

Procurement Basics

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UNDERSTANDING PROCUREMENT AND HUD GOVERNING REGULATIONS IS IMPERATIVE

Key Functions Related to Procurement Policies



- Ensure fair and impartial treatment of all bidders
- Increase the pool of potential bidders
- Select Lowest Cost/Highest Quality Products and Services
- Ensure that the applicable federal, state and local regulations are followed

HUD Procurement Regulations

Procurement is codified at 2 CFR Part 200

- This is also known as the Common Rule
- Promulgated by Congress

For awards made prior to December 26, 2014, the governing regulations are 24 CFR §85.36

Governing Regulations

2 CFR Part 200: *Also known as the "Common Rule" in that it applies to all state and local government recipients of Federal Housing Assistance Grants and is the controlling regulation governing procurement activity. It provides for full and open competition in procurement matters.*

State & Local Regulations: *Must also follow applicable state or local laws on procurement. If state or local law is stricter than Federal law, the state or local law will apply. Federal law will apply if stricter than state or local law. In general the Housing Commission must comply with whichever is more stringent.*

Governing Regulations

HUD HANDBOOK 7460.8 Rev. 2:

- Issued by HUD to explain 24 CFR §85.36 (now 2 CFR Part 200)
- 2 CFR 200 & 24 CFR 85.36
- 7460.8 HUD Handbook
- Housing Agency Procurement Policy

Procurement Standards

Organizations must avoid acquisition of unnecessary or duplicative items.
Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.
Where appropriate lease-purchase analysis should be conducted.
Organizations are encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or share goods and services.
Organizations are encouraged to use Federal excess and surplus property in lieu of new equipment or property

2 CFR 200.318

Procurement Standards

Maintain written standards of conduct governing conflicts of interest and the performance of employees engaged in the award and administration of contracts –

24 CFR §85.36(b) and 2 CFR Part 200



Procurement Standards

Make awards only to responsive and responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.



24 CFR §85.36(b) and 2 CFR Part 200

Procurement Standards

Maintain records sufficient to detail the significant history of a procurement

- In writing, in one clearly marked file
- Contains all documents pertaining to the procurement
- Records Retention: 3 years after final payment, 5 years for Capital Fund Grants (Final Rule)
- Audit clause to be included in all solicitations

24 CFR §85.36(b) and 2 CFR Part 200

Relationship Of Local Or State Laws With Federal Law

PHAs must comply with the stricter of federal rules and state/local rules

State rules:

- When procuring property and services under a grant, a state will follow the same policies and procedures it uses for procurements for its non-federal funds. The state will ensure that every purchase order or other contract includes any clauses required by federal statutes and executive orders and their implementing regulations.
- Therefore, one procurement policy only!

85.36(a) and 2 CFR 200

Procurement Policy

Recommendation: Do Not Combine Policy and Procedure

- Policy approved by Board of Commissioners
- Procedure approved by Executive Director
- HUD approval not typically required, PHA Self Certify!!!
- Include stricter requirements of Common Rule, Handbook or applicable local laws
- Know the difference: Policy/ Procedure/ Practice

Competition

All procurement transactions will be conducted in a manner providing full and open competition.

24 CFR §85.36(c) and 2 CFR Part 200

Competition

Situations considered to be restrictive of competition:

- Placing unreasonable requirements on firms in order for them to qualify to do business
- Requiring unnecessary experience
- Excessive Bonding
- Specifying brand names when “an equal” product will do

24 CFR §85.36(c) and 2 CFR Part 200

Methods Of Procurement

There are seven types of procurement:

- Micro Purchase & Petty Cash
- Procurement by small purchase procedures
- Procurement by sealed bids (IFB – typically advertised)
- Procurement by competitive proposals (RFP – typically advertised)
- Request for Qualifications (RFQ – typically advertised)
- Procurement by noncompetitive proposals, rare (emergencies)

24 CFR §85.36(d) and 2 CFR Part 200

Independent Cost Estimate

All procurement activity should begin with an independent cost estimate or cost reasonableness statement

- Will determine the procurement method
- Should be created in-house
- Must be documented before receiving bids or proposals

24 CFR §85.36 and 2 CFR Part 200

Methods Of Procurement

All methods must include:

- A complete, adequate and realistic specification, purchase description or scope of services
- Two or more responsible bidders are willing and able to compete effectively. Three bids preferable, two acceptable and one acceptable if reasonable!

24 CFR §85.36(d) and 2 CFR Part 200

Methods Of Procurement

- Small Purchase Procedures
- Typically used for purchases of services, supplies or property
- Generally not appropriate for construction services

24 CFR §85.36(d) and 2 CFR Part 200



Methods Of Procurement

Procurement by small purchase (simplified)

Small Purchase Dollar Limits:

- Less than \$10,000 is a Micro Purchase (one quote only, but cost must be reasonable)
- Up to \$250,000 is a Small Purchase. Maybe? (quotes from adequate number of sources. Goal of 3)
- Maximum dollar amount may be set lower by applicable state statute and PHA Policy

24 CFR §85.36(d) and 2 CFR Part 200

19

Methods Of Procurement

Procurement by small purchase procedures

- Do not break down purchases aggregating more than the small purchase limit into several smaller purchases
- Can break down purchases to encourage WBE/MBE participation
- Set aside for resident-owned businesses (Section 3) New Section 3 regulations effective in 2021, See HUD FAQ's on Section 3

85.36(d) and 2 CFR 200

20

Small and Minority Businesses and Women-Owned Businesses, and Labor Surplus Area Firms

Organizations **must take** the following affirmative steps to ensure these firms are used when possible:

1. Place qualified small, minority, and woman-owned businesses on solicitation lists;
2. Assure that such businesses are solicited when they are potential sources;
3. Divide total requirement, when economically feasible, into smaller tasks or quantities to permit maximum participation by such businesses;
4. Establish delivery schedules, where requirements permits, which encourage such businesses to respond;
5. Use service and assistance from such organizations as SBA, Minority Business Development Agency of the Department of Commerce; **and**
6. Require prime contractors to take the same affirmative steps.

21

Methods Of Solicitation

Quotations for Small Purchases (QSP) may be obtained by:

- Mail
- In-person
- Fax
- Orally (recorded by HC in writing)
- Telephone (recorded by HC in writing)
- Internet
- Catalogs

22

Methods Of Procurement

Procurement by small purchase procedures

- The contracting officer must determine that the proposed price is fair and reasonable
- Base price reasonableness on competitive quotations or offers
- If only one response is received, include a cost analysis in the contract file

24 CFR §85.36(d) and 2 CFR Part 200

23

Methods Of Procurement

Procurement by Invitation for Bids/Sealed Bids

- HUD: Chapter only applies to procurements >\$250,000 or HC limit!
 - However, is appropriate to use ANYTIME the HA feels a formal solicitation is appropriate
 - Recommended use for any formal (advertised) solicitation
- Bids are publicly solicited and firm-fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest price.

24 CFR §85.36(d) and 2 CFR Part 200

24

Methods of Procurement

Procurement by competitive proposals (RFP) are typically used for:

- Consultant or Professional Services
- Specially designed equipment

24 CFR §85.36(d) and 2 CFR Part 200

Methods of Procurement

Procurement by competitive proposals

Request for Proposals (RFPs)

- Will be publicly advertised
- Will identify evaluation criteria and the relative weight
- Will identify two or more firms willing and able to compete effectively -- Goal is to receive at least three offerors

Methods of Procurement

Procurement by competitive proposals

Request for Proposals (RFPs)

- Award to the responsible firm whose proposal is most advantageous to the program (highest rated), with price and other factors considered
- NOTE: An RFQ is an RFP, except that cost is not received or analyzed until AFTER a top-rated proposer is chosen – THEN cost is negotiated

85.36(d) and 2 CFR

Comparison Of Sealed Bids And RFPs

SEALED BID	RFPs/RFQs
Typically for construction, supply, equipment, and non-complex services contracts	Typically for professional services and some non-professional services NOT typically for construction
Formal process if advertised when value >\$250,000 or HC established limit	Formal process if advertised when value >\$250,000 or HC limit
Bonds Required?: Only for construction—NOT typically recommended for non-construction	NO

Comparison Of Sealed Bids And RFPs

SEALED BID	RFPs/RFQs
Advertised Specifications leading to Price-based selection	Advertised Scope of Services leading to Skills(+price)-based selection
Suggested Format:	Suggested Format:
(1) IFB Document (2) Form of Bid (3) Profile of Firm Form (4) Section 3 Form (5) Instructions to Bidders (6) Sample Contract (7) Mandatory HUD Forms (8) MBE/WBE/DBE Forms	(1) RFP Document (2) Form of Proposal (3) Profile of Firm Form (4) Section 3 Form (5) Instructions to Proposers (6) Price Proposal (7) Mandatory HUD Forms (8) MBE/WBE/DBE Forms

Comparison Of Sealed Bids And RFPs

SEALED BID	RFPs/RFQs
Pre-bid Conference: Recommended, but cannot be mandatory	Pre-proposal Conference: Recommended, but cannot be mandatory
(1) Issue addendum answering any questions raised (2) For efficiency, give deadline for questions (3) Facilitate site visit, where necessary	(1) Issue addendum answering any questions raised (2) For efficiency, give deadline for questions (3) Issue time extension if necessary

Comparison Of Sealed Bids And RFPs

SEALED BID	RFPs/RFQs
Prior to the Submittal Deadline: (1) Except for construction-related solicitations, DO NOT disclose how many firms have garnered the documents or how many bids have been received. (2) Only receive bids that are sealed. Store any bids received securely. (3) Time-stamp all bids (4) Must be submitted by the published deadline.	Prior to the Submittal Deadline: (1) Except for construction-related solicitations, DO NOT disclose how many firms have garnered the documents or how many proposals have been received. Only receive proposals that are sealed. (2) Store any proposals received securely. (3) Time-stamp all proposals (4) Must be submitted by the published deadline.

Comparison Of Sealed Bids And RFPs

SEALED BID	RFPs/RFQs
Evaluation of Responsiveness and Responsibility: (1) May be conducted by one or more persons (2) Recommend conducting in private, NOT at public bid opening (3) HA reserves the right to waive minor mistakes	Evaluation of Responsiveness and Responsibility: (1) Responsiveness may be conducted by one person (2) Evaluation of proposals ALWAYS conducted in private by an evaluation committee, NOT in public (3) HA reserves the right to waive minor mistakes

Comparison Of Sealed Bids And RFPs

SEALED BID	RFPs/RFQs
Evaluation of Cost: (1) Conduct Cost or Price Analysis HA must check HUD LDP and Federal SAMS	Evaluation of Cost: (1) Performed by individual, not evaluation committee. (2) Assign points (RFP RFQ) (3) Conduct Cost and/or Price Analysis (4) **RFQ: Cost is NOT a point factor—negotiate cost with top-rated proposer considering technical factors HA must check HUD LDP and Federal SAMS

Comparison Of Sealed Bids And RFPs

SEALED BID	RFPs/RFQs
Award Factors: To the responsive and responsible bidder with the Lowest Cost Submitted Section 3: HAs are required to offer a Section 3 preference to all bidders (except for bids for commodities/equipment*), but a Section 3 response is voluntary on the part of bidders (however, Section 3 shall, "to the greatest extent feasible," be a part of every contract award, except as noted above*).	Award Factors: To the top-rated responsive and responsible proposer, "top-rated" considering cost (objective) and other factors (typically subjective) Section 3: HAs are required to offer a Section 3 preference to all proposers, but a Section 3 response is voluntary on the part of proposers (however, Section 3 shall, "to the greatest extent feasible," be a part of every such contract award).

Comparison Of Sealed Bids And RFPs

SEALED BID	RFPs/RFQs
Contract Award: (1) Typically full narrative format, but can be a PO. (2) Must have appropriate HUD Terms and Conditions (3) DO NOT execute a contractor's contract form (4) HA should use a standard form contract	Contract Award: (1) Typically full narrative format, but can be a PO. (2) Must have appropriate HUD Terms and Conditions (3) DO NOT execute a contractor's contract form (4) **For A/E awards, only contract form HUD-51915

Cancelling a Solicitation

- Solicitations must not be used to "gauge the marketplace" – does not foster public confidence.
- Good Reasons to cancel:
 - Lowest bid significantly exceeds the HA's budget.
 - Scope of work or specifications are found to be ambiguous or flawed by submission of wildly different bids or offer prices
 - Inadequate competition that does not reflect market availability
- If canceled, be sure to fully document the justification for doing so in the file.

Miscellaneous Additional Related Requirements

Debriefing Offerors

Protests

Geographic Preferences

- HAs must NOT require, consider or give preference to any firm simply because it is located in the local area (e.g. city; county; state; etc.) that the HC is based or located. Accordingly, it is NOT appropriate for a Commissioner to put pressure on a HC staff to do more business with local firms.

State Prevailing Wage Requirements

- If there are ANY Federal (HUD) monies in a construction project, then Davis-Bacon wage rates apply, no matter if State prevailing wage rates are higher or lower.

37

Methods of Procurement

Procurement by non competitive proposals

- "Sole Source" Provision of P.L. 110-329
- Item is available only from a single source
- Public exigency or emergency will not permit the delay of a competitive solicitation. Health and safety of residents!!!
- File must include written justification for sole source procurement

24 CFR §85.36(d) and 2 CFR Part 200

38

Contract Cost and Price

Grantees must perform a cost or price analysis in connection with every procurement action including contract modifications including change orders. (ICE)

24 CFR §85.36(f) and 2 CFR Part 200

40

Contract Administration

Procurement Policy:

- * Know when HA Board approval is necessary
 - * Know change order limits
 - * Monitor contractor performance
 - * Progress Reports
 - * Close out procedures
 - * If Capital Fund maintain records for 5 years
 - * Warranties, As-Builts, Final Waivers of Lien and close permits
- Document, Document, Documents. If not in writing it doesn't exist