

2024 AAHRA Spring Workshop

HUD HOT TOPICS: PROCUREMENT AND SECTION 3

APRIL 16, 2024

Sources

- HUD Procurement Handbook 7460.8 Rev 2
- HUD Exchange: [PHA Procurement Training - HUD Exchange](#)
- 2 CFR §200.317–200.326
 - Regulation controlling governing procurement activity
 - Provides for full and open competition
- Must follow applicable state and local procurement laws
 - Follow strictest applicable law (federal, state, or local)

Overall Objective of Procurement

- Allow for fair and open competitive process for PHA's business
- Assist PHA to be a good steward of public funds
- Provide clarity in business dealings
- Provide best value product or service for the agency
- Comply with all applicable laws, HUD regulations, and PHA policies
- Avoid ethical consequences: one primary reason for establishing clear procurement rules

PHA Procurement

- PHAs are required to establish and follow a written procurement policy with 2 CFR §200.317–200.326. AAHRA usually has up to date sample on their website.
- These requirements relate to all aspects of the housing operation...modernization, regular maintenance operation, purchasing of equipment, procuring of auditing/legal services, etc.
- The Executive Director (ED) or Contracting Officer (CO) has full authority to procure and execute contracts on behalf of the PHA.
- The ED can assign all or a portion of that responsibility to PHA staff based on the organization and staffing levels of the PHA
 - Delegations must specify monetary limits & types of actions allowed, including re-delegations

PHA Procurement Policy

- PHAs are required to establish and follow a written procurement policy with 2 CFR §200.317–200.326
- Confer authority to Executive Director as Contracting Officer (CO) and allow for delegation
 - *Contracting Officer (CO) is the person with authority for procurement activities*
- Threshold for Executive Director to commit PHA to a purchase and when a purchase must go before the Board for approval
- Different procurement types and thresholds for implementation
- Type of contracts and required clauses
- Ethics in contracting and how to avoid conflicts of interest
- Procurement operations and policy guidance should be regularly reviewed

ED or CO Procurement Responsibilities

- Use sound judgement in accomplishing PHA's procurement activity
- Ensure bidders and contractors are treated fairly, impartially, and equitably
- Ensure contract actions comply with all applicable federal, state, and local laws and PHA's approved procurement policy
- Any employee given procurement authority and responsibility is required to be provided training
- Each contract or purchase action must be signed by an authorized individual.
 - ***OBLIGATION*** occurs when a contract has been signed and dated by both parties.

Independent Cost Estimate (ICE)

- PHA's estimate of cost of goods or services to be acquired under a contract.
 - Benchmark to evaluate reasonableness of proposed pricing.
- The Public Housing Authority (Executive Director and Procurement Personnel) are responsible for developing ICE.
 - Often done with input of other staff and outside consultants
- Must be prepared prior to solicitation of offers
- Helps with determining the best contracting method to be used.
- When is ICE needed?
 - Micro-purchases: not needed
 - Above micro-purchase and below small purchase: minimal documentation
 - Above small purchase: required

What is ICE used for?

- Project and reserve funds for procurement
- Determine if cost-proposal assumptions are based on same or similar assumptions used by the PHA
- Determine if costs offered are fair and reasonable
- Decisions: project viability, structure, and resource requirements
- Conduct analysis of alternatives if needed
- Inform design trade-off decisions
- Conduct in-process reviews of projects
- Satisfy public law and oversight requirements

Conflict of Interest

- Conflict of Interest involves situations where a person is in a position to derive personal benefit from actions or decisions made in his/her official capacity.
 - No PHA employee, officer, or agent shall participate in selection, award, or administration of contracts supported by federal funds if there is a conflict of interest—financial or otherwise, real or apparent—would be involved.
 - No PHA employee, officer, or agent can sell supplies, services, or construction to the PHA for 1 year after he/she leaves the PHA

Conflict of Interest (CONT.)

- PHA, contractors, and subcontractors cannot enter into contracts or arrangements that allows certain individuals to work on PHA contracts for at least 1 year after ending their relationship with PHA.
 - Includes:
 - Former PHA employee in a position to formulate or influence policy
 - Public official, member of local governing body, or state or local legislator (or immediate family member) who exercises functions or responsibilities regarding PHA project
- No immediate family member of staff or PHA governing body can do business with the PHA
- Reference: 2 CFR §200.318(c)(1)

What does conflict of interest look like in a PHA?

PHA Executive Director's brother is a door vendor and bids on a PHA solicitation for doors.

The Maintenance Director owns stock in a company that sells a particular type of stove and recommends to the PHA that all units should be equipped with that stove.

BIG NO NO!!!!!!!

Micro-Purchase

- Threshold: \$10,000 (must not exceed \$10,000 in total during one-year period)
- Procurement: may award without soliciting quotes
- Selection: price must be reasonable
- Documentation required:
 - ICE not required
 - Executive Director signature verifies costs are appropriate
 - Documentation must be available for 3 years after final payment

Small Purchase

- Small purchase procedures are designed to give PHAs the flexibility needed to make purchases supporting day-to-day operations.
 - Current federal threshold for small purchases: Cannot Exceed \$250,000.
 - Local and state procurement laws may have lower thresholds.
 - PHA's threshold must not exceed federal limits.
- PHA must solicit and receive quotes (two or more)
- Independent Cost Estimate (ICE) is required.
- Documentation indicating bids/quotes were obtained and price reasonableness
 - Explanation supporting award on other factors unrelated to price (i.e., nonresponsive or not responsible)
- Documentation must be available for 3 years after final payment

Indefinite Delivery Contracts

- Sometimes called Blanket Purchasing Agreements (BPAs)
- Typically used when PHAs need to make frequent small purchases to address a recurring need
- Exact items, quantities, and delivery requirements are unknown, but unit cost or total available funds is known
- BPAs allow PHA to order supplies or services from a pre-set competed price list without having to make separate purchases every time
- Competition required over the Micro-purchase Threshold
 - PHA evaluates bids for price and quality of goods to be provided
- PHA may have more than one vendor for the same products

No Bid-Splitting Allowed

- PHAs may not break up purchases into small amounts to qualify under small purchase or micro-purchase thresholds.
- Example:
 - PHA has to purchase 40 new refrigerators estimated to cost \$32,000. PHA should solicit and receive 3 quotes from qualified vendors (small purchase). Instead, PHA orders 10 refrigerators at a time from the same vendor to stay below micro-purchase threshold and will not have to solicit quotes.

Required Forms and Mandatory Contract Clauses

- Required forms for small purchases for construction or maintenance exceeding \$2,000
 - Clauses in Table 5.1 of the HUD Procurement Handbook
 - HUD-5370-EZ or HUD-5370 (Construction)
 - Section II of form HUD-5370-C (Maintenance)
- Table 5.1 of HUD Procurement Handbook contains clauses regarding:
 - EPA requirements
 - Ownership of data and patent rights
 - Energy efficiency
 - Termination for cause and for convenience

Sealed Bids

- Sealed bids are used for purchases above federal small purchase threshold \$250,000 or state limit.
- Used mostly for construction contracts and purchase of commodities (equipment and supplies).
- Open on scheduled date, time and place
- Sealed bids are awarded based on price.
- Independent Cost Estimate is required
- Reference: 2 CFR §200.320

Invitation for Bid (IFB)

- Develop a Statement of Work (SOW)
- Develop/reassess Independent Cost Estimate (ICE)
- Determine if Plans & Specifications are needed
 - Hire an Architecture & Engineering firm using applicable procurement method
- Draft final Plans and Specifications and obtain Wage Rates, as applicable
- Finalize bid documents

Invitation for Bid (IFB)

- Publicly advertise for bids for at least 14 days
 - Local newspapers, trade periodicals, etc.
 - Mail advertisement to potential bidders
- Hold a pre-bid conference to discuss IFB, if necessary
 - Attendance is desirable but not mandatory
 - Issue addenda to clarify significant issues
- Receipt of bids
 - Time-date stamp all bids received
 - Secure in a private place
- Publicly open bids received on due date
 - Official reads name of bidder and cost of bid and records in official Bid Tabulation
 - Do not discuss results or intentions to award

Invitation for Bid (IFB)

Contract Award

- Analyze bids received to satisfy responsiveness requirement
 - Verify that all required documents in the IFB have been provided, including the bid bond submittal
- Evaluate all of the bids received by using evaluation factors and the ICE
- Verify potentially successful contractor's responsibility before contract award
- Write justification and/or recommendation letter to the file selecting successful entity
- Notify unsuccessful bidders
- If required, obtain PHA Board's approval

Required Forms for Sealed Bids

- HUD-5369 Instructions to Bidders for Contracts (construction)
- HUD-5369-B Instruction to Offerors Non-Construction
- HUD-5369-A Representations, Certifications, and Other Statements of Bidders (construction)
- HUD-5370 General Conditions of the Contract for Construction
- HUD-5370-C General Conditions for Non-Construction Contracts
- Davis-Bacon HUD wage decisions for construction
- Maintenance Wage Rate Decision for some (most) maintenance work

Competitive Proposals

- Competitive Proposals allow for negotiation procurement that considers factors other than just price.
- Competitive Proposals are used when:
 - Unclear or incomplete specifications
 - The nature of the work requires evaluation of technical merits in addition to price
 - Cannot award a firm fixed-price contract (e.g., Sealed Bid)
 - The PHA wants to consider different approaches to the work
 - There are 2 or more qualified offerors in the market
 - The cost estimate is more than the \$250,000 Federal regulatory threshold or a lower dollar limit specified in the PHA's Procurement Policy or state law

Two Types of Competitive Proposals

- Request for Proposals (RFP)
 - Used for procuring professional and consulting services, including Architecture/ Engineering (A/E) professional services
 - Price **IS** considered as a selection factor
 - Independent Cost Estimate (ICE) is required
- Request for Qualifications (RFQ)
 - Procedure can only be used for the selection of Architecture/Engineering professional services or Mixed-Finance Developers
 - Price **IS NOT** considered as a selection factor
 - Negotiate price after ranking respondents based on technical factors

General Requirements for Competitive Proposals

- Evaluation Factors and their relative weight must be included in the RFP/RFQ and referenced in the advertisement
- The PHA must establish an Evaluation Committee to review technical factors
- Price is always a factor, but it may or may not be a weighted evaluation factor
 - Where price is part of the scoring process, a Price or Cost Analysis must be part of the evaluation report issued by the Evaluation Committee
- Receiving Proposals and Confidentiality
 - Date- and time-stamped
 - Unopened until deadline passes
 - Kept confidential and must not be opened publicly

Required Forms for Competitive Proposals

- HUD-5369-B, Instructions to Offerors Non-Construction
- HUD 5369-C, Certifications and Representations of Offerors Non-Construction Contract
- HUD-5370-C, General Conditions for Non-Construction Contracts (either Section I or both Sections I and II)
- HUD-51915, Model Form of Agreement Between Owner and Design Professional
- HUD-51915-A, Contract Provisions Required by Federal Law or Owner Contract with the U.S. Department of Housing and Urban Development

Legal Services

- PHA must have HUD approval for spending on legal matters
 - Fixed price litigation contracts less than \$100,000 can be approved by PHA
- For litigation contracts over \$100,000, approval must be provided by HUD Office of Counsel.

Non-Competitive Bids

- Non-competitive procurements typically occur when:
 - Item or service is available from a single or sole source
 - Public emergency will not allow enough time for a competitive procurement
 - HUD expressly authorizes non-competitive proposals
 - PHA solicits proposals but only receives one, which means that competition was inadequate
- Similar process as competitive proposals, in that:
 - PHA must evaluate the proposal received based on the evaluation factors established at the time of the advertisement
 - Cost analysis required to ensure costs or prices are reasonable

Non-Competitive Bids

- PHAs are required to submit proposed non-competitive contracts to HUD for pre-award approval.
- Justification must be clearly documented and indicate necessity and circumstances of the procurement
 - Description of requirement
 - History of prior procurements and whether they were competitive or non-competitive
 - Specific exception applied from 2 CFR §200.320(f)(1)
 - Unique circumstances requiring the noncompetitive purchase
 - Efforts made to find competitive sources
 - What the PHA will do in the future to encourage more competition
 - Signature of CO and any higher PHA official as required by PHA policy

What is it Section 3?

- Section 3 is a provision of the Housing and Urban Development Act of 1968.
- The purpose of Section 3 is 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.
- Regulations published September 29, 2020, and effective November 30, 2020, govern how recipients of HUD financial assistance, including PHAs, are to comply with Section 3. 24 CFR Part 75.

Section 3 Applicability for PHAs

- Public Housing Programs
 - Operating Fund programs
 - Capital Fund programs
 - Development work under 24 CFR Subpart F
- Rental Assistance Demonstration (RAD): Pre-conversion planning or development work.

Section 3 Compliance Reporting

- **PHAs are not required to submit Section 3 annual reports until further notice.** Supplemental Notice PIH 2022-38/FPM-19-2022.
- Section 3 Performance Evaluation and Registration System (SPEARS) is no longer used. A successor system is planned but will not be available to meet the reporting dates* published in Section VI of PIH 2022-10.

*60 days after the end of the first full PHA fiscal year

- HUD will provide notification about future reporting requirements.

Section 3 Compliance Reporting (continued)

- PHAs (including MTW agencies) must retain records demonstrating compliance with Section 3 and associated regulations and produce those records to HUD upon request.
- PHAs should retain their records digitally to expedite monitoring reviews.
- Recipients can use Section 3 Utilization Tools (HUD-4737, 4737A, 4737B, 4737C, 4737D) to document compliance activities.
- PIH will conduct periodic monitoring reviews to determine compliance.

Section 3 Worker

A Section 3 worker is any worker who currently fits, or when hired within the past five years fit, at least one of the following categories, as documented:

- The worker's income for the previous or annualized calendar year is below the income limit established by HUD
- The worker is employed by a Section 3 business concern or
- The worker is a Youth Build participant.
 - *What is Youthbuild? Academic and occupational skills training program serving youth ages 16 – 24 who have dropped-out of high school, or previously dropped- out and re-enrolled.*

Targeted Section 3 Worker

A Target Section 3 Worker is

- Employed by a Section 3 business concern
 - *Section 3 business concern consists of:*
 - *51% or more owned and controlled by low or very-low-income persons*
 - *51% or more owned and controlled by current residents of public housing or Section 8-assisted housing*
 - *Over 75% of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers*

or

- Currently fits or when hired fit at least one of the following categories as documented within the past five years:
 - A resident of public housing or Section 8-assisted housing
 - A resident of other public housing projects or Section 8-assisted housing managed by the PHA that is providing the assistance
 - A YouthBuild participant

Resources

- REGULATIONS
 - [Section 3 Final Rule](#) (September 29, 2020)
 - [Section 3 Benchmarks](#) (September 29, 2020)
- NOTICES
 - [Notice 2022-10: PIH Section 3 Implementation](#) (April 2022)
 - [Notice PIH 2022-38/FPM-19-2022: Reporting Supplement](#) (December 2022)
- OTHER RESOURCES
 - [Section 3 and RAD](#) (March 16, 2021)
 - [Section 3 on HUD Exchange](#), including:
 - [Section 3 FAQs](#)
 - [“Understanding Section 3” Training](#)
 - [Section 3 Guidebook](#)
 - [Section 3 HUD.gov homepage](#) including:
 - [Section 3 Certification Forms](#)
- CONTACTS:
 - Section3@hud.gov – Section 3 PHA questions
 - Sec3Biz@hud.gov – Section 3 Business questions
 - PIH_OFO_Section3@hud.gov – Monitoring and compliance questions from field offices, not PHAs

QUESTIONS???