

An Introduction to Procurement Practices at Public Housing Authorities (Kentucky Edition)

**BOWLING GREEN, KENTUCKY
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Office of Public Housing
U.S. Department of HUD



Kentucky Housing
Association

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AGENDA

DAY ONE - 1

- **Procurement Basics**
- **PHA Roles and Responsibilities**
- **Procurement Laws and Regulations**
- **Contract Administration**
- **Ethics & Conflicts of Interest**
- **Basic Procurement Requirements**
 - Competition
 - Documentation
 - Planning
 - Cost Estimates
 - Contractor Responsiveness
 - Price Reasonableness

LUNCH

DAY ONE - 2

- **Procurement Types and Methods**
- **Informal vs. Formal**
- **Competitive Procurement**
 - Small Purchases Procurement
 - Micro Purchasing
 - Sealed Bid Procurement
 - Proposal-Based Procurement
 - Qualifications-Based Procurement
- **Noncompetitive Procurement**
- **Contract Types**

DAY TWO

- **Cooperative Purchasing**
- **Intergovernmental Agreements**
- **ARRA & Procurement**
- **Section 3 Requirements**
- **Labor Requirements**
- **Asset Management & Procurement**
- **Wrap-up & Questions**

TAB #1:

**An Introduction to Procurement Practices at
Public Housing Authorities**

TAB #2:

List of Procurement Training Resources - 1

TAB #3:

Mandatory Contract Clauses and HUD Forms

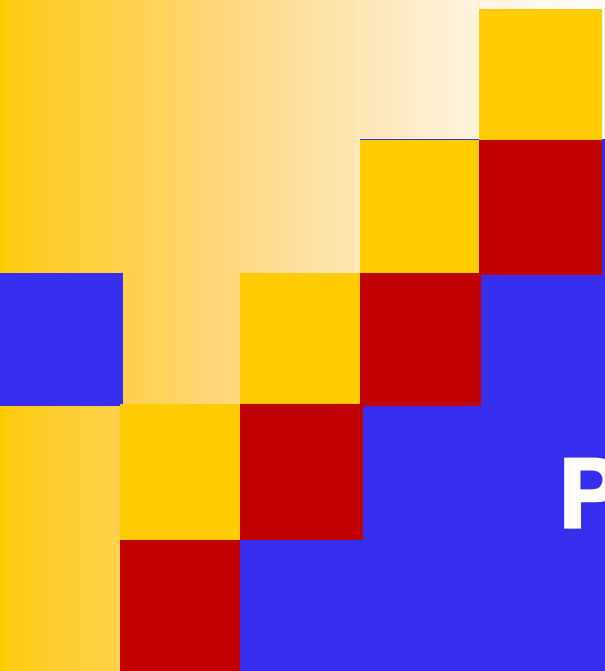
TAB #4:

List of Procurement Training Resources - 2

TAB #1

**An Introduction to Procurement Practices
at Public Housing Authorities**

(PowerPoint Presentation)



An Introduction to Procurement Practices at Public Housing Authorities (Kentucky Edition)

**Office of Public Housing
U.S. Department of HUD**

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Topics of Discussion

- Procurement Regulations
- Methods of Procurement
- Procurement Planning
- Asset Management
- Other administrative requirements
- Review of AMPs by HUD
- **ARRA**

Basics of Procurement



- **24 CFR 85.36**
 - Governs procurement activities at PHAs
- **PHA's Procurement Policy & Procedures**
 - Sets directives & administrative responsibilities
- **HUD Handbook 7460.8 REV. 2 -- "Procurement Handbook for Public Housing Agencies"**
 - Provides administrative & managerial guidance
- **PIH Notices and other guidance**
 - Provides additional directives
- **State and local laws**
 - If more stringent, overrides Federal Law except for specific provisions found in the **American Recovery and Reinvestment Act (ARRA) of 2009**



Procurement Handbook for PHAs

<http://www.hud.gov/offices/adm/hudclips/handbooks/pihh/74608/index.cfm>

- Applies to PH programs: Operating, Capital and Recovery Funds, Development and Special Grants
- Reflects the new \$100,000 Federal Simplified Acquisition Threshold per April 19, 1995, Federal Register Notice
- Establishes a \$2,000 limit for Micro Purchases
- Provides *exemption to HUD review of specific contract actions* provided:
 - PHA self-certifies that its procurement system meets regulatory requirements per 24 CFR 85.36(g)(3)(ii)
 - HUD reviews procurement system and then certifies PHA per 24 CFR 85.36(g)(3)(i)
- Provides a streamlined method for determining price/cost reasonableness
- E-Procurement allowed
- Provides listing of forms, including new clauses for Small Purchases

Procurement Roles



- Role of PHAs:
 - Implement and manage their programs in accordance with program requirements
 - May request HUD review of procurement systems
 - May self-certify that their procurement system meets HUD requirements



- Role of HUD:
 - Review PHA procurement system upon request by PHA
 - Perform post-procurement reviews



Procurement Authority

- Executive Director (ED) is first line of authority unless he/she assigns all or a portion of that responsibility to staff based on the PHA's organizational structure and staffing levels
 - Delegations must specify monetary limits and types of actions allowed, including re-delegations
- ED or Contracting Officer (CO) has full authority to procure and execute contracts on behalf of the PHA
- Board of Commissioners (BOC)
 - Provide only general oversight role of procurement activities at PHA through meetings
 - Should not be directly involved in the process of selecting vendor/contractor
 - May set up a contract concurrence process under Procurement Procedures, if desired, for certain actions which exceed a specified threshold



PHA Procurement Policy & Procedures

- Ensure that a PHA is acting legally and with integrity in its daily operations by providing regulatory and administrative oversight of all procurement activities
- The Procurement Policy...
 - Is adopted by the PHA Board of Commissioners per ACC
 - Identifies specific regulatory aspects of the procurement process
- The Procurement Procedures...
 - State specific actions and activities to use in implementing the policy



PHAs are required to:

- Use their own procurement procedures which reflect applicable State and local laws and regulations per 24 CFR 85.36(b)(1)
- Maintain a contract administration system per 24 CFR 85.36 (b)(2)
- Maintain a written code of standards of conduct governing performance in the award and administration of contracts per 24 CFR 85.36(b)(3)
- Establish procedures which provide for a review process to undertake economical and advantageous procurements per 24 CFR 85.36(b)(4)

PHAs are encouraged to...

- Enter into State and intergovernmental agreements for procurement or use of common goods and services per 24 CFR 85.36 (b)(5)
- Use Federal excess and surplus property in lieu of purchasing new equipment and/or property per 24 CFR 85.36(b)(6)
- Use value engineering clauses in construction projects per 24 CFR 85.36(b)(7)





Grantees will also...

- Make awards only to *responsible contractors* possessing the ability to perform successfully under the terms and conditions of a proposed procurement per 24 CFR 85.36(b)(8)
- Maintain records sufficient to detail the significant history of a procurement per 24 CFR 85.36(b)(9)
- Alone be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements per 24 CFR 85.36(b)(11), including protests, disputes and claims
- Have protest procedures to handle and resolve disputes relating to their procurements per 24 CFR 85.36(b)(12)



Applicability of State and local laws

- Per 24 CFR 85.36(d)(1), the **Federal Simplified Acquisition Threshold** is \geq \$100,000
- But for PHAs in the Commonwealth of Kentucky
 - Formal Procurement Threshold > \$20,000
 - Refer to Kentucky Model Procurement Code, **KRS 45A.385 - “Small purchases by local public agencies”**
- PHAs need to secure local legal advice on applicability of State and local laws
- The most stringent law applies...**ALWAYS!** (unless specified by Federal grantor – e.g., ARRA)



Applicability of State and local laws

Kentucky Model Procurement Code

KRS Chapter 45A

45A.385 Small purchases by local public agencies.

The local public agency may use small purchase procedures for any contract for which a determination is made that the aggregate amount of the contract does not exceed twenty thousand dollars (\$20,000) if small purchase procedures are in writing and available to the public.

Effective: July 15, 2002

History: Amended 2002 Ky. Acts ch. 192, sec. 1, effective July 15, 2002. --

Amended 1990 Ky. Acts ch. 95, sec. 2, effective July 13, 1990. -- Amended 1984 Ky. Acts ch. 6, sec. 2, effective July 13, 1984. -- Amended 1980 Ky. Acts ch. 250, sec. 13, effective April 9, 1980. -- Created 1978 Ky. Acts ch. 110, sec. 78, effective January 1, 1980.

PHAs must have a Contract Administration System!

- Purpose: Ensures that contractors perform in accordance with the terms, conditions, and specifications.
- Applies to all contracts awarded, whether formal or not, under:
 - Small Purchase Procedures (SPP)
 - Invitations for Bids (IFB)
 - Request for Proposals (RFP)
 - Request for Qualifications (RFQ)





in Procurement

- The regulations require that grantees have a written code of standards
 - No employee, officer or agent of the PHA shall participate in the selection, award or administration of a contract paid for from Federal funds *if a conflict of interest* – real or apparent – *would be involved*.
- Recommendations:
 - Do not solicit or accept gifts, favors or anything of monetary value.
 - Keep relationships at a professional level.
 - Avoid any conflicts of interest!



Conflicts of interest...

- Per regulations, *a conflict arises when any of the employees, officers or agents of a PHA, including their family members or partners, have a financial interest in a firm selected for award.*
- Likewise, contractors awarded contracts/agreements at a PHA should not hire any member of the PHA, their family members or business partners, neither any member of the local and State governing body.
- Note: If in doubt, PHA's Contracting Officer should obtain legal advice from attorney, or consult with HUD's Legal Counsel Office.

COMPETITION!



- Per 24 CFR 85.36(c)(1), all procurement transactions must be conducted in a manner providing full an open competition.
 - Examples of restrictive actions include...
 - Unreasonable qualification requirements on firms
 - Requiring unnecessary experience or excessive bonding
 - Non-competitive awards to consultants on retainer contracts
 - Organizational conflicts of interest
 - Specifying only a brand name product
- Per 24 CFR 85.36(c)(3), grantees will have written selection procedures for procurement transactions.



Exceptions to Competition

- Under 24 CFR 85.36(d)(4)(i)(B), PHAs are allowed to sidestep competitive procurement in instances of **emergency** or **public exigency**, if goods and/or services
 - Cannot be solicited in a competitive manner (e.g., award of a contract is not feasible under informal bids, sealed bids or competitive proposals) *because time is of the essence!*
- Emergencies: An *unforeseen or unpreventable* event or occurrence which threatens the life, health and safety of the residents of the properties managed by the PHA
- Public Exigency: An urgent condition affecting the PHA at large or the community where the PHA is located, such as damage caused by a natural disaster or civil/political unrest
- *Prior HUD approval is not required for procurements to address Emergency or Public Exigency situations!*



Emergencies & Public Exigencies

- Not discussed in Procurement Handbook
- Emergencies:
 - Section 11 of the ACC allows PHAs to incur in *unbudgeted emergency expenditures* to eliminate serious hazards to life, health and safety
 - Addressed in sample Procurement Policy
- PHAs must document use under the noncompetitive solicitation process. Otherwise, the PHA must competitively bid work per procurement regulations 24 CFR 85.36.
 - Signed certification summarizing action

Procurement actions by PHAs deemed to restrict competition



- Geographic Restrictions to quotes/solicitations except for A/Es
- Limiting “Competitive Range” to “top 3” offers for competitive-based procurements
- Mandatory attendance at pre-bid conference
- Closed specifications which request a specific product by *brand name* “only” or either can only be met by one product

Use of Name Brands

- In using name brands for products, the PHA's procurement specifications or documents must:
 - Use salient specifications, and
 - State "or equal."



2009 Jagurarius XE V16

- Metallic Silver
- Power Moon Roof
- 4.6 Liter, 64 valve, 16 cylinders
- 500 horsepower
- DOHC engine
- Navigation System
- Or equal!



Documentation

- PHAs must properly document each significant action of every procurement
- Per 24 CFR 85.36(b)(9), the records maintained must be sufficient to detail the significant history of a procurement, including:
 1. *Rationale for procurement method used*
 2. *Selection of contract type*
 3. *Selection/rejection of contractor*
 4. *Basis for contract price*
- Per 24 CFR 85.42, PHAs must keep records a minimum of 3 years from the date of the last expenditure.



Sample of records...



- Independent estimate
- Rationale for procurement method employed for each procurement action
- Selection of contract type for other than a typical procurement
- Copies of newspaper advertisements
- Abstract of offers made
- Calculation of low bid
- Price or Cost Analysis
- List of vendors
- Detail of negotiations (for proposal or qualifications-based procurement)
- Contractor's selection or rejection

Procurement Planning



- For each procurement action planned, *identify* the Scope or Statement of Work (SOW) and type of contract.
 - Short-Term vs. Long-Term Needs per Physical Needs Assessment
- *Consider* the time restraints:
 - Urgency
 - Type and size of the job
 - Market conditions
- *Develop* a price estimate (e.g., ICE) for each procurement action planned before advertising...its confidential!
- *Identify* the source and availability of funds:
 - Operating vs. Capital Funds or other
- *Develop* a schedule for actions planned with due date.

Some basic requirements...



- PHAs cannot place unreasonable requirements on firms or other entities.
- PHAs cannot negotiate with lowest bidder on a sealed bid contract.
- PHAs cannot break down services estimated to cost over the \$100,000 Federal Simplified Acquisition Threshold (or the established Small Purchase Threshold at the PHA - \$20,000 for KY) into several purchases to circumvent regulations (referred to as “bid splitting”) *except as justified* to provide opportunities to Disadvantaged Business Enterprises (DBE).



Some basic requirements (cont.)...

- Terms of Contract – PHAs must follow State/local requirements; KY requirements –
- All contracts must have a finite period (1 or 2 years)
- Contracts may incorporate options for renewal or extension, for a total contract period not to exceed 5 years in total
- Any contract or agreement greater than 5 years in length must be approved by HUD



10 Basic Procurement Steps

1. Develop a Statement of Work (SOW)
2. Complete an Independent Cost Estimate (ICE)
3. Determine rationale for procurement method
4. Solicit & receive quotes/bids/proposals
5. Determine responsive/responsible bidder, as applicable
6. Determine price reasonableness
7. Award contract for solicitation
8. Implement contract administration system
9. Close out the contract
10. Maintain records for minimum of 3 years

Independent Cost Estimate (ICE)

- ***An ICE is required for each procurement action!***
- Purpose:
 - Used for budgetary purposes
 - Used to determine if procurement is to be formally advertised or not
 - Used as comparison in determining price/cost reasonableness
- In developing the ICE, PHAs may use:
 - Price last paid for similar procurement
 - Catalog price
 - Comparison of previous bid prices
 - Advertised prices
 - Personal experience
 - Other historical information



A procurement tenet!

- Per 24 CFR 85.36(b)(8), PHAs shall award procurements only to ***responsible*** contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement!





Responsive Bidders

- A bidder or offeror who submits a reply or bid which conforms to the material terms and conditions of the solicitation
- Per 24 CFR 85.36(d)(2)(ii)(D), the qualification process applies *only* to Sealed Bids (i.e., IFB)
- The PHA's Contracting Officer (CO) must assess responsiveness by ensuring that all required documents were provided (e.g., bid bond) as noted in the solicitation or request
- *Makes bidders or offerors to a solicitation eligible entities to be considered for award!*



Responsible Contractors

- A bidder or offeror that has the ability to perform successfully under the terms and conditions of the proposed contract/agreement
 - Per 24 CFR 85.36(d)(2)(ii)(D) of Sealed Bids, PHAs shall award contracts to the lowest responsive and responsible bidders
 - Per 24 CFR 85.36(d)(3)(iv) of Competitive Proposals, PHAs shall make awards to responsible firms whose proposal is most advantageous
- In determining responsibility, the PHA's CO shall consider the bidder's/offeror's:
 - Integrity
 - Compliance with public policy
 - Past performance and experience
 - Financial and technical resources

Price Reasonableness Test

- A PHA must support award by documenting that the price/cost for the goods and services is reasonable!
- A Price or Cost Analysis is *always required* in all buys
 - Amount and type of purchase or acquisition determines the degree of analysis to be completed before contract or agreement award
 - Simplistic approach implemented by Procurement Handbook
- The ICE developed *prior* to issuing the solicitation should also be used as reference for the analysis



PRICE ANALYSIS



- A simple comparative analysis of the *prices* quoted by the various suppliers, contractors, etc., to the PHA's ICE and other sources of information
- Typically used for Micro or Small Purchases, IFB and *simple* Competitive Proposals (i.e., RFP/RFQ) when only the price being paid is the determining factor and "fair" competition is present
- Once the CO determines that the prices quoted or offered in response to the solicitation are ***reasonable***, the PHA can award the solicitation to the lowest bidder/offeror!

COST ANALYSIS



- A more detailed analysis of the price of the solicitations
 - Required when price is not the determining factor for the award, there is no competition in the open market, or either prices vary widely
 - Used mostly for *complex* Competitive and for Noncompetitive Proposals
- Consists of a review and evaluation of each element of cost to determine its *reasonableness, allocability and allowability!*
 - Break down the price into its components of cost
 - Examine each item of cost - materials & labor
- Once the CO determines that the prices quoted or offered in response to the solicitation are **reasonable**, the PHA can award the solicitation to the lowest bidder/offeror!

Sample A/E Cost Proposal

Eligible A/E Costs	Quantity	Rate	Subtotal	Total
Architectural Assistant	185 hrs	\$65	\$12,000	
Mechanical Engineer	120 hrs	\$85	\$10,200	
Lead Architect	80 hrs	\$125	\$10,000	
DIRECT LABOR COSTS				\$32,000
Materials			\$5,000	
Travel			\$1,000	
OTHER DIRECT COSTS				\$6,000
FRINGE BENEFITS		20% of labor costs (\$32,000 x .20)	\$6,400	
OVERHEAD		20% of total costs (\$44,400 x .20)	\$8,880	
TOTAL INDIRECT COSTS				\$15,280
Sub-total Direct and Indirect Costs			\$53,280	
PROFIT		9%		\$4,795
TOTAL CONTRACT COST (FIRM-FIXED PRICE)				\$58,075

A&E Cost Proposal

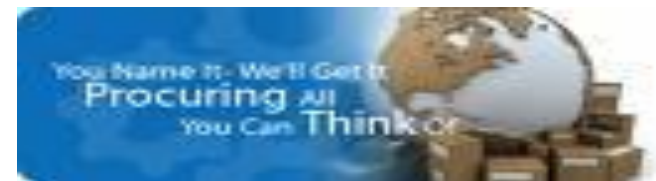
Fringe Benefits Calculation		
Item 1	FICA	7.5%
Item 2	Unemployment Taxes	1.3%
Item 3	Workmen's Comp. Ins.	1.5%
Item 4	Health Insurance	9.7%
Total %		20.0%

LUNCH!

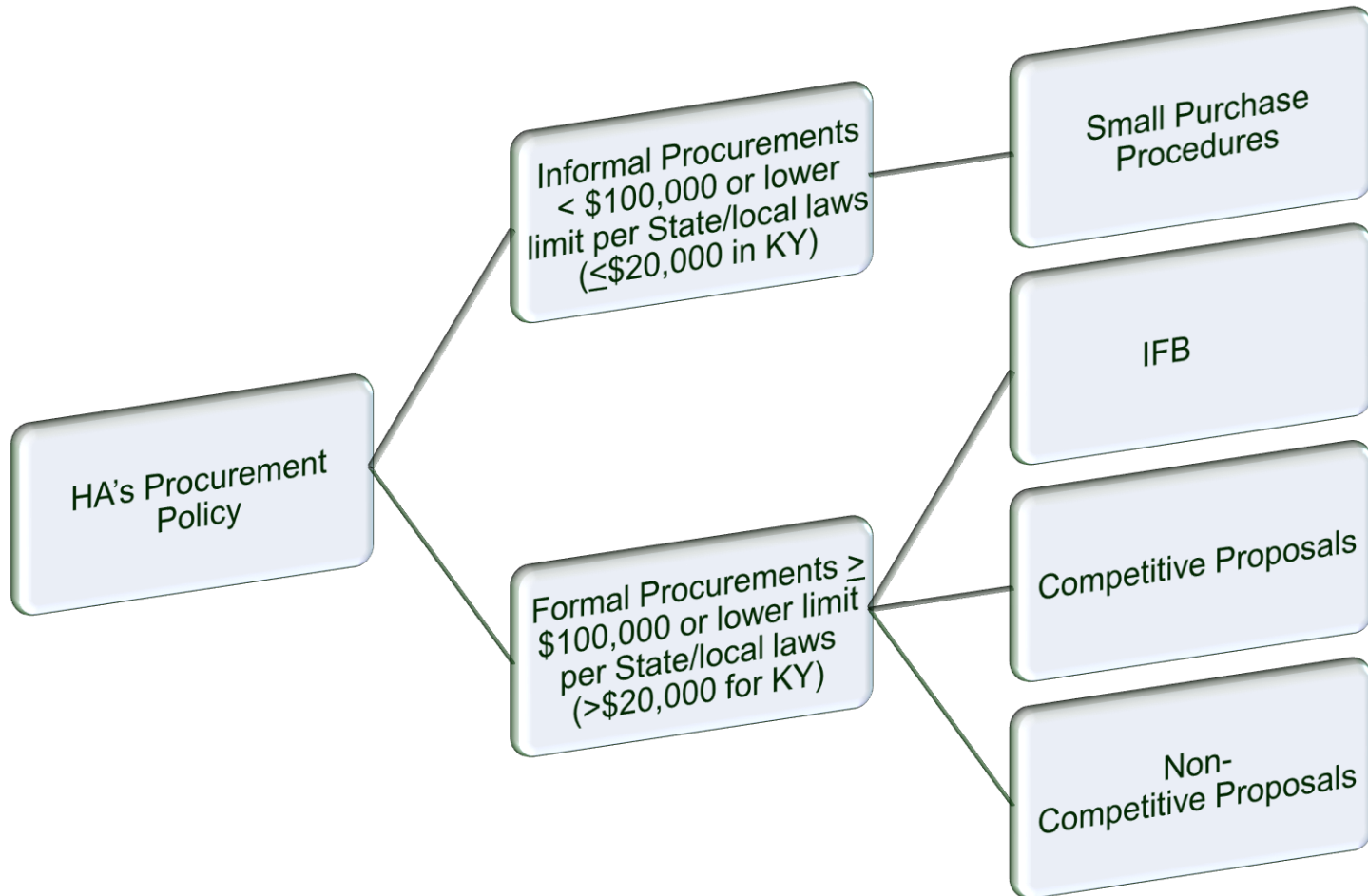


The Procurement Methods

- 24 CFR 85.36(d) outlines four basic procurement methods to be used based on the Federal Simplified Acquisition Threshold/PHA Small Purchases Threshold:
 1. Small Purchase Procedures (**Informal, \leq \$20,000 for Kentucky**)
 2. Sealed Bids (**Formal, $>$ \$20,000 for Kentucky**)
 3. Competitive Proposals
 4. Noncompetitive Proposals



Procurement Matrix for PHAs





Informal vs. Formal Procurement at PHAs

- **Informal Procurements:**
 - Used when the estimated dollar value of the procurement activity planned is less than the PHA's Small Purchase Threshold
 - Any procurement method may be used
 - **Public advertisement is *not required!***

- **Formal Procurements:**
 - Used when the estimated dollar value of the procurement activity planned equals or exceeds the PHA's Small Purchase Threshold
 - Any procurement method may be used *except* SPP
 - IFB and RFP/RFQ under Competitive & Noncompetitive Proposals
 - **Public advertisement is required!**



Procedures at Kentucky PHAs

- Typically, for PHAs in the Commonwealth of Kentucky, the Procurement Policy defines Small Purchases as any procurements estimated to cost not more than \$20,000
- A typical sample distribution for Informal Procurements as recommended in the Procurement Handbook is:
 - < \$50 - Petty Cash Purchases
 - \$0 to \$2,000 - Micro Purchase
 - \$2,001 to \$20,000 – Small Purchases
- If procurement action is estimated to cost more than \$20,000, then it must be formally procured in the open market!
 - Sealed Bids, Competitive and Noncompetitive Proposals



General Requirements for Small Purchase Procedures (SPP)

- Used when the Independent Cost Estimate (ICE) is less than the Federal Simplified Acquisition Threshold or a lower threshold as specified in the PHA's Procurement Policy (\$20,000 in Kentucky).
- These purchases are less formal than the other types of procurement procedures.
- At least three oral or written quotes (via facsimile or email) should be obtained.
- Procedure *allows* PHAs to obtain equipment or supplies, or to seek professional services typically obtained via the formal solicitation process.
- PHAs need to incorporate the provisions outlined under Table 5.1 to the Purchase Order, contract or agreement.



Micro Purchases

- A sub-category of SPP costing less than \$2,000.
- An Independent Cost Estimate is not required!
- Only one (1) quote required if price is considered reasonable by the CO.
 - Signature of CO signifies that price is reasonable based on the open market prices (Price Reasonableness Test is supported by the open market).
- If used, purchases of like items should be equitably distributed among available suppliers.
- Prior to repeating a purchase, a new quote should be obtained to verify that the price being paid is still reasonable.
- PHA uses Purchase Order (PO) to document.
- Wage rates are not required!

11 Basic Steps for Small Purchase Procedures

1. Develop basic Statement Of Work
2. Develop Independent Cost Estimate
3. Determine if specifications are needed
4. Develop a potential list of bidders or offerors
5. Contact potential bidders/offerors via phone, fax or email
6. Discuss nature of solicitation (bid or proposal) with sufficient detail



11 Basic Steps for Small Purchase Procedures (cont.)

7. Receive solicitations, preferably in writing
8. Determine that price is reasonable
9. Award the contract by executing official document (PO or agreement)
 - CO's signature satisfies the responsibility criteria of the successful offeror
10. Document the file
 - Record of all actions taken
 - Copy PO or agreement
11. Manage the contract award per PHA's established procedures





HUD Forms for Small Purchases

- **Solicitation** – no HUD form mandated; format based on action being procured
- **PO or Contract Agreement** – HUD mandates no format, however, required contract clauses can be found in the following documents:
 - Table 5.1, Mandatory Contract Clauses For Small Purchases Other Than Construction
 - For **construction/development** contracts between \$2,000 and \$100,000: HUD-5370-EZ, General Conditions for Small Construction/Development Contracts
 - For **maintenance & non-routine maintenance contracts** between \$2,000 and \$100,000: Section II, HUD-5370-C, General Conditions for Contracts - Non-Construction Contracts (Section II of the form)
 - Any applicable wage determinations

When to use Sealed Bids?

- Used mostly for construction contracts and purchase of commodities (e.g., equipment and supplies)
- Used when the cost estimate is *more than* the Federal regulatory threshold or the limit specified in the PHA's Procurement Policy (\$20,000 in KY)
- Two or more bidders willing in the open market
- Dependent upon good specifications
- Can award on the basis of *price*
- Can award a fixed-price contract



The Sealed Bid Process...

...four basic steps!

1. Advertise solicitation or Invitation For Bids (IFB)
2. Open bids *publicly*
3. Award contract to ***responsive & responsible bidder with the lowest bid***
4. Execute a fixed-price contract



Issuing a Sealed Bid – IFB

- Develop a detailed Statement Of Work
- Develop/reassess Independent Cost Estimate
- Determine if Plans/Specifications are needed
 - Hire an A/E firm using appropriate procurement. method
- Draft final Plans/Specifications and obtain wage rates
- Finalize bid documents
- Publicly advertise for bids
 - Local newspapers, trade periodicals, etc.
 - Mail solicitation to potential bidders





Issuing a Sealed Bid – IFB (cont.)

- Hold a pre-bid conference to discuss IFB
 - *Attendance is desirable but not mandatory!*
 - Issue addenda to clarify significant issues
- Any questions/requests for clarification should be submitted in writing, and responses in the form of addenda must be transmitted to all parties holding bid packages via post or facsimile (confirm receipt)
- 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!*



Issuing a Sealed Bid – IFB (cont.)

- Analyze bids received to satisfy the responsiveness requirement
 - Verify that all required documents in the IFB have been provided, including the bid bond submittal
- Complete a Price (or Cost) Analysis of bids received against each other if competitive, or by using other sources and the Independent Cost Estimate
- Verify successful contractor's responsibility before contract award
- Write justification and/or recommendation letter to the file selecting successful entity
- If required, obtain Board of Commissioners approval



Issuing a Sealed Bid – IFB (cont.)

- Notify contractor selected for award of intent to award contract
- Notify unsuccessful bidders of no award
- Contract agreement is executed by the parties
- Conduct a pre-construction conference
- Obtain insurance documents, Performance and Payment Bonds, etc.
- Issue the Notice to Proceed
 - Outlines start/completion timeframes
- Manage the contract per administrative procedures in place at the PHA!

HUD Forms for Sealed Bids



- Attachments to IFB:
 - HUD-5369, Instructions to Bidders for Contracts
 - HUD-5369-A, Representations, Certifications, and Other Statements of Bidders
 - HUD-5369-B, Instructions to Offerors Non- Construction
 - HUD-5369-C, Certifications and Representations of Offerors Non-Construction Contract
 - Any applicable wage determinations
- Attachments to Contract Agreement:
 - HUD-5370, General Conditions for Construction Contracts
 - HUD-5370-C, General Conditions for Non-Construction Contracts (either Section I or both Sections I & II)
 - Any applicable wage determinations



Administration of IFB

1. Modifications and withdrawal by bidder are allowed before the bid opening.
2. Bids must be opened on scheduled date, time and place. Any postponement must be issued via an official addendum mailed with sufficient time (7 days).
3. Any issues brought forth in the bid opening are taken under advisement only...no opinions given!
4. Generally, no withdrawals allowed after bid opening unless an obvious error is evident..
5. If deductive alternates are used, you have to take them in a specific order as outlined in the bid documents.
6. Cannot pre-price future work, e.g., no add-on alternates.
7. Cannot negotiate price!

Proposal-based Procurement

Two types of Proposals:

■ Competitive Proposals

- The market *guarantees* adequate competition

■ Noncompetitive Proposals

- The market does not support competition
- Single or sole source items/services
- Emergencies and Public Exigencies



When to use Competitive Proposals



1. Conditions require the use of the method, such as unclear or incomplete specifications.
2. Action is based on technical merits and price.
3. There are 2 or more qualified offerors in the market
4. Cannot award a firm fixed-price contract (i.e., IFB).
5. Formal procurement used when the cost estimate is *more than* the Federal regulatory threshold or the limit specified in the PHA's Procurement Policy (**\$20,000 in Kentucky**).

Competitive Proposals

Competitive-Based Proposals

- Identified as Request for Proposals (RFP)
- Used for procuring professional and consulting services, *including A/E professional services*
- **Price** is considered as one of the selection factors!



Qualifications-Based Proposals

- Identified as Request for Qualifications (RFQ)
- *Procedure can only be used for the selection of A/Es*
- **Price** is not used as a selection factor!



Competitive Proposals (cont.)

Competitive-Based Proposals (or RFP)

- ***Price is part of the evaluating factors outlined!***
- A competitive range is determined based on both price and qualifications; if the best ranked firm is not selected, then negotiations are held and a reassessment performed once again prior to selecting the best ranked firm.

Qualifications-Based Proposals (or RFQ)

- Only allowed for the selection of A/E firms and selection of partner for public/private partnerships.
- ***Price is not part of the evaluating factors outlined!***
- The competitive range is based only on the qualifications of the responding entities, the top contender is selected, and *price negotiated thereafter.*

Types of RFPs


Request for Proposals

Competitive Proposals

Non-Competitive Proposals

Qualifications-Based Proposals
(Used in the Selection of A/Es)
RFQ
Price is Excluded

Competitive-Based Proposals
RFP
Price is Included



General requirements for Competitive Proposals

- Evaluation Factors and their *relative weight* must be included in the RFP/RFQ format 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 factors.
- 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.
- Profit must be negotiated as a separate element of the contract.

The Competitive Proposal Process...four basic steps!



1. Advertise & receive proposals (RFP/RFQ)
2. Evaluate qualifications, with or without price
3. Negotiate the price, if applicable
4. Award the contract agreement to the top ranked entity with the best qualifications, price considered!



Issuing Competitive-Based Proposals

- Develop a detailed Statement Of Work
- Develop/reassess the Independent Cost Estimate
- Develop the applicable Evaluation Factors, ***including price***, and the award criteria
- Publicly advertise the Request For Proposals
 - Local, state and national newspapers, trade periodicals, etc.
 - Mail advertisement to potential entities or firms
- Hold a pre-proposal conference, if deemed necessary
- Issue addenda, if necessary
- Receive proposals
 - ***Do not open publicly!***
 - Time-date stamp and safeguard

Technical Evaluation Committee/Panel

- Made up of at least 3 members...use odd numbers
- Members identified by CO
- Panel member must identify any conflict of interest related to RFP or RFQ and, if necessary, must recuse themselves from participation in evaluation
- Independent panel
- Confidential decisions
- See Appendix 9 – Certification of Nondisclosure





Rating and Ranking of Proposals

- Action plan...
 - Draft evaluation factors and scoring range - customized to proposal - before solicitation is advertized
 - Develop rating and ranking forms to summarize criteria
 - Identify evaluation committee and chairperson
- Use whole numerals for scoring range
 - Example for 20 point scale
 - 15 – 20 points: Excellent
 - 10-14 points: Good
 - 0-9 points: Poor
- CO holds meeting to discuss procedures to follow



Rating and Ranking (cont.)

- Sample Evaluation Factors

1. Evidence of experience and ability to perform task specified under solicitation
2. Capability to provide service in a timely manner
3. Knowledge of applicable Federal, State and local laws, and regulations
4. Fee schedule for tasks
5. Licensing requirements
6. Other rating criteria, as necessary

- Final Ranking Identification

- Acceptable
- Capable of being made acceptable
- Unacceptable

Competitive-Based Proposals (cont.)

- Evaluating Committee evaluates proposals *using one of two methods* to rank potential entities (procedure employed must be identified in advertised RFP):
 - Price is part of the initial evaluation factors!
 - Points are assigned to the “price” based on its relative importance to the points assigned to the other technical factors.
 - ***Evaluation of factors is a one-step process.***
 - *Trade-off method where price is secondary!*
 - A technical evaluation of the qualification factors, *excluding price*, is done first, followed *by* a final evaluation considering price.
 - ***Evaluation of factors is a two-step process.***
- Evaluation Committee issues the Evaluation Report
 - Lists the final ranking of the offerors by technical merit, *including price.*



Competitive-Based Proposals (cont.)

- Evaluating Committee develops the negotiation objectives to be used by the CO in the reassessment of proposals.
- Contracting Officer determines the limit of the competitive range (cut-off) and either...
 - Proceeds to negotiate with the best ranked offerors, or
 - Awards contract to top ranked offeror without negotiations provided such procedure is clearly outlined in the RFP, and the contract file contains the rationale for such action.
- Negotiations: *discussions* with top-ranked offerors which allow *clarifications of unclear issues, improvement of weaknesses, corrections of deficiencies, etc.*, with an opportunity to revise the original proposals.



2nd Round of CBPs

- After initial negotiations are complete, CO notifies the entities within competitive range to submit *best and final offers* ...a second round!
- CO receives best and final proposals.
- Evaluation Committee performs a second technical evaluation of re-submitted final proposals and makes a final recommendation per Evaluation Report.
- CO either selects the top-ranked provider or, if needed, performs second round of negotiations/discussions with selected offerors in the final competitive range.
- CO accepts the most advantageous proposal.
- CO must justify his determination in writing and ensure that the successful offeror is responsible.

Issuing CBPs... the end!



- If required, obtain BOC approval
- Conduct pre-award conference, if required
- CO approves award of agreement
- Agreement is executed by the parties
 - Notice of Award shall be posted in a public area
- CO notifies unsuccessful offerors
- PHA administers and manages the contract per established procedures!




Issuing Qualifications-Based Proposals

- **Used only for the selection of A/Es (price is excluded)**
- The RFQ includes only technical qualification statements related to the project being procured
- The evaluation process is similar to the one outlined for CBPs except there's no factor for price
- Once a competitive range has been established, the CO negotiates a price with the top-ranked firm in an effort to reach a fair and reasonable cost. If an agreement can not be reached, negotiations are terminated with this entity and the CO starts negotiations with the next highest-rated firm, etc., until a contract is obtained.
- *Price is negotiated after the best qualified entity has been selected*
- QBP can only be used for the selection of A/Es or when specifically authorized by HUD!



HUD Forms for Competitive Proposals

- Attachments to Solicitation (Non-Construction and A/Es)
 - HUD-5369-B, Instructions to Offerors Non-Construction
 - HUD 5369-C, Certifications and Representations of Offerors Non-Construction Contract
- Attachments to Contract Agreement
 - Non-Construction
 - HUD-5370-C, General Conditions for Non-Construction Contracts (either Section I or II or both)
 - A/Es
 - HUD-51915, Model Form of Agreement Between Owner and Design Professional, or
 - HUD-51915-A, Contract Provisions Required by Federal Law or Owner Contract with the U.S. Department of Housing and Urban Development (*used with AIA B108-2009 model contract*)



General Requirements for Noncompetitive Proposals

- Used when procurement under other types is *not feasible* and one of the following *circumstances* applies:
 1. Item is available only from a single source,
 2. An emergency situation or public exigency exists,
 3. After solicitation of a number of sources, competition is determined inadequate with only one respondent, *or*
 4. HUD authorizes.
- If applicable, its initial use must be justified in writing.
- Since there are no comparative prices in the open market, there's no competition. Therefore, *a Cost Analysis must be part of the evaluation report.*
- Also, since there are no other offerors, all technical and cost aspects may be negotiated with the sole provider.



Issuing Noncompetitive Proposals

- Same process as for Competitive-Based Proposals except that the evaluation covers only the technical merits and price of the single competitor.
 - Evaluation may be performed by CO since no need to arbitrarily rate more than one offeror (clear guidance not provided in Procurement Handbook).
- *A Cost Analysis must be part of the evaluation!*
- The CO must certify that the entity is responsible at the time of contract award.
- Administer and manage the contract per administrative procedures in place at the PHA!

Most frequently used forms of noncompetitive procurements!

- Issuance of contract modifications outside the SOW to add unrelated work
- Non-emergency actions
- Sole source procurements without HUD approval per 24 CFR 85.36(g)(2)(ii)





Summary of Procurement by PHAs

- Follow the Golden Rule: Always provide full and open competition!
- Determine that price is reasonable by performing a price/cost analysis
- Award to responsive & responsible bidders or offerors, as applicable
- Always document the contract file
- Ensure contract compliance



HUD approval required per 24 CFR 85.36(g)(2)

- *Any procurement procedures or operational actions which fail to comply with the established regulations*
- For formal procurements exceeding the Federal Simplified Acquisition Threshold *or* the limit specified in the PHA's Procurement Policy (\$20,000 in Kentucky) where...
 - Only one bid or offer is received
 - Awarded without competition
 - Specifies a "brand" name
 - Awarded to other than the apparent low bidder under an IFB
- A contract modification which changes the Scope of Work **or** increase the contract amount by more than the Federal Simplified Acquisition Threshold *or* the limit specified in the PHA's Procurement Policy (\$20,000 in Kentucky)
 - *Applies to any type of procurement method!*

HUD approval of Noncompetitive Actions

Types of noncompetitive actions per §85.36(d)(4)(i)	Linkage to HUD review provisions of noncompetitive actions @ §85.36(g)(2)	HUD review/approval per established Simplified Acquisition Threshold at PHA (\$20,000 in Kentucky)
1. Single source procurements	Example: PHA requests bid/offer from only one entity	HUD must approve since awarded without intent to meet competition requirements per 24 CFR 85.36(g)(2)(ii)
2. Emergency or Public Exigency situations do not allow use of competitive solicitations	HA proceeds to mitigate condition: time is of the essence!	No HUD approval required!
3. HUD authorizes use of noncompetitive proposals	Examples: use of brand name or issuance of contract modifications which change scope of contract or exceed the established Simplified Acquisition Threshold at PHA	HUD must approve since awarded without competition per 24 CFR 85.36(g)(2)(iii) and (v)
4. After issuance of solicitations, competition is determined inadequate (i.e., sole source)	Example: One bid/offer received in response to a solicitation in open market	Even though PHA intended to meet competition, there's none in the open market; therefore, HUD must approve per 24 CFR 85.36(g)(2)(ii)

Contract Types

- **Prohibited types**
 - Cost-plus-percentage-of-cost
 - Cost-plus-percentage-of-construction cost
- **Fixed-Price**
 - Firm fixed-price (used for IFB)
 - Fixed-price with economic market adjustment
- **Cost-reimbursement**
 - Cost contract with no fee (used for non-profit organizations)
 - Cost-plus-fixed fee (negotiated fee = profit)
 - Two types based on delivery or performance
- **Indefinite-delivery contracts**
 - Definite-quantity
 - Requirements
 - Indefinite-quantity
- **Time and materials and labor-hour**
- **Letter contract** (mostly used in emergencies for preliminary work)



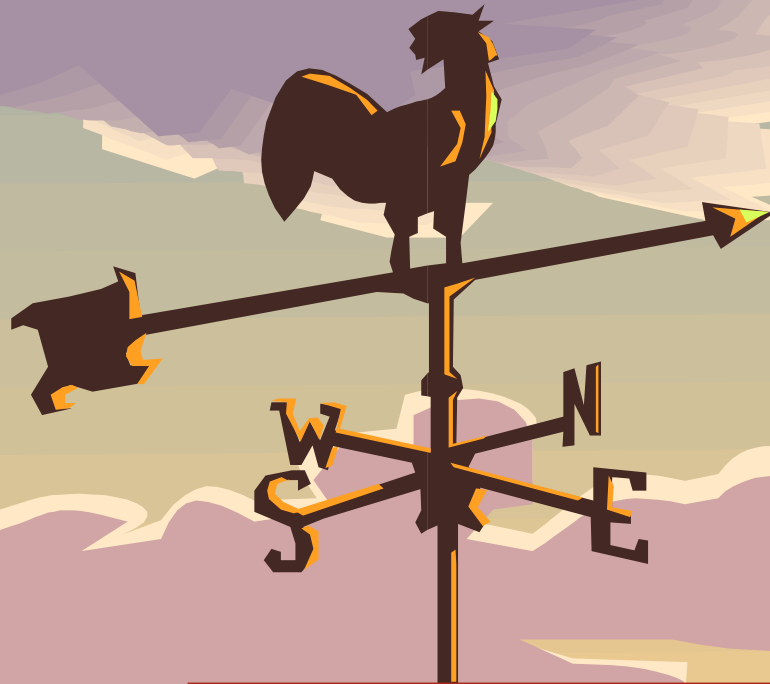


END OF SESSION ONE



ANY QUESTIONS?

START OF SESSION TWO



ANY QUESTIONS?



Cooperative Business Relationships

- Per 24 CFR 85.36(b)(5), to foster greater economy and efficiency, PHAs are encouraged to enter into *State and intergovernmental agreements* for procurement or use of common goods and services.
- Alternative procurement method requires less time and effort, and results in lower administrative costs.
- Conditions of use (see Section 14.2 of Chapter 14 of the Procurement Handbook):
 1. Method can only be used for “common supplies and services” of a **routine nature** at a PHA.
 2. Before using method, PHA should make a **comparative Cost Analysis** of the cost and availability of undertaking procurement in open market vs. with governmental entity.
 3. The PHA **must ensure** that the governmental agency procured the supplies or services in compliance with 24 CFR 85.36.

Cooperative Purchasing (cont.)

- Purpose: A PHA enters an agreement with a government agency to acquire supplies or services previously procured by the government agency without having to issue a specific solicitation in the open market.
 - Note: The PHA is subject to the good/services procured by the government entity, therefore, it must review their procurement to ensure it meets its needs.
- **Condition #4**: Before undertaking any purchases, the PHA must enter into an agreement with the government entity selected to participate in the cooperative effort.
- The PHA would then obtain the supplies or services at the same price, either directly from the vendor or through the government agency.
- Payment can be made directly to the vendor or through the government agency.

Four Methods of Cooperative Purchasing

1. Contracting directly with the government agency to purchase their equipment/surplus.
2. Joining with another government agency to issue/award a competitive solicitation.
3. Buying from GSA Schedule 70, Information Technology, and Consolidated Schedule contracts containing IT SINs only.
4. Entering into a contract with a firm that has a competitively-solicited contract with a local government agency: **Joinder or Piggy-back**



HUD's Assessment of Intergovernmental Agreements

- Assess Preliminary Requirements:
 - Was a comparative Cost Analysis performed?
 - Is the action for obtaining “common supplies and services” of a *routine nature*?
 - Does PHA have evidence that the gov. entity procured the goods & services per regulations @ §85.36?
 - Was an agreement executed between the parties?
- Assessment of Procured Actions undertaken by PHA:
 - Determine where activity falls within 4 methods
 - Assess per criteria discussed in Procurement Handbook

Use of Debit & Credit Cards for Purchases



- Not a procurement method!
- An acceptable payment method in which a debit or credit card is used for eligible PHA costs
- Typical providers:
 - Gasoline for maintenance and inspection vehicles
 - Office supplies
 - National supply and hardware stores
- Allowed as a financial transaction for Micro Purchases and Small Purchases
- Procurement Procedures must establish internal controls for use & monetary limit



Sample Policy & Procedures

■ Procurement Policy

- Current format recommended under Appendix 1 of REV 2 of the Procurement Handbook
- PHAs should implement “as is” with minor edits commensurate with their operation

■ Procurement Procedures

- No sample format provided in the Procurement Handbook
- Research web database for samples posted by other similar PHAs

ARRA Amendments to PHA Procurement Policy



- Procurement requirements under page 6 of PIH Notice 2009-12:
 - Any requirements relating to the *procurement of goods and services* arising under State and local laws and regulations shall not apply to Capital Fund Stimulus grants except where permitted by 24 CFR Part 85.
 - PHAs were instructed to amend their procurement standards and policies, *as necessary*, to expedite/facilitate use of ARRA funds by removing all procurement standards contrary to Part 85.
 - PHAs were allowed to use noncompetitive procedures without having to obtain preliminary HUD approval.
 - In procuring work activities, PHAs shall follow **Buy American Provisions** under Section 1605 of ARRA .

More on ARRA Amendments to Procurement Policy

- Email to PHAs entitled Recovery Act – Procurement Guidance and FAQs # 3 both dated July 24, 2009:
 - PHAs are required to amend their Procurement Policy by issuing an addendum to remove any State or locally imposed threshold.
 - Other administrative *inclusions, prohibition or preemption* of State/local laws 24 CFR 85.36 are not affected by the ARRA provisions.
 - Applicable to any and all procurement activities undertaken after March 18, 2009, the effective date of the ACC for the FY 2009 CFRGs (S-type grants).
- See sample scenarios under Procurement Guidance for FO for Formula Grants – One Year Strategy issued 2/10/2010.



Section 3 per 24 CFR, part 135

- Promotes economic opportunities for low-income residents and certified low-income businesses through professional services and other labor contracts
 - Does not apply to purchases < \$25,000 involving goods and services
 - Reference requirement and attached Section 3 clause to applicable solicitations subject to requirement
 - Document contract file of efforts
- Support and promote Disadvantaged Business Enterprises (DBEs) and Resident-Owned Businesses
 - Goals : 20% of all operating and capital costs

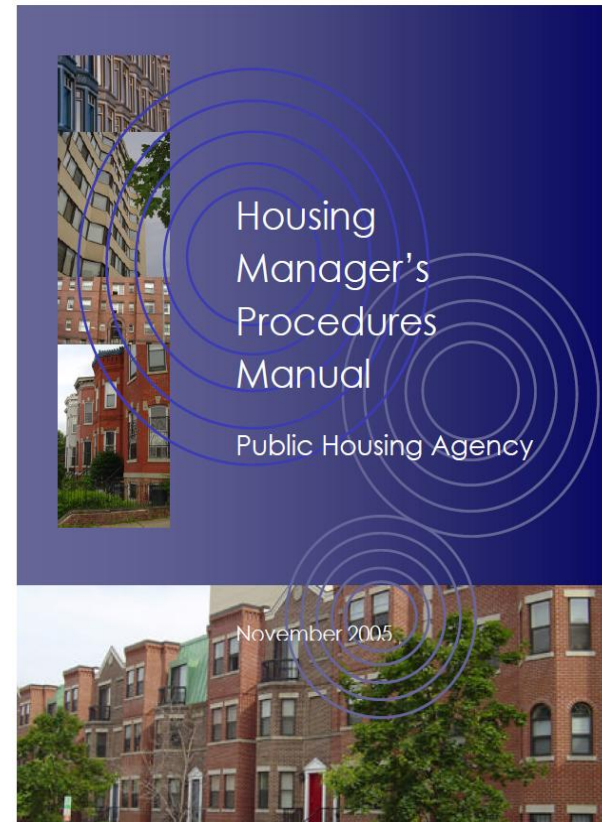


Wages for Maintenance Work

- Applies to all maintenance-related contracts > \$2,000
- PHA must pay workers prevailing wages per established maintenance classifications such as painters, roofers, plumbers, electricians, etc.
 - Davis Bacon wages for classified construction work
 - HUD-determined wages for routine and non-routine maintenance work
- Service contracts are exempt, such as veh. maint./repairs, security services, trash pick-up, routine HVAC service/repairs, etc.
- Management: wage interviews required using HUD-11

PHAs and Asset Management

For PHAs using an Asset Management structure, specific guidance is outlined in Chapter 11, “Procurement” of **Housing Manager’s Procedures Manual – Public Housing Agencies**



http://www.hud.gov/offices/pih/programs/ph/mtw/housingmanpro_pha.pdf



Planning under Asset Management

- All PHAs under the Asset Management structure must *develop* an **Implementation Plan** which identifies the procurement decision making process for the project-based set up.
- Determine which specific procurement activities are to be performed...
 - At a project level by each AMP under management,
 - By the Central Office Cost Center (COCC), or either
 - Contracted out in the private market.
- Factors to consider:
 - Need/urgency: emergency vs. routine services
 - Available skills and capacity in-house @ AMP vs. COCC
 - Type of procurement activity: maintenance vs. administrative and professional services
 - Funds availability per allowable fee structure @ AMP
 - Cost-effectiveness & convenience of delivery @ AMP
 - COCC administrative set-up & resources available



Asset Management Provisions

- All procurement related activities are to be locally administered and managed by the *project-based* housing manager that controls day-to-day operations:
 - All contracting is planned and executed at a project-based level.
 - The cost to administer procurement activities is a function of overall management responsibilities at AMP.
- Regulations @ 24 CFR 85.36 require PHAs to perform procurements as a PHA-wide entity; therefore, an AMP may not breakdown activities aggregated under SPP to meet the Micro Purchase threshold, or from the Formal Procurement process to be procured under SPP except when justified .
- PHAs were required to start developing project-based budgets in FY beginning July 2007 and thereafter
 - 1st yr. was a transition period
 - PHAs were required to comply with the fee structure starting in July 2008

Asset Management Implementation Plan



- Outlines the decision making process under the AMP structure:
 - Options: centralized @ COCC, localized @ AMP or a combination of both administrative methods
 - Consider cost effectiveness and efficiency
 - Supported through *amended* Procurement Policy & Procurement Procedures, as applicable
- The plan must reflect the needs of the AMPs:
 - Who will managed leasing services, CFP, maintenance services, vacancy rehab , etc.?
 - Who will complete environmental assessments, LBP, Asbestos, ADA/504 compliance for properties?
- Determine which procurement activities will be...
 - Bid by the AMP in the open market
 - Performed by the COCC on behalf of the AMP



Procurement Actions by AMPs

- Amend Procurement Policy and Procedures, as needed, to reflect the final Implementation Plan.
- PHAs must develop project-based budgets for each AMP that must include accurate procurement estimates for all services at the project level.
- *Project Manager* at AMP is responsible for the procurement of all goods & services, therefore, any deviation must be justified.
- AMPs *may* pay COCC a separate Capital Fund Program (CFP) Management Fee (10% max.) for the administration of their capital grants.



Contracted-out Procurements by AMPs

- If the AMP does not has skilled labor on staff to perform a contract activity (e.g., drafting of P/S) it will contract the function with the COCC if it has capable staff in-house.
- However, if the COCC is not capable or either can not perform activity, then the function must be contracted out in the open market, particularly if a cumbersome and highly technical solicitation, etc.
 - AMP may issue solicitation itself: service cost
 - AMP may request assistance from the COCC in preparing/administering the solicitation as a fee-for-service



Categories of Cost at AMPs

- Cost to administer all procurement and contracting activities for AMP fall under the following categories:
 - “Front-line cost” at AMP level when performed with in-house staff at project-based level
 - “Fee-for-service” approach if performed by the COCC
 - FAL through COCC allowed if cost-beneficial compared to private market performance
 - Delegation of supervision/inspection of construction activities to the COCC
 - Financed as a “Service Cost” if contracted out in the private market
 - Part of the “Management Fee” if performed by the COCC
 - Example: CFP Management Fee



Procurement Activities at COCC

- Defined as procurement activities deemed cost effective for COCC to manage on behalf of AMPs.
- Part of the activities are covered in the Management Fee paid by the AMC to the COCC
- COCC has expertise in procuring services:
 - *Is willing and able to perform the specific service*
 - *Has the capacity and knowledge to perform activity*
 - *Has the systems in-place to effectively perform task*
- COCC has full responsibility to administer procurement activities outlined in approved Implementation Plan.
- Low, indirect risk to AMP as COCC assumes responsibility to initiate, perform and complete activity.



Use of Blanket Purchase Agreements or Indefinite-Quantity Contracts by AMPs

- Used by AMPs to obtain any goods and services
 - Goods: Maint. mtrls., electrical/plumbing supplies, lawn equip.
 - Services: VUT, legal/auditing, painting, exterminating
- Can be used under Small Purchases or Formal Procurements
 - Agreements typically used for services
 - Contracts typically used for the provision of maint./adm. goods
- Price/costs established and vendor selected through a master procurement undertaken by COCC on behalf of AMPs
- AMP uses in lieu of issuing solicitation itself in the open market by issuing internal request (*issuance of PO should not be used*) for list of pre-qualified vendors under each category

HUD's On-Site Assessments of Procurement Activities by AMPs

- Review evaluates that the PHA...
 - Has adopted a Procurement Policy that is current and consistent with HUD regulations, &
 - Maintains adequate files and documentation for its procurement actions.
- HUD staff reviews a sample of procurement contracts undertaken by AMP (or COCC) using operation or capital funds.



Post-Training Actions for HAs

- If necessary, amend the Procurement Policy.
 - BOC must approve any amendments.
- Review the Procurement Procedures in place for adequacy
 - Determine if managerial and administrative procedures & delegations of authority are adequate.
 - PHAs under Asset Management structure need to address project-based set up.
- Update Procurement Plans!
- Review all bidding & contract documents to ensure proper forms are incorporated therein per Procurement Handbook requirements.
- Be sure there is an acceptable management system to monitor compliance of all solicitations.





Resources

- Procurement Information:
 - Copy of Procurement Handbook 7460.8 REV 2:
www.hud.gov/offices/adm/hudclips/index.cfm
 - Public Housing internet web page:
www.hud.gov/offices/pih/index.cfm
- Regulatory references:
 - List of debarred entities from doing business with the Federal Government: www.epls.gov
 - Wage Rates: www.wdol.gov
 - List acceptable sureties for the issuance of Performance & Payment Bonds:
www.fms.treas.gov/c570

QUESTIONS?

