principles, practices, methods and techniques of public agency procurement and purchasing, including competitive bidding procedures; principles, practices and techniques of drafting and administering procurement contracts and enforcing contract provisions; applicable agency, state and federal law and regulation governing agency procurement and contracting activities; risk management and property/liability insurance principles, methods, terminology and practices, including the assessment of risk and exposure and adjudication of claims; research methods and analysis techniques; sources and types of products and services used by a public housing agency; methods of conducting product and vendor research; budgeting practices and procedures; recordkeeping practices and procedures related to a procurement function; principles and practices of sound business communication.

Ability to:

Operate a computer and word processing, spreadsheet and other standard software; define issues, analyze information and problems, evaluate alternatives and develop sound conclusions and recommendations; present proposals and recommended courses of action clearly and logically; organize, set priorities and exercise sound independent judgment within areas of responsibility; understand, interpret, explain and apply agency, state and federal law and regulation governing procurement and contracting procedures; efficiently conduct vendor and product research; draft concise, comprehensive specifications for procurement of goods and services; communicate clearly and effectively orally and in writing; prepare clear, accurate and concise records and reports; use tact, discretion and diplomacy in dealing with concerned customers, contractors and vendors; effectively negotiate price and terms on behalf of the agency; establish and maintain highly effective working relationships with agency managers, staff, tenants, contractors, suppliers, vendors and others encountered in the course of work.

Training and Experience:

A typical way of obtaining the knowledge, skills and abilities outlined above is graduation from a college or university with major coursework in business administration, public administration, finance, operations management or a related field; and three years of increasingly responsible experience in purchasing a variety of goods and services similar to those purchased by the agency; or an equivalent combination of training and experience. Experience in a governmental setting is highly desirable.

Licenses; Certificates; Special Requirements:

A valid California driver's license is required for certain assignments.

PHYSICAL AND MENTAL DEMANDS

The physical and mental demands described here are representative of those that must be met by employees to successfully perform the essential functions of this class. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Physical Demands

While performing the duties of this class, employees are regularly required to sit; talk or hear, both in person and by telephone; and use hands repetitively to operate, finger, handle or feel standard office equipment; and reach with hands and arms. Employees are frequently required to stand and walk. Specific vision abilities required by this job include close vision and the ability to adjust focus.

Mental Demands

While performing the duties of this class, employees are regularly required to use written and oral communication skills; read and interpret complex data and information; use math and mathematical reasoning; analyze and solve problems; learn and apply new information; perform highly detailed work on multiple, concurrent tasks with frequent interruptions; interact with agency managers, staff, tenants, contractors, vendors, suppliers and others encountered in the course of work.

WORK ENVIRONMENT

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this class. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. Employees work under typical office conditions, and the noise level is usually quiet.

Notes

CHAPTER 3 General Procurement Requirements

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Recognize the required elements in procurement planning
- Identify the purpose and requirements of an Independent Cost Estimate (ICE)
- Describe inspection of work and internal controls to provide sufficient procurement oversight

Section 1 Procurement Planning

GENERAL

Planning is critical to ensuring all 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.

Adequate planning upfront can save your PHA in the long run by avoiding spending administrative time and expenses on correcting issues and mistakes that stem from poor planning.

The amount of planning necessary will depend on the procurement method selected, the anticipated amount of the procurement and the complexity of procuring the goods or services needed.

PHAs must consider what procurement functions or authority will be delegated to project sites and the site staff assigned. A PHA may use a centralized procurement system, a decentralized system or a mix of both. The delegation of spending authority to site staff has expanded in many PHAs with the implementation of project-based budgeting and management, and as roles are more fully defined and performance standards established.

Procurement planning can be simple—examining inventory records, estimating upcoming year's requirements - or it may involve looking for more efficient ways to procure goods and services, e.g., using master contracts to purchase items that are needed regularly as long as project sites have available storage.

Helpful hint: After completing various site budgets for the upcoming fiscal year, consider utilizing these budgets as a starting point to commence procurement planning. Use the synergies created in the budgeting process as a springboard to the procurement planning process (as you have already identified most of the items you plan to procure in the upcoming budget cycle).

INTERGOVERNMENTAL AGREEMENT

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

An intergovernmental agreement is an agreement with a state or local government agency (including other 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 procurement that will allow the PHA to benefit from volume discounts in pricing.

Some PHAs are established as direct branches of city or county government, and in these cases, may be required to procure under these agreements.

Chapter 13 will explore in greater detail the benefits and requirements of these types of arrangements.

INDEPENDENT COST ESTIMATES (ICE)

An Independent Cost Estimate (ICE) is the PHA's estimate of the cost to acquire goods or services under a procurement or contract. The ICE is part of the planning process for all procurements above the micro-purchase level.

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.

All procurements above the small purchase threshold should have some form of an Independent Cost Estimate (ICE) documented in the files. The level of detail will vary greatly but even small and micro purchases should have something in the file indicating how the PHA derived the estimated costs for the project prior to obtaining quotes/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.

These cost estimates must not be disclosed outside the PHA as these are considered confidential information.

When is an ICE Required?

A formal ICE is **REQUIRED** for all procurement actions (including change orders and contract modifications) that exceed the PHA's small purchase threshold. It is strongly recommended that small and micro purchases also include some level of ICE in the file, even if minimal, depending on the scale and type of purchase.

An ICE **MUST** be made before receiving bids, proposals, and/or pricing for the following instances:

- When evaluating sealed bids or competitive proposals
- When there is a noncompetitive procurement
- When negotiating modifications to contracts that impact the price or estimated cost
- When terminating a contract and the contractor is entitled to payment of reasonable costs incurred as a result of termination

General Procurement Requirements

Section 1: Procurement Planning

Notes

An ICE is required as follows:

Purchase Type	Purchase Amount (Federal)	ICE Requirement
Micro purchases	Below \$10,000 for goods and services and below \$2,000 for construction	No formal written ICE needed but a general estimate should be derived to ensure cost reasonableness; including this level of detail in a file provides transparency as to the use of taxpayer funds
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 but a very useful tool and at times can help determine type of procurement necessary
Above small-purchase threshold	Greater than \$250,000	Formal documented ICE is required. Can be broken into categories: <ul style="list-style-type: none"> • Labor • Materials • Direct costs • Overhead • Profit

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.

Important Points

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, tabulated under appropriate cost headings (e.g. labor, materials, other direct costs such as travel, overhead, and profit).

- In addition, for complex projects, outside expertise may be needed to complete the ICE. Outside parties such as engineer, consultant and/or attorney may assist in the preparation of the ICE.

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.

What is an 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;
- 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 \$720 and a total estimated total cost of \$57,600 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 estimated cost exceeds the PHA's small purchase threshold of \$50,000, the PHA must conduct a formal solicitation requesting bids or proposals through an invitation for bid (IFB) method.

NOTE: If the estimated cost is near a PHA's small purchase threshold it is also strongly recommended that a formal solicitation be conducted **even if the estimate is slightly below the threshold**. If informal quotes are received from vendors but all quotes have costs that exceed the small purchase threshold (\$50,000), the goods or services will need to be sent for a formal solicitation.

The three vendors who submitted quotes are prohibited from bidding on the work as they now have an unfair advantage by being given advance notice and information about the scope of work.

Best Practices

Understand the Requirement:

- Ensure that the personnel completing the Independent Cost Estimate fully understand the requirement and the Statement of Work and have the necessary technical expertise to adequately estimate all costs associated with the expenditure. In some cases, this may require additional assistance from other entities, resources, technical experts, or consultants if procured properly.

Select an Estimation Method:

- An ICE can contain any combination of cost estimation methods and expert opinions. The three primary cost estimation methods are as follows:
 - Top Down: Estimates are based on historical data of a similar contracts or purchases. When making any estimates based on historical data, adjustments have to be made for the specific work required. This method is generally less time-consuming, but also less accurate.
 - Adjust the known costs by adding or subtracting elements of material, time, and economic or inflationary changes as necessary.
 - Example: In the past when landscaping at location “A” was purchased, it was \$20,000 for 100,000 square feet (i.e., \$0.20 per square foot). Future estimates could be made based on the per unit calculation.
 - Bottom Up: Estimates are very detailed, separated into individual tasks or elements. This method can be more time-consuming, but generally is the most accurate.
 - The cost of individual tasks and elements are estimated to the greatest level of specified detail.
 - The task/element costs are then summarized or “rolled up” to higher levels.
 - Cost and accuracy influenced by the size and complexity of tasks/elements.

- Can be completed using these steps:
 - Determine all required tasks or deliverables for the contract.
 - Identify the resources required to complete all tasks or deliverables.
 - Estimate costs for all tasks or deliverables (labor, travel, supplies/commodities, subcontractor, admin, overhead, other direct costs, etc.).
 - Add the costs to an aggregate amount to establish the total estimate.
- Lump Sum (**method of last resort**): This type of estimate may be useful when the ultimate award price can be determined without examining individual cost elements. Two methods of lump-sum estimating are “round table” and “comparison”:
 - Round table estimating:
 - Develop the estimate based on technical expertise and knowledge of the market. The degree of accuracy is dependent on the expertise of the participants.
 - Comparison estimating:
 - Proposed costs based on previously completed expenditures that are similar to the current requirement. The known costs are adjusted by adding or subtracting elements of material, time, and economic or inflationary changes as necessary. This method is used when relatively few adjustments are needed to develop the estimate. (Whenever a record of prices previously paid for a similar requirement is available, attach a copy of this record to the current estimate.)

Conduct Research:

- Adequate research or technical expertise is imperative for completing a comprehensive Independent Cost Estimate. PHA staff conducting research will want to:
 - Identify potential vendors and published labor rates;
 - Assess market supply and demand and associated cost impacts;
 - Identify other variables which may impact cost, such as certification standards, geographic location, seasonality, etc.;
 - Evaluate previous contracts or acquisitions for relevancy and currency;
 - Ensure data is gathered from accurate and applicable technical sources; and
 - Use multiple sources of market research—not just one.

Create a Narrative:

- When completing the Independent Cost Estimate, it's helpful to provide a narrative that explains the source of the data listed on the ICE. The narrative should answer the following questions:
 - How was the estimate made?
 - What assumptions were made?
 - What information/tools were used?
 - Where was the information obtained from (and when)?
 - How did previous estimates compare with prices paid?

Include Cost Ranges:

- In order to measure the accuracy of the Independent Cost Estimate against responses subsequently received, it is encouraged that the ICE include cost ranges (floors and ceilings) and closely match the anticipated scope of goods or services being procured.

Breakout Costs When Necessary:

- For more complex projects, be sure to include the standard cost elements (e.g., direct labor, overhead). Common quantitative measures that can be used to project costs are:
 - Direct Labor Costs for tasks to be performed, including:
 - Labor rates (wages/salaries) – remember to use prevailing wages or Davis-Bacon wages when applicable. There are two types of labor costs.
 - Unburdened: Includes only the salary.
 - Burdened (fully loaded): Includes salary plus an allocation of costs for overhead
 - Fringe benefits for labor (i.e., vacation, sick leave, pension etc.)
 - Labor hours or level of effort to perform the work for each labor category
 - General and Administrative Expenses (G&A), profit/fee, and any escalation for option years

- Other direct costs, which may include:
 - Travel (airfare, per diem, visas, passport, etc.)
 - Tools/equipment
 - Vehicles
 - Subcontractors
 - Materials or Supplies
 - Office expenses (equipment, utilities, rent, etc.)

Use Relevant and Accurate Sources:

- Ensure that the estimate uses current, updated information and dollar figures based on prior similar purchases, commercial catalogs, and published list prices.

Adjust for Inflation:

- Ensure the estimate reflects the period of performance, inflated properly for multi-year ICEs. For estimates based on previous contracts or pricing, remember to adjust costs for inflation, whenever applicable.

Document:

The Independent Cost Estimate should include notes, justifications, or assumptions to form estimate conclusions, e.g., (historical costs, adjustments for inflation since last procurement of similar scopes, website, and cost surveys responses). Ensure the ICE has been adequately documented as to source, content, time, units, assessment of accuracy and reliability, and circumstances affecting the data. Thoroughly document the methodologies, assumptions, sources, and calculations used to determine the costs.

Structure like Bid Schedule or Pricing Form:

- The ICE should generally look the same as the Bid Schedule or Pricing Sheet, making it easier to evaluate and analyze proposed costs. For example, if the county is requesting unit pricing, the ICE should be broken down into unit pricing. If the PHA is asking for hourly rates, or is anticipating a labor hour contract, the ICE should show hourly rates.

Level of Effort:

- If/when applicable, the ICE should include methodology used for estimating the level of effort required.

Actions to Avoid:

- **Do not** share the ICE with anyone outside the PHA contract officer or authorized representatives.
- Information regarding the ICE or budget of a project shall not be published, released, or disclosed outside of the PHA or its authorized representatives.
- Access to information concerning the Independent Cost Estimate should generally be limited to PHA personnel whose official duties require knowledge of the estimate.
- **Do not** reveal information that may give any one organization an unfair competitive advantage.
- **Do not** use a preferred organization's quotation as the ICE or copy pricing from another contract in its entirety, especially if that contractor may bid on the current procurement.

COST OR PRICE ANALYSIS

One of the main uses of the PHA's ICE is for it to be used as a tool when conducting Price or Cost Analysis and assist in determining the reasonableness or unreasonableness of price. If the PHA intends to require a breakdown of costs from bidders or offerors, the Independent Cost Estimate shall similarly be broken down into the various cost elements.

EVALUATING COST AND PRICE

For every procurement above the PHA's small 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. Remember that micro and small purchases still must be considered fair and reasonable and small purchases end up having a general price analysis (comparing of lump sum prices) when receiving more than one quote or response.

- As previously discussed, the Price Analysis is the evaluation of a proposed price (the lump sum) without analyzing any of the separate elements that it is composed of.
- The Price Analysis method can be used for all procurements that have price competition (are not sole-source/non-compete) and are not Request for Qualifications (RFQ for ancillary and elective, or A and E services). If there is no price competition, or if the procurement method used was a Request for Qualifications (RFQ), a more detailed Cost Analysis must be performed.

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”; that is, 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.

Method to Determine Cost Analysis

A Cost Analysis is required for any Request for Qualifications (RFQ) or any procurement exceeding the PHA's small purchase threshold that does not have price competition (non-compete).

A Cost Analysis is:

- 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 RFQ (for A and E services where price is not an evaluation factor) or a cost-reimbursement contract

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 modification (i.e., change of scope that affects price)
- Contract termination payment (negotiate final amount of cost settlement)
- Construction contracts awarded using methods other than sealed bidding

Conducting a Cost Analysis

Proposed costs must meet three critical tests:

1. 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.
 - See Federal Acquisition Regulations (FAR) at 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 2 CFR Part 200: Nonprofit Organizations Exempted from Subpart E of Part 200.

- Examples of typically unallowable expenses include:
 - Advertising (only certain types are allowable)
 - Alcoholic beverages
 - Entertainment
 - Fundraising or lobbying costs
 - Fines and penalties
 - Per diem travel that exceeds federal travel regulations prescribed by the General Services Administration
- 2. 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.
- 3. Is it reasonable?
 - Reasonable costs are what a prudent business would pay in a competitive marketplace.
 - 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 independent cost estimate (ICE).

*Notes***Documentation Required**

Procurement Type	Documentation Required
Sealed bids	Bid tabulation sheet
Competitive bids	If adequate competition, only need comparison of prices offered
No adequate completion, only one bid received, price varied significantly from ICE	Cost analysis required CO must explain lack of competition and/or price variance

POTENTIAL INFORMATION SOURCES AND LINKS TO DEVELOP AN ICE OR PRICE/COST ANALYSIS

Historical cost information such as previous prices and quantities purchased as part of prior contracts, as well as more current documents.

- NOTE: It is important to ensure that the information is relevant, recent, and that the sources of information are for similar services.

Commercial pricing sources, catalogs, and market surveys.

Contracts published on other government websites (i.e., state contracts, city contracts, other counties, etc.).

Soliciting input or assistance from Purchasing Office personnel or other departments, entities, and/or PHAs who may be aware of similar contracts or have relevant pricing available.

Subject Matter Experts (PHA personnel or consultants with technical expertise relevant to the project).

General Services Administration (GSA) - Provides government contract rates and pricing.

- https://www.gsaadvantage.gov/advantage/main/start_page.do

Contract-Awarded Labor Category (CALC) - Tool that helps find awarded prices to use in negotiations for labor contracts. It offers ceiling prices, fully burdened costs, services data, and worldwide rates.

- <https://calc.gsa.gov/>

Bureau of Labor Statistics – National Compensation Survey

- <http://www.bls.gov/ncs>

Office of Personnel Management (OPM) Website for annual salary with locality pay

- <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>

Wage Determinations Online Website

- <https://beta.sam.gov/search?index=wd>

Resources requiring payment:

- RSMeans – Database of detailed construction cost estimates, including breakdowns of labor, tool, and equipment costs.
 - <https://www.rsmeans.com/>
- Xactimate – Software for estimating construction and remodeling costs.
 - <https://www.xactware.com/en-us/>
- Craftsman – Estimation program and cost books for construction, electrical, concrete, masonry, plumbing, and other work.
 - <https://www.craftsman-book.com/>
- NECA – Subscription and software for electrical cost estimation and other resources.
 - <https://www.necanet.org/store/store-front>
- BNi – Provides annual cost estimating guides, construction cost books, cost estimating tools, and reference material.
 - <https://www.bnibooks.com/>
- Economic Research Institute (ERI) - Benchmark salaries and compensation based on job title, location, industry, and size and evaluate cost of living data.
 - <https://www.erieri.com/>

Section 2 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.

Individual procurement plans can assist the PHA to use its resources more effectively, e.g., purchase in bulk and/or schedule purchases to coincide with projected use. This will avoid emergency purchases which often result in high prices for the PHA.

These plans can also be helpful in determining the responsibilities of the PHA staff throughout the year, particularly in larger PHAs where staff are carrying out a number of assignments. As mentioned, plans are best developed in conjunction with budget preparation.

Individual procurement plans should be developed for complex procurements such as purchase of computers and large construction efforts.

Plans should indicate any significant considerations that might create a risk of delayed delivery, such as failure to anticipate site conditions for construction, or severe weather.

CONSIDERATIONS IN DEVELOPING THE INDIVIDUAL PROCUREMENT PLAN

The Requirement

What is the scope of the requirement?

What precisely is the contractor required to do?

How can the requirement best be specified or stated?

What discussions with functional/program personnel may be necessary to determine technical approaches and possible difficulties, and similar considerations?

- NOTE: Advance information on any specific procurement should not be given out, as it may give or create the impression of giving the recipient of the information an unfair advantage over other vendors.

Has the item been purchased previously?

- If so, were there any special problems or issues that should be addressed?

Timing

How long will it take for the necessary steps to award a contract?

The time will vary depending on the complexity of the item and the procurement method chosen.

What specific performance milestones should be included in the contract?

Funding

What is the estimated cost of the supplies, services, or construction?

What source of funds is available?

Will the project be funded in full or in increments?

Approvals

Are any HUD or other approvals needed before the procurement request is submitted to the Contracting Officer?

What HUD or other approvals will be required at the solicitation and contract stages?

Solicitation and Evaluation Data

How should the procurement be publicly advertised?

Are there potential contractors, known to be qualified, who should be solicited?

Is an adequate purchase description or specification available?

What specific evaluation criteria are needed?

How will the technical evaluation be accomplished?

What contract type is most appropriate for the procurement?

Contract Performance and Administration

What performance management or quality assurance tools will be needed, such as progress reports, inspections, performance standards, outcomes, operational tests, etc.?

Equipment Lease or Purchase

PHAs routinely purchase equipment while many private sector businesses find that leasing equipment is more efficient and cost effective.

A PHA may decide to consider leasing equipment; factors that should be considered include:

- Length of period the equipment is to be used and to what extent the equipment will be used;
- Financial and operating advantages of various types and makes of equipment;
- Rental payments for the estimated period of use vs. the net purchase price of the equipment;
- Transportation and storage costs of equipment;
- Maintenance required, e.g., can PHA staff maintain equipment;
- Potential obsolescence of equipment because of likely technological improvements;
- Potential trade in or salvage value

ELEMENTS OF THE INDIVIDUAL PROCUREMENT PLAN

An IPP should contain relevant 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

Plans should also indicate any significant considerations that might create a risk of delayed delivery, such as failure to anticipate actual site conditions for construction.

Section 3 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 goods and/or services)
- 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 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 (state and local law may require longer).

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.

Notes

Section 4 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 their 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.

Section 5 Chapter 3 Self-Graded Quiz

1. A PHA can conduct the Independent Cost Estimate (ICE) at any time during the procurement process as long as it is prior to contract execution?
 - a. True
 - b. False
2. What is an Independent Cost Estimate (ICE) used for?
 - a. Determining the procurement method to be used
 - b. Ensuring that vendor/contractor prices are reasonable
 - c. Support the PHA in an audit or legal dispute
 - d. All of the above
 - e. None of the above
3. 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
4. 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
5. One purpose of the independent cost estimate is to provide the PHA with a fair market value to evaluate incoming bids/proposals.
 - a. True
 - b. False

Section 6 Exhibits

Exhibit 3-1: Procurement Forecast Calendar

**ABC HOUSING AUTHORITY
PROCUREMENT FORECAST CALENDAR 2013**

Work Item No.	Project Title/Description	Estimated Value	Solicitation Method(s)	Anticipated Solicitation Date	Procurement Contact Person	Funding Source
1	General Office Supplies	\$25,000	IFB	January 2013	Bob Smith (123) 555-6666 bob.smith@abcpa.org	Operating Fund
2	Landscaping Services	\$100,000	IFB	February 2013	Mary Thomas (123) 555-8888 mary.thomas@abcpa.org	Operating Fund
3	Annual Independent Audit Services	\$30,000	RFP	March 2013	Bob Smith (123) 555-6666 bob.smith@abcpa.org	Multiple Funds
4	Accounts Payable Checks	\$5,000	IFB	March 2013	Bob Smith (123) 555-6666 bob.smith@abcpa.org	Operating Fund
5	Pick-up Truck - Amp 5	\$25,000	SB	April 2013	Mary Thomas (123) 555-8888 mary.thomas@abcpa.org	Operating Fund
6	Trucks (2) for HCV Inspectors	\$50,000	SB	May 2013	Mary Thomas (123) 555-8888 mary.thomas@abcpa.org	HCV Program
7	Roof Replacement - Amp 1	\$125,000	IFB	June 2013	Mary Thomas (123) 555-8888 mary.thomas@abcpa.org	Capital Fund - Year 10
8	Snow Removal Services	\$50,000	IFB	July 2013	Mary Thomas (123) 555-8888 mary.thomas@abcpa.org	Multiple Funds
9	Consultant Services - Develop Procurement Policy/Procedures	\$30,000	RFP	October 2013	Bob Smith (123) 555-6666 bob.smith@abcpa.org	Multiple Funds
10	Hot Water Tanks (100)	\$25,000	SB	October 2013	Mary Thomas (123) 555-8888 mary.thomas@abcpa.org	Operating Fund

IFB Invitation For Bid
RFP Request For Proposal
SB Sealed Bid

General Procurement Requirements

Elements of the Individual Procurement Plan

**ABC HOUSING AUTHORITY
PROCUREMENT CALENDAR 2013**

Date Due	Time Received	Project Title/Description	Solicitation Method No.	Location	Procurement Contact Person	Solicitation Received
1/20/2013	2:30	Bid Opening: General Office Supplies	IFB 01-001	Board Room - 2nd Floor	Bob Smith (123) 555-6666 bob.smith@abcpha.org	Yes
2/15/2013	3:00	Bid Opening: Landscaping Services	IFB 02-002	Board Room - 2nd Floor	Mary Thomas (123) 555-8888 mary.thomas@abcpha.org	Yes
3/17/2013	3:00	Proposals Due: Annual Independent Audit Services	RFP 03-001	Board Room - 2nd Floor	Bob Smith (123) 555-6666 bob.smith@abcpha.org	Yes
3/24/2013	3:00	Bid Opening: Accounts Payable Checks	IFB 03-003	Board Room - 2nd Floor	Bob Smith (123) 555-6666 bob.smith@abcpha.org	Yes
4/15/2013	3:00	Bid Opening: Pick-up Truck - Amp 5	SB 04-001	Board Room - 2nd Floor	Mary Thomas (123) 555-8888 mary.thomas@abcpha.org	Yes
5/10/2013	3:00	Bid Opening: Trucks (2) for HCV Inspectors	SB 05-002	Board Room - 2nd Floor	Mary Thomas (123) 555-8888 mary.thomas@abcpha.org	Yes
6/1/2013	3:00	Bid Opening: Roof Replacement - Amp 1	IFB 06-004	Board Room - 2nd Floor	Mary Thomas (123) 555-8888 mary.thomas@abcpha.org	Yes
7/20/2013	3:00	Bid Opening: Snow Removal Services	IFB 07-005	Board Room - 2nd Floor	Mary Thomas (123) 555-8888 mary.thomas@abcpha.org	Yes
10/5/2013		Consultant Services - Develop Procurement Policy/Procedures	RFP 10-002	Board Room - 2nd Floor	Bob Smith (123) 555-6666 bob.smith@abcpha.org	No
10/15/2013		Hot Water Tanks (100)	SB 10-003	Board Room - 2nd Floor	Mary Thomas (123) 555-8888 mary.thomas@abcpha.org	No

IFB Invitation For Bid
RFP Request For Proposal
SB Sealed Bid

CHAPTER 4 Ethics in Procurement and Contracting

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Identify what a conflict of interest is
- Recognize the requirements and prohibitions are regarding actual or perceived conflicts of interest
- Explain examples of conflicts of interest
- Identify gratuities, kickbacks, and use of confidential information, and how to prevent and address these prohibited actions
- Describe sanctions for ethical violations

Section 1 Introduction

The PHA's procurement policy must prohibit any employee of the agency from participating in the selection of a vendor or the award of a contract if a conflict—real or perceived—would be involved. An example of this would be if an employee, family member, partner, or any organization that employs or is negotiating to employ the employee's family member or partner, has a financial interest in the vendor selected for contract award.

Also, the policy must prohibit employees who participate in a procurement process from accepting gifts, gratuities, favors, and kickbacks from current or potential vendors or contractors.

HUD Handbook 7460.8 REV 2 contains a chapter on ethics in public contracting. A copy of the Ethics chapter from the HUD Handbook can be found at the end of this chapter.

Section 2 Conflict of Interest

DEFINITION

2 CFR 200.318 (c)(1) and Section 19 of the Annual Contributions Contract (ACC) are the mandatory authoritative references regarding conflicts of interest. These references define conflict of interest.

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

REQUIREMENTS

No 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 perceived—would be involved.

- The PHA, its contractors, or subcontractors cannot enter into a contract or arrangement with certain individuals for at least one 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 their immediate family); and
 - A public official, member of the local governing body, or state or local legislator (or member of their immediate family) who exercises functions or responsibilities regarding PHA projects.

No employee, officer, or agent can sell supplies, services, or construction to the PHA for one year after they leave the PHA.

EXAMPLES OF CONFLICT OF INTEREST 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 property manager's brother is a door vendor. The brother bids on a PHA solicitation for doors
- The PHA 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 PHA analyst 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.

A sample conflict of interest policy is contained in Exhibit 4-1 at the end of this chapter.

Section 3 Gratuities, Kickbacks, and Use of Confidential Information Authority and Definition

The mandatory references are 2 CFR 200.318(c)(1) and Section 19 of the ACC.

GRATUITIES

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

Requirements

No PHA officers, agents, current or former employees can solicit or accept gratuities or favors one year of ending employment.

Examples of Accepting Gratuities

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.
- A property manager has her home lawn mowed at a discount by the same landscaping contractor that the PHA uses.

PHA Policies Regarding Gifts

The HUD Procurement Handbook states that PHAs may set minimum rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. These rules must be incorporated in the PHA's procurement policy.

Some PHAs establish a "minimum amount rule", that is, employees may accept gifts if the dollar value is less than a certain amount, e.g., \$10, \$25.

Section 4 Practical Considerations in Ethics and Buying

Maintaining good relationships with your vendors is important. They can let you know about new products, shortages, upcoming price increases, etc.

It is easy to become overly friendly and relaxed with vendors. Successful sales people are usually fun to be with and to talk with. In working with sales people, buyers have to be conscious of maintaining both positive and professional relationships with vendors. Because persons in these positions have, or are perceived to have, access to agency funds, vendors may be more tempted to cross certain ethical lines.

Vendors may bring freebies or gifts when they visit. If they offer a little bit of inexpensive food, you can put it in the office to share. If they offer a free cup, hat, flashlight, or other token with a logo, it is best not to use or wear the item, because it can appear that the agency is biased towards that vendor. Tell the vendor you are donating the item on their behalf. Ongoing office perks, like regularly delivered coffee, cannot be accepted. You can always use the line, "The best gift you can provide us is great pricing and excellent service."

As a general practice, don't go to lunch with your vendors, particularly if they pay but even if they don't. Buyers need to avoid even the appearance of bias, or that they may be willing to accept gifts or perks that could affect their buying decisions. Don't worry about offending sales reps. It is common for businesses to prohibit vendor lunches, both because it could create a poor appearance and also so that staff who are purchasing goods/services are not receiving benefits not available to other staff.

Never accept free tickets to games or shows, substantial gifts sent directly to your home or other valuable items or perks. By accepting gifts, you risk the agency's reputation as well as your own. If you accept a gift or perk that you wouldn't want a manager or supervisor to know about, you've probably crossed an ethical boundary.

Do not request or accept special pricing when buying items for yourself, if the special price is due to the fact that you are an agency employee. Don't advertise your position if you are not buying for the agency.

KICKBACKS

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

The Requirement

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.

Examples of Kickbacks 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.

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

The Requirement

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

Examples

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.

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 PHA 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 them 5% of the first year's contract if it wins the contract.

Review the following situations and identify the potential ethical dilemma in each.

-
- This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.

Section 4: Practical Considerations in Ethics and Buying

2. You are the asset manager at a project site. You have assigned the responsibility for procuring maintenance and other related supplies to the maintenance supervisor. This supervisor has been assigned a PHA credit card for such purchases. All purchases are reviewed and approved by you upon receipt of the credit card statement at the end of the month. The maintenance supervisor visits one of the large maintenance supply warehouses to purchase various supplies to complete several outstanding work orders.

During this visit the supervisor takes the opportunity to also purchase two gallons of paint for a project at his residence. Upon entering the check-out lane he decides it would be much easier to pay for **all** of the items with the PHA credit card, as he plans to write a check to pay the PHA for the paint when he meets with the asset manager at the end of the month to review the credit card statement. At the end of the month the maintenance supervisor provides you a check for the paint, then subsequently explains his actions. Are the supervisor's actions justified? Why or why not?

Section 5 Sanctions for Ethics Violations

The Executive Director and the Board establish sanctions for violations of the procurement policy, including ethics violations.

- 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.

SUBSTANTIAL DEFAULT

HUD established a new 24 CFR Part 907, under the interim PHAS rule, effective March 25, 2011, for regulations governing substantial default by a PHA.

The Housing Act of 1937 addresses the events or conditions that constitute substantial default of a PHA. Part 907 codifies these statutory requirements.

- However, nothing in Part 907 limits the discretion of HUD to take any action available under the Housing Act of 1937, the ACC, or any other law or regulation that may authorize HUD to take actions against a PHA in substantial default.

Basis for Substantial Default

A PHA may be declared in substantial default when the PHA:

- Violates a federal statute;
- Violates a federal regulation; or
- Violates one or more terms of an ACC, or other covenants or conditions to which a PHA is subject.

In addition to the violations listed above, if a PHA is designated as a troubled performer under PHAS, the PHA will be in substantial default if the PHA:

- Fails to execute a Memorandum of Agreement (MOA);
- Fails to comply with the terms of an MOA; or
- Fails to show substantial improvement

Note that while procurement is not a PHAS indicator and is not assessed under PHAS, a troubled PHA may be found to have procurement policies and/or practices that violate HUD regulations.

Remedies for Substantial Default

Except for a troubled PHA, upon determining that events have occurred or conditions exist that constitute a substantial default, HUD may:

- Take any action provided for in the Housing Act of 1937;
- Provide technical assistance for existing PHA management staff; or
- Provide assistance deemed necessary, in the discretion of HUD, to remedy emergency conditions.

In the case of a substantial default by a troubled PHA:

- For a PHA with 1,250 or more units, HUD will petition for the appointment of a receiver; or
- For a PHA with fewer than 1,250 units, HUD shall either petition for the appointment of a receiver or take possession of the PHA;
 - Including all or part of any project or program of the PHA (which could include the procurement function);
- And appoint, on a competitive or noncompetitive basis, an individual or entity as an administrative receiver to assume the responsibilities of HUD for the administration of all or part of the PHA's projects or programs.

To the extent feasible, while a PHA is operating under any of the actions that may have been taken by HUD, all services to residents will continue uninterrupted.

Section 6 Chapter 4 Self-Graded Quiz

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 PHA 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 who works for the PHA 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 real estate 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
6. If a PHA is declared under substantial default, and the PHA's procurement policies and/or practices violate HUD regulations, HUD may:
 - a. Provide technical assistance
 - b. Petition for receivership, taking possession of the procurement function
 - c. Take legal action against a PHA employee who has violated HUD regulations
 - d. Any of the above

Section 7 Exhibits

Exhibit 4-1: 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. *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.

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:_____

Notes

CHAPTER 5 **Micro and Small Purchases**

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Identify what constitutes a small purchase
- Recognize the thresholds, methods of procurement, selection, and documentation requirements for micro-purchases, small purchases, and petty cash
- Describe the use of indefinite-delivery contracts
- Understand the prohibition against bid-splitting
- Identify the elements of purchase orders
- Recognize required forms and mandatory contract clauses

TERMS IN THIS CHAPTER

A complete glossary of terms is found in chapter 19. Here are the terms we will discuss in this chapter:

- ***Micro Purchases*** are lower value or “discretionary” purchases under \$10,000 (or less if a lower threshold is established by state and/or local requirements or the PHA).
- ***Small purchases*** are purchases of supplies and nonpersonal services which don’t exceed the PHA’s dollar limitation (which can be the current Federal small purchase threshold of \$250,000 or a lower amount specified in state law or based on the agency or Board's discretion) in the aggregate.
- ***Small purchase procedure*** is the simplified method for acquiring supplies, materials, and services (including construction) that don’t exceed the PHA’s small purchase threshold.
- ***Quotation*** is the price or offer submitted by a potential vendor in the small purchase method of procurement.

Section 1 Introduction

Micro and 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. Micro-purchases are the least constraining and at times are called “discretionary purchases.”

Similarly, small purchases can be used if the cost of a good or service is over \$10,000 (\$2,000 for construction due to Davis Bacon and Prevailing Wage requirements), and below the small purchase threshold of \$250,000 (or less if required by state or local law or established by the PHA).

NOTE: Most PHAs have a much smaller threshold closer to \$50,000-\$100,000 or less depending on size and other factors. It is recommended that you update your threshold if you believe it is too large and always ensure it is in compliance with state and local laws, which are often lower than the federal threshold as well.

As mentioned, 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.

Micro purchase and small purchase requirements are codified in 2 CFR 200.320(a-b).

Section 2 Bid-Splitting

PHAs may not (are not allowed to) 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.

Section 3 Micro-Purchases

MAXIMUM THRESHOLD

Maximum threshold is \$10,000, but local and state governments may have a lower threshold to which the PHA must adhere.

METHOD OF PROCUREMENT

The PHA may award micro-purchases without soliciting multiple quotes.

To the extent practicable, the non-federal entity must distribute micro-purchases equitably among qualified contractors, vendors, and suppliers.

SELECTION

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

- A micro purchase can be made without soliciting competitive bids or quotations as long as the price is considered to be reasonable. Most staff will be familiar with market costs for commonly used goods and services and the use of a micro purchase threshold will likely be used for most everyday purchases at a project.

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. PHA Procurement policies and procedures govern the specific types of documentation required for various purchases, especially at the micro and small purchase level. Ensure that your PHA has clearly listed what types of documentation and authorized signatures are required for various purchases and PHA purchasing forms.

Documentation must be available for three years after final payment.

GUIDANCE

Micro purchase thresholds are helpful if the PHA continues to decentralize procurement responsibilities, allowing site staff to be authorized, through the Delegation of Authority, to purchase materials for maintenance work and/or office materials up to the micro purchase level.

To ensure fairness in procurement, PHAs that use a micro purchase threshold are encouraged to use all competitive vendors that are available and willing to provide the goods and services at a reasonable price.

- Efforts should be made to distribute purchases among a variety of qualified vendors.
- When seeking price quotations for repetitive work, where one vendor consistently quotes lower price, the contracting officer may want to consider an indefinite quantity contract.
- Remember, it is the PHA's responsibility to reach out to the community to ensure that all vendors have an equal opportunity to participate in the procurement process. This includes minority, women, and Section 3 owned businesses.

PHAs are not allowed to break down procurements in order to use a micro purchase threshold or other small purchase procedures to circumvent a more formal procurement process (no bid splitting).

Section 4 Small Purchases

MAXIMUM THRESHOLD

Small purchase procedures are typically conducted for purchases that are above the PHA's micro-purchase threshold (up to \$10,000 federal threshold), and below the small purchase threshold or "Simplified Acquisition Threshold" set by the PHA. \$250,000 is the federal maximum, but local and state governments may, and often do, have a lower threshold to which the PHA must adhere.

METHOD OF PROCUREMENT

The PHA must solicit and receive at least two quotes from qualified sources. The HUD Handbook 7460.8 Rev-2 recommends that PHAs request at least three quotes. Quotes may be made via phone, or email; via eProcurement; or in writing as long as they are adequately documented in the procurement file.

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 was reasonable.

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.

Section 5 Debit or Credit Cards

A PHA may use debit or credit cards as a payment method to facilitate and track purchases under the micro and/or small purchase amount. The procurement policy must list positions authorized as well as the dollar limits of these cards. This information must be contained in the procurement policy and approved by the Board. For procurements above the micro-purchase threshold, the PHA will require that written quotes are received prior to using a debit or credit card to complete the procurement.

In short, using a debit or credit card is not meant to circumvent the procurement policy requirements, but is rather a means of making the payment and tracking those expenses to each project.

It is critical that PHAs that decide to use debit or credit cards establish reasonable procedures to manage the use of cards through a system of internal controls.

- Examples of safeguards may include:
 - Limiting the type of purchase that may be made using a card, e.g., only goods
 - Limiting the amount of purchases that can be made using a card, e.g., \$2,000
 - Establishing a procedure to ensure receipt of goods or services procured with a card - prior to payment of the card balance
 - Establishing a procedure that strictly prohibits utilizing the card to purchase items for personal use

Section 6 Purchase Orders

Purchase orders are used as another form of payment for micro-purchases, as well as small purchases. Purchase orders often act as the agreement between the PHA and the contractor or vendor and may be issued for the one-time procurement of goods or services up to the PHA's small purchase limit (federal threshold is \$250,000, state and local may be lower).

If the price exceeds PHA's micro-purchase threshold, the PHA must follow small purchase procedures of obtaining multiple quotes prior to issuing a purchase order. 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 established when the PHA issues the purchase order, and the vendor accepts it or delivers the goods or services listed thereon.

ELEMENTS OF A PURCHASE ORDER

Purchase Order Element	Purpose
Purchase order number	Assists both the PHA and the vendor in tracking the order
Scope of work/service (discussed in more detail in Chapter 9)	Encompasses deliverables, quantity, quality, and other specifications
Price	Includes price per unit, fee, etc.
Delivery	Delineates how delivery is to be made, timeframe for delivery, how item(s) is packaged for delivery, etc.
Method of Payment	Specifies (typically) receipt of payment within 30 days of receipt of a correct invoice
Inspection	Includes who inspects and what are the criteria for acceptance
Acceptance	Includes how acceptance is indicated
Approval	Name/date/signature of person authorizing procurement

Depending on the work or goods to be procured, purchase orders issued under the small purchase threshold require mandatory provisions as follows:

- Small purchases (up to PHA small purchase threshold) must include the mandatory clauses included in Exhibit 5-1 at the end of this chapter.
- For construction contracts that exceed \$10,000 but are not more than \$250,000, PHAs must include the clauses from form HUD-5370-EZ, General Conditions for Small Construction/Development Contracts and the applicable prevailing wage requirements. (PHA may use form HUD-5370 if they choose, rather than 5370-EZ).
- For maintenance contracts, including non-routine maintenance, that exceed \$10,000 but are less than \$250,000, the PHA must include clauses contained in Section II of the form HUD-5370-C, General Conditions for Non-Construction Contracts, and the applicable HUD wage decision.

Learning Activity 5-1: Procurement Methods

The North Bay Housing Authority's procurement policy includes a micro purchase threshold of \$2,000 and a small purchase threshold of \$75,000. Any procurement that exceeds the micro purchase threshold but is under the small purchase threshold must be completed using a purchase order process. Each of the PHA's AMP housing managers has procurement authority up to \$10,000. As the housing manager at the Baker Road housing development, AMP #2, which process would you use for each of the procurements listed below?

***Micro purchase=MP; Purchase Order=PO; Central Office Responsibility=CO;
Not Available=NA***

- _____ 1. Desk and chair for new management assistant that will cost \$600.
- _____ 2. Plumbing supplies to complete maintenance work order that will cost \$310.
- _____ 3. PHA's insurance deductible of \$15,000.
- _____ 4. Contractor to paint three units at an estimated cost of \$2,500.
- _____ 5. Landscaping services to include all of the AMPs in the North Bay portfolio at estimated annual cost of \$10,200.
- _____ 6. Reimbursement for parking ticket incurred while making a bank deposit for the Baker Road housing development.
- _____ 7. Replacement of all seven personal computers and printers in AMP #2 at a total estimated cost of \$8,500.
- _____

Section 7 Required Forms and Mandatory Contract Clauses

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 delivers the goods or services listed thereon.

REQUIRED CONTRACT CLAUSES FOR SMALL PURCHASES

Exhibit 5-1 contains the mandatory contract clauses for small purchases under construction, found in Table 5.1 of the HUD Procurement Handbook. This exhibit 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.

REQUIRED FORMS FOR SMALL PURCHASES FOR CONSTRUCTION OR MAINTENANCE EXCEEDING \$2,000

In addition to the clauses in Exhibit 5-1, 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.

Form	Title
HUD-5370-EZ or HUD-5370 if the PHA prefers	Assists both the PHA and the vendor in tracking the order
Section II of form HUD-5370-C	For Maintenance Contracts—General Conditions for Non-Construction Contracts (attach applicable HUD maintenance wage decision)

Section 8 Chapter 5 Self-Graded Quiz

1. What is the current federal 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 (for RFPs)
 - d. a and b only
 - e. b and c only
 - f. a, b, and c
5. 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. Utilizing federal thresholds, 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. Both a and b
 - f. Both c and d

Section 9 Exhibits

Exhibit 5-1: Table 5.1 of HUD Procurement Handbook 7460.8 REV 2

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.

Notes

CHAPTER 6 Sealed Bids

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Recognize what a sealed bidding process is
- Identify the requirements and steps in the sealed bid process
- Describe an Invitation for Bid (IFB)
- Recognize the requirements for bid opening
- Identify criteria for contract awards in the sealed bid process
- Understand what responsiveness and responsibility entail
- Identify bonds and guarantees for construction work

DEFINITION

Sealed bids are used for purchases that exceed the small purchase threshold. However, at the PHA's 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.

2 CFR 200.320 (c) is the mandatory reference that defines sealed bidding requirements.

TERMS IN THIS CHAPTER

A complete glossary of terms is found in Chapter 15. Here are the terms we will discuss in this chapter:

- ***Bid*** is the offer submitted by a bidder in the sealed bidding method of procurement.
- ***Sealed bidding*** is the procurement method in which the PHA requests competitive sealed bids. This method of procurement requires that written specifications describe the requirements of the PHA clearly, accurately, and completely; a public bid opening is held; and evaluation of bids and award of the contract is based on the lowest bid submitted by a responsive and responsible bidder.
- ***Specifications*** are the clear and accurate description of the technical requirements, generally for maintenance and construction work, but also for a service or supply contract.

Section 1 Invitation for Bids (IFB)

Solicitations pursuant to an Invitation for Bid (IFB) or Request for Bids (RFB) 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. Scope of Work (or Statement of Work) and Specifications
 - i. Overview of work/service/product needed
 - ii. Timeframe of completion/delivery
 - iii. Description of what the work/service/product will be used for
- c. 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.
- d. General Conditions:
 - 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)

Section 1: Invitation for Bids (IFB)

Notes

- vi. HUD-5370-C General Conditions for Non-Construction Contracts (Section I, for Non-construction, Maintenance and Non-maintenance)
- 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, if applicable

a. Cover Page

The cover page, while not complex, includes crucial information that if incorrectly listed can cause major delays and additional administrative costs. It is best to have a process to have multiple staff review the cover page information (as well as the entire solicitation package) to ensure there are no mistakes.

b. Scope of Work

One of the most important parts of the entire procurement package, the scope of work provides a comprehensive, and detailed description of the work to be completed, services to be provided, or goods to be delivered. The length of the scope or statement of work will vary in length and detail depending on the type and complexity of work being procured. A general goal should be that the scope of work includes all information a contractor or vendor would need to complete the work without the need for additional explanation or follow-up. It is impossible to eliminate all questions from vendors on every procurement, however, the more comprehensive and detailed the scope or statement of work is, the less likely you will have to answer many questions. This can save the PHA valuable time and administrative costs.

Specifications

Specifications can either be included as part of the general scope or statement of work, or included as a separate section/document in the solicitation package.

Specifications are easily confused with or thought of as the scope of work. However, specifications include things like exact measurements, quantities, capacity, durability, and other elements that need to be detailed in order to complete the work properly. For smaller, less complex procurements, specifications may be one measurement and easily included as part of the scope of work. For larger more complex procurements, specifications are often separated out, so all measurements, quantities, and material requirements are clearly understood and found.

Scope or Statement of Work (SOW) and specifications are discussed in more detail in Chapter 9

c. Bid Form

The bid form can have a variety of formats, layouts, and structures depending on the size and type of work, service, or goods being procured. The important part about the bid form is that it provides the PHA with pricing that is easy to compare for multiple bidders, regardless of the type of goods or services being procured.

d. General Conditions

Also confused and conflated with specifications and scope of work, general conditions are specific clauses and requirements that are not related to the actual scope of work to be completed. These include the HUD required clauses, as well as any state and local clauses and requirements.

Section 1: Invitation for Bids (IFB)

*Notes***2. Method of Solicitation and Time Period**

IFBs can be solicited in various ways including advertising on websites, in newspapers and trade journals, and using e-procurement. The notice must state:

- Place, date, time of bid opening (or proposal due date)
- Solicitation number or other method of identification of solicitation
- Point of contact for questions and information
- Brief description of needed items or services

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

Invitation for bids will be publicly advertised and bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids.¹

Recommendation: Send bid packets to known contractors or those who previously registered to more effectively solicit several bids.

3. Bidder Registration

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

1. 2 CFR 200(c)(2)(i)

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. A pre-bid conference is normally conducted only for large or complex procurements, or with special considerations (e.g., diseased trees at the property). Notice of any scheduled conference shall be included in the IFB and the published notice.

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.

- Some firms may already be so familiar with the work that attendance is not necessary. Other firms may be unable to schedule a representative to attend, although they may be well qualified to do the work at a reasonable price. To impose such a requirement to attend a pre-bid/proposal conference could unnecessarily limit competition and is not recommended.

The timing of the conference should allow bidders enough time to review the IFB and adequate time to revise their bids before bid opening.

The conference should be attended by both the Contracting Officer and supporting technical staff, so that the questions of prospective bidders can be answered.

At the conference, the Contracting Office should state that nothing at the conference will change the terms of the IFB unless a subsequent amendment is issued.

A summary or transcript of the conference should be sent to all those on the solicitation mailing list, *not just those who attended*.

Section 1: Invitation for Bids (IFB)

Notes

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 or Amendments to Bid Packets

If an amendment needs to be issued just before the scheduled bid opening date, the bid opening shall be postponed for an adequate period of time to permit the potential bidders to fully analyze the change, and to submit timely bids.

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.

Section 2 Alternative Bids

If a PHA has limited available funding and if allowed in the PHA's procurement policy, a PHA may include a list of deduct alternatives when preparing a bid solicitation package. This type of solicitation would set out the full scope of work or products needed and then list deduct alternatives to enable the PHA to make an award within available funds should all bids exceed the amount of funding available.

- **Example:** IFB requires replacement of all roofs, windows and doors at an AMP. Alternate 1 could delete replacement of all doors and only some of the windows; Alternate 2 could delete replacement of all doors and all windows and only require roof replacement.

This process allows the PHA to complete as much work as possible while not having to re-bid the work. However, all "deducts" must be taken in a predetermined order and listed in the specifications.

Alternates cannot be added or deducted if not clearly defined and stated in the solicitation prior to bid opening.

Section 3 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.

Sealed bids should be stored in a locked bid box, cabinet or safe until the advertised bid opening time to ensure that bids are protected.

Bids are opened publicly on the date and time noted in the solicitation. Sealed bidding is a public process; to ensure fairness in the award process, any interested parties are permitted to attend the bid opening.

The PHA staff—typically the Contracting Officer (CO)—will read the bidders' names and prices aloud. This information will be recorded and made available for public inspection. The CO will not identify an awardee until after the bids have been evaluated; that is, no commitment is made to any bidder at the bid opening.

Questions and disagreements raised by bidders at the opening shall be taken under advisement and a decision resolving any questions or disagreements should be deferred until the Contracting Officer has returned to their office and had the opportunity to review all the pertinent facts. Generally, most questions should have been asked prior to the deadline listed in the solicitation. However, some questions may arise related to procedures during or after the bid opening that are warranted.

After the bids received have been publicly opened and read, an abstract or tabulation of all bids is prepared showing the names of bidders and prices, including alternates if any. This abstract becomes part of the official contract file.

MISTAKES BEFORE BID OPENING

A bidder should be permitted to withdraw or modify its bid by written or telegraphic/facsimile notice prior to bid opening, as provided for in the Invitation for Bids.

MISTAKES AFTER BID OPENING

Changes to a bid after bid opening is not permitted, as this would give the bidder an advantage over other bidders.

WITHDRAWAL OF BIDS

Withdrawal of a bid is permissible where there is an obvious error in the lowest bid, such as a math error or a misplaced decimal, but the mistake must be readily apparent from the bid itself.

If withdrawal is allowed by the PHA, it should be without forfeiting the bid bond, upon verification of the error.

In cases of alleged mistakes or requests for withdrawal, the decision to allow a correction or withdrawal should only be made after consultation with the PHA's legal counsel.

Section 4 Contract Award

OVERVIEW OF BID EVALUATION

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

The first step is to evaluate the apparent low bid. Should the low bid exceed the project budget, this is the time the PHA would apply any “deduct alternates” that were noted in the Invitation for Bid. Alternates can be applied one at a time to identify the bidder whose resulting price falls within the budget. The alternates can be applied until the low bid falls within the project budget and provides the greatest amount of work for the PHA.

The next step is to evaluate the low bid for responsiveness.

To be considered a responsive bid, the Contracting Officer should review the low bid to be sure the bidder did not alter the specifications or any other terms/conditions (delivery schedules, payment terms)

If the bid is determined to be non-responsive, the bid must be rejected and the next lowest bid reviewed for responsiveness.

The third step in the evaluation process is to determine if the low bidder is responsible.

PRICE: BASE BIDS, DEDUCT ALTERNATIVES, 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.

- **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

RESPONSIVENESS AND RESPONSIBILITY

2 CFR 200.318(h) contains the regulations governing responsiveness and responsibility.

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**).

Responsibility

Generating the lowest bid is not the only requirement in the selection process. PHA should carefully assess contractor responsibility before awarding contracts. Evaluation considerations, including those related to contractor responsibility, should be outlined in the PHA's procurement policy. A contractor is only deemed responsible if they are confirmed not to be debarred or suspended and are able to perform the work being procured.

Section 4: Contract Award

Notes

Good contract management records should be maintained on each contract awarded so these files can be accessed for future contract award. Information in these files should include data on timeliness of delivery, quality of work, and compliance with terms of contract.

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.

Depending on the type, size, and complexity of the work being procured, PHAs may request all or none of this information as part of the procurement process. However, it is ultimately the PHA's responsibility to enter into contracts only with responsible contractors able to complete the work to the PHA's satisfaction.

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

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.

BONDS AND GUARANTEES

Bonding requirements discussed in this section apply to construction contracts. A PHA may use sealed bidding for other types of materials and services and may, if the PHA chooses, adopt bonding requirements for other sealed bid contracts.

For construction contracts exceeding the small purchase threshold, contractors are required to submit bid, performance and payment bonds as follows:

- Bid bond or guarantee in the equivalent of 5% of the bid price, and one of the following:
- A performance and payment bond for 100% of the contract price
- Separate performance and payment bonds, each for 50% of the contract price or
- 20% cash escrow
- 25% irrevocable letter of credit

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.

- 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.

Preparation of Performance and Payment Bonds

Bonds must be written by acceptable bonding (surety) companies that are authorized to do business in the State where the PHA is located. To ensure that the bonding company is an acceptable firm, check the “T-List” published by the U.S. Treasury by accessing the list at: http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/surety_home.htm.

Each bond needs to list the rate of premium and total premium amount charged clearly. If there is power of attorney for persons signing for the surety company that power of attorney must be attached and should not be dated prior to the date of the bond.

Failure to obtain the required assurance of completion within the time specified from the successful bidder would make the bidder ineligible for award. The PHA can either award to the next lowest responsible and responsive bidder or resolicit through a new procurement. The PHA may retain the ineligible bidder’s bid guarantee.

Section 5 Bid Rejection

Any bid rejection must be fully documented with all reasons for rejection clearly stated. Any reasons being listed and documented for bid rejection should be free of any real or perceived biases. Rejection must not be based on previous personal or professional experiences that are not clearly documented (i.e., an unpleasant phone conversation you had with a vendor that was not documented and didn't affect the work completed).

Section 6 Chapter 6 Self-Graded Quiz

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. Description/summary of project
 - 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

Notes

CHAPTER 7 Competitive Proposals

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Identify the purpose of competitive proposals and when they are used
- Recognize methods of solicitation and components of a solicitation
- Describe the steps in amending and canceling a solicitation
- Recognize evaluation factors and scoring criteria
- Understand the role and responsibilities of the evaluation committee
- Apply the negotiation process
- Recognize how to determine the competitive range
- Identify the cost and price analysis
- Recognize procurement of specific services such as architecture and engineering contracts (A/E), legal services, litigation services and HUD approvals, and employment contracts

INTRODUCTION

When the competitive proposal method of procurement is chosen over sealed bids, the justification must be documented. Competitive proposals fall into two general types of solicitations: Request for Proposals (RFP) and Request for Qualifications (RFQ). Most work will be required to utilize the RFP method—we will discuss the limited uses for RFQs towards the end of this chapter.

The competitive proposal method, whether an RFP or RFQ, 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

2 CFR 200.320 (d) are the regulations that govern competitive proposals.

Section 1 Request for Proposal (RFP) Overview

The Request for Proposal (RFP) method of procurement is used when the PHA needs to do a procurement above the small purchase threshold and the sealed bidding process is not likely to meet the requirements of the procurement.

Under the RFP method, the PHA:

- Issues an RFP soliciting price and technical proposals from potential sources
- Evaluates the proposals and establishes a competitive range
- Negotiates with those in the competitive range
- Receives and evaluates best and final offers from those in the competitive range
- Makes award to the contractor offering the most advantageous proposal, considering price and the technical factors stated in the RFP.

The main difference between the Request for Proposal (RFP) and Request for Qualifications (RFQ) process is the RFP process **must** consider price as part of the selection process, and the RFQ process does not negotiate a fair and reasonable price until after the selection process.

The chief advantage of the RFP approach is that it allows the PHA to hold discussions with each offeror to ensure that there is a complete understanding of the work to be undertaken.

No public bid opening is held. The primary reason for not having a public opening is that there are multiple award factors as compared to the sealed bid price method where the bid is the only factor. Normally, it takes several hours (or even days depending on the complexity of the procurement) to evaluate proposals.

Section 1: Request for Proposal (RFP) Overview

Notes

Proposals submitted by offerors are kept in confidence and not released to anyone who has not been granted access by the Contacting Officer. This is due to proprietary information potentially being used as part of an offeror's proposal.

After selection is made, the basis for selection is subject to public inspection.

SEALED BIDDING VS COMPETITIVE PROPOSALS

The most impactful and critical difference between sealed bidding and competitive proposals is that sealed bidding does not allow for bidders to be selected based on factors other than prices. While contractors and vendors submitting sealed bids need to be capable of performing the work and meet certain other criteria, if they are deemed responsible and reasonable, they are to be awarded based on price alone. Competitive proposals allow for vendors to be evaluated and selected on more than just price.

Another important difference between sealed bidding and competitive proposals is the finality of initial offers.

Under competitive proposals, alterations in the nature of a proposal, and in prices, may be made after proposals are open; such changes are not allowed in sealed bidding.

Under the competitive proposal method, an offer may be withdrawn at any time before award.

Further, the competitive proposals method differs from sealed bidding in that it permits discussions with competing offerors and changes in their proposals (including price in some cases), and it allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of the contract.

Section 2 When Competitive Proposals are 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; and/or
- 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

Typically, competitive proposals are for:

- Computer hardware and/or software
- Telecommunications equipment
- Vehicles, e.g., maintenance vans
- Professional services
 - Legal
 - Accounting
 - Consultant
 - Security
- Outsourcing of functions
- Management or maintenance of one or more AMPs

Section 3 Preparing the Request for Proposals (RFP)

In general, all RFPs should be in a standard format. The face page should contain a table of contents and may reference documents, which are incorporated into the RFP. Any such document reference should explain where the full documents may be obtained.

The following format may be used to develop a request for proposal.

SUGGESTED FORMAT FOR RFP

Cover letter which includes basic information on the items or services required.

Face page which includes information about the closing date, point of contact, address for submission of proposals.

Section on pricing, which includes a blank form which offerors will use to submit their prices; the type of contract to be used in the solicitation should be noted in this section.

Section on specifications and/or statement of work appropriate for the solicitation.

Mandatory forms and contract provisions:

- Each solicitation package must include the following forms which include all the mandatory contract provisions:
 - Form HUD-5369-B, Instructions to Offerors, Non-Construction
 - Form HUD-5369-C, Certifications & Representations of Offerors - Non-Construction Contract
 - Form HUD-5370-C, General Conditions for Non-Construction Contracts may be included.

Section 3: Preparing the Request for Proposals (RFP)

Notes

Section on submission requirements.

- This section should explain all materials that the PHA requires to be submitted with the proposal including all HUD-required forms. Also, if the proposals are evaluated based on similar experience, this section should clearly request information on relevant experience from respondents.

Evaluation Factors – (Non-Price)

- Also referred to as “technical factors,” this is one of the most critical parts of the RFP.
- Evaluation factors will be used by respondents to develop their proposals, so it is important that the statement of evaluation factors included in each RFP is clear and easy to understand.
- The statement of evaluation factors should include the value or criticality assigned to each factor and will help ensure a fair selection process.
- Evaluation criteria typically include the following:
 - Demonstrated understanding of the requirement
 - Appropriateness of the technical approach proposed (labor categories, estimated number of hours, skill mix)
 - Quality of the work plan
 - Technical capabilities (personnel, equipment materials)
 - Management plan (staffing in key positions, method of work assignment, procedures to ensure particular level of service)
 - Experience in performing similar work
 - Past performance of work like the requirement (meeting costs, schedules, performance - should be verified by reference checks)

Section 3: Preparing the Request for Proposals (RFP)

Notes

Evaluation Factors (Price)

- When using a competitive proposal process, a PHA must consider price in selecting the successful proposal. To evaluate price, the PHA may use one of two options (must be included in the RFP):
- Price is assigned explicit points
 - 80 points for technical merit; 20 points for price
- Price is considered along with other technical factors
 - Technical factors are considered in all proposals and then the proposals are ranked. At that point, prices are evaluated. The PHA may award the proposer whose price and technical factors are the most advantageous to the PHA.

Section 4 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 on websites
- Advertising in trade journals or publications
- E-procurement

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

COMPONENTS OF A TYPICAL SOLICITATION (FOLLOW THE RFP)

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)

PRE-PROPOSAL CONFERENCE

The PHA may offer interested parties an opportunity to meet at a pre-proposal conference to ask questions or seek clarity of the PHA's requirement. As in the case of pre-bid conferences, attendance at a pre-proposal conference is not mandatory and cannot be included in the evaluation of the proposals.

AMENDING AND CANCELING A SOLICITATION

Amendment or Cancellation	Steps
Amendments before the proposal date	<p>The Contracting Officer (CO) must notify in writing all potential offerors who obtained the solicitation.</p> <p>Amendments may be posted on website or bulletin boards where procurement information is disseminated.</p> <p>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.</p>
Amendments after proposal due date Technically not an "amendment"; rather a "notice" as a solicitation cannot be amended after the due date.	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.
Amendments after determination of the competitive range. Technically not an "amendment"; rather a "notice" as a solicitation cannot be amended after the due date.	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.
Canceling the Request for Proposal (RFP)	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.

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 confidentiality.
 - Names of offerors kept confidential until after award.
 - Evaluation Committee members and other staff involved must sign Certification of Non-disclosure (Exhibit 7-1).

Late submissions:

- Not considered unless in conformance with exceptions within Section 6 of form HUD 5369-B

Section 5 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.

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 (only if documented, not hearsay).

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.

Section 5: Evaluating Proposals

Notes

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

Factors and Weighting Combined

The CO prepares an evaluation template for each solicitation that provides clear direction for the evaluators regarding the criteria used to select the best proposal. Each factor is given a maximum point value.

Below is an example of a template, 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.

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 (Exhibit 4-1) and a Non-disclosure Certification (Exhibit 7-1).

Committee Tasks

Three distinct methods are used to evaluate Technical Factors. The Evaluation Committee only evaluates Technical Factors subjectively, as the Proposed Costs are evaluated and scored objectively separate from the Evaluation Committee.

Evaluation of technical factors include the following methods.

Individual Review and Scoring:

Each appointed evaluator conducts an individual evaluation of each proposal using the evaluation form.

Each 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.

This method's weakness is that the evaluator does not receive insight from other evaluators. This method tends to take longer than the other methods.

Group Review, Individual Scoring:

Proposals are reviewed by everyone in a group setting, thus allowing for discussion among evaluators while everyone completes their 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.

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.

Negotiation

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

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.

COMPETITIVE RANGE

Offerors whose proposals are unacceptable should be notified promptly by letter with the appropriate rationale for such action; such offerors are excluded from the remainder of the procurement.

**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.

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.

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.

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, 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).

Section 6 Best and Final Offers

Once the oral interview is completed, the PHA establishes a deadline (usually one 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.

Best and final offers are usually required only once. However, in some circumstances, it may be determined that it is in the PHA's best interest to conduct another round of negotiations and request a second best and final offer.

After best and final offers are received, a final round of technical and cost/price evaluation must occur.

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
- More details about methods for conducting price and cost analysis will be covered in Chapter 10

Section 7 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)

Learning Activity 7-1: Basic Steps in the Procurement Process

1. For Request for Proposals (RFP), indicate which of the steps you would take in the correct order:
 - _____ Receive and evaluate best and final offers
 - _____ Issue an RFP soliciting price and technical proposals
 - _____ Create Independent Cost Estimate (ICE)
 - _____ Evaluate the proposals and establish a competitive range
 - _____ Develop a statement of work
 - _____ Make award to contractor offering the most advantageous proposal
2. In a Request for Proposal (RFP) procurement, indicate which of the following evaluation factors you would **not** consider:
 - a. Firm's prior experience on comparable projects
 - b. Capability of firm to timely perform
 - c. PHA Board Chairperson does not like owner of firm
 - d. Firm's licensing credentials
3. For small purchases, 250K, indicate which of the following steps you would take:
 - a. Consult PHA procurement policy
 - b. Prepare an ICE
 - c. Determine scope of purchase
 - d. All of the above
 - e. Both a and c
4. For sealed bidding, after you have prepared your Scope of work, indicate which of the steps you would take in the correct order:
 - _____ Conduct public bid opening process
 - _____ Record bids
 - _____ Solicit bids from qualified vendors
 - _____ Create Independent Cost Estimate (ICE)
 - _____ Award bid to lowest, responsive, responsible bidder
 - _____ Prepare invitation for bids (IFB)

Section 8 Request for Qualifications (RFQ)

ARCHITECTURE AND ENGINEERING CONTRACTS (A/E)

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

Qualifications-Based Selection¹

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.

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.) Remember, if the state law is more stringent than the federal law, the PHA must follow the state law. In cases where the state law requires RFQ for A/E services, then that method must be used for all A/E service procurements.

1. 2 CFR 200.320(d)(5)

Section 8: Request for Qualifications (RFQ)

Notes

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.

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

Section 8: Request for Qualifications (RFQ)

*Notes***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).
- 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.

Section 8: Request for Qualifications (RFQ)

Notes

- The award is 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.

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.

- The PHA shall not allow an A/E contractor, on a sole source basis, to prepare an application on a “no fee” basis, and then compensate that A/E by paying a contingent fee or contracting on a sole-source basis to do the design and construction phases.

LEGAL SERVICES

Applicable Regulations and Authority

2 CFR 200.318(a)

PIH Notice 2006-9

2 CFR 200.403–200.405

HUD Litigation Handbook 1530.1 REV-5

Methods of Procurement

Small purchase procedures 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. Some state and local laws require A/E services be procured using a Request for Qualifications (RFQ) method, which the PHA would have to adhere to.

Competitive Proposals Request for Proposals (RFP)

Used when the number of hours and level of effort cannot be easily quantified and the PHA has a strong justification for including price as a selection factor.

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. Some state and local laws require A/E services be procured using a Request for Qualifications (RFQ) method, which the PHA would have to adhere to.

Competitive Proposals Request for Qualifications (RFQ)

This is the preferred method when exceeding small purchase threshold because it considers technical quality first, and then negotiation of a fair and reasonable cost. Because A/E services are very complex, large, and involve a great deal of liability, focusing solely on technical factors in the initial part of the selection process through an RFQ usually benefits the PHA in finding the best A/E contractor for the needs of the project.

This is by far the preferred and most efficient method.

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.

Time and material contracts are discussed in more detail in Chapter 10.

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.

Section 8: Request for Qualifications (RFQ)

Notes

- **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.)

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

Contract Addendum—Legal Service Protocol

Exhibit 7-2 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.

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 two years, the PHA requires local HUD approval.
- HUD recommends that contracts be awarded for two years with three one-year renewal options.

Learning Activity 7-2: Test Your Knowledge - Terms and Definitions

- Match the following terms with the appropriate definitions below.

Terms

- A. Performance Bond
- B. Blanket Purchase Agreement or Indefinite Quantity Contracts
- C. Request for Qualifications (RFQ)
- D. Request for Proposals (RFP)
- E. Obtaining 3 or more quotations
- F. Evaluation Plan
- G. Best and Final Offer
- H. Sealed Bidding or Invitation for Bid (IFB)

Definitions

- _____ 1. Under the small purchase method of procurement, a brief written request for a price/cost estimate from potential suppliers/contractors.
- _____ 2. After negotiations have been completed, proposers are sometimes requested to submit their final response.
- _____ 3. The approach to reviewing procurement proposals for the purpose of developing a ranking of the submitted proposal.
- _____ 4. A form of procurement in which price is neither requested nor used as an evaluation factor and is only allowable for A/E services.
- _____ 5. The PHA's written solicitation to prospective offerors to submit a proposal based on the terms and conditions set forth therein considering technical factors and price when selecting the most advantageous offeror.
- _____ 6. Generally issued by an insurance company or a bank to guarantee satisfactory completion of a project by a contractor.
- _____ 7. Competitively established procurements that are issued to several commercial sources for frequently purchased goods or services.
- _____ 8. A solicitation for contractors and/or vendors to submit packages that include unit and/or lump sum pricing for the procurement on pre-established forms and are selected based on the lowest qualified respondent.

Section 9 Chapter 7 Self-Graded Quiz

1. When are Requests for Proposals (RFPs) 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. The Evaluation Committee considers proposed costs in its evaluation of proposals for a request for proposals (RFP).
 - a. True
 - b. False
5. All proposals are private information and not disclosed to anyone until after award has been completed to the top-rated firm (and in some cases never).
 - a. True
 - b. False
6. The request for qualifications (RFQ) method can typically only be used for A/E services or for developer contracts.
 - a. True
 - b. False
7. When procuring legal services, which of the following methods are allowed? Select all that apply.
 - a. Sealed bidding or IFB
 - b. Small purchase procedure
 - c. Request for Proposals (RFP)
 - d. Request for Qualifications (RFQ)
 - e. Only a, b, and c
 - f. All of the above

Section 10 Exhibits

Exhibit 7-1: Certificate 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.

Exhibit 7-2: Legal Service Contract Protocol

SAMPLE LEGAL SERVICES ENGAGEMENT LETTER

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

ADDENDUM TO ENGAGEMENT AGREEMENT

1. The [name of PHA] and [name of legal service individual or firm] Legal Service Personnel (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 PHAs 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)**.
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]

Exhibit 7-3: Procurement Documentation Checklist

ABC Housing Authority

Solicitation Number: _____

Procurement Documentation Checklist					
Item	Micro Purchases Up to \$3,000	Small Purchases \$3,000-\$150,000	Sealed Bid	Competitive Proposals	Non-Competitive Proposals
Pre-Solicitation (File #1)					
Critical Path					
Questionnaire					
Sole Source Justification					
Procurement Documentation Checklist					
Solicitation (File #2)					
Onvia Summary Page					
Advertisements					
Outreach					
Plan Holders List					
Pre-Proposal/Bid Agenda					
Addenda					
Bid & Evaluation (File #3)					
Bid Opening Form					
Bid Summary Sheet					
Responsibility Form					
Non-Disclosure Agreements					
Evaluations Forms					
Bid Summary Memorandum					
Award (File #4)					
Board Report					
Contract Signing/Pre-construction Conference Notes					
Contract					
Amendments/Change Orders					
Service Revision Notifications					
Notification of Unsuccessful Bidders					
Contract Administration (File #5)					
Licenses/Certifications/Debarment					
Insurance					
NTP					
Bonds					
Misc. Required Documents					
Closeout Audit Form					
Equal Opportunity & Section 3					
Certificate of Compliance					
Workforce Report					
Representation					
Section 3 Documents					
SIGNATURES		DATE			
Analyst					
Admin.					
Supervisor					

Procurement and Section 3

Competitive Proposals

Employment Contracts

Notes

CHAPTER 8 Noncompetitive Proposals

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Identify the four situations in which noncompetitive proposals typically occur purpose of competitive proposals and when they are used
- Recognize the process for procuring through a noncompetitive proposal
- Describe the HUD approval process for noncompetitive proposals
- Recognize evaluation factors and scoring criteria

Section 1 When Noncompetitive Proposals Occur

Noncompetitive proposals are addressed in 2 CFR 200.320(f).

Noncompetitive proposals are generally not planned (except in very rare “sole-source” situations). Noncompetitive procurements are uncommon compared to micro-purchases or competitive procurements. Noncompetitive procurements can only occur in one of four situations, as described below. As will be described later in Chapter 14, certain contracting with resident-owned businesses and resident management corporations are exempted from these restrictions on noncompetitive proposals.

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

- **Example 1:** A 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.
- **Example 2:** Some of the sod for the grounds at a community center is in need of replacement but in order to match the existing sod, only Schmidt's Sod carries the specific product that matches your specifications. You may purchase at Schmidt's without obtaining two other quotes for sod.

Frequently, procurement of public utilities falls within this category.

2. The public exigency or emergency for the requirement will not permit the type of delay that would be caused by competition (sometimes known as “special market conditions”)

- **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.

3. HUD expressly authorizes noncompetitive 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.”

4. 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.

Section 2 Process

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

- PHAs must evaluate the one firm for responsiveness and responsibility.
- For RFQs, cost is negotiated.
- Technical or cost aspects of the proposal can be negotiated after initial evaluation and the proposer must be considered responsible at the time of award.
- Since there is no price competition in noncompetitive procurement, a cost analysis (the more detailed breakdown of separate elements of costs) is required, and the price must be justified as fair and reasonable.
- Unless exempted, PHAs are required to submit proposed noncompetitive contracts to HUD for pre-award approval.

Documentation is crucial for any procurements utilizing the noncompetitive method. Because this method does not allow for a real-time direct comparison of costs, there is a higher risk of fraud, waste and/or abuse. It is best practice to create official memos explaining the reason a noncompetitive procurement was needed. Memos may range from a short paragraph to a multiple page document depending on size and type of procurement. Regardless, any time a noncompetitive procurement is used one of the four reasons outlined in 2 CFR 200.320(f) must be documented and justified in the file.

Section 3 HUD Approval

If the aggregated value is greater than \$250,000, PHAs are required to submit noncompetitive 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.

Section 4 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 noncompetitive procurement
- History of prior procurements of the same kind of item or service and whether they were competitive or noncompetitive
- Specific exception applied from 2 CFR 200.320(f)(1):
 - The item is only available from one source
 - Public exigency or emergency which does not allow for delay in conducting a competitive solicitation
 - The federal awarding agency or pass-through allows for a noncompetitive award in response to a request by the PHA (HUD authorizes the use of a noncompetitive process)
 - Despite soliciting from numerous sources, the competition is still inadequate
- Statement as to the unique circumstances that required the award by noncompetitive proposal
- Description of the efforts to find competitive proposals, including advertisements in trade journals or local publications, and other outreach

Section 4: Justification Documentation

Notes

- The documentation of efforts to identify and obtain competition for the goods or services being procured is one of the most important types of documentation the PHA can keep in the file for the noncompetitive procurement. A clear description of adequate efforts (not just the normal posting process one time through) are required to justify any noncompetitive procurements if justification is based on the fourth exception from 2 CFR 200.320(f)(1): “Despite soliciting from numerous sources, the competition is still inadequate.”
- In addition, the first exception from 2 CFR 200.320(f)(1): “The item is only available from one source” is only truly the case on rare occasions, often involving incredibly technical, complex, or specified goods and/or services. These procurements also need adequate documentation of the reasons the goods and/or services are only available from the one contractor or vendor (showing efforts to identify other sources and/or clear explanation and documentation that the item is only available from the one source).
- 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

Following is a sample form to use when it is necessary to purchase goods or services using the noncompetitive or sole source method of procurement.

OUTLINE FOR JUSTIFICATION FOR NON COMPETITIVE PROCUREMENTS

Vendor Selected _____

Address of Vendor _____

Date of Contract/Purchase Order _____

Amount of Contract/Purchase Order _____

- o Description of the goods or services being procured.
- o History of prior procurements of this service or goods (competitive vs. noncompetitive).
- o The specific exception that applies:
 - o Goods/services available only from a single source
 - o The public emergency for the requirement will not permit delay resulting from competitive solicitation
 - o Awarding agency (HUD) authorizes noncompetitive process
 - o After competitive solicitation competition is determined to be inadequate
- o Statement of the special circumstances that require award/procurement by noncompetitive approach.
- o Description of the efforts made to find competitive sources (e.g., advertisement in trade journals or local publications, phone calls to suppliers, issuance of written solicitation).
- o Statement of the efforts that will be taken in the future to promote competition for the requirement.
- o Approval/signature of PHA official above the Contracting Officer making the award.

Signed by:

Signed by:

Contracting Officer

Title

Date

Date

Learning Activity 8-1: Noncompetitive Procurement

- The Housing Authority of Coffee County (HACC), not unlike other similar entities, was facing a funding shortfall due to HUD funding proration and the implementation of Asset Management. Most of the AMPs were sufficiently funded; however, HACC's central office cost center was finding it very difficult to continue to maintain its current staffing level with the reduced funding. HUD had previously advised HACC that its administrative costs (especially employee benefits) seemed out of line in comparison with other PHAs in their jurisdiction. Thus, HACC conducted a small purchase competitive procurement that resulted in the hiring of Good Benefits Consulting Company. Good Benefits' task was to review the various employee benefits provided by HACC. Upon completion of the review, HACC planned to solicit competitive proposals, with the hope of obtaining lower benefit costs. After meeting with various departmental representatives, the Consultant advised the Executive Director that his firm could provide the employee benefits at a 15% savings over current costs.
- Review the following justification for noncompetitive procurement and answer the question following.

HOUSING AUTHORITY OF COFFEE COUNTY JUSTIFICATION FOR NONCOMPETITIVE PROCUREMENT

In accordance with 2 CFR 200.320, the Housing Authority of Coffee County intends to award a \$725,000 contract on a noncompetitive basis to Good Benefits Consulting Company. These services are needed to lower HACC's employee benefit costs due to HUD funding reductions.

The bases for the justification are as follows:

- Good Benefits was familiar with HACC's employee benefit plans
- Good Benefits would not charge HACC for the services provided in gathering the benefit data
- The PHA would save time and money by not soliciting, then evaluating numerous proposals
- HACC would save money on employee benefits, and not have to furlough any central office staff

Signed:

Thomas Bradley, Contracting Officer
Housing Authority of Coffee County

Section 4: Justification Documentation

Question:

- Do these circumstances and the justification support an award to Good Benefits Consulting Company? Why or why not?

Section 5 Procurement Summary

	Small Purchases		Sealed Bids	Competitive Proposals	Non-competitive Proposals
	Micro purchases Up to \$10,000	\$10,000 to \$250,000	\$250,000 and higher	\$250,000 and higher	
Independent Cost Estimate	Not required	Required (minimum documentation)	Required (detail commensurate with complexity)	Required (detail commensurate with complexity)	Required
Competition	No required competition but price must be reasonable	Solicit REASONABLE number of written or verbal quotes (recommend 3)	Specification IFB Advertise Open publicly	Scope of Work RFP Evaluation Factors Advertise Evaluate proposals Evaluation report	Sole source or only one bidder

Section 6 Chapter 8 Self-Graded Quiz

1. PHAs may solicit sole-source or noncompetitive procurements when they know which vendor/contractor they would like to work with.
 - a. True
 - b. False
2. Justification for awarding a noncompetitive 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. Contracting officer did not send out solicitation in time and the PHA Board really wants the work completed ASAP
3. Noncompetitive proposals never require additional documentation.
 - a. True
 - b. False

Notes

CHAPTER 9 Statement/Scope of Work and Specifications

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Recognize the purpose and definitions of statements or scopes of work (SOW)
- Describe the types of specifications
- Identify elements of the SOW

INTRODUCTION

The Statement or Scope of work (SOW) is among the most important aspects of a procurement because they document the PHA's requirements, deliverables, and expectations. An SOW is required for all procurements exceeding the small purchase threshold. In addition, some elements of the SOW described in this chapter should be included in small and micro-purchases as previously discussed to ensure consistency with the purchase and the orders/work completed.

It is helpful to act as if the SOW is the only time/place for you to document exactly what you expect your contractors/vendors to do to complete the work, service, or deliverable being procured, because in some ways, it is. The importance of the SOW emphasizes the significance of good planning in procurement. The person preparing the SOW should thoroughly understand what the end use will be and what it will take to get the desired result.

While there are opportunities for vendors to ask questions prior to bid/proposals being submitted, the SOW is the most clearly detailed document for this crucial information. 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.

In addition to all of this, in cases of disputes, protests, and legal action, the SOW is almost always a critical piece of the PHA's case. If there is a clearly documented SOW detailing what the PHA wanted to procure, vendors and contractors do not have much of an argument for disagreements or disputes. However, if the SOW is vague and not clearly stated, then the PHA is less protected in disputes from contractors/vendors regarding the SOW.

Regulations regarding specifications and SOW are at 2 CFR 200.319(a).

Section 1 Statement/Scope of Work

The Statement or Scope of Work (SOW) is used to describe requirements, deliverables, and expectations of contractors and vendors to complete the actual work being procured (goods, and/or services). The SOW can and should vary in length and detail depending on the size, scope, and complexity of a procurement.

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

ELEMENTS OF THE SOW

PHA objectives

Detailed work and task requirements

Specifications (discussed in the section that follows)

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.

Section 2 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.

TYPES OF SPECIFICATIONS

Functional or Performance Specification:

Explains how the item will function or how it will be used.

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 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.)

Section 2: Specifications

*Notes***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 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.

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.

Section 2: Specifications

Notes

Offerors should have an opportunity to present products of other brands that meet the specifications.

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 the 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 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.

Section 3 Chapter 9 Self-Graded Quiz

1. Small purchases below the PHA's threshold do not require any elements of the scope of work to be included
 - a. True
 - b. False
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
3. The SOW is used to describe requirements and expectations of the PHA for the work to be completed by the contractor or vendor.
 - a. True
 - b. False

CHAPTER 10 Contracting Requirements

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Identify contract pricing and types of contracts
- Recognize factors used in determining type of contract used
- Describe what contract types are prohibited
- Discuss firm fixed-price contracts, cost-reimbursement contracts, indefinite delivery contracts, time and materials, labor-hour contracts, and letter contracts
- Recognize when different types of contracts are used, and the requirements for each
- Understand contractor responsibilities
- Identify criteria for limited denial of participation, debarment, and suspension
- Explore evaluating cost and price - method to determine cost analysis, required and recommended cost analysis, conducting a cost analysis, and documentation required
- Recognize the procedures, elements, for protects
- Identify options for the PHA to unilaterally extend the term of the contract - when it is used, procedures, and documentation
- Discuss labor standards and wage rates, when Davis-Bacon wages apply, and PHA enforcement

Section 1 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.

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 performance period may have economic adjustment factors to account for potential changes in labor and materials charges (if such was published as 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.

Section 1: Contract Pricing and Types of Contracts

Notes

- 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. the 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.

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 CONTRACTS¹

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

- Cost-plus-percentage contracts oblige the PHA to pay all costs, plus a commission based on a percentage of future costs. This gives the contractor incentive to increase costs because it is commission based.

1. 2 CFR 200.32(d), HUD Handbook 7460.8

Section 1: Contract Pricing and Types of Contracts

Notes

- Cost-plus-percentage-of-construction-cost contracts. The cost for individual construction-related services is determined by applying a percentage of actual construction costs as a fee, such as an A/E contract in which the fee is determined by the total construction cost. Allowing construction-related services to be based on construction costs may incentivize architects, engineers, and other design professional to increase construction costs and to design an overly expensive construction project to increase profits.

TYPICAL CONTRACT TYPES

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

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—if 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.

Section 1: Contract Pricing and Types of Contracts

Notes

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.

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 as such to the PHA.

Section 1: Contract Pricing and Types of Contracts

Notes

Types of cost-reimbursement contracts:

- Cost contract (no fee)
 - The 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 contractors 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 period.
 - The Contracting Officer (CO) determines if the level of effort was satisfactory and pays fee at the end of the period.

Section 1: Contract Pricing and Types of Contracts

Notes

- **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 expenses by the trainer will be reimbursed at a 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.

Indefinite Delivery Contracts

What is an indefinite delivery contract?

- Indefinite delivery contracts specify unit prices for supplies or services in estimated quantities and the 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 that 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.

Section 1: Contract Pricing and Types of Contracts

Notes

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 the 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.

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 riskier 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.)

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.

Section 2 Contractor Responsibility

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

Section 2: Contractor Responsibility

Notes

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 employees is not listed thereon.
 - LDP site found at:
 - https://www.hud.gov/program_offices/general_counsel/limited_denial_participation_hud_funding_disqualifications
- **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.

Section 2: Contractor Responsibility

Notes

- **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>

Section 3 Evaluating Cost and Price

For every procurement above the PHA's small 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. Remember that micro and small purchases still must be considered fair and reasonable and small purchases end up having a general price analysis (comparing of lump sum prices) when receiving more than one quote/response.

- As previously discussed, the Price Analysis is the evaluation of a proposed price (the lump sum) without analyzing any of the separate elements that it is composed of.
- The Price Analysis method can be used for all procurements that have price competition (are not sole-source/non-compete) and are not Request for Qualifications (RFQ for A&E services). **If there is no price competition, or if the procurement method used was a Request for Qualification (RFQ), a more detailed Cost Analysis must be performed.**

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

A cost analysis is required for any Request for Qualifications (RFQ) or any procurement exceeding the PHA's small purchase threshold that does not have price competition (non-compete).

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 RFQ (for A&E services where price is not an evaluation factor) 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.

Section 3: Evaluating Cost and Price

Notes

- Is it reasonable?
 - Reasonable costs are what a prudent business would pay in a competitive marketplace.
 - 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.

*Notes***Section 4 Documentation Required**

Procurement Type	Documentation Required
Sealed bids	Bid tabulation sheet
Competitive bids	If adequate competition, only need comparison of prices offered
No adequate completion, only one bid received, price varied significantly from ICE	Cost analysis required CO must explain lack of competition and/or price variance

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.

The 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.

Section 5 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.

PHA AUDIT OF CONTRACTOR'S RECORDS

HUD forms 5369 and 5370 contain provisions regarding bid protests and contract disputes.

- PHAs are required to have written procedures for resolving protests.
- 2 CFR 200.318(k) are the regulations governing protests.

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 protester, 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.

Section 5: Protests

Notes

- 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.

Section 6 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.

WHEN IT IS 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.

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.

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

Section 7 Labor Standards and Wage Rates

The Davis-Bacon Act was passed by Congress in 1931, establishing the requirement that contractors pay the local prevailing wage on public works projects in construction. It applies to any contract valued in excess of \$2,000 that involves construction, alteration, and repair on government projects, including housing projects.

The Davis-Bacon Act's (DBA) emphasis on paying a local prevailing wage and fringe benefits was created to protect communities from the upheaval usually caused by federal contracts. The DBA essentially levels the playing field by preventing outside contractors from entering a higher cost area and underbidding local contractors.

To ensure that fair wages are paid to laborers on construction projects, HUD monitors PHAs on the actions taken by the PHA to ensure wages are paid 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").

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.

AUTHORITY

HUD Handbook 1344.1, REV-3

- DOL Regulations 29 CFR Part 5

Procedures for Construction Contracts

HUD HANDBOOK 1344.1, REV-3

In January 2023, HUD issued REV-3 of the HUD Handbook 1344.1 on Davis-Bacon standards. REV-3 of the handbook:

- Updates the name of the office to the **Office of Davis-Bacon and Labor Standards**
- Adds Rental Assistance Demonstration (RAD) second component and Community Development Block Grant (CDBG) information to the handbook
- Adds additional information and detail about reporting

REV-3 is now effective and should be used for guidance.

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.dol.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 one year.

Five Things to Know about Davis-Bacon

1. **Davis-Bacon is a federal law that requires local prevailing wages be paid on most federal and federally funded construction contracts.** The Davis-Bacon Act ensures that federal government funds elevate labor standards for construction workers across the country, and that taxpayer dollars are used to ensure local wage and benefit standards, allowing responsible contractors to compete for federally funded or assisted construction contracts.
2. **If it's a Davis-Bacon project, it requires Davis-Bacon wages.** Construction workers working on Davis-Bacon covered construction contracts must be paid no less than the locally prevailing wages for all hours worked in each labor classification. If a construction worker on a Davis-Bacon project works in more than one labor classification, the contractor or subcontractor must pay the highest applicable wage rate for all hours worked or different wage rates based on the actual hours worked in each labor classification. Local wage determinations that list labor classification and wage rates are issued by the Wage and Hour Division of the U.S. Department of Labor and can be found at sam.gov, with a link to the DOL.

Section 7: Labor Standards and Wage Rates

Notes

3. **Understand the wages owed to construction workers.** Contractors and subcontractors on Davis-Bacon projects must pay their construction workers not less than the wages and fringe benefits listed on the wage determination for the work performed. To help ensure workers are paid the proper rates, workers, contractors and subcontractors should familiarize themselves with:
 - where the work is being performed,
 - the type of construction (building, residential, highway, or heavy),
 - and the applicable labor classifications for the work being performed.
4. **Certified payroll reports help ensure workers are paid the correct wages for the work they perform.** Certified payroll reports play a crucial role in ensuring that construction workers on Davis-Bacon projects are paid the proper wages for the work performed. Contractors and subcontractors must pay covered workers and submit a certified payroll report on a weekly basis. Contracting agencies may withhold contract funds if certified payroll records are not submitted or are submitted unsigned, and falsification of certified payroll reports can even lead to criminal penalties.
5. **Education and compliance assistance on Davis-Bacon is offered by the Wage and Hour Division.** The Wage and Hour Division offers compliance and educational materials on their website and at their toll-free helpline at 866-4US-WAGE (487-9243). For more information about the Davis-Bacon and Related Acts visit Government Contracts Toolkit.

Section 7: Labor Standards and Wage Rates

Notes

REPORTING

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

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

COMPLIANCE

During the term of the contract, employees must be paid at least once a week with full wages, as well as the employer's choice of two options - fringe benefits or paying the fringe amount out in cash. Additionally, companies are required to maintain basic records for all workers during the performance of the contract and for at least three years after. These records must contain basic employee information such as a name and Social Security number, job classification (e.g., plumber, carpenter), hourly rates of pay, any rates associated with the fringe, hours worked in the performance of the contract, and details on any fringe benefit plans and programs and proof that the benefit program has been communicated to the workforce.

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

ENFORCEMENT

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

- Ensuring correct wage rates are included in the solicitation for bids;
- Posting wage rates at the job site;
- Conducting onsite interviews with laborers to ensure that rates are commensurate with work performed based on the labor classification; (see HUD Form 11);
- Receipt and review of certified payroll reports submitted with each pay request;
- Retention of all records; and
- Ensuring worker safety on site.

DAVIS-BACON FINAL RULE

The Department of Labor (DOL) has released the final rule updating Davis Bacon and related regulations. This rule became effective as of October 23, 2023.

This is the first comprehensive review of this rule in 40 years. The purpose of the final rule is to update the regulations at 29 CFR to increase the efficiency of administration while protecting covered construction workers.

The rule changes the method that prevailing wages and other wage rates are determined, the requirements around wage determinations, compliance, and enforcement, and provides updated definitions.

DOL has published summary charts of the various aspects of the final rule including:

- Prevailing Wages
- Wage Determinations
- Definitions
- Compliance Principles
- Enforcement

All these charts are available based on interest and need at:

- <https://www.dol.gov/agencies/whd/government-contracts/construction/rulemaking-davis-bacon/dba-comparison-charts>

Section 8 Chapter 10 Self-Graded Quiz

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
2. Which of the following is not a typical contract type?
 - a. Cost-reimbursement
 - b. Cost estimate
 - c. Indefinite delivery
 - d. Fixed price
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 and include written justification in the procurement file.
 - 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 Contract Administration

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Identify the HUD forms used in contract administration
- Recognize factors in administering construction costs, including monitoring and inspection
- Describe fair labor standards
- Recognize requirements and processes for progress payments
- Discuss delays and time extensions
- Identify steps for completion of work and closing, including notification, final inspection, and post-inspection meeting
- Recognize required documents for final payment
- Discuss construction warranties
- Understand administering non-construction contracts, including post-award conferences, monitoring, and inspecting supplies and services, post-receipt monitoring, and enforcing specifications and timelines
- Classify types of contract modifications, including the process for modification or change orders and modification register,
- Discuss contract claims
- Identify contract termination for convenience and contract termination for default

Notes

Section 1 General

Contract Administration refers to all activity after awarding a contract to ensure the PHA receives the supplies and services required under the contract. This chapter includes sections on construction and non-construction contracts.

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 IFBs)
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.

Section 2 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.

MONITORING AND INSPECTIONS

Construction contracts must be properly monitored to ensure work is completed in accordance with the contract terms. 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.

FAIR LABOR STANDARDS

HUD Handbook 1344.1, REV-3, as required by U.S. Department of Labor (DOL) regulations is applicable to Davis Bacon Act-covered work (29 CFR Part 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.

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 have signed copies of the schedule for their files. As work is completed and accepted, the schedule will guide the payment process.

What should the PHA review prior to issuing a payment?

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

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

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 for the geographic area the work is being carried out.

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.

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 inspect all work within 10 days of receiving the written completion notification.

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.

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 that 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. The notarized requirement is from HUD Handbook 7460.8, Rev-2.

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 two-year period for complex equipment is usually reasonable.

It is very important for the PHA to have a warranty inspection planned approximately one 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.

Section 3 Administering Non-construction Contracts

Oversight and monitoring of non-construction contracts will vary depending on the complexity of the work assigned.

POST-AWARD CONFERENCE

Complex projects should begin with a post-award conference soon after the 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 defect.

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 or services, 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 based on the terms of the RFP and contract or purchase order.

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 must 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 signed by the CO and the contractor.
- If a contract modification exceeds the PHA's small purchase threshold, there must be a detailed cost analysis conducted as discussed in Chapter 10.

PROCESS FOR MODIFICATION OR CHANGE ORDERS

The CO issues change orders when contract terms such as price, services or products requested, specifications, and timeframes must be modified.

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

- Description of the proposed change
- Price changes
- Estimate of time

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 (currently \$250,000).

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 must maintain records of actions that may result in a dispute or claim for damages for three years from the date of submission of the final expenditure report.

Section 3: Administering Non-construction Contracts

Notes

The PHA must maintain records that include the following:

- Relevant correspondence
- Correspondence related to rejection or acceptance of goods and/or 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

Section 4 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 contractors 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.

TERMINATION FOR CONVENIENCE

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 still needs the services and has money to pay for them.

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 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.

Section 5 Chapter 11 Self-Graded Quiz

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
2. 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
3. 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
4. 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
5. 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
6. 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 State and Local Laws and Regulations Governing PHA Procurement

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Understand how state and local procurement laws apply to procurement
- Identify state-enabling legislation and state statutes regarding procurement
- Discuss local law
- Apply guidance on state and local procurement laws

GENERAL

PHAs must abide by federal law and regulations and are 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.

Notes

Section 1 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.

Section 2 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.

NOTE: Not all states have procurement requirements that PHAs must follow; it is recommended that the agency's counsel check state statutes and advise the CEO.

- 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.
 - 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.

Notes

Section 3 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.

Section 4 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
- 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 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 before submitting the policy to the PHA Board for approval or adoption.

Section 5 Chapter 12 Self-Graded Quiz

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. Prevailing wage rates should be checked and re-issued for a competitive solicitation as applicable.
 - a. True
 - b. False

CHAPTER 13 Cooperative Business Relationships

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Describe the four methods of implementing intergovernmental agreements
- Recognize the requirements, process, and elements of implementing intergovernmental agreements
- Identify inter-entity agreements for joint procurement activity
- Identify joint-venture partnerships, including selection methods and procurement requirements,
- Describe consortia partnerships

GENERAL

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.

State and local governments often award requirements or indefinite quantity contracts (for printing, vehicles, or other items) available for use by other governmental departments.

These contracts offer substantial discounts over what the PHA would be forced to pay if it purchased the items on its own.

Several PHAs may also issue a group solicitation for necessary goods or services to achieve similar savings.

Use of such agreements simplifies and speeds up the procurement process since PHAs do not have to develop specifications or issue solicitations.

Some states have passed laws regarding procurement of supplies or services from federal, state, or local governmental agencies or departments.

Section 1 Intergovernmental Agreements

“Intergovernmental agreements” are with a state or local (e.g., city, county, Indian tribe) governmental entity. (The term “governmental entity” also includes PHAs.)

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)

REQUIREMENTS FOR INTERGOVERNMENTAL AGREEMENTS

Requirements for entering into collaborative procurement agreements are as follows:

- The agreement will provide 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 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.

Section 1: Intergovernmental Agreements

Notes

- 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.

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)
- Using bonding services from a state housing finance agency
- **Piggybacking Example:** A PHA procures services from a national firm 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);

Section 1: Intergovernmental Agreements

Notes

- 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.

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.

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

Section 1: Intergovernmental Agreements

Notes

- 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
- 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).

Section 2 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.

Any proposed “agreement” with a non-governmental entity (e.g., nonprofit organization, commercial firm) should be considered a procurement contract and must be entered into competitively.

- HUD regulation appears to limit the purpose of agreements to the “procurement and use of common goods and services.”

Section 3 Practical Guidance on Using Cooperative Purchasing

There are several important points to remember should the PHA decide to use the cooperative purchasing method of procurement:

- The originating PHA's contract must still be open (if the contract is past its expiration date or has been terminated, the PHA cannot "piggyback")
- A correct procurement and award process must have been followed
- The services or items to be procured must be the same or similar services to those in the original contract
- The contractor or vendor must agree to honor the current pricing schedule in the contract for services or goods
- There must be an agreement between the PHAs to allow a piggyback arrangement. This can be in the form of an agreement, letter of intent or exchange of emails confirming the parties agree to the arrangement.
- Both PHAs must have cooperative purchasing as one of the methods of procurement in their agency's procurement policy

For the procurement file, be sure to include:

- A copy of the original solicitation documents (IFB, RFP, published notice or email inviting proposals)
- The evaluation sheet, notes, or bid tabulation summary from the originating process
- A copy of the originating agency's contract with the vendor or contractor
- Note, letter, email from the vendor or contractor agreeing to abide by the terms of the original contract, including the current pricing

Section 4 Chapter 13 Self-Graded Quiz

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 14 Section 3 and Contracting with MWBE and Resident Owned Businesses

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Recognize training and employment opportunities through Section 3 of the Housing and Urban Development Act of 1968
- Describe alternative procurement processes for resident-owned businesses
- Understand the definition of minority and woman owned businesses (MWBE)
- Identify assistance to small and other disadvantaged businesses, including business type definitions
- Understand new PHA reporting requirements
- Recognize PHA outreach, reporting, and documentation requirements
- Know the difference between MWBE and Section 3

Section 1 Introduction to Section 3 and MWBE

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

Section 3 is a provision of the Housing and Urban Development Act of 1968. The purpose of Section 3 to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing federal, state, and local laws and regulations, be directed to low and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low and very low-income persons.

In addition, and completely separate, HUD requires non-federal entities to take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms (often referred to as disadvantaged businesses) are used when possible. These are the MWBE outreach requirements that, while similar to Section 3, differ in definition and requirements. The difference is the primary population focus.

Often times PHAs find success in partnering with local organizations that already work with low-income individuals and MWBEs to provide job training and hiring opportunities. PHAs are already stretched thin with budgets and staffing, and working with other organizations can help reduce the administrative time and costs involved with a successful Section 3 program.

Regulations for Section 3 are at 24 CFR Part 75 and for MWBE at 2 CFR 200.321.

Section 2 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 2 CFR Part 200.321.

Affirmative steps must include:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists
- Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises
- Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce

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 percent owned by one or more minority group members; or, in the case of a publicly owned business, one in which at least 51 percent 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 percent 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 percent 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).

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."

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 businesses:

- 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
- Develop a systematic method for identifying and maintaining an inventory of certified minority and women's business enterprise (MBEs and WBEs), their capabilities, services, and products
- Utilize the local media, electronic or print, to market and promote contract and business opportunities for MBEs and WBEs
- Develop informational and documentary materials (fact sheets, program guides, procurement forecasts, etc.) on contract/subcontract opportunities for MBEs and WBEs
- Develop procurement procedures that facilitate opportunities for MBEs and WBEs to participate as vendors and supplies of goods and services

Section 3 and Contracting with MWBE and Resident Owned Businesses

Section 2: Assistance to Small and Other Disadvantaged Businesses

Notes

- Sponsor business opportunity-related meetings, conferences, seminars, etc. with minority and women business organizations
- Maintain centralized records with statistical data on the utilization and participation of MBEs and WBEs as contractors and subcontractors in all HUD-assisted program contracting activities
- Establish partnerships with other community agencies, governmental agencies, and educational institutions to work collaboratively in the effort to engage small and 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. Also collaborating and partnering with local organizations that assist MWBEs to easily and quickly communicate contracting opportunities.

Section 3 Section 3 of the Housing and Urban Development Act of 1968 (24 CFR 75)

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.

Congress established Section 3 to guarantee that the employment and other economic opportunities created by federal financial assistance for housing and community development programs should, if possible, be directed toward low and very low-income persons, particularly those who are recipients of government assistance for housing.

Section 3 applies to:

- Public housing agency (PHA) funds used for housing development, operations, and capital fund programs; and
- Certain Notification of Funding Availability (NOFA) and grant agreements

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

EVOLUTION OF SECTION 3

- Section 3 was originally codified in the Housing and Urban Development Act of 1968
- In 1995, Fair Housing and Equal Opportunity (FHEO) regulations were included in 24 CFR Part 135
- In 2015, FHEO published proposed regulations which never became final

- In 2019, the Office of Field and Policy Management (FPM) proposed regulations in 24 CFR Part 75. These regulations were cleared by the Office of Management and Budget in August 2020
- In September 2020, the new final rule was published with an effective date of November 30, 2020
- On July 1, 2021, organizations subject to the Section 3 regulations were to be in compliance with the new rule

FINAL RULE TIMELINE

- **Legacy Projects:** These are projects with contracts for which assistance or funds were committed prior to November 30, 2020, e.g. construction contracts
 - Requirements for legacy projects are to adhere to the “old” rule (24 CFR Part 135) although no reporting of Section 3 compliance to HUD in SPEARS is required.

IMPROVEMENTS IN THE FINAL RULE

The final rule (effective November 30, 2020) focused on improving effectiveness by:

- Promoting sustained employment and career development
- Focusing reporting requirements on key outcome metrics
- Aligning reporting with standard good business practices
- Providing program specific oversight
- Clarifying obligations of Section 3

DEFINITIONS

Programs Covered by Section 3 Requirements

- Public Housing
- CDBG Grants including disaster relief grants
- HOME Funds
- Housing Trust Funds
- Neighborhood Stabilization Grants
- Economic Development Initiatives; Brownfield Economic Development Grants
- HOPWA Funds
- Homeless Assistance Grants (Emergency Solutions Grants)
- University Partnership Grants
- Economic Stimulus Funds
- 202/811 Grants
- Rental Assistance Demonstration (RAD)

Section 3 Project

A Section 3 project is a site or sites along with any buildings or improvements located on the site that are under common ownership, management and financing.

- Section 3 applies to the entire Section 3 project if the project is fully OR partially funded under HUD programs that provide housing and/or community development financial assistance.
- Section 3 applies to any and all public housing financial assistance funds, regardless of the amount of funding assistance.

Section 3 Worker

Is someone who currently fits — or when hired within the past five years fit one or more of the following categories:

- A low or very low-income worker
- Employed by a Section 3 business concern
- YouthBuild participant

Targeted Section 3 Worker

The definition of a Targeted Section 3 Worker differs depending on the type of financial assistance utilized by the project. For those projects using public housing financial assistance, a Targeted Section 3 worker is someone who is:

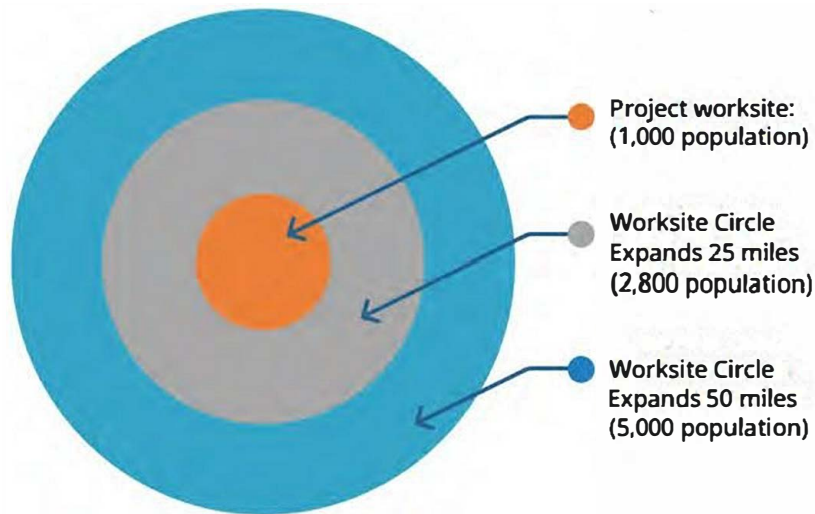
- Employed by a Section 3 business concern OR
- Currently fits or when hired fit at least one of the following categories within the past five years (must have documentation):
 - Is a resident of public housing or lives in Section 8-assisted housing that is managed by the PHA that is providing assistance
 - Is a YouthBuild participant

For those projects using HCD financial assistance, a Targeted Section 3 worker is someone who is:

- Employed by a Section 3 business concern OR
- Currently fits or when hired fit at least one of the following categories as documented within the past five years:
 - Is living within the service area or the neighborhood of the project (defined in 24 CFR Part 75.5
 - Is a YouthBuild participant

Service Area (24 CFR Part 75.5)

- The area within one mile of the Section 3 project OR
- If less than 5000 people live within one mile of the Section 3 project, the service area is then defined as a circle centered around the Section 3 project site that encompasses 5000 people.

**Section 3 Business**

- At least 51 percent owned and controlled by low — or very low-income persons OR
- Businesses where Section 3 workers perform over 75 percent of the labor hours over the prior three-month period OR
- At least 51 percent owned and controlled by current public housing or Section 8-assisted housing residents

Labor Hour

Labor hours are defined differently depending on the type of financial assistance used. For a project utilizing public housing funds (any type or amount) a labor hour is the hours worked by all workers employed during a PHA's fiscal year.

Significant Changes to the Section 3 Rule

Former Emphasis

A new hire for a temporary job and a new hire for a permanent job counted as the same;

New Emphasis

Focuses on labor hours instead of new hires that recognizes the value of a permanent job; more incentives for employers to invest and retain low-income workers.

Former Benchmarks

- Thirty percent of persons hired with Section 3 funding must be Section 3 residents;
- Ten percent of total funds for construction contracts to be awarded to Section 3 businesses;
- Three percent of total funds for non-construction contracts to be awarded to Section 3 businesses;
- There have been NO updates to these benchmarks;

New Benchmarks

- Twenty-five percent of all labor hours must be performed by a Section 3 worker;
- Five percent of all labor hours must be performed by Targeted Section 3 workers;
- The benchmark notice should be updated by the Secretary every three years.

Compliance & Monitoring

- Under the old rule, enforcement and compliance of Section 3 was the responsibility of the Office of Fair Housing and Equal Opportunity.
- The new rule integrates Section 3 monitoring and compliance into regular program office workloads.

Applicability and Thresholds

For projects using public housing financial assistance there is no threshold as to the amount of the expenditure or the size of the contract.

Public housing funds include development assistance, operating funds, capital funds, any mixed finance development and programs incorporated through NOFA processes including RAD, Jobs Plus, FSS, ROSS, Choice Neighborhoods as well as similar programs.

Safe Harbor for Section 3

Safe harbor specifies that there are certain actions or conduct taken that will be determined to have met the requirements of a statute or regulation, even if the benchmark or goal is not achieved.

For Section 3, a PHA will be deemed successful if it met or exceeded the Section 3 benchmarks and followed the required prioritization or effort.

If the PHA cannot meet the benchmarks or the prioritization of effort required, Safe Harbor would be the documentation that the PHA has made qualitative efforts to assist low and very low-income persons with employment and training opportunities.

PHA Benchmarks

- Twenty-five percent or more of all labor hours worked by all workers employed with public housing financial assistance in the PHA's fiscal year must be Section 3 workers;
- Five percent or more of all labor hours worked by all workers employed with public housing financial assistance in the PHA's fiscal year must be Targeted Section 3 workers

NOTE: Non construction services that require an advanced degree or professional licensing are excluded from the Section 3 Final Rule.

OUTREACH AND DOCUMENTATION

HUD has developed an Opportunity Portal for Section 3 businesses and recipients. The portal offers job search for Section 3 workers as well as a search tool for Section 3 businesses to use to identify contracting opportunities. In addition, employers can post job openings or training positions that are available to Section 3 workers.

Website address:

- **<https://hudapps.hud.gov/OpportunityPortal>**

There are several sample forms included at the end of this chapter including a sample Section 3 plan, and self certification forms for Section 3 businesses as well as Section 3 workers and Targeted Section 3 workers.

It is important that each PHA conduct outreach and education of the opportunities available to Section 3 businesses and to Section 3 workers.

Examples of outreach for Section 3 contracting and hiring include:

- Establishing training programs, which are consistent with the requirements of the Department of Labor, for public and Indian housing residents and other Section 3 workers in the building trades.
- Advertising the training and employment positions available at the PHA or for contracts awarded by the PHA. Distribution of flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) to every occupied dwelling unit in the housing development or developments where Section 3 individuals reside through monthly or quarterly newsletters is a common outreach practice.

Section 3: Section 3 of the Housing and Urban Development Act of 1968 (24 CFR 75)

Notes

- Advertising the training and employment positions by posting flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) in the common areas or other prominent areas of the housing development or developments.
- Contacting resident councils, resident management corporations, or other resident organizations, where they exist, in the housing development or developments where Section 3 workers reside, and community organizations in HUD-assisted neighborhoods, to request the assistance of these organizations in notifying residents of the training and employment positions to be filled.
- Notifying potential contractors for Section 3 covered projects of the requirements of Section 3 and incorporating the Section 3 prioritization requirements included in 24 CFR Part 75.19 in all solicitations and contracts.
- In determining the responsibility of potential contractors, consider their record of Section 3 compliance as evidenced by past actions and their current plans for the pending contract.
- Contacting business assistance agencies, minority contractors' associations and community organizations to inform them of contracting opportunities and requesting their assistance in identifying Section 3 businesses which may solicit bids or proposals for contracts for work in connection with Section 3 covered assistance.
- Providing written notice to all known Section 3 business concerns of contracting opportunities. This notice should be in sufficient time to allow the Section 3 business concerns to respond to the bid invitations or request for proposals.

- Carrying out workshops on contracting procedures and specific contract opportunities in a timely manner so that Section 3 business concerns can take advantage of upcoming contracting opportunities, with such information being made available in languages other than English where appropriate.
- Advising Section 3 business concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.
- Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of Section 3 business concerns.
- Where appropriate, breaking out contract work items into economically feasible units to facilitate participation by Section 3 business concerns.
- Documenting attempts to perform outreach and education to Section 3 business.
- Demonstrating that you would be willing to provide training to Section 3 workers to make them eligible for jobs available.

ECONOMIC OPPORTUNITIES

Economic opportunities include job training, employment, and contracting opportunities.

For training and employment opportunities, the following should receive priority:

- Public housing residents
- Other low-income residents of the PHA's jurisdiction
- Participants in HUD YouthBuild programs
- Homeless persons

Job Training and Employment Opportunities – Examples

Administrative – Accounting, architecture, appliance repair, bookkeeping, IT, payroll, purchasing, research, transportation, and word processing, and desktop publishing

Services – Appliance repair, florists, marketing, carpet installation, janitorial, photography, catering, landscaping, printing, computer/information, manufacturing, and transportation

Construction – A Section 3 covered project involves the construction or rehabilitation of housing (including reduction of lead-based paint hazards), or other public construction such as street repair, sewage line repair or installation, updates to building facades, etc.

- Demolition projects are also included.

Examples are architecture, bricklaying, carpentry, cement/concrete, demolition, drywall, electrical, elevator construction and repair, engineering, fencing, HVAC, iron works, machine operation, painting, plastering, plumbing, surveying, and tile setting.

Contracting Opportunities

Businesses that meet the revised definition of a Section 3 business concern should receive priority under Section 3.

PHA'S SECTION 3 RESPONSIBILITIES

Each PHA (and their contractors, subcontractors, or subrecipients) are required to comply with the requirements of Section 3 for new employment, training, or contracting opportunities resulting from the expenditure of covered funding. This responsibility includes:

1. Implementing procedures to notify Section 3 workers and business concerns about training, employment, and contracting opportunities generated by Section 3 covered assistance
2. Notifying potential contractors working on Section 3 covered projects of their responsibilities
3. Incorporating the Section 3 clause into all covered solicitations and contracts¹
 - PHA requests for proposals should include a Section 3 requirement.
 - This includes how the bidder plans to recruit, train, and hire low-income residents and how successful trainees are selected for hire.
4. Facilitating the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns
5. Assisting and actively cooperating with HUD in making contractors and subcontractors comply
6. Refraining from entering into contracts with contractors that are in violation of Section 3 regulations

1. C24 CFR 75.19

7. Documenting actions taken to comply with Section 3

8. Submitting Section 3 annual summary reports (form HUD-60002)

Section 3 resources and tools are now available. These resources assist workers, contractors and subcontractors with the knowledge needed to understand Section 3 and Section 3 recipients with the tools needed to implement Section 3.

Resources include:

- Brochure for Workers and Businesses (available in English and Spanish)
- Job Aid for Contractors and Subcontractors - Public Housing Financial Assistance
- Job Aid for Contractors and Subcontractors - Housing and Community Development Financial Assistance
- Resident Outreach and Referral Strategy
- Resident Outreach and Business Development Strategy

ANNUAL REPORTING

PHAs and other grantees are required to report Section 3 activities to HUD.

In addition to reporting, PHAs must also retain onsite records of Section 3 activities during each reporting period.

Under the new rule, the PHA will track and report total labor hours worked for all workers and for Section 3 Workers and Targeted Section 3 Workers for the specific reporting period. (Under the previous rule, HUD required PHAs to track new hires. Tracking new hires is no longer required.)

PHAs that do not meet quantitative benchmarks for labor hours are required to report qualitative efforts and activities to comply with Section 3 objectives. Small PHAs with fewer than 250 public housing units may opt to report only qualitative efforts as a first option.

A. S3R and Section 3 Compliance Reporting Systems

PHAs and other recipients of public housing financial assistance subject to Section 3 requirements previously submitted Section 3 compliance information through HUD's Section 3 Performance Evaluation and Registration System (SPEARS). SPEARS is no longer used for Section 3 compliance reporting. Instead, PHAs will report under the new rule in a successor system called S3R. The regulation requires each grantee to report on Section 3 compliance per the reporting requirements for each applicable program. In instances where there are multiple funding sources, grantees must collect and report the same data across programs for consistency.

B. Labor Hour Reporting

On an annual basis, PHAs will report:

- The total number of labor hours worked;
- The total number of labor hours worked by Section 3 workers; and
- The total number of labor hours worked by Targeted Section 3 workers.

Labor hours for Section 3 workers and Targeted Section 3 workers may be counted for five years from when their Section 3 status is established by the employer, given that employment is maintained with the same employer.

HUD MONITORING FOR SECTION 3

As noted earlier in this chapter, HUD program offices will be incorporating Section 3 into their regular compliance/monitoring visits. An important part of receiving a good report from HUD is to ensure retention of all required documents as well as documents that demonstrate efforts taken to comply with the Section 3 requirements. In addition to this documentation, a PHA MUST maintain and have available for review certain records or documents, including:

1. 1. Copies of signed consolidated plan, public housing five-year plan, or annual plan certifications/assurances.
2. Procurement records to identify the dollar amount of each covered contract awarded during the time span under review.
3. Copies of bid solicitations that reference Section 3 applicability.
4. Contract documents that include a “Section 3 clause” or language that applies the Section 3 requirements to contractors and subcontractors in the contracts awarded.
5. Minutes, sign-in sheets, agendas, or other relevant evidence from pre-construction meetings, to determine if Section 3 requirements were discussed with prospective bidders.
6. Labor hour records to determine the percentage of Section 3 workers and Targeted Section 3 workers in comparison to total labor hours.

7. Descriptions of procedures used by the PHA, subrecipients, developers, and contractors to verify the eligibility of Section 3 workers and businesses.
8. Lists of Section 3 workers and businesses maintained by the PHA.
9. Outreach efforts to determine how Section 3 workers or businesses were targeted or recruited for employment, training, or contracting opportunities.
10. Lists of Section 3 business concerns that received contracts/subcontracts during the period under review. This information should include name of contractor, address, telephone number, email address, contract amount, date awarded, and services provided.
11. Lists of Section 3 workers or Targeted Section 3 workers employed by the PHA and its contractors during the period under review. This information should include the name of each low or very low-income individual, address, telephone number, date hired, position, and status (employed, terminated, etc.).
12. Evidence that developers, contractors, or subcontractors notified local labor unions about their Section 3 obligations.
13. Evidence that developers, contractors, or subcontractors posted signs regarding job vacancies and subcontracting opportunities at the job site.
14. PHA procedures for monitoring subrecipients, developers, contractors, and subcontractors for compliance.

15. Correspondence or other records from Section 3 workers and businesses regarding training, employment, or contracting opportunities to determine how those inquiries were addressed or resolved.

CONTRACTOR/SUBCONTRACTOR SECTION 3 REQUIREMENTS

If the contractor/subcontractor has the need to hire new persons to complete the Section 3 covered contract or needs to subcontract portions of the work to another business, they are required to direct their newly created employment and/or subcontracting opportunities to Section 3 workers and businesses. The same goals apply to contractors and subcontractors as are applicable to PHAs.

Contractors and subcontractors must comply with Section 3 requirements. Responsibilities include:

- Notifying subcontractors of their responsibilities under Section 3 including, but not limited to, incorporating the Section 3 language in subcontract documents.
- Refraining from contracting with subcontractors who have been found in violation of the requirements of 24 CFR Part 75.
- Maintaining records that document a good faith effort to utilize Section 3 workers and businesses. This is required of both the contractor and subcontractor.
- Documenting all efforts and actions taken to meet the Section 3 benchmarks.

HOW DOES SECTION 3 APPLY TO RAD CONVERSIONS?

The requirements of Section 3 apply to HUD funding that is used for or in connection with new construction, rehabilitation or infrastructure projects or activities when the amount of assistance is \$200,000 or more. Examples of HUD funding that may be used in a RAD conversion are HOME or CDBG funds.

While the RAD program itself does not provide funding for housing construction or rehabilitation, the RAD Notice (PIH 2012-32 Rev 2) applies Section 3 to all initial repairs or new construction identified in the Financing Plan. Accordingly, for the purposes of the regulation all work included in the RAD Conversion Commitment is considered “Section 3 covered projects” and the Project Owner is considered the “Recipient.” Project owners must take proactive steps to hire local low-income persons and to award contracts to businesses that are owned by or substantially employ those persons. Additionally, the requirements of Section 3 may apply after conversion when HUD funding is used in connection with construction or rehabilitation activities.

HUD SECTION 3 WEBSITE AND RESOURCES

HUD’s Section 3 website has extensive information and resources. The website is at <https://www.hud.gov/section3>.

DIFFERENCE BETWEEN SECTION 3 AND MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES (MWBE)

Section 3 and MWBE are two entirely separate programs. However, recipients and contractors working on PHA projects are likely to be required to comply with both.

Minority business enterprise (MBE) means a business enterprise that is minority-owned or owned by socially and economically disadvantaged persons. A *women’s business enterprise (WBE)* is a business enterprise that is women-owned. Pursuant to 24 CFR 200.321, recipients and contractors must take all affirmative steps to assure that small and minority businesses, women’s business enterprises, and labor surplus area firms are used when possible.

Section 3 is both race and gender neutral. The preferences identified under Section 3 are based on income-level and location. Section 3 regulations were designed to encourage recipients of HUD funding to direct new employment, training, and contracting opportunities to low-income residents and the businesses that employ these persons within their community, regardless of race and/or gender.

Resident-Owned Businesses

HUD strongly encourages PHAs to contract with resident businesses to the maximum extent feasible. This has been a proven strategy for moving low-income persons out of poverty and into economic stability.

PHAs are permitted, but not required, to use alternative procurement process when contracting with resident-owned businesses. The alternative procurement process is based on the established procurement procedures and requirements set forth in regulations at 24 CFR 200.320, but limits solicitation to resident-owned businesses.

The purpose of this rule is to enhance the economic opportunities available to PHA residents by facilitating the award of PHA contracts to resident-owned businesses capable of performing successfully at a reasonable price.

When using 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.

Section 3: Section 3 of the Housing and Urban Development Act of 1968 (24 CFR 75)

Notes

- The PHA solicits a quote, bid, or proposal from one or more resident-owned businesses.
 - The PHA receives offer(s) from one or more resident-owned businesses and ensures 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 carefully 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.

Section 4 Chapter 14 Self-Graded Quiz

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. Because Section 3 has hiring and contracting “benchmarks” if the PHA does not meet the threshold no additional documentation or information is needed.
 - a. True
 - b. False
3. Section 3 benchmarks use labor hours as metrics rather than percentage of persons hired.
 - a. True
 - b. False
4. Section 3 applies to landscaping of PHA property.
 - a. True
 - b. False
5. 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

Section 3

Plan

(Sample)

Version Number	Date Updated	Summary of Changes
1.0	[date]	Initial Draft

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1. Overview of Section 3 Requirements

A. WHAT IS SECTION 3?

Section 3 is a provision of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) that is regulated by the provisions of 24 CFR 75. Section 3 regulations ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

B. PURPOSE OF THIS DOCUMENT

This plan outlines how the [recipient/ grantee] and its subrecipients, contractors and subcontractors will comply with HUD's Section 3 requirements in implementing [subrecipient/ grantee]'s [HUD funded program]. [Recipient/ grantee] will, to the greatest extent feasible, ensure that employment and other economic opportunities are directed to low- and very low-income persons (Section 3 workers and Targeted Section 3 workers) and to eligible businesses (Section 3 Businesses) and requires the same of its contractors.

[Recipient/grantee] may amend its Section 3 Policies and Procedures document as necessary to ensure continued compliance with HUD's requirements and/or to reflect updated Section 3 guidance and outreach strategies.

C. APPLICABILITY

For public housing financial assistance, all funding is covered, regardless of the amount of expenditure or size of a contract. This plan applies to development assistance, operating funds, capital funds, and all mixed-finance development.

For housing and community development financial assistance, this plan applies to housing rehabilitation, housing construction, and other public construction projects that exceed \$200,000 or more of housing and community development financial assistance from one or more HUD programs. Applicability is determined at the project level.

For projects funded with Lead and Hazard Control and Healthy Homes Programs, this plan applies to projects that exceed \$100,000.

This plan also applies to projects that include multiple funding sources. Multiple funding source projects include projects that include public housing financial assistance, housing and community development financial assistance for single or multiple recipients, and the Lead Hazard Control and Healthy Homes Program.

Section 3 requirements **do not** apply to: 1) Material Supply Contracts - § 75.3(b), 2) Indian and Tribal Preferences - § 75.3(c), and 3) Other HUD assistance and other Federal assistance not subject to Section 3 §75.3 (d). However, for financial assistance that is not subject to Section 3, recipients are encouraged to consider ways to support the purpose of Section 3.

2. Section 3 Coordinator

[Recipient/grantee]'s Section 3 Coordinator serves as the central point of contact for Section 3 compliance for [recipient/grantee] and its subrecipients, contractors and subcontractors supporting the program. Subrecipients, contractors, subcontractors and others are encouraged to reach out to [recipient/grantee]'s Section 3 Coordinator with questions regarding Section 3 compliance:

[coordinator name]

[coordinator title]

[coordinator email]

3. Employment, Training, and Contracting Goals

A. SAFE HARBOR COMPLIANCE

[Recipient/grantee] will be considered to have complied with the Section 3 requirements and met safe harbor, if they certify that they followed the required prioritization of effort and met or exceeded the Section 3 benchmarks, absent evidence of the contrary.

Prior to the beginning of work, contractors and subcontractors will be required to certify that they will follow the required prioritization of effort for Section 3 workers, Targeted Section 3 workers, and Section 3 business concerns as outlined below in [section C](#). After completion of the project, on the Section 3 Cumulative Report, contractors and subcontractors will be required to certify that they followed the prioritization of effort requirements.

If the contractor and subcontractor does not meet the safe harbor requirements, they must provide evidence that they have made qualitative efforts to assist low and very low-income persons with employment and training opportunities.

B. SAFE HARBOR BENCHMARKS

[Recipient/grantee] has established employment and training goals that subrecipients, contractors, and subcontractors should meet in order to comply with Section 3 requirements outlined in [24 CFR Part 75.9 - for public housing financial assistance] or [24 CFR Part 75.19 - for housing and community development financial assistance]. The safe harbor benchmark goals are as follows:

(for public housing financial assistance)

- 1) Twenty-five (25) percent or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA's fiscal year are Section 3 workers;

Section 3 Labor Hours/Total Labor Hours = 25%

And

- 2) Five (5) percent or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA's fiscal year are Targeted Section 3 workers, as defined at 24 CFR Part 75.11.

Targeted Section 3 Labor Hours/Total Labor Hours = 5%

(for housing and community development financial assistance)

- 1) Twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers;

Section 3 Labor Hours/Total Labor Hours = 25%

And

- 2) Five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers, as defined at 24 CFR Part 75.21.

Targeted Section 3 Labor Hours/Total Labor Hours = 5%

HUD establishes and updates Section 3 benchmarks for Section 3 workers and/or Targeted Section 3 workers through a document published in the Federal Register, not less frequently than once every 3 years. Given that the Section 3 benchmarks are subject to change every three years or sooner, [recipient/grantee] will review and update the Section 3 Plan every [redacted] years/months, as needed.

It is the responsibility of contractors to implement efforts to achieve Section 3 compliance. Any contractor that does not meet the Section 3 benchmarks must demonstrate why meeting the benchmarks were not feasible. All contractors submitting bids or proposals to the [recipient/grantee] are required to certify that they will comply with the requirements of Section 3.

C. CERTIFICATION OF PRIORITIZATION OF EFFORT FOR EMPLOYMENT, TRAINING, AND CONTRACTING

EMPLOYMENT AND TRAINING

Under the [recipient/grantee]'s Section 3 Program, contractors and subcontractors should make best efforts to provide employment and training opportunities to Section 3 workers in the priority order listed below:

(for public housing financial assistance)

- 1) To residents of the public housing projects for which the public housing financial assistance is expended;

- 2) To residents of other public housing projects managed by the PHA that is providing the assistance or for residents of Section 8-assisted housing managed by the PHA;
- 3) To participants in YouthBuild programs; and
- 4) To low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the assistance is expended.

(for housing and community development financial assistance)

Provide employment and training opportunities to Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the project is located in the priority order listed below:

- 1) Section 3 workers residing within the service area or the neighborhood of the project, and
- 2) Participants in YouthBuild programs.

Contractors and subcontractors will be required to certify that they will and have made best efforts to follow the prioritization of effort requirements prior to the beginning work and after work is completed.

CONTRACTING

Under the [recipient/grantee]'s Section 3 Program, contractors and subcontractors must make their best efforts to award contracts and subcontracts to business concerns that provide economic opportunities to Section 3 workers in the following order or priority:

(for public housing financial assistance)

- 1) Section 3 business concerns that provide economic opportunities for residents of public housing projects for which the assistance is provided;
- 2) Section 3 business concerns that provide economic opportunities for residents of other public housing projects or Section-8 assisted housing managed by the PHA that is providing assistance;
- 3) YouthBuild programs; and
- 4) Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the assistance is provided.

(for housing and community development financial assistance)

- 1) Business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which assistance is located in the following order of priority (*where feasible*):
 - a) Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project; and
 - b) YouthBuild programs.

Contractors and subcontractors will be required to certify that they will and have made best efforts to follow the prioritization of effort requirements prior to the beginning work and after work is completed.

4. Section 3 Eligibility and Certifications

Individuals and businesses that meet Section 3 criteria may seek Section 3 preference from [recipient/grantee] or its contractors/subcontractors for training, employment, or contracting opportunities generated by [public housing financial assistance or housing and community development financial assistance]. To qualify as a Section 3 worker, Targeted Section 3 worker or a Section 3 business concern, each must self-certify that they meet the applicable criteria.

Businesses who misrepresent themselves as Section 3 business concerns and report false information to [recipient/grantee] may have their contracts terminated as default and be barred from ongoing and future considerations for contracting opportunities.

A. SECTION 3 WORKER AND TARGETED SECTION 3 WORKER CERTIFICATION

A Section 3 worker seeking certification shall submit self-certification documentation to the recipient contractor or subcontractor, that the person is a Section 3 worker or Targeted Section 3 worker as defined in 24 CFR Part 75. For the purposes of Section 3 worker eligibility, [recipient/grantee] will use individual income rather than family/household income to determine eligibility. The income limits will be determined annually using the guidelines published at <https://www.huduser.org/portal/datasets/il.html>.

Persons seeking the Section 3 worker preference shall demonstrate that it meets one or more of the following criteria currently or when hired within the past five years, as documented:

- 1) A low or very low-income resident (the worker's income for the previous or annualized calendar year is below the income limit established by HUD); or
- 2) Employed by a Section 3 business concern; or
- 3) A YouthBuild participant.

Persons seeking the Targeted Section 3 worker preference shall demonstrate that it meets one or more of the following criteria:

(for public housing financial assistance)

- 1) Employed by a Section 3 business concern or
- 2) Currently meets or when hired met at least one of the following categories as documented within the past five years:
 - a) A resident of public housing; or
 - b) A resident of other public housing projects or Section 8-assisted housing; or
 - c) A YouthBuild participant.

(for housing and community development assistance)

- 1) Employed by a Section 3 business concern or
- 2) Currently meets or when hired met at least one of the following categories as documented within the past five years:
 - a) Living within the service area or the neighborhood of the project, as defined in 24 CFR Part 75.5; or
 - b) A YouthBuild participant.

The recipient/grantee should establish a certification procedure. The certification procedure should provide step-by-step guidance to eligible Section 3 workers and Targeted Section 3 workers seeking certification.

Section 3 workers and Targeted Section 3 workers who are seeking preference in training and employment must submit the Section 3 Worker and Targeted Section 3 Worker Certification Form. The certification procedure will consist of the following:

PROJECTS INVOLVING MULTIPLE SOURCES OF FUNDING

As a best practice, it is recommended that for projects that include public housing financial assistance and housing and community development financial assistance, that the housing and community development recipient/grantee follow subpart B to maintain consistency in reporting.

In cases where Section 3 covered projects include multiple sources of funds, including public housing financial assistance and housing and community development assistance, the [PHA] must follow the definition of Targeted Section 3 worker and priorities as outlined in subpart B of Part 75. For housing and community development financial assistance, [recipient/grantee] may follow either subpart B or subpart C of Part 75.

In cases where Section 3 covered projects include multiple housing and development funding sources (financial assistance) from single or multiple recipients, [recipients/grantee] will follow subpart C of Part 75. Refer to chart in [Appendix B](#).

B. SECTION 3 BUSINESS CONCERN CERTIFICATION

The [recipient/grantee], should encourage contractors and subcontractors to make best efforts to award contracts and subcontracts to Section 3 business concerns.

Businesses that believe they meet the Section 3 Business requirements can may self-register in the HUD Business registry, here: <http://www.hud.gov/Sec3Biz>. Businesses may seek Section 3 Business Concern preference by demonstrating that it meets one or more of the following criteria:

- 1) At least 51 percent of the business is owned and controlled by low- or very low-income persons; or
- 2) At least 51 percent of the business is owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing; or
- 3) Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers.

Businesses that seek Section 3 preference shall certify, or demonstrate to [recipient/grantee], contractors or subcontractors, that they meet the definitions provided in the above. Businesses may demonstrate eligibility by submitting the Section 3 Business Concern Certification Form, located [redacted].

6. Section 3 Outreach

A. OUTREACH EFFORTS FOR EMPLOYMENT AND TRAINING

In order to educate and inform workers and contractors, [recipient/grantee]'s Section 3 Coordinator will be prepared to provide training and technical assistance on a regular basis per program guidelines. When training opportunities are available, contractors and subcontractors should, to the greatest extent feasible:

- 1) Notify the Section 3 Coordinator when training opportunities are available
- 2) Provide information/handouts about Section 3 training opportunities to potential Section 3 workers and Targeted Section 3 workers
- 3) Conduct an annual training for Section 3 workers and Section 3 businesses

Contractors and subcontractors should employ several active strategies to notify Section 3 workers and Targeted Section 3 workers of Section 3 job opportunities, including:

- 1) Clearly indicating Section 3 eligibility on all job postings with the following statement: "This job is a Section 3 eligible job opportunity. We encourage applications from individuals that are low income and/or live in Public Housing and/or receive a Section 8 voucher";
- 2) Including the Section 3 Worker and Targeted Section 3 Worker Self-Certification Form in all job postings
- 3) Working with the Section 3 Coordinator to connect Section 3 worker and Targeted Section 3 workers in the [recipient/grantees] database with opportunities and/or utilize the Section 3 Opportunity Portal to find qualified candidates
- 4) Establishing a current list of Section 3 eligible applicants
- 5) Contacting local community organizations and provide them with job postings for Section 3 eligible applicants; and
- 6) Coordinating a programmatic ad campaign, which results in widespread job posting across diverse ad networks including:
 - a) Advertising job opportunities via social media, including LinkedIn and Facebook;
 - b) Advertising job opportunities via flyer distributions and mass mailings and posting ad in common areas of housing developments and all public housing management offices
 - c) Contacting resident councils, resident management corporations, and neighborhood community organizations to request their assistance in notifying residents of available training and employment opportunities

B. OUTREACH EFFORTS FOR CONTRACTING

When contracting opportunities arise in connection with the [HUD program], [recipient/grantee] will employ the following strategies to notify Section 3 Business Concerns of Section 3 contracting opportunities, including but not limited to:

- 1) Adding Section 3 language to all RFPs, procurement documents, bid offerings and contracts.

- 2) Coordinating mandatory pre-bid meetings to inform Section 3 Business Concerns of upcoming contracting opportunities. The Section 3 Coordinator will participate in these meetings to explain and answer questions related to Section 3 policy.
- 3) Advertising contracting opportunities in local community papers and notices that provide general information about the work to be contracted and where to obtain additional information.
- 4) Providing written notice of contracting opportunities to all known Section 3 Business Concerns. The written notice will be provided in sufficient time to enable business concerns the opportunity to respond to bid invitations.
- 5) Coordinating with the prime contractor to publicize contracting opportunities for small businesses.
- 6) Coordinating with the [recipient/grantee]'s Business/Economic Development Department and all other business assistance agencies and contractor associations to inform them of contracting opportunities and request their assistance in identifying Section 3 business concerns. Could include local community development organizations, business development agencies (Chamber of Commerce), and minority contracting associations.
- 7) Connecting Section 3 business concerns with resources to support business development to assist in obtaining contracting opportunities (e.g., bonding and insurance assistance, etc.). Contractors will also be encouraged to collaborate with the [recipient/grantee] as subcontract opportunities arise in an effort to notify eligible Section 3 business concerns about the contracting opportunities.

7. Section 3 Contracting Policy and Procedure

It is not required, however, recipients may want to consider developing a Section 3 Contracting Policy and Procedure to ensure that Section 3 requirements are incorporated into covered contracts/procurements.

[Recipient/grantee] will incorporate Section 3 in its existing Procurement Policy and adopt a Section 3 Contracting Policy and Procedure to be included in all procurements generated for use with HUD funding. This policy and procedure contain requirements for making efforts to award contracts to Section 3 Business Concerns.

All contractors/businesses seeking Section 3 preference must, before submitting bids/proposals to the [Recipient/grantee] be required to complete certifications, as appropriate. Such certifications shall be adequately supported with appropriate documentation as referenced in the Section 3 Business Concern Certification Form.

8. Section 3 Provisions/Contract Language

To comply with the requirements outlined in 24 CFR Part 75.9 or 75.19, it is recommended that recipients/grantees develop Section 3 language to include in covered contracts, subcontracts and agreements to ensure that the Section 3 requirements of 24 CFR Part 75 are binding to subrecipients, contractors and subcontractors.

Additionally, public housing authority recipients may want to consider incorporating a section on Resident Owned Business Contracting and provide the option of utilizing the alternative procurement process in Section 24 CFR Part 963.

[Recipient/grantee] will include standard Section 3 language in all of its contracts to ensure compliance with regulations in 24 CFR Part 75. [Recipient/grantee] will take appropriate actions upon finding that a contractor is in violation of 24 CFR Part 75 and does not knowingly contract with any contractor that has been found in violation of the Section 3 regulations. On a periodic basis the Section 3 Coordinator will audit [recipient/grantee] contractors for compliance with the minimum Section 3 requirements outlined in the Section 3 Plan.

In addition, contractors and subrecipients are required to include language in all Section 3 covered contracts or agreements for subcontractors to meet the requirements of 24 CFR Part 75.9 (for public housing financial assistance) or 24 CFR Part 75.19 (for housing and community development financial assistance).

For businesses, noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

9. Reporting Requirements

For Section 3 covered contracts, contractors must submit the Section 3 Performance and Summary Report to [recipient/grantee]'s Section 3 Coordinator on a monthly basis, and the annual reporting requirement set forth in that form's instructions.

A. MONTHLY REPORTING

- 1) Contractors are required to submit monthly activity reports to [recipient/grantee]'s Section 3 Coordinator [Coordinator's email address] by the [number] day of each month.

B. ANNUAL REPORTING

- 1) Once a project is completed, contractors must submit a final Section 3 cumulative report for the program year.
- 2) Upon the completion of a project, [recipient/grantee]'s [project name] Section 3 Coordinator will conduct a final review of the project's overall performance and compliance.
- 3) [Recipient/grantee]'s Section 3 Coordinator will submit the Section 3 data into [required reporting system] to HUD at [reporting period].

C. REPORTING ON PROJECTS WITH MULTIPLE FUNDING SOURCES

- 1) For Section 3 projects that include public housing financial assistance and housing and community development financial assistance, [recipient/grantee] and [recipient/grantee] will report on the project as a whole and will identify the multiple associated recipients.
- 2) For projects assisted with funding from multiple sources of housing and community development assistance that exceed the thresholds of \$200,000 and \$100,000 for Lead Hazard Control and Healthy Homes Programs (LHCHH), the [recipient/grantee] will follow subpart C of Part 75 and will report to the applicable HUD program office, as prescribed by HUD. Note: LHCHH assistance is not included in calculating whether the assistance exceeds the \$200,000 threshold. HUD public housing financial assistance and HUD housing and community development financial assistance is not included in calculating whether the assistance exceeds the LHCHH \$100,000 threshold. Refer to chart in [Appendix B](#).

10. Internal Section 3 Complaint Procedure

In an effort to resolve complaints generated due to non-compliance through an internal process, [recipient/grantee] encourages submittal of such complaints to its Section 3 Coordinator as follows:

- 1) Complaints of non-compliance should be filed in writing and must contain the name of the complainant and brief description of the alleged violation of 24 CFR Part 75.
- 2) Complaints must be filed within [redacted] () calendar days after the complainant becomes aware of the alleged violation.
- 3) An investigation will be conducted if complaint is found to be valid. [Recipient/grantee] will conduct an informal, but thorough investigation affording all interested parties, if any, an opportunity to submit testimony and/or evidence pertinent to the complaint.
- 4) The [recipient/grantee] will provide written documentation detailing the findings of the investigation. The [recipient/grantee] will review the findings for accuracy and completeness before it is released to complainants. The findings will be made available no later than [redacted] () days after the filing of complaint. If complainants wish to have their concerns considered outside of the [recipient/grantee] a complaint may be filed with:

The HUD program office responsible for the public housing financial assistance or the Section 3 project, or to the local HUD field office. These offices can be found through the HUD website, www.hud.gov/.

Complainants may be eligible to bring complaints under other federal laws. The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information (medical history or predisposition to disease). For more information about complainant rights, please contact EEOC at: www.EEOC.gov.

The Department of Labor Office of Federal Contract Compliance Programs (OFCCP) enforces, for the benefit of job seekers and wage earners, the contractual promise of affirmative action and equal employment opportunity required of those who do business with the Federal government. More information about the services they provide can be obtained at: <http://www.dol.gov/ofccp/>.

11. Appendices

APPENDIX A: DEFINITIONS

The terms *HUD*, *Public housing*, and *Public Housing Agency (PHA)* are defined in 24 CFR part 5.

The following definitions also apply to 24 CFR Part 75 HUD's Economic Opportunities for Low-and Very Low-Income Persons:

1937 Act means the United States Housing Act of 1937, 42 U.S.C. 1437 *et seq. activities related to Public Housing*

Contractor means any entity entering into a contract with:

- (1) A recipient to perform work in connection with the expenditure of public housing financial assistance or for work in connection with a Section 3 project; or
- (2) A subrecipient for work in connection with a Section 3 project.

Labor hours means the number of paid hours worked by persons on a Section 3 project or by persons employed with funds that include public housing financial assistance.

Low-income person means a person as defined in Section 3(b)(2) of the 1937 Act, at or below 80% AMI. Note that Section 3 worker eligibility uses individual income rather than family/household income.

Material supply contracts means contracts for the purchase of products and materials, including, but not limited to, lumber, drywall, wiring, concrete, pipes, toilets, sinks, carpets, and office supplies.

Professional services means non-construction services that require an advanced degree or professional licensing, including, but not limited to, contracts for legal services, financial consulting, accounting services, environmental assessment, architectural services, and civil engineering services.

Public housing financial assistance means assistance as defined in 24 CFR Part 75.3(a)(1).

Public housing project is defined in 24 CFR 905.108.

Recipient means any entity that receives directly from HUD public housing financial assistance or housing and community development assistance that funds Section 3 projects, including, but not limited to, any State, local government, instrumentality, PHA, or other public agency, public or private nonprofit organization.

Section 3 means Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

Section 3 business concern means:

- (1) A business concern meeting at least one of the following criteria, documented within the last six-month period:
 - (i) It is at least 51 percent owned and controlled by low- or very low-income persons;
 - (ii) Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or

(iii) It is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

(2) The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees.

(3) Nothing in this part shall be construed to require the contracting or subcontracting of a Section 3 business concern. Section 3 business concerns are not exempt from meeting the specifications of the contract.

Section 3 Coordinator is person tasked with overseeing all Section 3 responsibilities for the PHA/CD office.

Section 3 project means a project defined in 24 CFR Part 75.3(a)(2).

Section 3 worker means:

(1) Any worker who currently fits or when hired within the past five years fit at least one of the following categories, as documented:

(i) The worker's income for the previous or annualized calendar year is below the income limit established by HUD.

(ii) The worker is employed by a Section 3 business concern.

(iii) The worker is a YouthBuild participant.

(2) The status of a Section 3 worker shall not be negatively affected by a prior arrest or conviction.

(3) Nothing in this part shall be construed to require the employment of someone who meets this definition of a Section 3 worker. Section 3 workers are not exempt from meeting the qualifications of the position to be filled.

Section 8-assisted housing refers to housing receiving project-based rental assistance or tenant-based assistance under Section 8 of the 1937 Act.

Service area or the neighborhood of the project means an area within one mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.

Small PHA means a public housing authority that manages or operates fewer than 250 public housing units.

Subcontractor means any entity that has a contract with a contractor to undertake a portion of the contractor's obligation to perform work in connection with the expenditure of public housing financial assistance or for a Section 3 project.

Subrecipient has the meaning provided in the applicable program regulations or in 2 CFR 200.93.

Targeted Section 3 worker has the meanings provided in 24 CFR Part 75.11, 75.21, or 75.29, and does not exclude an individual that has a prior arrest or conviction.

Very low-income person means the definition for this term set forth in section 3(b)(2) of the 1937 Act (at or below 50% AMI).

YouthBuild programs refers to YouthBuild programs receiving assistance under the Workforce Innovation and Opportunity Act (29 U.S.C. 3226).

APPENDIX B: MULTIPLE FUNDING SOURCES - CHART

TYPE OF FINANCIAL ASSISTANCE	DEFINITIONS *TARGETED SECTION 3 WORKER	THRESHOLDS	PRIORITIZATION	REPORTING
Public Housing and Housing and Community Development	PHA – must follow subpart B of Part 75 HCD – may follow subpart B or C of Part 75	None *Any amount of PH assistance triggers Section 3	PHA – must follow subpart B of Part 75 HCD – may follow subpart B or C of Part 75	PHA – must follow subpart B of Part 75 HCD – may follow subpart B or C of Part 75 Both - Must report on project as a whole and identify the multiple associated recipients
Multiple Sources of Housing and Community Development <i>(single or multiple recipients)</i>	Must follow subpart C of Part 75	Exceeds \$200,000 for Section 3 projects *LHCHHP exceeds \$100,000	Must follow subpart C of Part 75	Must follow subpart C of Part 75 Must report on project as a whole and identify the multiple associated recipients Must report to the applicable HUD program office, as prescribed by HUD

Section 3 Worker and Targeted Section 3 Worker Self-Certification (Sample Form)

The purpose of HUD's Section 3 program is to provide employment, training and contracting opportunities to low-income individuals, particularly those who are recipients of government assistance for housing or other public assistance programs. **Your response is voluntary, confidential, and has no effect on your employment.**

Eligibility for Section 3 Worker or Targeted Section 3 Worker Status

A Section 3 worker seeking certification shall self-certify and submit this form to the recipient contractor or subcontractor, that the person is a Section 3 worker or Targeted Section 3 Worker as defined in 24 CFR Part 75.

Instructions: Enter/select the appropriate information to confirm your Section 3 worker or Targeted Section 3 Worker status.

Employee Name: _____

1. Are you a resident of public housing or a Housing Choice Voucher Holder (Section 8)? ☐ YES ☐ NO
2. Are you a resident of the [City/County of insert name] ☐ YES ☐ NO
3. In the field below, select the amount of individual income you believe you earn on an annual basis. *The grantee should confirm that their state and local laws do not prohibit this question.

- | | | |
|--|--|---|
| <input type="checkbox"/> Less than \$10,000 | <input type="checkbox"/> \$30,001 - \$40,000 | <input type="checkbox"/> More than \$60,000 |
| <input type="checkbox"/> \$10,001 - \$20,000 | <input type="checkbox"/> \$40,001 - \$50,000 | |
| <input type="checkbox"/> \$20,001 - \$30,000 | <input type="checkbox"/> \$50,001 - \$60,000 | |

Select from **ONE** of the following two options below:

I qualify as a:

- ☐ Section 3 Worker (as defined on page 4 of Section 3 Worker Certification Form)
- ☐ Targeted Section 3 Worker (as defined on pages 4-5 of Section 3 Worker Certification Form)

(frontside)

Employee Affirmation

I affirm that the above statements (on frontside of this form) are true, complete, and correct to the best of my knowledge and belief. I hereby certify, under penalty of law, that the following information is correct to the best of my knowledge.

Employee Address: _____

Print Name: _____ Date Hired: _____

Signature: _____ Date: _____

FOR ADMINISTRATIVE USE ONLY

Is the employee a Section 3 worker based upon their self-certification? ☐ YES ☐ NO

Is the employee a Targeted Section 3 worker based upon their self-certification? ☐ YES ☐ NO

Was this an applicant who was hired as a result of the Section 3 project? ☐ YES ☐ NO

If Yes, what is the name of the company? _____

What was the date of hire? _____

**EMPLOYERS MUST RETAIN THIS FORM IN THEIR SECTION 3 COMPLIANCE FILE
FOR FIVE YEARS.**

(backside)

The City of (insert locality here)
Or
the (insert name here) Housing Authority

Section 3 Income Limits

Eligibility Guidelines

The worker's income must be at or below the amount provided below for an individual (household of 1) regardless of actual household size.

Individual Income Limits for City of (insert locality here)
FY 20 (insert year here)

Income Limits Category	FY 20 (enter year here) Income Limits
Extremely Low Income Limits (30%)	
Very Low Income Limits (50%)	
Low Income Limits (80%)	

See <https://www.huduser.gov/portal/datasets/il.html> for most recent income limits.

Section 3 Worker Definition:

- A low or very low-income resident (the worker's income for the previous or annualized calendar year is below the income limit established by HUD); or
- Employed by a Section 3 business concern; or
- A YouthBuild participant.

Targeted Section 3 Worker Definition (for public housing)

- Employed by a Section 3 business concern or
- Currently meets or when hired met at least one of the following categories as documented within the past five years:
 - A resident of public housing; or
 - A resident of other public housing projects or Section 8-assisted housing; or

- A YouthBuild participant.

Targeted Section 3 Worker Definition (for housing and community development)

- Employed by a Section 3 business concern or
- Currently meets or when hired met at least one of the following categories as documented within the past five years:
 - Living within the service area or the neighborhood of the project, as defined in 24 CFR 75.5
 - A YouthBuild participant.

Section 3 Business Concern Certification for Contracting (Sample Form)

Instructions: Enter the following information and select the criteria that applies to certify your business' Section 3 Business Concern status.

Business Information

Name of Business _____

Address of Business _____

Name of Business Owner _____

Phone Number of Business Owner _____

Email Address of Business Owner _____

Preferred Contact Information

☐ Same as above

Name of Preferred Contact _____

Phone Number of Preferred Contact _____

Type of Business (select from the following options):

☐ Corporation

☐ Partnership

☐ Sole Proprietorship

☐ Joint Venture

Select from **ONE** of the following three options below that applies:

☐ At least 51 percent of the business is owned and controlled by low- or very low-income persons (Refer to income guidelines on page 4).

☐ At least 51 percent of the business is owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

☐ Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers (Refer to definition on page 4).

(frontside)

Business Concern Affirmation

I affirm that the above statements (on the frontside of this form) are true, complete, and correct to the best of my knowledge and belief. I understand that businesses who misrepresent themselves as Section 3 business concerns and report false information to [insert name of recipient/grantee] may have their contracts terminated as default and be barred from ongoing and future considerations for contracting opportunities. I hereby certify, under penalty of law, that the following information is correct to the best of my knowledge.

Print Name: _____

Signature: _____ Date: _____

*Certification expires within six months of the date of signature

Information regarding Section 3 Business Concerns can be found at [24 CFR 75.5](#)

FOR ADMINISTRATIVE USE ONLY

Is the business a Section 3 business concern based upon their certification?

☐ YES ☐ NO

EMPLOYERS MUST RETAIN THIS FORM IN THEIR SECTION 3 COMPLIANCE FILE FOR FIVE YEARS.

(backside)

The City of (insert locality here)
Or
the (insert name here) Housing Authority
Section 3 Income Limits

Eligibility Guidelines

The worker's income must be at or below the amount provided below for an individual (household of 1) regardless of actual household size.

Individual Income Limits for City of (insert locality here)
FY 20 (insert year here)

Income Limits Category	FY 20 (enter year here) Income Limits
Extremely Low Income Limits (30%)	
Very Low Income Limits (50%)	
Low Income Limits (80%)	

See <https://www.huduser.gov/portal/datasets/il.html> for most recent income limits.

Section 3 Worker Definition:

- A low or very low-income resident (the worker's income for the previous or annualized calendar year is below the income limit established by HUD); or
- Employed by a Section 3 business concern; or
- A YouthBuild participant.

Targeted Section 3 Worker Definition:

- Employed by a Section 3 business concern or
- Currently meets or when hired met at least one of the following categories as documented within the past five years:
 - A resident of public housing; or
 - A resident of other public housing projects or Section 8-assisted housing; or
 - A YouthBuild participant.

Notes

CHAPTER 15 Glossary of PHA Procurement Terms

I. GENERAL TERMS

Acceptance – The act of an authorized representative of the housing authority acknowledging that the supplies or services are in conformity with the contract requirements.

Amendment – Written revision made to a solicitation.

Annual Contributions Contract (ACC) – The contract between HUD and the PHA, that includes the terms and conditions for the operation, modernization, and development of public housing. The current version of the ACC (form HUD-53012A, 7/95) does not contain any specific language governing PHA procurement activity but incorporates by reference regulations promulgated by HUD at 24 CFR as well as applicable laws and regulations.

Anti-competitive Practices – Actions by potential contractors that improperly reduce or eliminate competition or restrain trade. For example, 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.

Audit Finding – Deficiencies which the auditor is required by 200.516(a) to report in the schedule of findings and questioned costs.

Auditor – An auditor who is a public accountant or a Federal, State, local government, or Indian tribe audit organization, which meets the general standards specified for external auditors in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of nonprofit organizations.

Bid – In the sealed bidding method of procurement, the offer submitted by a bidder.

Bid Splitting – The act of intentionally splitting a purchase into smaller purchases for the purpose of evading a bidding threshold regulation. This type of action is illegal.

Bidder's List – List of prospective contractors (also called **Source List** or **Mailing List**).

Capital assets – Tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include:

- (i) Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, exchange, or through a lease accounted for as financed purchase under Government Accounting Standards Board (GASB) standards or a finance lease under Financial Accounting Standards Board (FASB) standards; and
- (ii) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).

Cardinal Changes – Modifications to an existing contract which are beyond the general scope of that contract and are so extensive that a new procurement should be used.

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

Change Order – Unilateral action taken by the Contracting Officer within the scope of the contract in order to modify the drawings, designs, specifications, method of shipping or packing, place of inspection, delivery, or acceptance of an existing contract.

Closeout – The process by which the Federal awarding agency or passthrough entity determines that all applicable administrative actions and all required work of the Federal award have been completed and takes actions as described in 200.344.

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 – In a competitive proposals procurement (RFP), those proposals that, after evaluation by the housing authority, have a reasonable chance of receiving the award, both from a technical and cost standpoint.

Consortia – These are a special kind of PHA consortium where two or more agencies join together to perform planning, reporting and other administrative functions, including the joint preparation of a PHA plan. Constructive Change Order – Informal requests for additional work or services caused by some act or omission to act on the part of the housing authority which causes a contractor extra work, delays, or money.

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.*

Contract Administration – The monitoring of the contractor’s performance in order to assure compliance with performance requirements and contract terms.

Contract Modification – Any written alteration in the specifications, delivery point, date of delivery, contract period, price, quantity, or other provision of an existing contract.

Contracting Officer – An official authorized by the executive director to enter into and/or administer procurement contracts and make related determinations and findings.

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).

Corrective Action – Action taken by the auditee that: (1) Corrects identified deficiencies; (2) Produces recommended improvements; or (3) Demonstrates that audit findings are either invalid or do not warrant auditee action.

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

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

Equipment – Tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000.

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

Expenditures – charges made by a non-Federal entity to a project or program for which a federal award was received.

(1) The charges may be reported on a cash or accrual basis, as long as the methodology is disclosed and is consistently applied.

(2) For reports prepared on a cash basis, expenditures are the sum of:

- (i) Cash disbursements for direct charges for property and services;
- (ii) The amount of indirect expense charged;
- (iii) The value of third-party in-kind contributions applied; and
- (iv) The amount of cash advance payments and payments made to subrecipients.

(3) For reports prepared on an accrual basis, expenditures are the sum of:

- (i) Cash disbursements for direct charges for property and services;
- (ii) The amount of indirect expense incurred;
- (iii) The value of third-party in-kind contributions applied; and
- (iv) The net increase or decrease in the amounts owed by the non-Federal entity for:
 - (A) Goods and other property received;
 - (B) Services performed by employees, contractors, subrecipients, and other payees; and
 - (C) Programs for which no current services or performance are required such as annuities, insurance claims, or other benefit payments.

Federal Small Purchase Threshold – Maximum dollar amount for individual small purchases. PHAs may use the federal small purchase threshold (currently \$150,000) or may establish a lower threshold in accordance with state or local requirements.

Firm Fixed-Price Contract – Contract which provides for a price which is not subject to any adjustment by reason of cost experience of the contractor in the performance of the contract; the preferred type of contract.

For-Profit Organization – A non-Federal entity organized for profit. It includes, but is not limited to:

- a. An "S corporation" incorporated under Subchapter S of the Internal Revenue Code;
- b. A corporation incorporated under another authority;
- c. A partnership;
- d. A sole proprietorship.

Improper Payment –

1. Any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements.

- (i) Incorrect amounts are overpayments or underpayments that are made to eligible recipients (including inappropriate denials of payment or service, any payment that does not account for credit for applicable discounts, payments that are for an incorrect amount, and duplicate payments). An improper payment also includes any payment that was made to an ineligible recipient or for an ineligible good or service, or payments for goods or services not received (except for such payments authorized by law).

Note 1 to paragraph 1.(i) – Applicable discounts are only those discounts where it is both advantageous and within the agency's control to claim them.

- (ii) When an agency's review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation, this payment should also be considered an improper payment. When establishing documentation requirements for payments, agencies should ensure that all documentation requirements are necessary and should refrain from imposing additional burdensome documentation requirements.
 - (iii) Interest or other fees that may result from an underpayment by an agency are not considered an improper payment if the interest was paid correctly. These payments are generally separate transactions and may be necessary under certain statutory, contractual, administrative, or other legally applicable requirements.
 - (iv) A "questioned cost" (as defined in this section) should not be considered an improper payment until the transaction has been completely reviewed and is confirmed to be improper.
 - (v) The term "payment" in this definition means any disbursement or transfer of Federal funds (including a commitment for future payment, such as cash, securities, loans, loan guarantees, and insurance subsidies) to any non-Federal person, non-Federal entity, or Federal employee, that is made by a Federal agency, a Federal contractor, a Federal grantee, or a governmental or other organization administering a Federal program or activity.
 - (vi) The term "payment" includes disbursements made pursuant to prime contracts awarded under the Federal Acquisition Regulation and Federal awards subject to this part that are expended by recipients.

2. See definition of improper payment in OMB Circular A-123 appendix C, part I A (1) "What is an improper payment?" Questioned costs, including those identified in audits, are not an improper payment until reviewed and confirmed to be improper as defined in OMB Circular A-123 appendix C.

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

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 whether they conform to contract requirements.

Instrumentality – Means a subsidiary branch of the PHA through which functions or policies are implemented.

Intergovernmental or Interagency Agreement – An agreement between a PHA and a federal, state, or local government agency (including other PHAs) for the provision of services or supplies. (Also referred to as cooperative agreements, memorandum of agreement and consortium agreement).

Internal Controls – Safeguards that ensure effectiveness and efficiency of operations, reporting reliability, and compliance with applicable laws, federal regulations, and housing authority policy.

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

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

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

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

Level-of-Effort Contract – Contract (usually cost-reimbursement type) which specifies the number and type of person-hours which the contractor will apply in pursuing the project.

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

Micro Purchase – Small purchases up to \$10,000 or as amended in 2 CFR 200.320 (or lower threshold established by PHA).

Modification – A written revision or change to the contract.

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.

Noncompetitive Proposals – The method of procurement in which the housing authority solicits proposal(s) from only one source or a limited number of sources, if justified in writing for one of the following reasons: the item is available only from a single source; public emergency will not allow enough time for a competitive procurement; inadequate response is received to a competitive solicitation; or HUD approves the use of noncompetitive proposals.

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.

Qualifications-Based Selection (QBS) – A form of procurement of architect-engineering services by competitive proposals in which price is neither requested in the RFP nor used as an evaluation factor; instead, technical qualifications only are reviewed and a fair and reasonable price negotiated with the best qualified firm.

Quotation – In the small purchase method of procurement, the price or offer submitted by a potential vendor.

Request for Proposals (RFP) – Under the competitive proposals method of procurement, the housing authority’s written solicitation to prospective offerors to submit a proposal based on the terms and conditions set forth therein. Proposal evaluation and contractor selection are based on the factors for award as stated in every competitive RFP.

Request for Quotations (RFQ) – Under the small purchase method of procurement, a brief written request for a price quotation from potential contractors.

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 – One which 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 Bidding – The procurement method in which the housing authority requests competitive sealed bids. This method of procurement requires that specifications be written describing the requirements of the government clearly, accurately, and completely; a public bid opening is held; and evaluation of bids and award of the contract is based on the lowest bid submitted by a responsive and responsible contractor.

Show Cause Letter – A document the contracting officer sends to a defaulting contractor to notify the contractor that the contract may be terminated by reason of default unless the contractor can prove in 10 days that the condition was not his or her fault.

Small Purchase Procedures – Simplified method for acquiring supplies, materials, and services (including construction) that do not exceed the PHA's small purchase threshold.

Small Purchase Threshold – Purchases of supplies and nonpersonal services which do not exceed the housing authority's dollar limitation (\$150,000 or lower amount specified in state law) in the aggregate.

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 – Clear and accurate description of the technical requirements of a contract.

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

Subsidiary – A type of operating entity created and operated by a PHA over which it has a controlling interest. It may be wholly owned or controlled by the PHA and may be a nonprofit organization.

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

Supplies – all tangible personal property other than those described in the definition of equipment in this section. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or \$5,000, regardless of the length of its useful life.

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 housing authority on a unilateral basis when it no longer needs or requires the products or services, or when it is in the best interests of the housing authority.

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

Time-and-Materials Contract – Contract which provides for payment of supplies and services on the basis of incurred direct labor hours (at fixed rates which include direct costs, indirect costs, and profit) and materials (at cost).

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

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 PHA.

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 2 CFR 200.317–200.326.

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 2 CFR 200.317–200.326.

For additional information, refer to PIH Notice 2004-5.

Program Manager – An entity a PHA procures in accordance with 2 CFR 200.317–200.326 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.

III. ACRONYM GUIDE

A/E	Architect/Engineer
ABA	American Bar Association
ACC	Annual Contributions Contract
AMP	Asset Management Project
BTU	British Thermal Unit
CFR	Code of Federal Regulations
CO	Contracting Officer
COCC	Central Office Cost Center
CSS	Community and Supportive Services
DOE	U.S. Department of Energy
DOL	U.S. Department of Labor
EPC	Energy Performance Contracting
FAR	Federal Acquisition Regulation
FSS	Family Self-Sufficiency
GAO	General Accounting Office
GSA	General Services Administration
HCD	Housing and Community Development
HOME	Home Improvement Partnership Program
HOPE VI	Homeownership and Opportunity for People Everywhere
HOPWA	Housing Opportunities for People with Aids
HOTMA	Housing Opportunity Through Modernization Act
HUD	U.S. Department of Housing and Urban Development
ICE	Independent Cost Estimate
IFB	Invitation for Bids
IPP	Individual Procurement Plan
LDP	Limited Denial of Participation

LGB	Local Governing Body
LSP	Legal Service Personnel
MBDC	Minority Business Development Center
MWBE	Minority Women Business Enterprises
MOC	Minority Owned Corporation
NAICS	North American Industry Classification System
NOFO	Notice of Funding Opportunity
NSPIRE	National Standards for the Physical Inspection of Real Estate
OCPO	Office of Chief Procurement Officer
OMB	Office of Management and Budget
PHA	Public Housing Agency
PIH	Public Indian Housing
PHAS	Public Housing Assessment System
QBS	Qualification-Based Selection
QHWRA	Quality Housing and Work Responsibility Act
RAD	Rental Assistance Demonstration
RFP	Request for Proposals
RFQ	Request for Qualifications
RMC	Resident Management Corporation
SBDC	Small Business Development Center
SOW	Statement/Scope of Work
USC	United States Code
WBC	Women's Business Centers
WBE	Women's Business Enterprise