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Competitive Proposal Procurement for Construction Contracts

Traditionally public housing agencies (PHA) use the sealed bid method of procurement for construction contracts. However HUD does not prohibit the use of competitive proposals to procure construction contracts.

The primary advantage to using the competitive proposal method is that the award is based on the best overall value to the PHA and rather than focusing on primarily on price as the sealed bid method requires. PHAs are afforded various areas of flexibility by using the competitive proposals, such as:

- Consider technical factors other than price,
- Discuss the submitted offers with the proposers,
- Negotiate contract price and other contract terms,
- Revise proposals before final selection of a contractor,
- Withdraw an offer at any point before award.

To determine best overall value to the PHA, the PHA can evaluate various factors including technical expertise, past experience, quality of proposed staffing and other appropriate factors and not just lowest price. The evaluation factors and their weight must be included in the Request for Proposal (RFP).

There are also similarities with sealed bidding and competitive proposals. The HUD required forms for construction contracts must be used when using competitive proposals to procure construction contracts. The following HUD forms must be attached to the RFP:

- **Form HUD-5369** – Instruction to Bidders for Contracts, Public and Indian Housing Programs (Construction),
- **Form HUD-5369-A** – Representations, Certifications and Other Statements of Bidders, Public and Indian Housing Programs (Construction), and
- **Form HUD-5370** – General Conditions of the Contract for Construction.

These forms use the sealed bid terminology since sealed bid procurement is the primary method for construction contracts. However the information in the forms is for construction contracts and is not limited to the sealed bid procurement method. The appropriate David-Bacon wage decision is also required to be attached to the RFP for construction contracts.

Another similarity is the bonding requirements. Each proposer must submit a bid bond or guarantee in their proposal and each contractor must submit a performance and payment bond. The bonds should be issued by surety (bonding) company listed on the U.S. Treasury Circular 570 (T-List). The T-List can be found at: <http://www.fms.treas.gov/c570/index.html>.

Adding competitive proposals to your construction contract procurement tool belt, your PHA may be able to get a better product at a lower price, maximizing your construction budget. For more information on PHA procurement can be found in the Procurement Handbook for Public Housing Agencies (HUD Handbook 7460.8 REV 2) at http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/pihh/74608.



Tenant Provided Third-Party Written Verification is Now Acceptable



HUD issued the final rule on the refinement of income and rent determinations for Public Housing, Section 8 Moderate Rehabilitation, Project-based Voucher, Project-based Certificate, and the Housing Choice Voucher Program. The rule significantly changes verification requirements and introduced effective methods to reduce errors in unreported or underreported income. The regulation was further clarified through the issuance of PIH 2010-19 on May 17, 2010 that was

effective immediately.

The notice revises the verification hierarchy that now includes six levels. PHAs are required to access the EIV system and obtain an income report for each household and further required to maintain the income report in the tenant file along with the HUD-50058. If the Income Report does not contain any employment and income information for the family, the PHA should attempt the next lower level verification technique.

The six levels are:

Level	Verification Technique	Ranking
6	Upfront Income Verification (UIV) using HUD's Enterprise Income Verification (EIV) system	Highest (Mandatory)
5	Upfront Income Verification (UIV) - Non-HUD	Highest (Optional)
4	Written Third Party Verification	High (Mandatory to supplement EIV-reported income sources and when EIV has no data; Mandatory for non-EIV reported income sources; Mandatory when tenant disputes EIV-reported employment and income information and is unable to provide acceptable documentation to support dispute)
3	Written Third Party Verification Form	Medium-Low (Mandatory if written third party verification documents are not available or rejected by the PHA; and when the applicant or tenant is unable to provide acceptable documentation)
2	Oral Third Party Verification	Low (Mandatory if written third party verification is not available)
1	Tenant Declaration	Low (Use as a last resort)

Significant Changes in the Level and Acceptability of Certain Tenant Provided Documents:

Directly under the tiers of the most preferred forms of verification (EIV and UIV) is Written Third Party Verification. It includes an original or authentic document generated by a third party source dated either within the 60-day period preceding the reexamination or PHA request date. Such documentation may be in the possession of the tenant (or applicant), and in the past was commonly referred to as tenant-provided documents. It is the Department's position **that such tenant-provided documents are now considered written third party verification** since these documents originated from a third party source. Previously tenant supplied documents that came from a third party were not considered third-party written documentation- but were a lesser tier in the hierarchy that would have required additional third party written verification, whenever possible. Third party written documents now includes, but is not limited to, acceptable tenant-provided documentation (generated by a third party source) such as pay stubs, a payroll summary report, employer notice/letter of hire/termination, SSA benefit verification letter, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices, etc. The PHA **may**, at its discretion, reject any tenant-provided documents and follow up directly with the source to obtain necessary verification of information.

Cont'd



If using pay stubs as a form of verification, the PHA is required to obtain at a minimum, two current and consecutive pay stubs for determining annual income from wages. For new income sources or when two pay stubs are not available, the PHA should project income based on the information from a traditional written third party verification form or the best available information. Unless there is a dispute in the information or verification, the PHA can now use these tenant supplied documents that are now considered written third party verification, coupled with using EIV to streamline and expedite the verification process for determining income from these sources.

Other Major Changes:

In addition to accessing the information, each new admission the PHA is required to confirm and validate the EIV Income Report within 120 days of the PIC submission date and maintain a copy in the file. For each historical adjustment (reexamination or changes), the PHA is required to review the EIV Income Report to confirm/validate family-reported income within 120 days of the PIC submission date and maintain a copy in the file. For each interim reexamination of the family income and composition, the PHA is required to verify that there are no household income discrepancies and maintain verification in the tenant file. HUD emphasized additional reporting requirements that must be maintained by the PHA in order to maintain program compliance.

In addition to procedural changes for the PHAs, they must make revisions to the Admissions and Continued Occupancy Policy (ACOP) or Administrative Plans. PHAs are strongly encouraged to provide notice to applicants and participants through the HUD supplied document, *What You Should Know About EIV*.

The full text of Notice PIH 2010-19 can be found at: <http://1.usa.gov/r7giQ2>.

Mandatory Contract Clauses for Small Purchase Procurement

Small purchase procurement allows public housing agencies (PHA) to simplify the purchasing of most goods and services the PHA will need. Currently the Federal small purchase threshold is \$100,000 however if a State or local government has a lower threshold, the lower threshold must be used. To maintain competition, the PHA must solicit quotes from an adequate number of sources (usually three quotes but a minimum of two) and the quotes may be obtained in writing, orally, from catalogs, email or other electronic means.

While small purchase procedures streamline and simplify the procurement process, there are mandatory contract clauses that must be included in all small purchase procurements. For non-construction small purchases in excess of \$2,000, there are five mandatory clauses:

1. Examination and Retention of Contractor's Records.
2. Right in Data and Patent Rights (Ownership and Proprietary Interest).
3. Energy Efficiency.
4. Procurement of Recovered Materials.
5. Termination for Cause and for Convenience (contracts of \$10,000 or more).

These five clauses are listed on Table 5.1 of HUD's Procurement Handbook for Public Housing Agencies (7460.8 REV 2), which can be found at: <http://1.usa.gov/pZFz51>. PHAs are also bound by any applicable State or local procurement requirements.

For small purchase construction contracts between \$2,000 and \$100,000, the applicable Davis-Bacon wage decision and form HUD-5370-EZ, General Conditions for Small Construction/Development Contracts, must be incorporated. Form HUD-5370-EZ is designed for small construction jobs however the PHA may use form HUD-5370 instead of form HUD-5370-EZ if it is more appropriate for the work to be conducted.

Finally for small purchase maintenance contracts between \$2,000 and \$100,000, PHAs must include Section II of form HUD-5370-C, General Conditions for Non-Construction Contracts; Table 5.1 of HUD's Procurement Handbook for Public Housing Agencies and the applicable Davis-Bacon wage decision.

Davis-Bacon wage decisions can be requested at <http://www.wdol.gov> and the HUD forms on labor relations and mandatory contract clauses can be found at: <http://1.usa.gov/p4jTqR>.

PHAs that incorporate small purchase procurement in to their procurement policy and procedures can take advantage of the minimal paperwork and streamlined procurement processes.



PIH Notices

PIH 2011-45, “Parameters for Local, Non-Traditional Activities under the Moving to Work Demonstration program” issued August 15, 2011. This notice clarifies HUD policies, Federal statutes and regulations that apply to local, non-traditional activities implemented under the Moving to Work (MTW) demonstration program. MTW agencies have the authority to use their MTW funds to implement local, non-traditional activities, as long as they have this authority formalized in their Standard MTW Agreement (MTW Agreement), serve exclusively families at or below 80% of area median income (AMI) and use the MTW funds for activities that meet one of the three MTW statutory objectives of increasing the efficiency of Federal expenditures, incentivizing self-sufficiency of participating families and increasing housing choice for low-income families. Per the MTW Agreement, MTW agencies prepare and submit an Annual MTW Plan. The Department must approve each Annual MTW Plan, and accordingly has broad authority to accept or reject provisions of the Plan that fail to comport with other applicable laws and such terms as the Secretary may require.

PIH 2011-46, “PHA Determinations of Rent Reasonableness in the Housing Choice Voucher (HCV) Program – Replacement of PIH Notices 2009-51 and 2010-18” issued August 17, 2011. This Notice combines current relevant policy of PIH Notices 2009-51 and 2010-18 concerning rent reasonableness requirements in the Housing Choice Voucher (HCV) program and removes obsolete provisions of PIH Notice 2009-51 relative to the definition of assisted and unassisted housing. By accepting each monthly housing assistance payment from the PHA, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises. The owner must give the PHA information requested by the PHA on rents charged by the owner for other units in the premises or elsewhere.

PIH 2011-47, “Transactions between Public Housing Agencies and their Related Affiliates and Instrumentalities” issued August 17, 2011. PIH Notice 2007-15 (HA) is extended until amended, superseded, or rescinded. This notice provides guidance to public housing agencies (PHAs) regarding the creation and use of affiliates and instrumentalities in Public and Indian Housing programs under the United States Housing Act of 1937. Affiliates and instrumentalities may participate in mixed-finance developments subject to Annual Contributions Contract (ACC) amendments and other regulations. PHAs remain responsible for the submission of mixed-financing documentation; this responsibility may not be transferred to affiliates or instrumentalities.

PIH 2011-48, “Guidance on Reporting Public Housing Agency Executive Compensation Information and conducting Comparability Analysis” issued August 26, 2011. Public Housing Agencies (PHAs) that administer HUD-assisted public housing and housing choice voucher programs will be required to report to HUD annually the compensation provided to each of their five highest compensated employees, which will then be posted on HUD’s website with job titles but without employee names. This will serve as a valuable transparency and oversight tool and a point of comparison for local PHA boards in determining appropriate compensation levels. To that end, all PHA boards will also be required to conduct comparability analyses when determining executive director compensation levels and certify that such an analysis has been performed. This notice: (1) provides information and guidance on Form HUD-52725 to be used by PHAs to report executive compensation and explains its required use; and (2) explains how PHAs are to conduct comparability analyses with respect to compensation provided to executive directors and certify that they have done so. The requirements in this notice apply to all PHAs that administer a public housing or housing choice voucher program, except for PHAs that operate a housing choice voucher program only and receive less than 50 percent of their funding for employees from HUD (this includes all HUD programs). Exempt PHAs are requested but not required to submit the compensation information.

Contact us:

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(Put “HUD PHM Newsletter” in the subject line)

Upcoming Events

NAHRO 2011 National Conference & Exhibition
October 23-25, 2011
St. Louis, MO
<http://www.nahro.org/national-conference-exhibition-0>

