



Jim Haining <jhaining@gmail.com>

Important Potential Major Changes to Housing Agency Procurement Standards: Notice #2

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Mon, Mar 16, 2015 at 8:34 PM



Housing Agency Procurement Assistance

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I sent out my first notice pertaining to this issue on December 19, 2014. I am pleased to forward the following additional information that I have recently received from the HUD Procurement team.

BEGINNING OF THE CORRESPONDENCE RECEIVED FROM HUD . . .

Dear Mr. Gifford,

Thank you for your email regarding the important changes to PHAs' procurement standards in light of 2 CFR 200. At this time, specific implementation guidance from HUD for PHAs has not been issued but is forthcoming. PHAs should follow the guidance in the December 19, 2014 interim final rule which you reference below and is attached to this email. In pertinent part, on page 76079, the interim final rule states:

§ 85.1 Applicability of and cross reference to 2 CFR part 200.

- (a) Federal awards with State, local and Indian tribal governments are subject to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards at 2 CFR part 200.
- (b) Federal awards made prior to December 26, 2014 will continue to be governed by the regulations in effect and codified in 24 CFR part 85 (2013 edition) or as provided by the terms of the Federal award. Where the terms of a Federal award made prior to December 26, 2014, state that the award will be subject to regulations as may be amended, the Federal award shall be subject to 2 CFR part 200.

As stated, the terms of the Federal award will control whether the award is governed by 24 CFR Part 85 or by 2 CFR Part 200. For example, the Annual Contributions Contract (ACC) Amendment executed by PHAs in order to receive Capital Fund awards provides that PHAs shall carry out activities in accordance with applicable requirements. In this case, an ACC Amendment executed prior to December 26, 2014 would need to comply with 24 CFR Part 85, the applicable procurement requirement at the time the award was executed. However, for ACC Amendments executed after December 26, 2014, those awards are subject to 2 CFR Part 200. I realize this distinction might not be as neat on a practical level where multiple awards may be combined for a single use. In such case, the PHA should carry out activities in accordance with 2 CFR Part 200.

HUD hopes to issue more specific guidance in the near future. I've also attached a set of FAQs that may prove helpful as well. [NOTE FROM GIFFORD: I will put these FAQ's out as a part of subsequent notice after I have reviewed them in detail.]

As always, please reach out to us with any questions or concerns that you may have.

PHA Procurement

END OF CORRESPONDENCE RECEIVED FROM HUD

I have left attached hereto the "Interim Rule" referred to within the preceding Notice from HUD.

I have also attached hereto for your perusal an excellent "Side-by Side" comparison of 24 CFR 85.36 and 2 CFR 200. This document was developed by Jon Klinkenberg, CPPB, Director of Procurement at the Minneapolis Public Housing Authority. I am very grateful to Mr. Klinkenberg for formulating this comparison and to his Agency for allowing me to share this with others. (NOTE DISCLAIMER: This information is being issued as a public service only. Neither the Minneapolis Public Housing Authority, the Agency staff, nor Housing Agency Procurement Assistance or Michael S. Gifford take any responsibility for the accuracy of the information with this Notice or the attached comparison. By receiving and utilizing this information the user is thereby acknowledging that he/she will not hold any of the aforementioned parties within this paragraph liable for any information contained herein.)

One last thought: Based upon this information (e.g. both the correspondence from HUD and the attached comparison showing the changed conditions going from 24 CFR 85.36 to 2 CFR 200), I will next week issue another notice with my recommended draft of a revised procurement policy. It is my opinion and recommendation that agencies will implement these revised procurement standards by taking a revised procurement policy to their Board of Commissioners for approval. You may want to watch for this follow-up notice next week.

Regards,

Michael S. Gifford, C.P.M., CPSD
Housing Agency Procurement Assistance

I have a consulting practice providing procurement- and contracts-related mentoring, training, and technical assistance to housing agencies. I help housing agencies conduct procurement and contracts in a HUD-compliant and "best practice" manner. [Click here](#) to see my full resume. Please do not hesitate to contact me if you have any questions or concerns pertaining to procurement and contracts (initial answering of questions is "no charge"). As I am either on-the-road or on the phone a lot, an initial contact by e-mail is best; please be sure to include your return telephone number (office/cellular) so that I can call you back.

This email was sent to jhaining@gmail.com by HAPA
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2 attachments

 **SideBySideComparison_24CFR-to-2CFR_December2014.pdf**
384K

 **1214_interim_rule.pdf**
3069K