

PROCUREMENT & CONTRACT MANAGEMENT



Professional Development

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FACULTY

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POLL

How long have you been in affordable housing?

- A. Less than 5 years
- B. 6 - 10 years
- C. 11-15 years
- D. 15-20 years
- E. 21 or more!

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GOALS OF THE TRAINING

- Provide a Basic Understanding of Procurement
- Provide Tips on How to Administer a Compliant Program;
- Provide an Understanding of the Concept of Fair and Competitive Procurement;
- Provide Tips on Procurement Planning;
- Provide Tips on How to Promote Section 3 and WBE/MBE
- Provide Tips on How to Ensure Quality Work
- Provide Tips on How to Timely and Effectively Expend Funds

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GOALS OF THE TRAINING

- Provide Tips on How to Prepare Plans and Specs That Meet the Needs of the PHA
- Provide Tips on How to Maintain Proper Documentation
- Provide Tips of How to Effectively Manage Contracts
- Create an Opportunities to Network and Exchange Ideas

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BASIC RULES

10 Basic Compliance Rules for Procurement

- Award only to responsive, responsible and qualified contractors and vendors
- Never award to a debarred contractor
- Maintain sufficient records
- Provide full and open competition in most cases
- Perform independent cost estimate and a price or cost analysis of every procurement action

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BASIC RULES

10 Basic Compliance Rules for Procurement

- Require compliance with all terms and conditions of the plans, specs, and contract
- Include all Federally required contract clauses
- Adhere to all bid bonding and performance guarantees requirements
- Ensure compliance with Section 3 of the HUD Act of 1968, when applicable
- Apply and enforce Labor Standards laws and regulations, when applicable

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NEW REGULATIONS AND THRESHOLDS

2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audits

2 CFR 200.317 - 326

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OMB PUBLISHES NEW FINAL RULE IMPLEMENTING A-102

12/26/2013 at 2 CFR Part 200.

Developed in conjunction with the Council on Financial Assistance Reform (COFAR).

Final Rule Effective: 12/26/2014.

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OMB PUBLISHES NEW FINAL RULE IMPLEMENTING A-102

New Regulations:

- Combines 3 OMB Circulars into one Regulation:
 - A-102. Uniform Requirements for Grants to State and Local Governments
 - A-87. Federal Cost Principles.
 - A-133. Single Audit Act

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OMB PUBLISHES 2ND SET OF NEW INTERIM FINAL RULES IMPLEMENTING A-102:

New Regulations:

- 12/19/2014 at 2 CFR Part 200 and 24 CFR 85.
- Amends 25 CFR 85, deletes everything except 24 CFR 85.1- Now requires compliance with 2 CFR 200.
- Also makes minor amendments to 2 CFR 200.
- **Interim Final Rules** Effective: 12/26/2014.

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FEDERAL PROCUREMENT REQUIREMENTS

New Thresholds:

- The new 2018 changes small purchase thresholds:
 - **Old:** \$ 150,000
 - **New:** \$ 250,000
 - **Micro:** Was \$3,000, Revised to \$10,000
- Unless State law provides more stringent lower limit.
 - For both micro and small purchase threshold

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FEDERAL PROCUREMENT REQUIREMENTS

New Regulations:

- Additional minor changes such as:
 - Noncompetitive proposals.
 - Contract administration.
 - Revisions to mandatory contract clauses.
- Remainder of Part 2 CFR 200 substantially the same as 24 CFR 85.36

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FEDERAL PROCUREMENT REQUIREMENTS

Guidance:

Follow State law regarding procurement thresholds.

- If no State law bar, PHAs may use new thresholds
- Continue to follow HUD PIH Procurement Handbook 7460.8 REV 2 and related HUD forms. HUD was expected to update Handbook in 2020.

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2 CFR 200 PROCUREMENT STANDARDS

- Requires policies and procedures
- Maintain a contract administration system
- Employee code of conduct
- Provide for a review of procurement
- Encourage intergovernmental agreements
- Use Federal excess and surplus properties
- Encourage value engineering

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PROCUREMENT STANDARDS

- Award only to responsible contractors
- Maintain sufficient records
- Limited use of time and material type contracts
- Acknowledge PHA responsibilities
- Have established protest procedures

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PROCUREMENT STANDARDS - COMPETITION

- Provide full and open competition
- Avoid unreasonable requirements
- Avoid unnecessary experience
- Avoid excessive bonding
- Avoid noncompetitive awards
- Avoid organizational conflicts of interest

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METHODS OF PROCUREMENT

- Micro Purchases
- Small Purchases
- Sealed Bids
- Competitive Proposals
- Noncompetitive Proposals

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Methods of procurement

Micro Purchases

- Maximum Threshold of \$10,000
- May be awarded without soliciting multiple quotes
- Price must be reasonable based on past experiences, knowledge
- Contracting Officer must verify cost is reasonable

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Methods of procurement


Small Purchases

- Maximum Threshold of \$250,000 (state or local law may require a lower threshold)
- Must solicit and receive at least three (3) quotes
- Contracting Officer must document cost is reasonable


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SMALL PURCHASE THRESHOLDS




ESTABLISH A SINGLE QUOTE DOLLAR LIMIT



ESTABLISH A PHONE QUOTE DOLLAR LIMIT



FOR BIDS ABOVE THAT AMOUNT, THREE QUOTES ARE USUALLY REQUIRED IN ORDER TO COMPLY WITH THE FAIR AND OPEN COMPETITION REQUIREMENTS OF 2 CFR 200



ALWAYS REQUIRES A PRICE ANALYSIS

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Methods of procurement


SEALED Bid Procurement

- Used when purchase exceeds threshold of \$250,000 (state or local law may require a lower threshold)
- Clear unambiguous specifications
- Must advertise for a reasonable period
- Firm fixed price contract
- Responsiveness
- Responsibility


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SEALED BID CONSTRUCTION PROCUREMENT




Requires complete, accurate, and realistic specifications or purchase description



Requires 2 or more responsible bidders



Must result in a firm fixed price



Selection based principally on price

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SEALED BID CONSTRUCTION PROCUREMENT

- Process Must Comply with all Applicable State, Local and Federal Laws
- Must Conduct Formal Advertisement
- Requires a Bid Guarantee
- Requires a Non-Collusive Affidavit
- Specifications Must be Non-restrictive
- Requires Assurances of Completion

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SEALED BID CONSTRUCTION PROCUREMENT



- Section 3 Applies to All Construction Contracts
- Requires Federally Mandated Contract Clauses
- Completion Time Must Be Established
- Liquidated Damages must be included
- Include the "or equal" clause

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BID PACKAGE CHECKLIST

- Invitation to Bid
- HUD 5369 Instruction to Bidders
- HUD 5369A, Reqs and Certs
- HUD 5370, HUD General Conditions
- Special Conditions

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BID PACKAGE CHECKLIST

- Bidder's Qualifications
- Construction Specifications
- Drawings
- Wage Determination
- Bid Form
- Bid Guarantee

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BID PACKAGE CHECKLIST

- Non-Collusive Affidavit
- W/MBE Contract Goals and Requirements
- Sample Form of Contract (No HUD Contract Form. Develop PHA contract)
- Assurance of Completion Requirements
- Insurance Certificate, Verify Insurance coverage

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CONTRACT BID & AWARD PROCESS

ADVERTISEMENT FOR BIDS

NOTIFICATION OF BIDDERS

BID DOCUMENT DISTRIBUTION

CONTRACT ADDENDUM

CONDUCTING A BID OPENING

BID EVALUATION

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CONTRACT BID & AWARD

BID REJECTION AND WITHDRAW

NOTIFICATION OF CONTRACT AWARD

COMPLIANCE CERTIFICATION

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BID EVALUATION ENSURES

- Adequate Financial Resources are Available to the Contractor
- The Contractor has the Necessary Organization, Experience, and Skills
- A Good Past Performance Record
- Contractors Have Satisfactory Ethics Record

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DETERMINING RESPONSIBILITY

- Financial Capabilities
- Compliance with Schedules
- Review Past Performance
- Necessary Organization
- Eligibility
www.Hud.gov/enforce
<http://sams.gov>

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COST & PRICE ANALYSIS

- Purpose: Determine Cost Reasonableness
- Price analysis for bids
- Cost Analysis for proposals

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DETERMINING A REASONABLE PRICE

Price Reasonableness Must Be:

- Determined Based On A Comparison of Competitive Quotes Received, Catalogues, Market Prices, or Recent Competitive Purchases of the Same Item
- Procurement Files Must Document How and Why Cost Reasonableness was ascertained

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PROFIT

- SUBCONTRACTING
- PAST RECORD OF QUALITY
- INDUSTRY PROFIT RATES
- PROFIT REWARDS RISK

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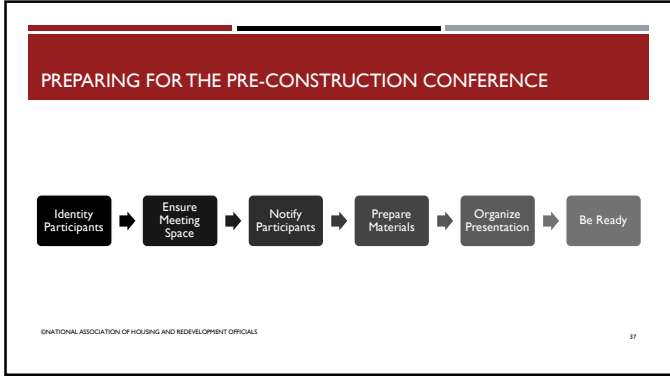
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THE PRE-CONSTRUCTION CONFERENCE

- Should be conducted for all contracts that involve on-site labor
- In many cases, it is the most important meeting you will have with your contractors

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CASE STUDY #1: SEALED BID

On May 15th, the Dealer's Choice HA, Nevada (DCHA) issued an Invitation for Bids (IFB) for the construction of chain-link fences on several of its development sites. DCHA was concerned that the estimated cost of their total fencing needs was beyond their HUD budget (\$54,000), so the IFB was structured to group their two most pressing needs as the "base bid" (identified as Site 1 and Site 1A) and then listed sites 2, 3 and 4 as separate "alternate bids". The IFB had a 30-day bidding period and indicated "contract award will be made to the responsive, responsible bidder offering the lowest price for the base bid and any selected alternate bid(s)."

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CASE STUDY #1: SEALED BID

Over the Memorial Day Weekend, there was a fire at Site 1A. When the maintenance chief visited the site the following Tuesday, he found that the IFB specs for Site 1A were no longer valid. Nevertheless, he reasoned, the IFB was structured with sufficient flexibility to allow for award of multiple sites, and a change order could be issued to the low bidder after award to deal with changed conditions resulting from the fire. After all, he reasoned, the impact would be the same for any contractor. Besides, issuing an IFB amendment with revised specs at this point would delay award and place fence installation in conflict with other planned construction activities.

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CASE STUDY #1: SEALED BID

Bid opening was held on June 16 and five bids were received. The two most price-competitive (both responsive and responsible bidders) are listed below

Site	ACE Fencing	Fence Masters
1	\$14,750	\$13,500
1A	\$17,525	\$24,750
Base Bid	\$32,275	\$38,250
Alternate Bid		
2	\$22,095	\$19,500
3	\$19,725	\$21,000
4	\$49,275	\$48,500

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CASE STUDY #1: SEALED BID

The maintenance chief and contracting officer met on June 21 to determine the low bidder. ACE's margin below Fence-Master for the base bid was so significant (\$5,975) that the selection of any of the alternates was irrelevant; ACE would be low in every case. Given the limitations of their HUD budget, they went with a combination of the Base Bid and Alternate 3, resulting in the selection of ACE Fencing for a contract award of \$52,000. The contract was prepared and submitted to the Board of Directors for final approval.

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BREAKOUT ROOM REPORT OUT!

1. Was anything wrong with the IFB as originally issued?
2. Do you agree with the maintenance chief's logic to defer dealing with the changed conditions at Site 1A until after contract award?
3. Do you agree with the selection of ACE for a contract award of \$52,000? Why or why not?
4. Accepting the maintenance chief's concerns about adversely impacting other planned construction activity as valid, how could the contracting officer have done the deal with the changed conditions resulting from the fire, without causing any delays?

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Methods of procurement

Competitive Proposals

- Used when purchase exceeds threshold of \$250,000 (state or local law may require a lower threshold)
- Must advertise for a reasonable period
- Considers factors other than price
- Outline evaluation factors in advertisement
- Have method for technical evaluation
- Award to responsible firm whose proposal is most advantageous to the PHA, with price and other factors considered

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COMPETITIVE PROPOSAL PROCUREMENT - PROCESS

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    graph LR
      A[Prepare a Cost Estimate] --> B[Prepare Request for Proposals]
      B --> C[Solicit Proposals]
      C --> D[Conduct Initial Ranking]
      D --> E[Establish a Competitive Range]
  
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COMPETITIVE PROPOSAL PROCUREMENT - PROCESS

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    graph LR
      A[Interview Top Ranked Firms] --> B[Request "Best and Final" Offers]
      B --> C[Perform a Cost Analysis]
      C --> D[Negotiate Costs]
      D --> E[Execute the Contract]
  
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CASE STUDY #2: COST ANALYSIS

The cost proposal shown below was submitted by Can Doit Consultants, Inc. (CDC) in response to a PHA's competitive Request for Proposals for a comprehensive management needs assessment and follow-up technical assistance. The contract will require the contractor to assess key operational areas of the PHA, including occupancy, maintenance, modernization, and tenant accounts receivable. The contractor will identify deficiencies in operations and propose corrective actions. The contractor will provide technical assistance to the PHA board members, managers, and staff in correcting identified deficiencies.

The proposed budget for the contract is \$300,000. The contract is expected to be awarded on a cost-plus-fixed-fee basis since the required level of effort to complete the needs assessment and technical assistance is not certain.

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CASE STUDY #2: COST ANALYSIS

Direct Labor		Hrs.	Rate	Cost
1	Project Manager	1040	\$40.00	\$41,600
1	Senior Project Leader	1500	\$38.00	\$57,000
2	Public Housing Specialist	1000	\$25.00	\$25,000
1	Occupancy Specialist	250	\$17.50	\$4,375
1	Construction Specialist	400	\$19.00	\$7,600
2	Secretaries	1000	\$9.00	\$9,000
				\$144,575

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CASE STUDY #2: COST ANALYSIS

Labor Overhead @35%	\$50,601		
Travel -40 round trips - Washington, DC & Chicago (@ \$500/trip)	\$20,000		
Consultants -Accounting, legal A&E	\$30,000		
Other Direct-Telephones, Copying, Misc.	\$5,000		
Overhead @ 32%	\$80,056		
Profit	\$44,768		
	\$375,000		

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CASE STUDY #2: COST ANALYSIS REPORT OUT!

1. What steps would you take to analyze these costs?
2. Which cost elements would you question? Why?


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ARCHITECT/ENGINEER SELECTION



USE SAME COMPETITIVE PROPOSAL SOLICITATION METHOD



EVALUATION CRITERIA MAY BE DIFFERENT



PHA SHALL USE HUD STANDARD A/E CONTRACT, HUD 519.15.1

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Methods of procurement

Non-Competitive Proposals

- Used when
 - Items or services are available from a single or sole source.
 - Public exigency or emergency for the requirement will not permit the type of delay that would be caused by competition.
 - HUD expressly authorizes non-competitive proposals.
 - After a solicitation of a number of sources, competition is determined to be inadequate.

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JUSTIFICATION DOCUMENTATION

- Description of the Requirement
- History of Prior Purchases
- What Specific Exception Applies
- Statement as to the Unique Circumstances
- Competition Efforts
- Statement as to Future Efforts

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CONTRACT TYPES

- FIRM FIXED PRICE
- INDEFINITE DELIVERY TYPES
- DEFINITE QUANTITY
- INDEFINITE QUANTITY
- COST-PLUS FIXED FEE
- TIME AND MATERIALS

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PROHIBITED CONTRACT TYPES

- COST-PLUS PERCENTAGE OF THE COST
- PERCENTAGE OF THE CONSTRUCTION COST - A/E SERVICES

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COST & PRICE ANALYSIS

Required for every type of procurement action including:

- Small Purchases
- Competitive Proposals
- Invitation For Bids
- Non-competitive Proposals
- Single Bids/Sole Source
- Change Orders

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REQUIRED CONTRACT PROVISIONS

- Legal Remedies
- Termination for Convenience
- Executive Order 11246 – EEO
- Copeland “Anti-Kickback”
- Davis-Bacon, DOL

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REQUIRED CONTRACT PROVISIONS

- CWHSSA (Contract Work & Hours Safety Standards Act)
- Record Retention (Both HUD and State Law)
- EPA, Clean Air and Water Acts

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OTHER REGULATORY RESOURCES

- 24 CFR 135/75 – Section 3
- 24 CFR 941 – Partnerships for Mixed Finance Development
- 24 CFR 943 – PHA Joint Ventures
- 24 CFR 963 – Resident Owned Businesses
- 24 CFR 968 – Public Housing Modernization
- 24 CFR 990 – PH Operating Fund

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OTHER REGULATORY RESOURCES

- HUD Handbook 7460.8 Rev 2
- HUD Contract forms (Check HUDClips for Updates)
- Labor Standards Handbook – 1344.1
- HUD Notices (PIH & Capital Fund)

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WORDS TO REMEMBER...

Shall **Must** **Should** **May**

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WHERE TO GET HUD FORMS & REGS

www.hudclips.org

Online technical assistance for procurement available at:

www.Hud.gov/offices/cpo/index.cfm

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PROCUREMENT ACTIONS REQUIRING HUD APPROVAL

Non-Competitive Procurement Exceeding Federal Small Purchase Limit

Brand Name Only Procurement Exceeding Federal Small Purchase Limit

Awards other than the low bidders that exceeds the Federal Small Purchase Limit

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PROCUREMENT ACTIONS REQUIRING HUD APPROVAL

Contract change orders that substantially change the general scope of work or increasing the contract amount by more than the Federal small purchase threshold

Use of the QBS method of procurement for other than A/E services

Contracts exceeding 2 years, including renewal options (if operating under the old, pre-1995 ACC), 3 years under new ACC.

Procurement exceeding \$100,000 for litigation or non-personal services

Contract exceeding 5 years, including options. To exceed 5 years, HUD must issue a determination that there is no practical alternative

All energy performance contracts and utility add-ons

HUD issued corrective action orders

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APPLICABILITY OF STATE & LOCAL LAW

As a general rule the PHA should enforce the most stringent of the two if there is a conflict with Federal regulations.

Exceptions:

- Geographic Preferences
- Wage Determinations (Must DOL wage decisions or HUD determined)

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PROCUREMENT ETHICS

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    graph TD
      A[Remember, it's not your money...]
      B[Conflict of Interests]
      C[Real and/or apparent]
      D[Privileged Information]
      B --- C
      B --- D
  
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THE PROCUREMENT POLICY ENSURES

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THE PROCUREMENT POLICY ESTABLISHES

Procurement Authorization

- When PHA Board approval is required
- Small Purchase Threshold
- Professional Services Thresholds
- Allowable length of contracts

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PROCUREMENT PROCEDURES

Strongly recommended by HUD (Possible Finding if none)

As procedures are fluid (change often as needed), not approved by HUD or Board

Explains Policy in greater detail

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OVERALL AGENCY PLANNING STEPS

Examine Current Inventory → Project Needs for Upcoming Year → Determine Procurement Methods

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COST ESTIMATES

-  SHOULD BE DONE FOR EVERY PROCUREMENT
-  WILL DETERMINE METHOD OF PROCUREMENT
-  HELPS DETERMINE THE SCOPE OF WORK
-  HELPS DETERMINE THE MATERIALS
-  A COST ESTIMATE IS THE SUMMARY OF THE EXPECTED COSTS OF PROVIDING LABOR AND EQUIPMENT AND RELATED COSTS TO COMPLETE A PROJECT.

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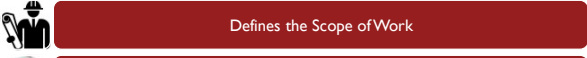

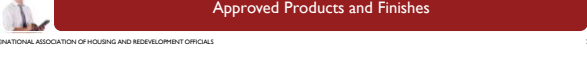
CONTRACTUAL & ADMINISTRATIVE REQUIREMENTS

- Do not include any provisions dealing with legal, financial, or contract administration issues in the work section of the SOW
- Address only the work to be performed
- Address PHA requirements for bidding in a separate section
- Require pricing that allows an analysis

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CONSTRUCTION SPECIFICATIONS

-  Intent of Specifications
-  Defines the Scope of Work
-  Explains the installation, workmanship standards and material requirements
-  Approved Products and Finishes


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CONSTRUCTION SPECIFICATIONS



Performance Approach
Specifies the end result required



Reference Standards Approach
Standards published by industry associations



Proprietary Approach
Name Brand

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CONTRACT ADMINISTRATION

Objectives of Contract Administration:

- Contractor complies with Terms & Conditions
- The product or service is provided at the time and place needed and is of the specified quality and quantity.


How to accomplish objectives:

- Pro-active and diligent monitoring
- Appropriate contract modifications
- Address unsatisfactory performance

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CONTRACT ADMINISTRATION



Problem areas:

- No/poor policies and procedures
- Controls established not followed
- Poorly written contract
- Work modified without being in writing
- Use of change orders to compensate for too low bid
- Poor administration documentation
- Under-trained PHA staff

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CONTRACT ADMINISTRATION

How to assure good Contract Administration:

- Read contract (all involved need a copy)
- Establish a monitoring plan
- Watch over the work—timely responses
- PHA/contractor cooperate (regular meetings—keep record)
- Maintain open relationship w/contractor
- Regularly compare actual performance with contract (schedules)

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CONTRACT ADMINISTRATION

Keys to successful Contract Administration:

- Write a "win-win" contract (sound SOW)
- Productive Pre-Conference (all issues discussed)
- Aggressive oversight
- Sound monitoring plan
- Documentation that is written, accurate, detailed, frequent and timely
- Problem solving that:
 - Gets the work done satisfactorily
 - Does not delay the work
 - Maintains good relationships

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CONTRACT ADMINISTRATION

Unsatisfactory Performance

Address immediately (in writing to contractor or file)	If excusable, modification with consideration	If acceptable, forbear	Require Correction	If unacceptable, reject
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SMALL PURCHASE ADMINISTRATION

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CONTRACT ADMINISTRATION FOR CONSTRUCTION PROJECTS

- The final link in a long process
- The Project Manager's Job is to Bring Physical Reality to all the Previous Efforts
- Don't have to be an expert in everything, but must be a good "traffic cop"
- Project Security
- Project Health, Safety, and Accident Prevention
- Environmental Considerations

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CONTRACT ADMINISTRATION FOR CONSTRUCTION PROJECTS

- CONDUCTING PROGRESS MEETINGS
- CONDUCT QUALITY INSPECTIONS
- SHOP DRAWING REVIEW
- CONTRACT PAYMENTS

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CONTRACT ADMINISTRATION FOR CONSTRUCTION PROJECTS

- Cost Overrun Options (cost reimbursement-type)
 - Decrease work
 - Increase funds
 - Provide force account labor
 - Terminate (Convenience or Default)
 - Liquidated Damages


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CONTRACT ADMINISTRATION FOR CONSTRUCTION PROJECTS



Making Contract Payments



Recommended HUD Forms

HUD 51000, Schedule of Values
 HUD 51001, Periodic Estimate
 HUD 51002, Schedule of Change Orders
 HUD 51003/4 Summary of Materials Stored

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CONTRACT ADMINISTRATION FOR CONSTRUCTION PROJECTS



Ensure Consistency with 51000



Retain 10 %



Inspect the Work, Verify the Materials



Ensure Supporting Documentation is Attached



Ensure Payrolls Have Been Submitted




Strike Throughs

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CHANGE ORDERS



- Is the work needed above and beyond the original contract scope?
- Is the contractor's price reasonable?
- All changes to the contract, regardless if price is effected, must be documented in the form of a change order.
- Defines and formalizes a change in the contract.

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CHANGE ORDER COMPLIANCE CERTIFICATION

The Proposed Work is Not Already Included in the Original Scope of Work

The Work is Necessary and Economical

The Work Cannot Be Practically Performed Under a Separate Contract, after completion of the contract

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ENFORCING LABOR STANDARDS

- It is the HA's responsibility to ensure all contractors and developers enforce all labor related laws and regulations.

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4 PHASES OF ENFORCEMENT



BID PACKAGE PREPARATION **PRE-CONSTRUCTION ACTIVITIES** **ON-SITE INSPECTIONS** **RECORDS REVIEW**

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COMMON INDICATORS OF FALSIFICATION & WILLFUL VIOLATIONS




RATIO OF LABORERS TO TRADES WORKERS **TOO FEW OF IRREGULAR HOURS** **DISCREPANCIES IN WAGE COMPUTATIONS** **EXTRAORDINARY DEDUCTIONS**

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CONTRACT CLOSE-OUT



CONTRACT CLOSE-OUT IS INITIATED BY THE CONTRACTOR **CONDUCTING FINAL PHA INSPECTIONS** **CONTRACTOR'S CERTIFICATE AND RELEASE**

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CONTRACT CLOSE-OUT PROCEDURES

- Review Status of Change Orders
- Review the Contract Work
- Review the Financial Status
- Follow Up on Punch List
- Warranties, As-Build Drawings, Operating Manuals, etc.
- Certificates of Completion – Optional
- Liquidated Damages
- Time Extensions
- Contract Performance Evaluation

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