

Legal Opinion: GCH-0095

Index: 6.245

Subject: Procurement Advice Provided for Housing Authority

March 23, 1994

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Dear Mr. Liotta:

This is in response to your letters of November 22, 1993 and February 2, 1994, which requested procurement advice for the Housing Authority of the City of Elizabeth, New Jersey (HACE). I apologize for our delay in response.

HACE must use procedures other than the small purchase method of procurement in situations where the need for services is recurring and the services or acquisitions exceed \$25,000 in the aggregate.

As you are aware, the main source of guidance which outlines the methods of procurement that must be used in various service order or contract situations is 24 C.F.R. §85.36. In addition, please find enclosed copies of my September 29, 1989 memorandum regarding Legal Services Procurements by Public Housing Agencies and Local Governments Participating in the Community Block Program and Procurement Notice PIH 90-47 (PHA) issued September 25, 1990. Although the notice expired September 30, 1991, the advice included is current. Also, paragraphs 2-3 and 2-5 and §2 and §3 of HUD Handbook No. 7460.8 REV 1, issued January 14, 1993, Procurement Handbook for Public Housing Agencies and Indian Housing Authorities are useful references.

The circumstances for which the small purchase procedure is intended are those in which the grantee is seeking services, supplies or other property at a cost not exceeding \$25,000 in the aggregate. The regulations further require that an adequate number (at least three) price or rate quotations be solicited from qualified sources. The PHA must file a written record of such quotations, a documented selection detailing the factors considered including price, and a purchase order which binds the agreement. This method of procurement may not be used in acquisitions exceeding \$25,000 in the aggregate. In situations where the aggregate requirements for services exceeds this amount, the cost of services shall not be broken down into several small purchases that are less than the threshold to allow for the use of the small purchases procedure.

In cases where there is a recurring need for services (for more than a year but not exceeding two years without HUD approval) which are estimated to exceed the \$25,000 limit, the recommended method of procurement is the competitive proposal procedure. When the estimated cost of the Architectural/Engineer or other services is in excess of \$25,000, the competitive proposal method is the best procedure because price is not used as the primary selection factor. This method only can be used in procurement of A/E profes

sional services.

Whether small purchase or competitive proposal procedures are used, the PHA, in soliciting A/E services, must conduct procurements in a manner providing for full and open competition. Noncompetitive proposals may be used only when award of a contract is infeasible under other procurement procedures and other additional, exceptional circumstances exist.

Sincerely,

Robert S. Kenison
Associate General Counsel
Office of Assisted Housing
and Community Development

Enclosures