



Integrity Bulletin

U.S. Department of Housing and Urban Development
Office of Inspector General

“In government contracting, we can’t afford the luxury of mistakes. You must be aware of what is going on and what you can do to protect both the government and yourself.” – Federal Acquisition Institute

Procurement & Contracting: Five Ground Rules for Executive Directors and Commissioners

Purpose

Goods and services must be procured in an effective manner and in compliance with Federal, State, and local laws. Although the majority of public housing agencies (PHA) comply with these rules and regulations, we are issuing this bulletin to assist you in identifying weaknesses in procurement and contracting procedures. Weak procurement policies or nonexistent oversight can entice some employees to manipulate contracts to their personal benefit. However, the very act of monitoring procurements and contracts has a deterrent effect on fraud and thereby enhances the integrity of the program.

While the information contained in this procurement process bulletin does not supersede HUD Handbook 7460.8, REV 2 (dated February 2007), or other issued guidance currently in effect, it should serve as a useful tool in highlighting important requirements and establishing self-assessments of your PHA’s procurement and contracting activities.

Background



PHAs are local governments, and their operating and capital assistance funds are considered Federal grants covered by 24 CFR (Code of Federal Regulations) Part 85, Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments. Part 85 is also known as the “Common Rule” in that it

applies to all State and local government recipients of Federal housing assistance grants. The Office of Management and Budget will supersede this regulation in late 2014 when it issues an update to the Common Rule in 2 CFR Part 200. HUD will then revise 24 CFR to incorporate this revision. PHAs are also required to follow applicable State or local laws on procurement, depending on their location. If there are inconsistencies among Federal, State, or local laws, the strictest of the requirements applies.

Although the administrative procedures concerning procurement may vary from agency to agency, there are several major requirements that should be met consistently. While reviewers must concentrate on administrative compliance, they also should be alert to indications of fraud and abuse. When indications of irregularity are uncovered, additional assessment of the situation may be needed. It is prudent for board members to be alert to any controversies or complaints regarding these activities and the staff responsible for them.

Ensure That Five Ground Rules Are in Place

A primary duty of the board of commissioners in regard to procurement and contracts is to ensure that policies and procedures are in place and comply with all Federal, State, and local requirements. Ask any business leader what is the greatest challenge in these times, and the most likely answer will be “to manage costs.” Procurement and contracting are key areas in which PHAs can control costs. Generally, the board approves the procurement policy, and the executive director is responsible for executing the policy and ensuring that it is followed. Regardless of whether the executive director administers procurement directly, delegates it to other officials, or contracts out the procurement process, the PHA and its board are ultimately responsible. You should ensure that checks and balances are in place to detect and prevent violations of procurement rules and procedures. In other words, internal controls and a quality control system should be in place so you can have assurances that rules are followed. While you must follow all requirements, you will position yourself well for meeting other rules by ensuring that the following five basics are in place:

1. Maintain Separation of Duties

The most direct way to prevent fraud is to eliminate the opportunity.

The person delegated to do the ordering should be different from the person(s) receiving and accepting the goods and the person(s) paying for the order. When this is not possible due to the limited size of staff, or when the process is decentralized, as in the case of an out-stationed project manager, additional rules should be used, such as limiting dollar authorizations and periodic reviews by an independent individual. The board should ensure that only designated individuals have the authority to bind the PHA to contracts. If you have a small staff, the board should provide increased oversight.

Example of Inadequate Separation of Duties

A Georgia housing authority used \$891,468 in Federal funds to pay ineligible and unsupported costs. The authority's board did not ensure that the former executive director expended funds in accordance with the authority's and HUD's requirements, adequately documented expenditures, and followed procurement policies. This condition occurred because the former executive director controlled all expenditure functions and did not establish proper separation of duties. She could prepare, sign, and code checks for accounting purposes. Only one signature was required on checks. She also reviewed and approved invoices. The board did not review any of the expenditures, nor did the former executive director provide the board with a list of expenditures. Among the former executive director's ineligible personal purchases were landscaping, televisions, cameras, Christmas decorations, dog food, veterinarian fees, and a waterslide. We recommended that HUD require the Authority to repay \$185,764 for ineligible payments made to or on behalf of the former board chairman, support \$182,369 in payments made to or on the behalf of the former executive director and the former lease enforcement officer, provide documentation to support \$523,335 in payments made for various purchases or repay its public housing program, and ensure that its board performs its oversight duties in a responsible manner. PHA officials responsible for improper payments were referred to the Departmental Enforcement Center for appropriate administrative actions.

2. Provide Competencies and Training

A best practice for the board is to ensure that there are requirements in place to have procurement and contracting staffs sufficiently trained to conduct their duties.



Federal and State contracting officers have strict training requirements, but these requirements generally do not flow down to the PHA level. So much of the PHA's expenditures flow through this process, that it is a high-risk area, and requires competent and ethical staff to perform at a high level.

Consequently, it is up to the board to ensure that a standard is in place and that any executive director it may hire has training and experience in this area. The board should also receive training in procurement and contracting and understand the PHA's policies for procurement and contracting. Training is usually available from industry associations and State agencies.

Example of Poor Training

A Louisiana housing authority did not always follow procurement regulations for its accounting, legal, and auditing services. It did not (1) use the proper procurement method, (2) execute complete bid packages and contracts, (3) maintain required contract documentation, or (4) renew contracts before their expiration date. These conditions occurred because the executive director did not always understand Federal requirements. As a result, payments totaling \$176,827 were unsupported. The Office of Inspector General (OIG) recommended, among other things, that the executive director and other staff be given procurement training.

3. Insist on Good Record Keeping



Board members will want to ensure that policies and procedures are comprehensive regarding the level of documentation to be maintained on procurements and contracts. The HUD handbook discusses in section 3-3 the types of documents to be kept for each procurement or contract. While outside parties may sometimes assist in the procurement process, all records should be maintained in one location so that overseers can view the complete picture.

While not required, you may want to consider requiring that periodic reports on procurement activities be submitted to the board or executive director to ensure transparency in the process. Reviewing these reports may disclose conflicts of interest or other abuses. Such reports to consider obtaining regularly are

- A “spend map” – a periodic plan for what is to be bought. Understand what (and how) your PHA spends.
- A contracts register of vendors, contractors, and subcontractors by date and type of procurement (micro-purchases, small purchases, requests for proposals, sole-source and competitive bids), funding source, and amount of the contract, along with a brief description.
- Summary of change orders by contract.
- A report that cross-checks vendor addresses and phone numbers with those of PHA employees.
- A report of any purchases lacking invoices.

Example of Poor Record Keeping

A south Texas housing authority failed to follow Federal regulations and its own procurement policy in its procurement and contracting for goods and services. Also, contrary to Federal requirements, the authority lacked a contract monitoring or administration system and failed to maintain procurement or contract files. Therefore, it was unable to provide records sufficient to detail the significant history of its procurements, including independent cost estimates, evidence of adequate competition when required, and clearly written contracts. As a result, the

authority incurred \$453,864 in ineligible costs and could not support almost \$1.8 million in procurement and contracting costs. OIG recommended that HUD determine whether the authority was in substantial default of its annual contributions contract and take appropriate administrative actions against its executive director and commissioners and support or repay undocumented costs.

4. Uphold Ethics and Bar Conflicts of Interest

Policies should apply to all board members as well as all PHA employees involved in PHA contracts and purchases. HUD requires that a written code of standards be included in the PHA's procurement policy, and many State and local conflict-of-interest laws exist. Ensure that your guiding principles bar those in positions of trust from personally gaining from transactions and that the process is fair to all seeking business with the PHA.



A common problem is the lack of understanding of what “appearances of conflicts” entails. Too often, PHA boards and managers believe that indirect or noncash gifts are not considered a conflict of interest. Examples are: vendor or contractor donations to PHA employee fund-raising drives, event tickets, meals, or giveaway gifts like a Thanksgiving turkey or iPad drawing, given to a PHA employee or board member or their affiliated organization. These gifts would be considered potential conflicts of interest so it's best to be wary of accepting anything of value from a contractor. If you are unsure whether it is legal, seek expert advice.

As a board member, you have an obligation to not only avoid conflicts of interest yourself, but also to be alert and question real or apparent conflicts by any other PHA employee or board member. Conflict-of-interest restrictions also extend to immediate family members, business partners, or organizations where they may be currently employed or are seeking employment. Generally, there is also a restriction for a 1-year period after leaving the PHA that prohibits PHA employees and their businesses from selling or attempting to sell goods and services to the PHA. See the HUD handbook, section 4-4, for more detailed restrictions or seek PHA counsel if you are in doubt about any situation.

Example of Ethical Violations

An investigation by HUD-OIG found that the director of modernization of a South Dakota housing authority accepted kickbacks from a contractor to garner favor for future contracts. The director pled guilty to one count of bribery concerning programs receiving Federal funds. He was sentenced to 1 year and 1 day incarceration and 3 years supervised release, fined \$10,800, and ordered to pay restitution of \$7,500. The HUD Departmental Enforcement Center debarred him from participation in procurement and non-procurement transactions for 36 months.

5. Maximize Competition

Ensuring that procurements are conducted and contracts are awarded in a way that obtains the most competition will serve the agency well. Things to look for and scrutinize are

- Sole-source contracts,
- A failure to rotate vendors on lower priced purchases,
- The use of unreasonably narrow or specific qualification criteria or bid specifications,



- Short timeframes for responding to offers,
- An insufficient number of responsive bidders,
- The overuse of small purchase contracts,
- An excessive number of small purchase contracts close to the small purchase dollar limit, and
- Insufficient price or rate quotes from qualified sources.

Example of Restricting Competition

The prior executive director of a Florida housing authority spent more than \$1.1 million for services provided by three firms without support that he acquired the services in compliance with HUD's and the authority's procurement requirements. He purchased the services on a case-by-case basis through a series of smaller purchases, which individually fell within his purchase authority but in total exceeded his \$100,000 purchase authority. Before the OIG audit, a new board chairperson began to question actions by the prior executive director, and the board prepared a formal evaluation of his performance. The evaluation resulted in a decision by the board to terminate the prior executive director's employment contract.

In Summary – Stay Alert

Most procurement and contracting problems come to light through complaints, protests, and alertness to unusual circumstances. Be sensitive to any audit findings on the procurement process by your independent public auditor. Board members must be vigilant for any controversies or complaints regarding these activities and the staff members who are responsible for them. You should understand the types of purchases that are not allowed or exceed needs. Remember, even allowable costs can be disallowed if they are unreasonable or not for an eligible or allowed purpose. Finally, HUD regulations specify the types of contracting actions that require HUD approval. Be sure your agency follows those rules. While there are many more schemes in the procurement and contracting areas, following the above basics will give you and your agency a head start in preventing abuses and fraud. If in doubt about a situation, don't ignore it. Get advice from your counsel, HUD office, or other experts.

**Serious allegations of fraud should be reported to your local
HUD Office of Inspector General or to the HUD OIG hotline at**

<http://www.hudoig.gov/report-fraud>.