

## CHAPTER 1. INTRODUCTION

### 1.1 Purpose of the Handbook

This handbook sets forth both required and recommended procurement practices applicable to Public Housing Agencies (PHAs or agencies) for the operation, modernization, and development of public housing. It incorporates changes in Federal laws, regulations, and other instructions, especially the increase in the Federal small purchase threshold, and aligns the Department's guidance in support of asset management.

### 1.2 Application

The instructions herein apply to all PHA procurement actions using Federal program grant funds, regardless of agency size, for the operation, modernization, and development of public housing. However, smaller PHAs will be governed mostly by the more streamlined small purchase procedures discussed in Chapter 5. Indeed, even among the largest PHAs, a majority of procurement actions may be conducted using small purchase procedures.

This handbook does not apply to:

- Tribally Designated Housing Entities (TDHEs) or to Indian Housing Authorities (IHAs);
- The operation of the Section 8 Housing Choice Voucher Program, which is exempted from **24 CFR 85.36** (see March 11, 1988, Federal Register, page 8050). Procurement activities within the voucher program, therefore, are governed by applicable state and local law (see Chapter 13 of this handbook). To the extent that the PHA utilizes procurement practices for its voucher program that are different from those required under **24 CFR 85.36**, the PHA should incorporate those differences in its procurement policy; or
- Income generated by the Central Office Cost Center through reasonable fee-for-service arrangements under **24 part 990**, e.g., management fees, bookkeeping fees, asset management fees, etc. Such fee income is not considered Federal program income and subject to **24 CFR part 85**. Fee income is governed only by State and local requirements, as applicable.

While this handbook is intended as the primary reference document for all PHA procurement matters, no document can be all-inclusive. Where situations arise that have not been addressed in this handbook, the PHA is urged to contact the local HUD field office. On a more limited basis, additional procurement-related technical assistance is available within HUD's Office of the Chief Procurement Officer (OCPO) and its three field-based Field Contracting Operations (Atlanta, Denver, and Philadelphia). Where necessary, the local HUD field office representatives can facilitate access to these latter resources.

To distinguish between instructions in this handbook that are mandatory versus those that are advisory, the following terms have the following meanings:

- "Shall" and "must," mean that an action or item is mandatory and is required by statute or regulation. Regulatory and statutory citations are provided throughout this handbook.

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

### **1.3 Source Requirements**

For administrative program purposes, PHAs are considered “local government(s)” and public housing assistance in the form of Operating Fund or Capital Fund assistance (or other grant assistance covered by 24 CFR Part 85) are considered a “Federal program grant funds.” As such, PHAs are governed by **Part 85** of Title 24 of the Code of Federal Regulations (**24 CFR Part 85**), Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments. **24 CFR Part 85** is also known as the “Common Rule” in that it applies to all state and local government recipients of Federal housing assistance grants. **Section 85.36** of this “Common Rule” is the controlling regulation governing procurement activity. Among other items, **24 CFR 85.36** provides for full and open competition in all PHA procurement matters. The standards provided in this handbook are basic principles that each grantee must adhere to when it contracts for needed items using Federal program grant funds.

PHAs are also required to follow applicable State or local laws on procurement, depending on their location. In some cases, the Federal standards are stricter than State or local law. In such cases, the PHA must comply with the applicable Federal law and the rules in **24 CFR 85.36**. If State or local law is stricter than Federal standards, then State or local law will apply. Additional guidance on dealing with State and local regulations governing procurement is covered in Chapter 13 of this handbook. Other regulations that affect specific aspects of a PHA’s procurement program include:

- **24 CFR Part 135** – Economic Opportunities for Low- and Very Low-Income Persons, which implements Section 3 of the Housing and Urban Development Act of 1968
- **24 CFR 941, Subpart F** – Public/Private Partnerships for the Mixed Finance Development of Public Housing Units
- **24 CFR Part 943** – PHA Consortia and Joint Ventures
- **24 CFR Part 963** – Public Housing — Contracting with Resident Owned Businesses
- **24 CFR Part 964** – Tenant Participation and Tenant Opportunities in Public Housing
- **24 CFR Part 965** – PHA-Owned or Leased Projects – General Provisions (see Subpart A on pre-emption of state prevailing wage requirements)
- **24 CFR Part 968** – Public Housing Modernization (see 968.110 on wage provisions and 968.135 on contracting requirements)
- **24 CFR Part 990** – The Public Housing Operating Fund Program (see Section 990.170 on utilities)

## **1.4 Consistency with Good Business Practices**

The fundamental goal of a PHA's procurement system should be to satisfy end users in terms of cost, quality, and timeliness of the delivered product or service while complying with applicable laws, rules (e.g., HUD regulations and notices), and the PHA's own policies. Further, those involved in the procurement function should exercise personal initiative and sound business judgment in providing the best value product or service in meeting the agency's needs. Consistent with that goal, Contracting Officers may assume that, if a specific strategy, practice, policy or product is in the best interests of the PHA and is not addressed in this handbook, nor prohibited by law, executive order, regulation, or other directive including the PHA's own policy, the strategy, practice, policy or procedure may be a permissible exercise of authority. Contracting Officers are advised to seek advice whenever they have doubts about an intended strategy, practice, policy or procedure.

## **1.5 State and Local Law**

Each PHA operates under a different set of State and/or local laws. In some cases, the Federal standards may be more stringent than the State or local law/regulation. In general, the PHA must comply with whichever is more stringent. It would be impossible for the Department to provide guidance on each and every State/local requirement affecting procurement. A more complete discussion of the relationships between Federal, State, and local laws is found in Chapter 13.

## **1.6 Public Access to Procurement Information**

Certain information about PHA procurements is normally considered public (e.g., name of the winning contractor and total contract price) and should be released to the public in accordance with the PHA's procurement policy and applicable State laws and regulations governing freedom of information. Other information related to procurement is often protected from disclosure (e.g., proprietary business information such as technical methods or processes, detailed pricing information, personal information, or the PHA's pre-decided information such as internal proposal evaluations). PHAs must exercise caution to ensure that protected information is not made public. Contracting personnel should consult the PHA's legal counsel whenever there is any question regarding the release of information.

In addition to laws requiring the publication of procurement opportunities, many State governments have enacted Freedom of Information or similar laws designed to further the goal of open government by providing public access to procurement information. These laws are not uniform as each State has a different set of rules defining what type of information is considered public as well as how and when it may be released. The State law on public records may or may not apply to the PHA's procurement actions. Each PHA must incorporate applicable State laws into its procurement policy and ensure that procurement actions are conducted in accordance with such laws.

## **1.7 Availability of HUD Forms and Documents**

All required forms listed in this document, as well as relevant HUD notices, handbooks, and regulations, can be found online through one or more of the following:

- Information related to the public housing programs and their requirements is available at HUD's Office of Public and Indian Housing web site:

<http://www.hud.gov/offices/pih/index.cfm>

- Valuable procurement-related information and contacts to HUD personnel who can provide procurement-related technical assistance are available at HUD's OCPO's web site:

<http://www.hud.gov/offices/cpo/index.cfm>

- HUD forms may be found through:

<http://www.hudclips.org>.

Please note that any mandatory forms or clauses discussed in this handbook must not be modified without written HUD approval. HUD field offices may approve changes to forms necessary to conform to State and local laws, subject to concurrence by HUD field office counsel. Other changes to these forms shall only be made with the written authorization of the Assistant Secretary for Public and Indian Housing.

## **1.8 Paperwork Reduction Information**

The information collection requirements contained in this handbook has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number(s) 2535-0117; 2577-0157; 2577-0039; 2577-0025; 2577-0155; and 2577-0015. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Any new information collection and reporting requirements not covered under previous approvals will require a new package to be prepared and submitted to OMB for review.

## **1.9 Glossary**

The following is a list of key procurement and contracting terms and definitions used throughout this handbook.

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

**Annual Contributions Contract (ACC)** – Entered into between HUD and the PHA, setting forth terms and conditions for the operation, modernization, and development of public housing. The current version of the ACC (form HUD-53012-A, 7/95) does not actually contain any specific language governing PHA procurement activity, but incorporates by reference regulations promulgated by HUD at Title 24 of the Code of Federal Regulations, as well as all applicable laws and executive orders, and regulations.

**Amendment** – Written revision or clarification made to a solicitation.

**Anti-competitive Practices** – Actions by potential contractors that improperly reduce or eliminate competition or restrain trade. Examples are: an agreement or understanding among competitors to restrain trade, such as submitting collusive bids or proposals, rotating low bids, follow-the-leader pricing, or sharing of the business. Competition may also be wrongfully discouraged by illicit business actions that have the effect of restraining trade, such as controlling the resale price of products or an improper collective refusal to bid (24 CFR 85.36(c)(1)).

**Architect/Engineer (A/E)** – Person (or company) usually responsible for developing the plans and specifications of a building or development and, in some cases, supervising the construction effort.

**Bid** – The price submitted by a bidder in the sealed bidding method of procurement.

**Bidder's List** – General list of persons or firms who may be interested in contracting opportunities with the PHA, and in submitting bids in response to an Invitation for Bid.

**Change Order** – A unilateral modification made to the contract by the Contracting Officer under the authority of the contract's Changes clause. Only the specific changes permitted by the particular Changes clause may be made under a change order (e.g., modify the drawings, design, specifications, method of shipping or packaging, place of inspection, delivery, acceptance, or other such contractual requirement; see form HUD-5370). All change orders must be within the scope of the contract.

**Changed Conditions** – Construction site or repair conditions that differ significantly from those indicated in the contract or from those ordinarily encountered in the performance of the specific type of work required by the contract.

**Competitive Proposals** – Also called contracting by negotiation, a method of procurement using the solicitation, evaluation, and negotiation of proposals instead of sealed bids (see Chapter 7 for guidance on their use). The competitive proposal method is used for requirements exceeding the PHA's small purchase threshold when conditions are not appropriate for sealed bidding. (Note: Under the Qualifications-Based Selection method only, a Request for Qualifications (RFQ) is used in place of the RFP.)

**Competitive Range** – Those proposals submitted in response to a RFP that, after technical evaluation by the PHA's selection panel and considering the proposed costs/prices, have a reasonable chance of being awarded the contract (see Chapter 7, paragraph 7.2.N for detailed guidance).

**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, importantly, the joint preparation of a PHA Plan. Consortia are addressed separately in paragraph 14.7.

**Contract** – A mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the PHA to pay for them. It includes all types of commitments that obligate an agency 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, requirement 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 (two-party) contract modifications; and various cooperative and interagency agreements (as described elsewhere in this Handbook). Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, *et seq.*

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

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

**Contract Modification** – Any written alteration to a contract executed by an authorized contracting officer (see Chapter 11, paragraph 11.4.A).

**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). (See Chapter 11 for more detail.)

**Cost-Reimbursement Contract** – The contractor is reimbursed for his/her allowable costs of performance up to a total estimated amount specified in the contract (see Chapter 10, section 10.1, for detailed guidance on cost-reimbursement contracts). The contract may provide for the payment of a fee (i.e., a type of profit) in addition to costs.

**Cure Notice** – A document originated by the Contracting Officer and sent to notify the contractor that the contract may be terminated for default unless performance is corrected within a specified number of days.

**Excusable Delay** – A failure to perform within the contract period that is beyond the control and without fault or negligence of the contractor, as determined by the Contracting Officer.

**Federal Small Purchase Threshold** – The maximum dollar amount for individual small purchases (see Chapter 5). The threshold is currently set at \$100,000 (41 U.S.C. 403(11)). PHAs may establish lower thresholds.

**Firm Fixed Price Contract** – The contractor is paid a firm fixed-price for all required work regardless of the contractor’s actual costs of performance (see Chapter 10, section 10.1, for detailed guidance on fixed-price contracts).

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

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

**Instrumentality**- Shall mean 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 supplies or services. In recent years, the terms Cooperative Agreement, Intergovernmental Agreement, Consortium Agreement, or Memorandum of Agreement have been used interchangeably and are treated the same for the purposes of this handbook.

**Internal Controls** – Safeguards that ensure contracting actions will be conducted in conformity with applicable Federal and State regulations and PHA policy.

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

**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.

**Level-of-Effort Contract** – Contract (usually cost-reimbursement) that specifies the number and type of person-hours that the contractor will use in performance of the contract requirements.

**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 Purchases** – Small purchases under \$2,000 (or lower threshold established by the PHA; see paragraph 5.2.B).

**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** – Procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

**Offer** – A response to a solicitation (IFB or RFP) that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations 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 Qualifications-Based Selection (QBS) method are called “qualifications” (see paragraph 7.3.A).

**Offeror** - The general term for the entity that submits a response to a solicitation. For the purposes of this handbook, offeror may be used interchangeably with bidder, proposer, or respondent.

**Procurement** – The acquiring by contract of supplies and services (including construction) with the PHA’s Federal program grant funds through purchase, lease, or other means. Procurement begins at the point when agency needs are established and includes the description of requirements to satisfy agency 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 agency needs by contract.

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

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

**Quotation** – The price or cost submitted by a vendor in the small purchase procedures method.

**Request for Proposals (RFP)** – Solicitation method used under both the competitive or non-competitive methods of procurement. Proposal evaluation and contractor selection are based on the evaluation criteria and factors for award as stated in the RFP. Contract award is based on the best proposal responsive to the requirements of the statement of work resulting in the greatest benefit and best value to the PHA, which may not necessarily be primarily determined based on price.

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

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

**Sanctions** – Measures that may be invoked by HUD to exclude or disqualify contractors, PHA staff or agents acting on behalf of a PHA from participation in HUD programs (such as limited denial of participation or debarment), or measures the PHA may take regarding employees, officers, agents, or others who violate the ethical standards of the policies of the PHA (such as dismissal, reassignment, removal from position, etc.). In the case of violations, HUD would exercise any available remedy under the ACC, federal regulations and statutes, and grant agreements, including the U.S. Housing Act of 1937 as amended, 24 CFR Parts 84 and 85, and sections 17 and 19 of the ACC.

**Sealed Bidding** – A method of procurement inviting sealed bids. This method requires: specifications that are clear, accurate, and complete; a public bid opening; and evaluation of bids and award of the contract based on the lowest price submitted by a responsive and responsible contractor. Sealed bidding is the preferred method for construction (24 CFR 85.36(d)(2)).

**Show Cause Letter** – A document sent by the Contracting Officer notifying a defaulting contractor that the contract may be terminated for default unless the contractor can provide adequate justification for not terminating within a specified time period (usually 10 days).

**Small Purchase Procedures – Small Purchase Procedure** – A simplified method for acquiring supplies, materials, and services (including construction) that do not exceed the PHA's small purchase threshold. (The Federal threshold is \$100,000; PHAs are limited to this or a lower amount as specified in applicable State or local law or dictated by the PHA's Procurement Policy or imposed by HUD due to PHA's procurement performance.) (24 CFR 85.36(d)(1)).

**Small Purchase Threshold** – The per purchase dollar limit established by a PHA for small purchases. The threshold is set in the PHA's procurement policy. The threshold may not exceed the Federal small purchase threshold (see Chapter 5, section 5.2).

**Solicitation** – The general term for the agency'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 solicitations. The provisions include such information as 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.

**Specifications or Scope** – Description of the technical requirements of a contract.

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

**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 non-profit organization.

**Supplemental Agreement** – A type of contract modification to which both parties agree.

**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 PHA on a unilateral basis when the product or service is no longer needed or when it is in the best interest of the PHA.

**Time Delay** – An interruption during which supplies are not delivered or services or work are not completed in accordance with the performance 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 firms qualified to do business with the PHA.

**1.11 ACRONYM GUIDE**

**A/E** – Architect/Engineer

**ABA** – American Bar Association

**ACC** – Annual Contributions Contract

**BAT** – Bureau of Apprenticeship and Training

**BTU** – British Thermal Unit

**CEA** – Comprehensive Energy Analysis

**CFR** – Code of Federal Regulation

**CSS** – Community and Supportive Services

**DOE** – U.S. Department of Energy

**DOL** – U.S. Department of Labor

**EPC** – Energy Performance Contracting

**ESCO** – Energy Service Company

**FAR** – Federal Acquisition Regulation

**GAO** – General Accounting Office

**GSA** – General Services Administration

**HOPE VI** – Homeownership and Opportunity for People Everywhere

**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

**MOC** – Minority Owned Corporation

**NAICS** – North American Industry Classification System

**NOFA/Super NOFA** – Notice of Funding Availability

**OCPO** – Office of the Chief Procurement Officer

**OMB** – Office of Management and Budget

**PDF** – Portable Document Format

**PHA** – Public Housing Agency

**PHAS** – Public Housing Assessment System

**Pub.L.** – Public Law

**QBS** – Qualifications-Based Selection

**QHWRA** – Quality Housing and Work Responsibility Act

**RFP** – Request for Proposals

**RFQ** – Request for Qualifications

**RMC** – Resident Management Corporation

**SBDC** – Small Business Development Center

**SOW** – Statement/Scope of Work

**T-List** – U.S. Treasury Circular 570

**U.S.C.** – United States Code

**WBC** – Women’s Business Centers

**WBE** – Women’s Business Enterprise

