



# Jefferson Metropolitan Housing Authority, Steubenville, OH

## Public Housing Program



**To:** Kevin Laviano, Director of Public and Indian Housing Hub, 5DPH

*//signed//*

**From:** Kelly Anderson, Regional Inspector General for Audit, Chicago Region, 5AGA

**Subject:** The Jefferson Metropolitan Housing Authority, Steubenville, OH, Failed To Manage Its Procurements and Contracts in Accordance With HUD's and Its Own Requirements

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our review of the Jefferson Metropolitan Housing Authority's procurement procedures.

HUD Handbook 2000.06, REV-4, sets specific timeframes for management decisions on recommended corrective actions. For each recommendation without a management decision, please respond and provide status reports in accordance with the HUD Handbook. Please furnish us copies of any correspondence or directives issued because of the audit.

The Inspector General Act, Title 5 United States Code, section 8M, requires that OIG post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at <http://www.hudoig.gov>.

If you have any questions or comments about this report, please do not hesitate to call me at (312) 353-7832.



**Audit Report Number: 2016-CH-1005**

**Date: August 3, 2016**

**The Jefferson Metropolitan Housing Authority, Steubenville, OH, Failed To Manage Its Procurements and Contracts in Accordance With HUD's and Its Own Requirements**

## Highlights

---

### What We Audited and Why

---

We audited the Jefferson Metropolitan Housing Authority's public housing program based on the activities included in our 2016 annual audit plan and a request from the U.S. Department of Housing and Urban Development (HUD). Our audit objective was to determine whether the Authority complied with (1) Federal and its own procurement requirements and (2) HUD's requirements for the administration of its energy performance contract.

### What We Found

---

The Authority did not always comply with (1) Federal and its own procurement requirements and (2) HUD's requirements for the administration of its energy performance contract. Specifically, it failed to (1) maintain adequate documentation to support its procurements and (2) ensure that there were no real or apparent conflicts of interest in its contracting process. Additionally, it failed to achieve the expected savings on its energy improvements. As a result, HUD and the Authority lacked assurance that more than \$964,000 in public housing operating funds was used appropriately. Further, the Authority is at risk of defaulting on its nearly \$6 million energy conservation loan, thus potentially encumbering public housing properties.

### What We Recommend

---

We recommend that the Director of HUD's Cleveland Office of Public and Indian Housing require the Authority to (1) support or reimburse its program more than \$964,000 from non-Federal funds for its unsupported procurement and contracting activities, (2) work with HUD to develop a plan to ensure that energy savings are realized to prevent a potential default on its nearly \$6 million energy conservation loan used to purchase energy conservation equipment attached to the Authority's public housing properties, and (3) develop and implement adequate procedures and controls to address the findings cited in this audit report.

# Table of Contents

---

<b>Background and Objective.....</b>	<b>3</b>
<b>Results of Audit .....</b>	<b>4</b>
<b>Finding: The Authority Failed To Manage Its Procurements and Contracts in     Accordance With HUD’s and Its Own Requirements.....</b>	<b>4</b>
<b>Scope and Methodology .....</b>	<b>9</b>
<b>Internal Controls.....</b>	<b>11</b>
<b>Appendixes.....</b>	<b>12</b>
<b>A. Schedule of Questioned Costs and Funds To Be Put to Better Use.....</b>	<b>12</b>
<b>B. Federal, Authority, and Contract Requirements.....</b>	<b>13</b>

# Background and Objective

---

The Jefferson Metropolitan Housing Authority is a public housing agency created in 1958 by the State of Ohio to provide decent, safe, and sanitary housing for low-income households. The Authority is governed by a five-member board of commissioners appointed by elected officials. The board's responsibilities include performing duties and functions required by the Authority's bylaws or its rules and regulations. The executive director has supervision over the administration of the Authority and management of the Authority's housing projects.

The U.S. Department of Housing and Urban Development (HUD) established the public housing program to provide decent and safe rental housing for eligible low-income families, the elderly, and persons with disabilities. HUD provides funds to local housing agencies that manage housing for low-income residents at rents they can afford. The Public Housing Operating Fund program was developed under section 9(e) of the Housing Act of 1937 as amended. HUD provides public housing agencies operating funds for the operation and management of public housing. HUD authorized the Authority the following assistance for its Public Housing Operating Fund program for fiscal years 2013, 2014, and 2015:

Fiscal year	Operating Fund program
2013	\$2,432,431
2014	3,058,259
2015	<u>3,057,706</u>
<b>Total</b>	<b><u>8,548,396</u></b>

The objective of our audit was to determine whether the Authority complied with (1) Federal and its own procurement requirements and (2) HUD's requirements for the administration of its energy performance contract. Specifically, we wanted to determine whether the Authority (1) maintained adequate documentation to support its procurements, (2) ensured that there were no real or apparent conflicts of interest in its contracting process, and (3) achieved expected cost savings on its energy improvements.

# Results of Audit

---

## **Finding: The Authority Failed To Manage Its Procurements and Contracts in Accordance With HUD's and Its Own Requirements**

---

The Authority failed to (1) maintain adequate documentation to support its procurements and (2) ensure that there were no real or apparent conflicts of interest in its contracting process. Additionally, it failed to achieve the expected savings on its energy improvements. These weaknesses occurred because the Authority lacked (1) adequate procedures and controls to ensure that it complied with HUD's and its own procurement requirements and (2) a sufficient understanding of HUD's requirements for the administration of its energy contract. As a result, HUD and the Authority lacked assurance that more than \$964,000 in public housing operating funds was used appropriately. Further, the Authority is at risk of defaulting on its nearly \$6 million energy conservation loan, thus potentially encumbering public housing properties.

### **The Authority Lacked Documentation To Support Its Procurements**

We reviewed 11 of the Authority's procured contracts. Of the 11<sup>1</sup> contracts, 8 (73 percent) were missing pertinent procurement documentation. Specifically, the Authority's contract files were missing evidence that the Authority obtained the accurate number of proposals<sup>2</sup> when using the small purchase method and sought appropriate competition for five contracts. In addition, the Authority did not prepare independent cost estimates, maintain copies of proposals, or appropriately follow the sealed bid procurement method for three contracts over its small purchase threshold of \$50,000.

In addition, for the one of the three contracts that were over the Authority's small purchase threshold, the Authority's contract file did not contain an explanation for why the lowest bidder was not selected as required.<sup>3</sup> For the second of the three contracts, the Authority did not maintain copies of the proposals from the other bidders. For the remaining contract, which was for the services of an architecture and engineering firm, the Authority accepted sealed bid proposals, date stamped October 16, 2014. However, the sealed bids were **not** opened. Instead, the Authority retained the services of the same architecture and engineering firm that it had used for its previous procurements. According to the previous interim executive director and the current executive director, the Authority had done business with that firm since 1998.

As a result, HUD and the Authority lacked assurance that \$964,365 (\$619,750 from the unsupported procurements + \$344,615 from the architect and engineering contract in which the

---

<sup>1</sup> Our methodology for the selection of the 11 contracts is explained in the Scope and Methodology section of this audit report.

<sup>2</sup> 24 CFR (Code of Federal Regulations) 85.36(d)(1)

<sup>3</sup> 2 CFR 200.320(c)(2)(iv)

Authority did not open the sealed bids) in public housing operating funds used for the eight contracts was reasonable.

### **The Authority Had a Conflict-of-Interest Relationship**

The Authority's board member had a business and personal relationship with at least one of the Authority's contractors reviewed. In addition, the winning energy service contractor used the services of this contractor, as a subcontractor to implement the Authority's energy contract. We reviewed documentation in relation to the board member's voting on contracts for that contractor without disclosing details of the relationship to the board or abstaining from the voting process. According to the Authority's procurement policy, no employee, officer, board member, or agent of the Authority should participate directly or indirectly in the selection, award, or administration of any contract if a conflict of interest, either real or apparent, would be involved. The Authority's board approved its procurement policy through resolution number 1304-08 on May 28, 2008. The board member made the motion to adopt the resolution; therefore, he was aware of the Authority's conflict-of-interest requirements in its procurement policy.

In addition, the Authority sought requests for proposal for the installation of energy conservation equipment in its public housing projects. While procuring the energy services contract, the Authority narrowed its selection to two possible energy service contractors. The previous interim acting executive director said he believed that the winning contracting company was selected because it had promised to use a local subcontractor to install the energy conservation equipment.<sup>4</sup> According to the request for proposal, under the local support services section, the previous executive director stated that it would be difficult for the project to run smoothly with a contracted engineering and construction management firm that was more than 100 miles away. However, the request for proposal did not mention the location of the subcontractor. Therefore, the Authority used the local subcontractor requirement to select the energy contractor, a new startup company that had not yet completed an energy service contract. As stated above the winning contractor used the services of the subcontractor with which the Authority's board member had a conflict-of-interest relationship. The subcontractor implemented the Authority's energy contract.

### **The Authority's Energy Improvements Failed To Achieve Cost Savings**

The Authority entered into an energy contract with an energy performance contractor to install energy conservation equipment in its public housing projects. The equipment was supposed to reduce the cost of utilities paid by the Authority and its program households. To pay for the installation of the energy-efficient equipment, the Authority obtained a bank loan of nearly \$6 million. On June 17, 2013, HUD approved this contract, stating that its approval of HUD

---

<sup>4</sup> Section V.2.c of the Authority's request for proposal states that any subcontractors the contractor intends to use for the project should be identified and their role(s) described. The contractor is asked to provide the subcontractor's name, address, contact person, phone number, and relevant experience. In addition, Section X of the Authority's request for proposal states that the contractor must not award any work to any subcontractor without prior written approval of the Authority.

incentives for this energy performance contract was based on the contract's compliance with 24 CFR (Code of Federal Regulations) 990.185, which requires that reasonably anticipated energy cost savings be sufficient to fund the debt service payments under the contract. HUD funds were not used to secure the energy conservation loan used to finance the contract. Instead, the Authority pledged the energy efficient equipment as collateral for the loan. The Authority selected the add-on savings approach for this contract. Therefore, each year HUD gives the Authority a predetermined add-on amount to its public housing operating funds. This add-on subsidy amount was to be used to make the debt service payments on the energy conservation loan. If HUD determines that a savings is not realized, it reduces the next year's add-on subsidy amount by the previous year's add-on subsidy amount. Each year after the energy equipment is installed, the energy contractor or its designee is required to provide a monitoring and verification report documenting the energy savings received by the Authority. HUD reviews this information and determines whether the Authority is on track with its expected savings from the contract.

For calendar years 2014 and 2015, HUD disagreed with the Authority's monitoring and verification reports, which stated that the Authority had achieved the estimated energy savings. According to HUD, based on its review, the Authority was spending more for utility consumption than it was before the energy savings equipment was installed. Therefore, in accordance with HUD's energy performance contract approval letter, the Authority's add-on subsidy should have been reduced. For instance, the Authority's estimated add-on subsidy for 2014 and 2015 was \$343,370 and \$353,671, respectively.<sup>5</sup> Because the Authority did not achieve expected cost savings in 2014 and 2015, the Authority's add-on subsidy amount for 2014 and 2015 would be reduced from its 2015 and 2016 add-on subsidy amounts, respectively. These reductions would continue every year until a savings is realized. From 2014 through 2016, the Authority used its public housing operating funds to make the debt service payments on the energy conservation loan.

Further according to HUD, the Authority also did not comply with HUD's approval of the contract. Specifically, section 9 of the approval states that if there are material changes to the approved contract cost or contract savings to the Authority, in an amount greater than 10 percent of the originally approved contract,<sup>6</sup> the Authority must resubmit the project documentation to HUD for approval. Therefore, although the Authority did not achieve the expected cost savings on its energy improvements under its previously approved contract, HUD could not make a definite determination regarding the Authority's actual add-on subsidy and savings because the energy performance contract needed to be reapproved. Additionally, in accordance with HUD

---

<sup>5</sup> According to the contract, the estimated add-on subsidy amounts were based on the Authority's estimated project costs. Further, the add-on subsidies are subject to operating fund proration.

<sup>6</sup> The total contract amount was \$5,869,770. The Authority's anticipated savings from its energy improvements for 2014 and 2015 totaled \$983,133. Therefore, because the Authority did not achieve the anticipated cost savings, the contract savings had decreased by 100 percent.

Handbook 7460.8, REV-2, paragraph 11.4(E), contract modifications that increase the contract amount by more than the Federal small purchase threshold (\$100,000) generally require HUD field office approval. The Authority and its contractor made changes to the contract amount totaling \$185,000 through change orders. This amount was not approved by HUD.

According to the energy contract loan documents, the Authority pledged the energy-efficient equipment as collateral for the loan. Therefore, if the Authority was unable to pay the debt service payments for the loan, the bank would be entitled to take possession of the energy-efficient equipment. According to the loan documents, in the case of nonpayment, the Authority was required to return all equipment. The equipment included but was not limited to windows; heating, ventilation, and air conditioning units; insulation; and elevators. The equipment was attached to the Authority's public housing properties, thus placing HUD, the Authority, and the public housing households at risk.<sup>7</sup>

### **The Authority Lacked Adequate Procedures and Controls**

The Authority lacked (1) adequate procedures and controls to ensure that it complied with HUD's and its own procurement requirements and (2) a sufficient understanding of HUD's requirements for the administration of its energy contract. The Authority's current executive director said that the Authority had experienced a number of executive staff changes. Therefore, she believed that the missing documentation may have been misplaced or not appropriately completed and maintained. In addition, the Authority's previous interim acting executive director said that its architecture and engineering firm (1) reviewed the bids received, (2) maintained the procurement and bid documentation, (3) scored and ranked the bids, and (4) recommended the top proposals to the Authority. Based on our review, we determined that the architecture and engineering firm did not always maintain documentation to support the Authority's procurement process, including contract selection.

The Authority's grounds and building manager was hired in December 2014. He said that part of his duties included procurement activities. Before December 2014, the Authority's previous executive director handled all procurement-related activities, including obtaining proposals when applicable. However, the Authority was unable to locate documentation to support its procurement practices.

On July 20, 2015, the Authority's previous interim director implemented a new amendment to the procurement procedures, stating that the executive director must approve all purchase orders totaling \$2,000 or more and a minimum of three quotes must be obtained. The Authority said that when its contracts expired, it planned to update them to follow the new policy. Further, the Authority's board member and previous acting interim executive director said that he should have abstained from voting on contracts for the contractor with which he had a business and personal relationship.

---

<sup>7</sup> The Authority does not have sufficient non-Federal funds to make the debt service payments.

In addition, the Authority failed to update its energy contract savings and obtain HUD approval for change orders over \$100,000. The Authority was unaware that it was not receiving the contract energy savings because the contractor's measurement and verification reports showed an energy savings. HUD's review of the reports determined that the savings were not achieved. In addition, due to staff turnover, the Authority's current employees were not aware of the issues with the energy contract or that change orders had been issued.

### **Conclusion**

The weaknesses described above occurred because the Authority lacked (1) adequate procedures and controls to ensure that it complied with HUD's and its own procurement requirements and (2) a sufficient understanding of HUD's requirements for the administration of its energy contract. As a result, HUD and the Authority lacked assurance that more than \$964,000 in public housing operating funds was used appropriately. Further, the Authority is at risk of defaulting on its nearly \$6 million energy conservation loan, thus potentially encumbering public housing properties.

### **Recommendations**

We recommend that the Director of HUD's Cleveland Office of Public and Indian Housing require the Authority to

- 1A. Support or reimburse its program \$964,365 (\$619,750 + \$344,615) from non-Federal funds for the unsupported procurement and contracting cited in this finding.
- 1B. Update its expected energy savings – the total contract amount to include change orders – and provide supporting documentation to HUD for approval to ensure that the remaining contract amount is appropriately approved.
- 1C. Work with HUD to develop a plan to ensure that energy savings are realized to prevent a potential default on the \$5,869,770 energy conservation loan used to purchase energy conservation equipment attached to the Authority's public housing properties.
- 1D. Implement adequate procedures and controls to ensure that (1) procurements are appropriately managed, (2) adequate documentation is maintained to support the significant history of its procurements, and (3) adequate competition is sought for all procurements.
- 1E. Implement adequate procedures and controls to ensure that the Authority follows HUD's and its own conflict-of-interest requirements related to procurements. Such procedures should include but not be limited to selecting contractors based on open and free competition and ensuring that real or apparent conflicts of interest do not exist or are appropriately mitigated.

# Scope and Methodology

---

We performed our onsite audit work between December 2015 and February 2016 at the Authority's main office located at 815 North 6<sup>th</sup> Avenue, Steubenville, OH. The audit covered the period September 1, 2013, through October 31, 2015, but was expanded as determined necessary.

To accomplish our review objective, we interviewed HUD program staff and the Authority's employees. In addition, we obtained and reviewed the following:

- Applicable laws; Federal regulations at 2 CFR Part 200; HUD's regulations at 24 CFR Parts 85, 941, 982, and 990; Office of Public and Indian Housing notices; and HUD's Guidebook 7460.8, REV-2.
- The Authority's procurement procedures, annual contributions contract, 5-year and annual plans, accounting records, independent audit reports, bank statements, policies and procedures, and board meeting minutes for September 2013 through October 2015.

The Authority was unable to provide a comprehensive list of its contracts procured during the audit period from September 1, 2013, through October 31, 2015. Therefore, in addition to the list provided by the Authority, we also reviewed the electronic check register to identify payments to contractors. We combined the Authority's list with our review of the check register and identified 44 contractors that the Authority used to provide good or services during our audit period. We selected total of 10 contractors for review. Six of the contractors were based off a comparison of the Authority's list and our review of the electronic check register, two contractors were randomly selected<sup>8</sup> from our review of the electronic check register, and the remaining two contractors were judgmentally<sup>9</sup> selected. Therefore, we reviewed a total of 10 contractors. The Authority contracted with one of the contractors twice during our audit period; therefore we reviewed a total of 11 contracts for the 10 contractors. We reviewed the 11 contracts to determine whether the Authority (1) managed its procurements in accordance with HUD's and its own requirements, (2) maintained adequate documentation to support its procurement and contract selections, and (3) sought appropriate competition when it procured its contracts. We used these methods to select the contractors for review, because the Authority did not maintain a comprehensive list of its procurement and contracting activities. As such, we are unable to project our sample to the universe of the Authority's contracts.

We relied in part on data maintained by the Authority in its systems. Although we did not perform a detailed assessment of the reliability of the data, we performed a minimal level of

---

<sup>8</sup> We used Microsoft Excel's random number generator for our random selection of contractors to review.

<sup>9</sup> We judgmentally selected two contractors based on our meetings and discussions with the interim acting executive director and the Authority's staff.

testing and found the data to be adequately reliable for our purposes. We provided our review results and supporting schedules to the Director of HUD's Cleveland Office of Public and Indian Housing and the Authority's executive director during the audit.

We provided our discussion draft audit report to HUD's staff, the Authority's executive director, and board on July 8, 2016. We asked the Authority's executive director to provide written comments on our discussion draft audit report by July 20, 2016. The executive director chose not to comment on the report.

We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective(s). We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

# Internal Controls

---

Internal control is a process adopted by those charged with governance and management, designed to provide reasonable assurance about the achievement of the organization's mission, goals, and objectives with regard to

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

Internal controls comprise the plans, policies, methods, and procedures used to meet the organization's mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance.

## **Relevant Internal Controls**

We determined that the following internal controls were relevant to our audit objective:

- Effectiveness and efficiency of operations – Policies and procedures that management has implemented to reasonably ensure that a program meets its objectives.
- Reliability of financial reporting – Policies and procedures that management has implemented to reasonably ensure that valid and reliable data are obtained, maintained, and fairly disclosed in reports.
- Compliance with applicable laws and regulations – Policies and procedures that management has implemented to reasonably ensure that resource use is consistent with laws and regulations.

We assessed the relevant controls identified above.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, the reasonable opportunity to prevent, detect, or correct (1) impairments to effectiveness or efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations on a timely basis.

## **Significant Deficiency**

Based on our review, we believe that the following item is a significant deficiency:

- The Authority lacked adequate procedures and controls to ensure that (1) adequate documentation was maintained to support its procurements, (2) there were no real or apparent conflicts of interest in its contracting process, and (3) its energy improvements achieved the expected savings (finding).

# Appendixes

---

## Appendix A

---

**Schedule of Questioned Costs and Funds To Be Put to Better Use**

<b>Recommendation number</b>	<b>Unsupported 1/</b>	<b>Funds to be put to better use 2/</b>
1A	\$964,365	
1C		<u>\$5,869,770</u>
1F		
<b>Total</b>	<b><u>964,365</u></b>	<b><u>5,869,770</u></b>

- 1/ Unsupported costs are those costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of the audit. Unsupported costs require a decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of departmental policies and procedures.
- 2/ Recommendations that funds be put to better use are estimates of amounts that could be used more efficiently if an Office of Inspector General (OIG) recommendation is implemented. These amounts include reductions in outlays, deobligation of funds, withdrawal of interest, costs not incurred by implementing recommended improvements, avoidance of unnecessary expenditures noted in preaward reviews, and any other savings that are specifically identified. In this instance, if the Authority implements our recommendations, it will (1) ensure that funds are available for the operation and management of its public housing projects and (2) prevent a potential default on its nearly \$6 million energy conservation loan.

## Appendix B

---

### Federal, Authority, and Contract Requirements

#### *Procurement*

Federal regulations at 2 CFR Part 225, appendix A, section C(1)(a), state that to be allowable under Federal awards, costs must be necessary and reasonable for proper and efficient performance and administration of Federal awards and be adequately documented.

HUD's regulations at 24 CFR 85.36(b)(9) state that a public housing agency must maintain records sufficient to detail the significant history of each procurement. These records must include but must not necessarily be limited to the following: rationale for the method of procurement selected, selection of contract type, contractor selection or rejection, and basis for the contract.

HUD's regulations at 24 CFR 85.36(d)(1) state that procurements by small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold, currently set at \$100,000. If small purchase procedures are used, price or rate quotations should be obtained from an adequate number of qualified sources (generally defined as three).

HUD's regulations at 24 CFR 85.36(d)(2) state that procurements by sealed bids (formal advertising) are bids that are publicly solicited and a 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 in price. The sealed bid method is the preferred method for procuring construction contracts.

- i. In order for sealed bidding to be feasible, the following conditions should be present:
  - A. A complete, adequate, and realistic specification or purchase description is available;
  - B. Two or more responsible bidders are willing and able to compete effectively and for the business; and
  - C. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
- ii. If sealed bids are used, the following requirements apply:
  - A. The invitation for bids will be publicly advertised and bids should be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;
  - B. The invitation for bids, which will include any specifications and pertinent attachments, should define the items or services in order for the bidder to properly respond;
  - C. All bids will be publicly opened at the time and place prescribed in the invitation for bids;
  - D. A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs should be considered in determining which bid

- is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- E. Any or all bids may be rejected if there is a sound documented reason.

HUD's regulations at 24 CFR 85.36(f)(1) state that grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make an independent cost analysis before receiving bids or proposals. A cost analysis will be necessary when adequate price competition is lacking and for sole-source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulations. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price. Further, according to paragraph 10-3(E) of HUD's procurement handbook, documentation is required to demonstrate price reasonableness, including any cost analysis, whenever the price obtained varies significantly from the independent cost estimate, in which case the contracting officer should notate and explain the reasons for the difference; for example, poor estimate, etc.

HUD's regulations at 24 CFR 85.36(d)(3)<sup>10</sup> state that the technique of competitive proposals is normally conducted with more than one source submitting an offer and either a fixed-price or cost reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- i. Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals should be honored to the maximum extent practical;
- ii. Proposals will be solicited from an adequate number of qualified sources.

HUD's regulations at 2 CFR 200.320(c)(2)(iv) state that a firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder.

HUD Handbook 7460.8, REV-2, Procurement Handbook for Public Housing, transmittal page, states the following: "...areas that have been streamlined include: An increases in the small purchase threshold from \$25,000 to \$100,000, in accordance with revisions to 24 CFR 85.36."

HUD Handbook 7460.8, REV-2, section 1.9, defines competitive proposals as contracting by negotiation, a method of procurement using the solicitation, evaluation, and negotiation of proposals instead of sealed bids. The competitive proposal method is used for requirements

---

<sup>10</sup> HUD amended 24 CFR Part 85, which had codified Office of Management and Budget circulars superseded by 2 CFR Part 200.

exceeding the Authority's small purchase threshold when conditions are not appropriate for sealed bidding.

HUD Handbook 7460.8, REV-2, paragraph 5.3(A), states that the public housing agency must solicit price quotes from an adequate number of qualified sources (generally defined as not fewer than three, except in the case of micropurchases). The public housing agency's procurement policy should state any specific policy for the small purchase threshold.

HUD Handbook 7460.8, REV-2, section 6.21, states that under sealed bids, the public housing agency publicly solicits bids and a 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 in price.

HUD Handbook 7460.8, REV-2, paragraph 7.1(A) states that unlike sealed bidding, the competitive proposal method permits consideration of technical factors other than price, discussion with offerors concerning offers submitted, negotiation of contract price or estimated cost and other contract terms and conditions, revision of proposals before the final contractor selection, and the withdrawal of an offer at any time up until the point of award. Award is normally made on the basis of the proposal that represents the best overall value to the public housing agency, considering price and other factors, including, technical expertise, past experience, and quality of proposed staffing, set forth in the solicitation and not solely the lowest price.

HUD Handbook 7460.8, REV, paragraph 7.2(L), Evaluation Report, states that the public housing agency should prepare an evaluation report to document the ranking of the proposals by technical merit, using point scores or similar methodology. (If price is included in the point scoring, the evaluation report should also include the price or cost analysis as appropriate.) In addition, a narrative should accompany the scores to explain how the scores were derived, detailing the significant strengths, weaknesses, and deficiencies in the proposal. The level of detail for the evaluation report will be influenced by the complexity of the procurement, with more complex procurements likely requiring more detailed reports.

The Authority's procurement procedures, page 2, state that no employee, officer, board member, or agent of the Authority should participate directly or indirectly in the selection, award, or administration of any conflict of interest, either real or apparent.

The Authority's procurement policy, page 3, states that for small purchases for any amounts above the petty cash ceiling but not exceeding \$50,000, as amended, the Authority may use small purchase procedures. The Authority should obtain a reasonable number of quotes (preferably three). If an award is made for reasons other than the lowest price, documentation should be provided in the contract file. This amount increased from \$25,000 to \$50,000 when the Authority's resolution 1387-12 was passed on November 28, 2013. The Authority's procurement procedures, page 4, state that sealed bidding must be used for all contracts that exceed the small purchase threshold and that are not competitive proposals or noncompetitive proposals.

The Authority's procurement policy, page 5, competitive proposals (C), states that competitive proposals must be evaluated only by the criteria stated in the request for proposal. When it is not apparent from the evaluation criteria, the Authority should establish an evaluation plan.

The Authority's procurement policy, page 17, states that the Authority must maintain records sufficient to detail the significant history of each procurement action. These records should include but not be necessarily be limited to the following:

- A. Rationale for the method of procurement (if not self-evident);
- B. Rationale of contracting price arrangement (also if not self-evident);
- C. Reason for accepting or rejecting the bids or offers;
- D. Basis for the contract price (as prescribed in the handbook);
- E. A copy of the contracts documents awarded or issued and signed by the contracting officer;
- F. Basis for contract modifications; and
- G. Related contract administration actions.

The level of documentation should be commensurate with the value of the procurement. Records are to be retained for a period of 3 years after final payment and all matters pertaining to the contract are closed.

The Authority's procurement policy, page 1, states that it must provide a procurement system of quality and integrity; provide for the fair and equitable treatment of all persons or firms involved in purchasing by the Authority; ensure that supplies and services are procured efficiently, effectively, and at the most favorable prices available to the Authority; promote competition in contracting; and assure that the Authority purchasing actions are in full compliance with applicable Federal standards, HUD regulations, State, and local laws.

Section 19(A)(1) of the Authority's consolidated annual contributions contract states that in addition to any other applicable conflict-of-interest requirements, neither the public housing agency nor any of its contractors or subcontractors may enter into any contract, subcontract, or arrangement in connection with a project under this contract in which any of the following classes of people has an interest, direct or indirect, during his or her tenure or for 1 year thereafter:

- (i) Any present or former member or officer of the governing body of the housing authority, or any member of the officer's immediate family.
- (ii) Any employee of the housing authority who formulates policy or who influences decision with respect to the project(s) or any member of the employee's partner.
- (iii) Any public official, member of the local governing body, or State or local legislator, or any member of individual's immediate family, who exercises functions or responsibilities with respect to the project(s) or the housing authority.

Section 19 (A)(2) of the Authority's contract states that any member of these classes of persons must disclose the member's interest or prospective interest to the public housing agency and HUD.

Section 19 (A)(3) of the Authority's contract states that the requirements of this section (A)(1) may be waived by HUD for good cause if permitted under State and local law.

### Energy Contract

HUD's regulations at 24 CFR 990.185(a)(3)(i) state that if a public housing agency qualifies for this incentive (the subsidy add-on), *"then the Authority is eligible for additional operating subsidy each year of the contract to amortize the cost of the loan for the energy conservation measures and other direct costs related to the energy project under the contract during the term of the contract subject to the provisions of this paragraph (a)(3) of this section.* The Authority's operating subsidy for the current funding year will continue to be calculated in accordance with paragraphs (a), (b), and (c) of 24 CFR 990.170. The Authority will be able to retain part of the cost savings in accordance with 24 CFR 990.170(c). (ii) The actual cost of energy after implementation of the energy conservation measure will be subtracted from the expected energy cost, to produce the energy cost savings for the year. (iii) *If the cost savings for any year during the contract period are less than the amount of operating subsidy to be made available under this paragraph to pay for the energy conservation measure in that year, the deficiency will be offset against the Authority's operating subsidy eligibility for the Authority's next fiscal year.* (iv) If energy cost savings are less than the amount necessary to meet amortization payments specified in a contract, the contract term may be extended (up to the 20-year limit) if HUD determines that the shortfall is the result of changed circumstances rather than a miscalculation or misrepresentation of projected energy savings by the contractor or Authority. The contract term may be extended only to accommodate payment to the contractor and associated direct costs."

HUD's energy contract approval letter states that HUD incentives for the energy performance contract are based upon the contract's compliance with 24 CFR 990.185 regulations, which require that reasonably anticipated energy cost savings be sufficient to fund the payments under the contract. Section c. identifies the estimated add-on subsidy that will be paid to the Authority based on project costs as identified in the cash flow. Add-on subsidy is always paid compared to the actual utility savings for the same calendar year after the funding year in accordance with HUD guidance. During the reconciliation process, HUD will retain any difference in add-on subsidy paid, which was more than the actual savings realized for that calendar year, from the next year's add-on subsidy incentive payment. The add-on subsidy incentive is subject to operating fund proration.

Section 6.2 of the master lease purchase agreement for the energy-efficient equipment states that if the lessee's (Authority) governing body fails to appropriate sufficient funds in any fiscal year and if other funds are legally appropriated for such payments, a "non-appropriations event" should be deemed to have occurred. The lessee should return to the lessor all equipment covered by the affected lease at the lessee's sole expense in accordance with section 21.

Section 8.2 of the master lease purchase agreement for the energy-efficient equipment states that since the title security interest lists this equipment as collateral for the secured obligations, the lessee grants to the lessor first priority security interest in any and all of the equipment.

Section 9 of the master lease purchase agreement for the energy-efficient equipment states that all equipment is and will remain personal property and will not be determined to be affixed or attached to real estate or any building thereon.

Section 18.1 of the master lease purchase agreement for the energy-efficient equipment states that the lessee must not assign, transfer, pledge, hypothecate, or grant any lien on or not otherwise dispose of any lease or equipment or any interest in any lease or equipment.

Section 18.2 of the master lease purchase agreement for the energy-efficient equipment states that the lessor may assign its rights, title, and interest in and to any lease or equipment, in whole or in part, to any party at any time.

Section 20 of the master lease purchase agreement states that if default occurs, the lessor may, at its option, exercise any one or more of the following remedies:

- (a) Lessor may require lessee to pay all amounts currently due;
- (b) Lessor may require lessee to promptly return all equipment or lessor may repossess all any equipment without demand or notice;
- (c) Lessor may sell, lease, or otherwise dispose of equipment under any or all of the lease;
- (d) Lessor may terminate, cancel, or rescind any lease as to any and all equipment;
- (e) Lessor may exercise any other right, remedy, or privilege which may be available;
- (f) Lessor may require lessee to pay without limitation, any attorney fees and expenses, and any costs related to the repossession, safekeeping, storage, repair, reconditioning, sale or other disposition of any equipment.

Section 21 of the master lease purchase agreement for the energy-efficient equipment states that if the lessor is entitled to obtain possession of any equipment, the lessee is obligated to return any such equipment. Such equipment should be in the same condition as when received by the lessee (reasonable wear, tear, and depreciation resulting from normal and proper use excepted), should be in good operating order and maintenance as required by the lease and be free and clear of any liens (except lessor's lien), and must comply with all applicable laws and regulations.