

CHAPTER 11. CONTRACT ADMINISTRATION

11.1 General

This chapter provides guidance on the administration of contracts. Administration refers to all the actions taken regarding a contract after award to ensure that it is successfully performed, and that the PHA receives the required supplies or services.

11.2 Administering Construction Contracts

The following guidance and instructions are provided for administration of construction contracts. Contract administration for non-construction contracts is discussed in 11.3 of this chapter. (Information regarding contract administration for PHA development contracts is included in HUD Handbook 7417.1, Chapter 12.)

- A. **Pre-construction Conference and the Notice to Proceed.** Following the award of a construction contract, a pre-construction and safety conference should be held to thoroughly discuss key construction and contract administration-related issues. The PHA should issue a Notice to Proceed to the contractor stating the starting and completion dates and typical contract-related information. The notice should be prepared in an original with at least two copies signed by the Contracting Officer. The contractor should retain the original and sign, date, and return the copies. This Notice may be hand-delivered to the contractor at the conference and signed immediately. The PHA should retain one copy for the official contract file and, if requested, send the other copy to HUD. See **Appendix 14** for a sample Notice to Proceed.
- B. **Progress Meetings.** The PHA should meet with its architect and the contractor on a regular basis (usually weekly for large or complex projects) to discuss work progress, payments, any problems or deficiencies noted during inspection visits, overdue reports, and the construction schedule. The PHA or the A/E should prepare a written record of the items discussed at each meeting and place a copy in the construction contract file.
- C. **Inspections.** If an A/E firm has been retained to conduct the contract administration function, the PHA must hold the A/E firm accountable for carrying out the necessary inspections and monitoring. The quality of the inspection is critical, and the PHA should ensure that either the A/E or the designated person responsible for inspection (Clerk-of-the-Works) is fully qualified and performs the inspections frequently and thoroughly.
 1. **Inspection Reports.** All progress inspections should be documented using an appropriate PHA inspection report form. The inspection report should include a description of the work completed and a determination as to whether or not the work is acceptable. If payment is made on a unit price basis, quantities must be verified. If payment is made on a time and materials basis, the report should show that the time charged was spent on PHA work and that materials were charged at cost. A copy of the inspection report should be included in the contract file. Based on the progress report, the Contracting Officer should initiate any needed follow-up actions to ensure that the terms of the contract are being fulfilled.
 2. **Deficiencies.** Upon being notified by its architect or HUD of construction deficiencies, the PHA shall promptly notify the contractor in writing of the deficiencies observed. This notification should also advise the contractor that

failure to make timely corrections will be an infraction of the contract and that the contractor will be held liable for any resulting losses or delays.

- D. **Labor Standards.** The PHA is responsible for the administration and enforcement of labor standards requirements as provided in HUD Handbook 1344.1, REV 1, Chg1 as required by DOL regulations applicable to Davis-Bacon covered work (**29 CFR 5**). See 10.8.E of this Handbook.
- E. **Progress Payments.** Some state laws impose mandatory payment schedules to contractors that may not be consistent with HUD's holdback requirements. Any such problems should be resolved before soliciting bids for a contract. For Capital Fund and Development Projects, payments shall be made as follows:
1. If progress payments are necessary (they may not be necessary in small construction contracts), the PHA shall require the contractor to prepare a construction progress schedule for each project immediately after issuing the Notice to Proceed. The PHA may require use of form HUD-5372, Construction Progress Schedule, or another appropriate form from various professional organizations. The information must be realistic and consistent with the information provided by the contractor on the PHA-approved schedule of amounts for contract payments and the HUD-approved Project Implementation or Development Schedule, as applicable.
 2. The PHA or its architect should review the contractor's construction progress schedule to ensure that the scheduled dates and amount of work to be completed are reasonable and consistent with the contract. If acceptable, the PHA's architect shall sign the schedule and forward it to the PHA for approval. After approval by the PHA, the construction progress schedule shall be returned to the contractor and copies filed in both the construction contract file and the official contract file.
 3. The PHA should require the contractor to prepare a schedule of amounts of payments immediately after execution of the contract. The PHA must use form HUD-51000, Schedule of Amounts for Contract Payments, for this purpose.
 4. The PHA and its architect shall review the schedule to determine that both the scheduled work to be completed by the specified dates and the amount of payment for such work are reasonable. If acceptable, the PHA should approve and return the schedule to the contractor. HUD review is not required.
 5. The PHA is responsible for making progress payments to the contractor based on the PHA-approved schedule of amounts for contract payments. Generally, progress payments for acceptable work and materials delivered and stored on the site are made at 30-day intervals. HUD authorization of progress payments based on the approved payment schedule is not required.
 6. The contractor should submit a request for payment for each project on form HUD-51001, Periodic Estimate for Partial Payment. The request shall be accompanied by the contractor's written designation of a certifying officer. In addition, the contractor should submit the following HUD forms or other appropriate forms, if applicable, with each periodical estimate for partial payment: form HUD-51002, Schedule of Change Orders; form HUD-51003, Schedule of Materials Stored; and form HUD-51004, Summary of Materials Stored.
 7. The PHA should review each contractor request and should approve the payment if the following conditions have been met (if the contractor requests payment for

items that have not been acceptably completed, the PHA should delete those items and adjust the payment accordingly):

- a. The contractor's request is consistent with the PHA-approved schedule of amounts for contract payments;
- b. The request does not include the amount to be retained by the PHA under the contract;
- c. The work covered by the payment has been performed in accordance with the construction documents;
- d. The form HUD-51001, Periodic Estimate for Partial Payment, has been properly executed and all applicable supporting documentation submitted; and
- e. The contractor has submitted all required reports, such as payroll reports. The PHA shall retain the original form HUD-51001 and any applicable supporting documentation for its file and return a copy of the PHA-approved forms to the contractor.

F. Delays and Time Extensions. The contractor is responsible for completing the work within the time established in the contract. The PHA is responsible for monitoring the contractor to ensure that work will be completed as scheduled. The PHA may authorize justifiable time extensions without prior HUD review and approval, unless the PHA is subject to prior HUD approval under a HUD-established threshold that is less than the requested amount. The "Default" clause on the forms HUD-5370, 5370-C and 5370-EZ prescribes the conditions under which a time extension may be granted. The basic principle is that delays arising from unforeseeable causes beyond the control and without the fault or negligence of the contractor may be grounds for allowing a time extension. Such time extensions should be formalized in a written modification to the contract.

1. **Construction Log.** The PHA should maintain a construction log to record potential causes for delays that may be used as the basis for granting time extensions or for denying a request for a time extension. The construction log should contain daily reports that record at least the following: the daily temperature, the daily amount of precipitation, delays in obtaining labor and materials, including the duration and the applicable construction trade, delays experienced by others in completing non-contract public improvements (whether on-site or off-site), and other causes for delays, such as fires, floods, vandalism, or court orders.
2. **Time Extension Criteria.** In order to be considered for approval by the PHA, requests for time extensions should meet the following criteria:
 - a. The contractor should submit a written notice to the PHA within 10 calendar days of the start of any delay;
 - b. The severity and extent of adverse weather could not have been reasonably foreseen by the contractor (normal seasonal levels of rain, snow, cold or heat should have been considered by the contractor); and
 - c. The cause of the delay was beyond the contractor's control.

3. **Documentation.** Immediately upon receipt of the contractor's notification of delay or request for time extension, the PHA should send a letter of acknowledgment to the contractor. The letter should indicate that either: (1) immediate consideration will be given to the contractor's request or (2) the actual delay in work is difficult to determine and consideration will be given to the contractor's request upon completion of work. PHA staff should review records to ensure that the information provided by the contractor is accurate and complete. This will allow the Contracting Officer to determine the cause of the delay and the extent that it was within the contractor's control. It will also determine if the request meets the contract's criteria for approving or rejecting the request for a time extension. Two criterion for approval of time extension requests follow:
 - a. The contractor's request, as documented by the PHA "finding of fact," meets the requirements stated in paragraph 11.6.F.2 above, and
 - b. The additional time requested by the contractor is reasonable based on the nature and duration of the delay.
- G. **Completion of Work.** The completion of a construction contract requires some formal procedures, including the following:
 1. **Notification.** The contractor should provide prompt written notification to the PHA when all work is completed. A final inspection of completed work shall then be conducted. Until the final inspection has been carried out and corrections made, the PHA should not advance any of the retainage or make the final payment to the contractor.
 2. **Final Inspection.** Upon receipt of the contractor's notification of the date when the work has been completed, the PHA should conduct a final inspection within 10 calendar days.
 3. **Post-Inspection Meeting.** The inspection team should meet after completing the final inspection to determine whether the work has been completed in accordance with the construction documents and to identify any minor items of incomplete or unsatisfactory work (or seasonal work such as planting of shrubs and lawns). The team should also reach agreement on the items to be included on the PHA's or its architect's final punch list and on any major deficiencies that must be corrected by the contractor.
 4. **Documentation.** Following final inspection, the PHA should notify the contractor to submit the following documentation to the PHA:
 - a. A certificate of occupancy issued by the responsible local agency for each building (where appropriate);
 - b. One notarized original and two copies of the contractor's release, including certification that indicates:
 - i. The work was completed in accordance with the construction documents, including contract modifications, except any minor items identified on the PHA's or its architect's proposed certificate of completion;
 - ii. The total amount due the contractor and a separately stated amount for each unsettled claim against the PHA;

- iii. Documentation noting that the PHA is released of all claims, other than those stated in the contractor's release; and
 - iv. Wages paid to laborers or mechanics were consistent with the wage rate requirements of the contract and there are no outstanding claims for unpaid wages.
 - c. Assignment of all guarantees and warranties to the PHA; and
 - d. "Final" partial payment. The PHA may accept part of a project for occupancy before contract settlement if the following conditions are met:
 - i. The dwelling units to be accepted (except items approved for delayed completion) have been completed and are ready for occupancy;
 - ii. The general contractor agrees to early occupancy and completion of items approved for delayed completion;
 - iii. Early occupancy will not unduly inconvenience or represent a safety risk to tenants while the unfinished work is being completed;
 - iv. The PHA has obtained occupancy permits from the responsible local agency for each unit to be accepted; and
 - v. The PHA has executed an occupancy agreement with the general contractor indicating that the PHA partially accepts specified work, provided that the contractor accepts the responsibility to complete the project by the established completion date.
- H. Final Payment.** The PHA should ensure that an adequate and notarized certificate and release are received from each construction contractor to assure that the work was in full compliance with the construction contract documentation and that all materials, supplies, equipment, and labor-related expenses have been paid in full by the contractor. Prior to making final payment, the PHA should ensure that all required certified payroll reports have been received and that any discrepancies and/or wage underpayments have been corrected. Upon receipt of the approved certificate of completion, the PHA is authorized to make payment to the contractor. The PHA payment to the contractor should be the amount specified in the certificate of completion, but it should not include any amount to be retained for disputed items and incomplete work, such as the punch list or seasonal items.
- I. Construction Warranties.** The warranty period for all construction work should be at least 365 calendar days from the date of final acceptance of the work in question or such longer period as otherwise specified in the contract. For complex equipment or systems (such as boilers, air conditioning units, thermal paned windows or storefronts, or membrane roofs), the PHA should consider using a full two-year warranty. The extra year will help to ensure that the PHA can discover and report any hidden or latent deficiencies while the warranty is still in force. The contractor is fully responsible to correct any and all legitimate deficiencies reported within the warranty period. It is often a good approach to specify the additional warranty period on replaced or repaired items; one full additional year is generally reasonable and appropriate.
- 1. Warranty Inspections.** The PHA is responsible for performing required warranty inspections, including the 11-month inspection, during the warranty

period and promptly notifying the contractor in writing to remedy any defects relating to manufacturer or contractor warranties on equipment and systems and contractor warranties on materials and workmanship. This is an area that has been frequently overlooked by some PHAs and their A/Es. Failure to enforce warranties is a violation of the ACC requirement for economy and efficiency and can be very costly to the PHA. In such cases, the PHA will have to use its own funds after the expiration of the warranty to correct defects that were the contractor's responsibility.

2. **Corrective Action.** Upon receipt of the PHA's written notice, the contractor should promptly remedy any defects due to the use of faulty equipment or materials or poor workmanship. The contractor is also responsible for paying for any damage to other work resulting from such defects. If the contractor fails to resolve such warranty issues, the bonding company should be contacted by the PHA for final resolution.

11.3 Administering Non-Construction Contracts

The necessary amount of oversight and monitoring, i.e., contract administration, will vary with the complexity of the work. Relatively simple contracts may require limited monitoring, while large, complex contracts will need more in-depth monitoring and oversight. Efforts to develop good specifications and a carefully planned solicitation can be undermined by weak contract administration.

- A. **Post-award Conference.** For relatively complex projects, it is advisable to meet with the contractor soon after contract award to ensure that all parties understand the contract's performance requirements. Terms of the contract should be thoroughly discussed. In addition, formal minutes of the meeting should be recorded and subsequently issued to all meeting attendees. Also at this meeting, samples may be presented if required and inspection personnel introduced. Any necessary changes to the contract resulting from this meeting should be reflected in a formal written modification to the contract, rather than through oral agreements or instructions from PHA staff. Only the Contracting Officer has the authority to make a formal change in a contract.
- B. **Establishing a System for Receiving Supplies, Equipment, and Services.**
 1. The PHA should establish a system for ensuring that the items required by contract are delivered to an appropriate location where PHA personnel can make certain that receipt of supplies, materials, or equipment is properly handled and documented. For example, a contract for supplies should indicate where delivery should be made (what room or other location, such as a management office) and how the receipt will be recorded and provided to the contractor.
 2. The receiving report, either a standardized PHA document or one submitted by the contractor, should contain, at a minimum, the following information: contract number, item number/description of the item, date of receipt, place received, receiving official (printed name, signature, date), date of inspection, inspection official (printed name, signature, date), whether the work/item was or was not accepted (and, if not accepted, reasons for rejection), and accepting official (printed name, signature, date). The receiving, inspecting, and accepting official may, in certain circumstances, be the same individual, particularly under project-based management.
- C. **Monitoring and Inspecting Supplies and Services.** Once received, the PHA should monitor or inspect the supplies or services obtained in accordance with the contract. If poor contractor performance occurs, the PHA should document the file and remember that performance when awarding future contracts. The PHA should

also make recommendations to HUD, when appropriate, regarding suspensions and debarments and provide evidence involving serious complaints, areas of non-responsibility, and other violations of or failure to comply with Federal, State, or local laws and regulations to the HUD Field Office for review (see Chapter 10, Evaluating Contractors and Analyzing Cost and Price).

- D. Enforcing Specifications and Timelines.** The PHA should establish a system to enforce both specifications and timelines and, when necessary, enforce compliance with all of the contract specifications, particularly since the rules of law may relieve a contractor of any liability if the PHA failed to regularly monitor the contractor's performance before final acceptance. The PHA is not obligated to pay for or accept supplies or services until it has had an opportunity to fully inspect them. Such inspection and any rejection resulting therefrom should be within a reasonable time after delivery or performance. If the PHA fails to require the contractor to correct a particular defect because of the PHA's failure to inspect (assuming that the defect could have been found by reasonable inspection), the PHA may have waived its rights to future rejection based on that particular defect.

Acceptance may be assumed to have occurred, with or without concurrence by the PHA, if after a reasonable time to inspect has passed and the PHA has failed to make any notification to the contractor that the supplies, services, or construction do not conform to the contract requirements.

E. Acceptance of Supplies and Services

1. The Contracting Officer should ensure the supplies received from vendors are inspected and accepted, the performance of services was satisfactory, and receiving documents are prepared and processed for payment. This acceptance should not be delayed, since prompt payment will help to ensure good relations with vendors and contractors. In addition, many contracts allow a discount for prompt payment if made within a specified number of days. Discounts, if offered by the contractor, should always be taken by the PHA to the greatest extent feasible, and procedures should be established to facilitate expedited receipt and prompt payment.
2. **Nonconformance.** When supplies, services, or construction items do not conform to the contract, the PHA has three response options. reject the items, require the contractor to correct them, or conditionally accept them.

If any items or services are rejected, the contractor is subject to being declared in default unless it can provide conforming items or make a correction within the required delivery schedule/completion time. If the contractor is required to correct the defects, it would appear that the PHA has elected to have them corrected; therefore, the PHA may not terminate the contract for default until the contractor has a reasonable opportunity to correct the defects. If the contractor does not correct the defects within the required timeframe, the PHA may accept the defective items or deficient services, but negotiate a commensurate reduction in price.

- F. Labor Standards.** Maintenance contracts in excess of \$2,000 require the payment of HUD-determined wage rates.

1. **Posting Wage Rates.** PHAs must ensure that a copy of the applicable HUD wage decision is displayed at the job site in a place accessible to all maintenance laborers and mechanics and placed in an area that is protected from inclement weather.

2. **Compliance Monitoring.** PHAs have certain compliance monitoring and enforcement responsibilities for maintenance contracts subject to HUD-determined wage rates. See Chapter 10 of this Handbook for a discussion of the wage and recordkeeping requirements and the enforcement requirements of the PHAs.
- G. **Control of Payments.** To the extent practical, and to help eliminate disputes that arise when shortages or damages are not discovered until after payment has been made, payment for supplies and services should be made only after the delivered items are inspected and found to be satisfactory.

11.4 Contract Modifications

- A. **General.** Occasionally, it is necessary to modify a contract or purchase order to reflect changes in the required effort, period of performance, or price. Contract and purchase order modifications shall be issued in writing in one of the following forms:
1. Unilateral modification (a modification that is signed only by the Contracting Officer, such as a change order pursuant to the Changes clause on form HUD-5370, or administrative modification, such as a change in the address of the payment office), or
 2. Bilateral modification (such as a supplemental agreement in which both parties mutually agree on contract changes) that is signed by both the Contracting Officer and the contractor. Bilateral modifications are the preferred method of modifying contracts and purchase orders.
- B. **Process.** A change order is issued by the Contracting Officer after the award of a contract in any of the contract terms, including specifications, completion time, description of the work, etc., within the scope of the contract.
1. The Changes clause is included in form HUD-5370 (for construction) and form HUD-5370-C (for non-construction contracts) and form HUD-5370-EZ (for small construction/development contracts).
 2. A change order may be issued unilaterally by the Contracting Officer. In such cases, the contractor is entitled to submit a change order proposal to identify any changes in cost or schedules as a result of the change, and the parties negotiate an equitable adjustment.
 3. Change orders may be issued bilaterally if the contractor agrees to the change in advance. When a change is mutually agreed upon, including price adjustment for concessions made by either party, a contract modification is prepared and signed by both parties to the original contract. See **Appendix 15** for a Sample Contract Modification format that may be used for modifications.
 4. Change orders/modifications should include at least the following: a detailed description of the proposed change in work, a reference to the applicable working drawings and specifications, when applicable, a price (credit, debit, or no change) for the change in contract work, estimate of additional time, if any, required to complete the work, the contractor's itemized breakdown of the cost of materials and labor and an itemized breakdown for any applicable subcontractors, and the change indicate on the architectural or engineering drawings, if applicable.
- C. **Limitations on Change Orders.** The Changes clause contained in forms HUD-5370, 5370-C, and 5370-EZ, prescribes the specific circumstances in which a

change order may be issued. For example, adding the construction of a new building to a modernization contract would not be considered within the scope of the contract or within the authority of the Changes clause but should be considered a new contract (and subject to competition).

- D. **Modification Register.** The PHA shall maintain accurate records and documentation regarding contract modifications by including a modification register or other record in each contract file. This register is required to provide a permanent record of all actions taken in connection with each contract. The modifications register should generally include information on the following: the number of modifications, a brief description of the change, the cost of the proposed modification, the date submitted to HUD for approval, if applicable, any critical deadline dates, the date of HUD approval or disapproval, if applicable, and the action taken, and the amount of any additional time required by the contractor.
- E. **HUD Approval of Modifications.** PHAs must submit to HUD for prior approval any proposed contract modifications changing the scope of the contract in accordance with the Changes clause in the contract, or that increases the contract by more than the Federal small purchase threshold, unless exempted under paragraph 12.5 of this handbook.

11.5 Contract Claims

- A. **General.** Contract claims may occur after the contract has been executed and may be pursued by the PHA or the contractor, although most often the contractor is the claimant. Disputes may arise regarding breach of contract, mistake, misrepresentation, other cause for contract modifications, or other disputes as described in the contract documents, such as unforeseen conditions. Forms HUD-5370, 5370-C and 5370-EZ, describe types of disputes and how claims will be processed. PHAs are required to have a provision in the procurement policy that explains how claims and disputes will be handled.
- B. **Filing Claims.** The PHA should make every effort to resolve claims informally and expeditiously to avoid time losses or expensive delays. However, if the dispute cannot be resolved by mutual agreement, the following steps must be taken:
 - 1. The contractor must submit the claim to the PHA's Contracting Officer in writing within the timeframe specified in the contract documents.
 - 2. The claim must identify the nature and scope of the claim, including extra costs or time sought by the contractor.
- C. **Rendering Decisions on Claims.** The Contracting Officer shall review the facts pertinent to the claim and secure any necessary assistance from legal, technical, or other advisors and shall issue a final written decision promptly and within the timeframe stated in the contract documents. (As provided by forms HUD-5370 and 5370-C, if the Contracting Officer does not issue a final decision within 60 days after written request by the contractor for a final decision, or longer period if mutually agreed upon by both parties, then the contractor may proceed as if an adverse decision has been received.) The written decision should include:
 - 1. A description of the claim;
 - 2. A reference to the pertinent contract clauses;
 - 3. A statement of the factual areas of agreement or disagreement;
 - 4. A statement of the Contracting Officer's decision with support rationale; and

5. A statement referencing appeal rights as provided in the PHA's Procurement Policy.
- D. The Contracting Officer shall immediately furnish a copy of the decision to the contractor by certified mail, with return receipt requested.
- E. **Records of Claims.** The PHA shall maintain a complete written and dated record of any actions that may result in a dispute or claim for damages. An example would be records of weather conditions during the course of a contract, delays in receiving materials ordered by the PHA, or other items that may result in requests for time delays that may be disputed. These records protect the PHA's interests during any litigation that may arise later.

At a minimum, the PHA should maintain records of the following:

1. A complete and detailed job record; and
2. A disputes and claims file, including a cross-reference to other pertinent files (such as a separate file for a particular subcontractor), any correspondence related to a dispute, written minutes of meetings between the PHA and architects, or job meetings where decisions or agreements were made regarding disputes.

11.6 Contract Terminations

- A. **General.** Contracts are terminated either for default or termination, as prescribed in the termination clauses on forms HUD-5370, 5370-C, and 5370-EZ.
- B. **Termination Notice.** The Contracting Officer shall terminate contracts for convenience or default only by a written notice to the contractor. The notice shall be sent by certified mail with a return receipt requested. The notice shall state, at a minimum, the following:
 1. The contract is being terminated for default or for the convenience of the PHA under the cited contract clause authorizing the termination;
 2. Whether the contract is terminated in whole or in part (for partial terminations, identify the specific items being terminated);
 3. If terminated for default, the acts or omissions constituting the default, the Contracting Officer's determination that failure to perform is not excusable, the PHA's rights to charge excess costs of re-procurement to the contractor, and the contractor's appeal rights;
 4. The effective date of termination;
 5. The contractor's right to proceed under the non-terminated portion of the contract;
 6. Any special instructions; and
 7. Copies of the notice should be sent to the contractor's surety, if any, and any assignee.
- C. **Termination for Convenience.** Contracts may be terminated for convenience when the PHA no longer needs or desires the supplies or services under contract or can no longer fund the procurement.

1. **Settlement.** Settlement of contracts terminated for convenience may be settled through negotiations or by a unilateral determination of the Contracting Officer. The contractor should submit a settlement proposal promptly to the Contracting Officer for any amounts claimed as a result of the termination. Whenever possible, the Contracting Officer should negotiate a fair and prompt settlement with the contractor and should settle by determination only when mutual agreement cannot be reached.
 2. **Compensation.** A settlement should compensate the contractor fairly for work performed, for other costs incurred under the contract, and for preparations made for the terminated portions of the contract, including a reasonable allowance for profit. However, no profit shall be allowed on settlement expenses. In addition, the Contracting Officer shall not allow profit if it appears that the contractor would have incurred a loss had the entire contract been completed. Fair compensation is a matter of judgment and cannot be measured exactly. The Contracting Officer should use prudent business judgment in the settlement process, as opposed to strict accounting principles. The parties may agree to a total amount to be paid to the contractor without agreeing on individual cost items or profit.
- D. **Termination for Default.** A contract may be terminated for default because of the contractor's actual or anticipated failure to perform its contractual obligations. Under a termination for default, the PHA is not liable for the contractor's costs on undelivered work and may be entitled to the repayment of progress payments. If the contractor fails to make progress so as to endanger performance of the contract, the Contracting Officer should issue a written notice to the contractor (generally called a "Cure Notice") specifying the failure and providing a period of 10 days (or longer period if needed) in which to "cure" the failure. After the 10 days, the Contracting Officer may issue a notice of termination for default, unless the failure to perform has been cured.
1. **Notice.** If the contractor has failed to perform work within the required time and a termination for default appears appropriate, the Contracting Officer should, if practicable, notify the contractor in writing of the possibility of the termination. This notice shall call the contractor's attention to the contractual liabilities if the contract is terminated for default, and request the contractor to "show cause" why the contract should not be terminated. If the response to this "show cause" notice is inadequate or insufficient, action is taken in response to it; the contract should then be terminated for default.
 2. **Alternatives to Termination.** Alternatives to termination for default include the following (at the PHA's discretion): allow alternative dispute resolution (arbitration or mediation) as agreed to by both parties; allow the contractor or the surety to continue performance of the contract under a revised delivery schedule (in exchange for a reduced price or other consideration); permit the contractor to continue performance of the contract by means of a subcontract or other business arrangement with an acceptable third party, provided the rights of the PHA are adequately protected; or, if the contractor is not liable to the PHA for damages, execute a no-cost termination settlement agreement.
 3. **Repurchase.** When the supplies, services, or construction activities are still required after termination, the Contracting Officer should seek to contract for the same or similar items as soon as possible. The Contracting Officer may use any appropriate contracting method for the procurement (sealed bids or competitive or noncompetitive proposals, as appropriate), provided competition is solicited to the maximum extent practicable to secure the lowest price obtainable under the circumstances in order to mitigate damages.