Basics of Procurement

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Procurement

"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

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Procurement

- pro·cure·ment (pro-kyoor-ment)
  - *Noun*
    - The action of obtaining or procuring something
    - The process of procuring
  - Goods and services must be procured in an effective manner in compliance with federal, state, and local law
  - That's where you come in!

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Procurement

- Proper procurement of goods and services is one of the most important responsibilities of the Executive Director
- When spending federal funds, no matter how small the amount, its important to ensure:
  - Competitive pricing
  - Good value
  - Responsible contractors

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Procurement

- Goals of this Session:
  - Provide a regulatory background for public housing authority procurement
  - Understand the commonly used terms of doing business
  - Learn the types of contracts and methods of contracting
  - Understand the required steps for each procurement type

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Procurement

- Goals of this Session:
  - Comprehend the roles of the procurement players at HUD and the agency level
  - Learn how to administer an ethical, compliant procurement process
  - Understand the components of contract award and administration
  - Discuss compliant documentation of procurement all types of procurement actions

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Basics of Procurement

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Procurement Roles

- Board of Commissioners
  - Provides oversight of procurement activities
  - Approval of the procurement policy
  - Monitoring procurement and purchasing
  - Avoiding conflicts of interest
  - Approving contracts
  - Be alert for any indications of fraud, mismanagement, or conflicts of interest

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Procurement Roles

- Executive Director
  - Develop and implement PHA's procurement policy
  - Institute procurement procedures and standards
  - Procurement planning
  - Has full authority to procure and execute contracts on behalf of the PHA
  - Run compliant solicitations
  - Ensure open competition

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Procurement Roles

- Executive Director
  - Analyzes bids and proposals
  - Ensure fair and equitable contract terms
  - Enforce Davis Bacon and other wage determinations
  - Contract administration
  - Resolve protests
  - Maintain sufficient records

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Procurement Roles

- Agency staff
  - Follow procurement procedures
  - Ensure that purchasing is done at procured prices
  - Maintain professional relationships with all contractors and vendors
  - Avoid conflicts of interest
  - Report to the Executive Director on status of work done and contractor responsibility

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Delegation of Authority

- Board of Commissioners:
  - Appoints contracting officer
  - Delegates contracting responsibility
  - Sets dollar limits and thresholds
  - Determines further requirements and restrictions pertaining to procurement activity

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Delegation of Authority

- Executive Director:
  - Execute contracts
  - Operate within thresholds and limits established by the Board of Commissioners
  - Delegate purchasing authority to other PHA staff, at the discretion of the Board

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Delegation of Authority

- Best Practices/Requirements
  - All delegations of authority should be in writing
  - Separation of duties should be maintained when making appointments
  - All staff to which procurement authority is delegated must have proper training before executing duties

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Purchasing Thresholds

- Federal Thresholds
  - Micro-purchases - $3,000
    - 2 CFR 200.67
    - Formerly $2,000
  - Simplified Acquisition Threshold - $150,000
    - 2 CFR 200.88
    - *Small Purchase Threshold*
    - Formerly $100,000

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Purchasing Thresholds

- State Thresholds
  - Differ from state to state
  - PHA is required to follow the stricter of the federal or state threshold
  - Example: Illinois
    - Federal Small Purchase Threshold: $150,000
    - Kentucky Small Purchase Threshold: $20,000
    - Which of these would you be required to follow?

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Procurement Policy

- Must establish a local policy
  - Should also establish procedures to carry out the policy
  - The policy and procedures may be combined into one document
    - Do not recommend combining due to HUD approval or self-certification burden if procedures change
  - In a review, both policies and procedures will be reviewed and compared against Agency practices
  - 2 CFR 200.318(a)

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Procurement Terms

- Speaking “procurement” is like learning another language!
- Similar terms with different meanings make concepts difficult to grasp
- Understanding the terms and phrases commonly used may be the difference

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Procurement Regulations & Resources

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Procurement Regulations

- Early Regulations
  - OMB Circular A-102
    - Administrative Requirements for Grants and Cooperative Agreements to States Local and Federally Recognized Indian Tribal Governments
    - Dates back more than 20 years
    - PHA's are units of local government for the purpose of procurement

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Procurement Regulations

- Early Regulations
  - Regulations issued in the 1980s:
    - OMB Directs all Federal Agencies to issue the same OMB written regulations (common rule)
    - **HUD** issues regulations **24 CFR Part 85**
    - **Procurement standards** at 85.36

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Procurement Regulations

- Early Regulations
  - Regulations issued in the 1990s:
    - HUD issues Procurement Handbook for Public Housing Agencies, **7460.8**, 1993
      - Handbook Revised in **2007**
      - Requires policies & procedures

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Procurement Regulations

- The rules have changed
  - OMB issues new regulations 12/26/2013
  - 2 CFR Part 200
  - Developed in conjunction with the Council on Financial Assistance Reform (COFAR)

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Procurement Regulations

- The rules have changed
  - 12/19/2014 OMB Publishes Interim **Final Rule**
    - Amends 24 CFR 85.
      - Deletes everything except 24 CFR 85.1
      - Grantees must follow 2 CFR Part 200
      - Effective Date: **12/26/2014**
    - Final Rule issued 12/07/2015

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Procurement Regulations

- 2 CFR 200
  - Subpart A - Acronyms and definitions.
  - Subpart B - General Provisions.
  - Subpart C – Pre-Federal Award Requirements and Contents of Federal Awards.
  - Subpart D – Post Award Standards
  - Subpart E – Cost Principles.
  - Subpart F – Audit Requirements.

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Procurement Regulations

- 2 CFR 200
  - Subpart D – Post Award Standards
    - 200.317. Procurement by States
    - 200.318. General Procurement Standards
    - 200.319. Competition
    - 200.320. Methods of Procurement
    - 200.321. Contracting with Small and Minority Businesses, Women's Business Enterprises and Labor Surplus Area Firms

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Procurement Regulations

- 2 CFR 200
  - Subpart D – Post Award Standards
    - 200.322. Procurement of Recovered Materials
    - 200.323. Contract Cost and Price
    - 200.324. Federal Awarding Agency or Pass-Through Entity Review
    - 200.325. Bonding Requirements
    - 200.326. Contract Provisions

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Procurement Regulations

- Other Regulations
  - 24 CFR Part 135 – Economic Opportunities for Low and Very Low Income Persons, which implements Section 3 of the Housing and Urban Development Act of 1968
  - 24 CFR 905 – The Capital Fund (modernization and development, including mixed finance development of Public Housing Units)
  - 24 CFR Part 943 – PHA Consortia and Joint Ventures

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Procurement Regulations

- Other Regulations
  - 24 CFR Part 963 – Public Housing – Contracting with Resident Owned Businesses.
  - 24 CFR Part 964 - Tenant Participation and Tenant Opportunities in Public Housing
  - 24 CFR Part 965 – PHA Owned or Leased Projects – General Provision (see Subpart A on pre-emption of state prevailing wage requirements)
    - Energy Performance Contracting (EPC)
    - Energy Audits

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Procurement Regulations

- HUD Handbook 7460.8 Rev. 2
  - Primary Reference Document
  - Provides operational requirements & guidance on procurement for:
    - Capital Fund Grants
    - Procurement and purchasing
    - Development
    - Local policy development
  - https://www.hud.gov/program_offices/administration/hudclips/handbooks/pihh/74608

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Procurement Regulations

- State and Local Requirements
  - State purchasing and procurement laws
    - KRS Chapter 45A – Model Procurement Code
  - Small purchase threshold
  - State Freedom of Information Act
  - Bonding Requirements
  - Must always follow the more restrictive

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Procurement Planning

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Procurement Planning

- What are you going to do with all that money?
- Planning is essential to managing the procurement function properly
- Advance planning provides the PHA with adequate time to accomplish its procurement actions
- Adequate planning helps an agency stay compliant with purchasing requirements

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Procurement Planning

- Advance planning helps to:
  - Maximize competition and competitive pricing among contracts and decrease the PHA's procurement costs;
  - Reduce PHA administrative costs;
  - Ensure that supplies and services are obtained without any need for re-procurement, e.g., resolving bid protests; and
  - Minimize errors that occur when there is inadequate lead-time

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Procurement Planning

- Annual Planning
  - Budgets
  - Operational needs (PHA wide and by program)
    - Services
    - Supplies
  - Capital fund projects
    - Modernization
    - Rehabilitation
  - Current inventory

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Procurement Planning

- Other Considerations
  - Identify recurring requirements
  - Identify new requirements
  - Cooperative purchasing
  - Piggybacking
  - Individual Procurement Plans (IPP)

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"I want to buy something."

- Do I have enough money?
  - **VERIFICATION OF FUNDS**
- How much will I have to pay?
  - **COST ESTIMATE**
- Depends on what I want to purchase.
  - **STATEMENT OF WORK**
- OK, here is what I want to purchase.
  - **SPECIFICATIONS**
- Where do I find the best price?
  - **SOLICITATION**

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"I want to buy something."

- Ok, I'll buy it.
  - **PURCHASE ORDER**
- When will it arrive?
  - **DELIVERY**
- Did I get specifically what I ordered?
  - **INSPECTION**
- Is it in the condition promised?
  - **QUALITY ANALYSIS**
- Would I do business with this seller again?
  - **PERFORMANCE RATING**

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Elements of Procurement

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Steps in Procurement

1. Develop a Statement of Work
2. Complete an Independent Cost Estimate (ICE)
3. Determine procurement method
4. Solicitation (Quotes/Bids/Proposals)
5. Determine responsive, responsible bidders

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Steps in Procurement

6. Determine price reasonableness (Cost Analysis)
7. Award the contact
8. Contract administration
9. Close out the contract
10. Document the file/document retention

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Elements of Procurement

- Independent Cost Estimate (ICE)
  - Required for all procurements of $3,000 or more ($2,000 for construction contracts subject to Davis-Bacon)
  - Prepared before PHA receives bids or proposals
  - PHA benchmark for evaluating the price reasonableness
  - Facilitates the selection of the method of procurement

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Elements of Procurement

- Independent Cost Estimate (ICE)
  - Assists in determining type of contract
    - Below the small purchase threshold requires informal solicitations and contracts
    - Above the small purchase threshold requires formal advertising

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Elements of Procurement

- Price Reasonableness
  - Determine if the proposed price is fair and reasonable
  - Done prior to contract award
  - For most small purchases, price analysis is sufficient to a determination
  - In some cases, submission of cost details and analysis may be necessary

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Elements of Procurement

- Price Reasonableness
  - Price analysis – performed when there is adequate competition.
    - Comparison of ICE to prices submitted by competitors
    - Compare bid amounts to cost estimate to determine reasonableness of bids
    - Compare bid amounts to each other to identify the best price for the agency

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Elements of Procurement

- Price Reasonableness
  - Cost analysis - performed for more complex contracts where each element of cost is evaluated to determine reasonableness
    - General and Administrative Cost
    - Owner Overhead
    - Profit
    - Labor
    - Materials

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Elements of Procurement

- Price Reasonableness
  - Situations requiring a Cost Analysis:
    - All sole source and non-competitive proposals
    - Only one bid received that PHA finds unreasonable and decides to cancel the solicitation and negotiate a contract price with the sole bidder
    - Sufficient number of bids were not received and the PHA cannot establish price reasonableness through alternative means

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Elements of Procurement

- Price Reasonableness
  - Situations requiring a Cost Analysis:
    - If, under competitive proposals, the PHA requested that bidders provide separate elements of their costs, e.g., labor, materials, overhead, profit, etc.
    - When there is a contract modification
    - When making contract termination payments
    - When awarding any construction contracts that were obtained through means other than sealed bidding

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Elements of Procurement

- Statement (Scope) of Work (SOW)
  - Written description of work to be performed that establishes the standards sought for the supplies or services furnished under the contract
  - Generally used for the procurement of professional or management services
  - Clearly documents the project requirements, milestones, deliverables, end results, documents, and reports that are expected to be provided by the vendor.

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Elements of Procurement

- Specifications
  - A specification is a detailed description of materials, supplies, equipment, pre-cuts, or construction work that is used to tell prospective contractors ***precisely*** what the PHA desires to purchase
  - Chapter 9, PIH Procurement Handbook 7460.8 REV2 discusses specifications
  - 2 CFR 200 requires clear, accurate and detailed specifications and scopes of work

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Elements of Procurement

- Specifications
  - Three general types of specifications
    - Functional
    - Design specifications
    - Brand name or equal

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Contracting Types & Methods

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Contract Types

- Firm Fixed Price
  - The contractor is paid a firm fixed-price for all required work regardless of the contractor's actual costs of performance (Preferred)
  - Generally used in rehabilitation, modernization, materials, supplies, etc.

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Contract Types

- Cost Reimbursement
  - Provide for allowable costs to the extent provided by the contract
  - Establish a total cost ceiling for obligating funds
  - Only to be used when uncertainties in contract performance do not allow for an accurate fixed price contract

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Contract Types

- Indefinite-delivery
  - Indefinite delivery - definite quantity
  - Indefinite delivery - indefinite quantity

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Contract Types

- Indefinite delivery - definite quantity
  - Provide for delivery of a definite quantity of specific supplies or services for a fixed period of time (e.g., one year), with deliveries or performance to be scheduled at designated locations upon order
  - May be used when it can be determined in advance that:
    - A definite quantity of supplies or services will be required during the contract period; and,
    - The supplies or services are regularly available or will be available after a short lead time.

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Contract Types

- Indefinite delivery – indefinite quantity (IDIQ)
  - Provides for delivery of an indefinite quantity, within stated limits (a minimum and maximum quantity) of supplies or services during a fixed period
  - Quantity limits may be stated in the contract as number of units or as dollar values

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Contract Types

- Time and Materials
  - Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit
  - Materials at cost, including, if appropriate, material handling costs as part of material costs
  - A time-and-materials contract provides no positive profit incentive to the contractor to control cost or labor use – not ideal in that regard

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Contract Types

- Two prohibited types:
  - Cost-plus-a-percentage-of-cost
    - Pay all costs incurred throughout the contract, plus a commission based on the percentage of future costs
  - Percentage-of-construction-cost
    - Individual construction-related services is determined by applying a percentage of actual construction costs as a fee, such as an A/E contract

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Types of Solicitations

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Solicitation

- The general term for the agency's request for offers from potential offerors
- Method of appropriate solicitation is determined by type and amount of procurement action
- Contains instructions to bidders on how to prepare and submit a bid, and the deadline to submit it
- Purpose of the solicitation is to ensure full and open competition

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Solicitation

- Cannot contain features which unduly restrict competition
  - Placing unreasonable qualifying requirements on firms
  - Requiring unnecessary experience and excessive bonding
  - Specifying only "brand name" products instead of allowing "an equal" product
  - Noncompetitive pricing practices between firms or affiliated companies
  - Noncompetitive awards to consultants on retainer contracts

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Small Purchase Procedures (SSP)

- Used for purchases equal to or less than $150,000 or based on PHA's small purchase threshold
- Most of the PHA's purchasing will fall under SPP
- Method should be appropriate for the purchase
- Adequate number of qualified sources
  - Generally defined as not less than three
  - Minimum is two
  - Could also be a single (sole) source

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Small Purchase Procedures (SSP)

- Bid splitting is prohibited
  - PHAs shall not break down requirements aggregating more than the small purchase threshold into multiple purchases to permit the use of SPP
  - Larger requirements may be broken into smaller ones to afford small and minority businesses the opportunity to participate in the PHA's procurements

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Small Purchase Procedures (SSP)

- Petty Cash
  - Maximum $300
  - Must have a petty cash policy
  - Reconciled and replenished as needed

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Small Purchase Procedures (SSP)

- Micro purchases
  - This category has to be outlined in PHA's procurement policy
  - No ICE required
  - $2,000 for construction
  - $3,000 for non-construction

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Small Purchase Procedures (SSP)

- Purchases above micro purchase threshold but under simplified acquisitions threshold
  - $3,000 to $150,000, or state requirements
  - ICE required
  - Must solicit adequate competition
    - Generally defined as not less than 3
    - Two is the minimum
    - Unless you only have one bidder

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Small Purchase Procedures (SSP)

- Advertising/Solicitation Method
  - Oral
  - Phone
  - Written
  - Catalog
  - Email
  - Website

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Small Purchase Procedures (SSP)

- Basis for the award
  - Price reasonableness
  - Other factors (recommended)
    - Suitable evaluation procedures
    - Minimally burdensome
  - Contractor responsibility

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Sealed Bids

- Used for purchases above $150,000 or PHA's small purchase threshold
- Contractor qualifications are built into the request
- Firm, fixed price
- Preferred method for procuring construction

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Sealed Bids

- Public invitation for bids (IFB)
  - IFB Package should include:
    - Cover page and TOC
    - Bid forms
    - Statement of Work
    - HUD forms
  - Each bid should be date and time stamped when received by the PHA

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Sealed Bids
Public Bid Opening

- Time and place certainty
  - Submission location and deadline
  - Late submissions marked late and unopened

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Sealed Bids
Public Bid Opening

- Opening Process
  - Open to the public
  - Bids opened publicly at a specific date/time
  - Bids read aloud

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Sealed Bids
Public Bid Opening

- Recording the Bids
  - Bids recorded as they are read aloud
  - Bid tabulation is prepared showing names and bid prices

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Sealed Bids
Mistakes in Bids

- Correction of bids requires careful consideration
- Integrity of your bidding system must be maintained, fairness ensured, and delays avoided
- Bidders are bound by their bids
  - "Firm Bid Rule"
  - Circumstances may arise where correction or withdrawal of bids is proper and may be permitted

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Sealed Bid
Mistakes in Bids

- Mistakes Before Bid Opening
  - Permitted prior to bid opening
  - Contractors' responsibility

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Sealed Bid
Mistakes in Bids

- Mistakes After Bid Opening
  - In general, should not be permitted
  - Bidder must present clear and convincing evidence

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Sealed Bid
Mistakes in Bids

- Withdrawal of Bids
  - Permissible if there is an obvious error
  - Mistake must be readily apparent
  - Bidder must present clear and convincing evidence

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Sealed Bids
Advertising/Solicitation

- Advertising/Solicitation Method
  - Newspaper
  - Various trade journals or publications
  - E-procurement
  - Must run for a period of time sufficient to achieve effective competition
  - State or local law may impose additional requirements

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Sealed Bids
Basis for the Award

- Lowest responsive and responsible bidder
- Evaluation is of the bidders' ability to meet the material terms and conditions of the invitation for bid
- Equal bids should be decided by drawing lots or other random means of selection
- Rejection of any bid during the evaluation process shall be fully documented, including all reasons for the rejection

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Competitive Proposals

- Consideration of technical factors other than price
- Negotiation of price and other contract terms
  - Two types
    - Price considered – Request for Proposals (RFP)
    - Price not considered - Qualification Based Selection (QBS) uses the Request for Qualifications (RFQ) – A/E only
- Must have written method for technical evaluations

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Competitive Proposals

- Request for Proposal (RFP)
  - RFP Package should include:
    - Cover page and TOC
    - Bid forms
    - Statement of Work
    - Submission requirements
    - Evaluation factors
    - HUD forms

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Competitive Proposals

- Evaluation Factors (RFP)
  - Price
  - Demonstrated understanding of the requirement
  - Appropriateness of the technical approach in the proposal
  - Quality of the work plan
  - Technical capabilities and management plan
  - Demonstrated experience in performing similar work
  - Demonstrated successful past performance of work similar to that required by the solicitation

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Competitive Proposals

- Advertising/Solicitation Method (RFP)
  - Newspaper
  - Various trade journals or publications
  - E-procurement
  - Must run for a period of time sufficient to achieve effective competition
  - State or local law may impose additional requirements

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Competitive Proposals

- Receiving proposals (RFP)
  - Proposals should be date/time stamped
  - Contained confidential information, so they're not opened publicly
  - Late submissions will not be considered unless it's the only proposal received

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Competitive Proposals

- Competitive Range (RFP)
  - After the evaluation committee has evaluated all proposals, the Contracting Officer should determine a competitive range
  - Competitive range includes the proposals that have a reasonable chance of being selected for award considering their technical evaluation results and their proposed costs or prices
  - The competitive range, including the Contracting Officer's rationale for it, must be documented in the contract file

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Competitive Proposals

- Basis for the award (RFP)
  - Negotiated with offerors in the competitive range
  - Submission of best and final offers
  - Awarded to the responsible firm whose proposal is most advantageous to the program, with price and technical merit considered

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Competitive Proposals

- Request for Qualifications (RFQ)
  - Typical RFQs
    - Legal services
    - Audit/Accounting
    - Qualifications-based selection (QBS) method
      - Limited to A/E services
      - May also be authorized for additional use by HUD

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Competitive Proposals

- Evaluation Factors (RFQ)
  - Evidence of the firm's ability to perform the work
  - Capability to provide professional services in a timely manner
  - Evidence that the firm is currently registered in the State of the project's location
  - Carries Errors and Omissions insurance
  - Past performance in terms of cost control, quality of work, and compliance with performance schedules
  - Demonstrated knowledge of local building codes and Federal building alterations requirements

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Competitive Proposals

- Basis for the award (RFQ)
  - Does not use price as an evaluation factor
  - PHA requests technical qualifications statements from prospective firms and then ranks the statements according to their qualifications
  - PHA then opens negotiations with the top-ranked firm with intentions to reach agreement on a fair and reasonable price
  - If agreement cannot be reached, the PHA terminates negotiations with this firm and proceeds to the next-highest rated firm until a price determined to be fair and reasonable to both parties is obtained

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Non-Competitive Proposals

- Sole source
  - PHA solicits an offer from one source since it knows there is no competition in the open market
  - The item or service is available from only one firm

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Non-Competitive Proposals

- Single source
  - PHA solicits offers from multiples sources in the open market, but receives only one offer
  - PHA was not aware of lack of competition in the open market

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Non-Competitive Proposals

- Emergencies and Public Exigencies
  - Must be a justifiable condition where the health and safety of the residents is at stake and must be corrected immediately
  - No HUD approval is required, in order to facilitate a quicker response

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Non-Competitive Proposals

- Similar process to competitive proposals
  - Must perform a cost analysis
  - Technical and cost aspects may be negotiated
  - Must provide justification
  - Submitted to HUD for review

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Cooperative Purchasing

- HUD allows (actually encourages) agencies to enter into intergovernmental agreements for the procurement of goods/services
  - More efficient use of resources
  - Can reduce administrative burden significantly
  - Not allowed for certain contract types

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Cooperative Purchasing

- Requirements
  - The agreement provides for greater economy and efficiency and results in cost savings to the PHA
  - The agreement is used for common supplies and services that are of a routine nature only
  - PHAs must take steps to ensure that any supplies or services obtained using another agency's contract are purchased in compliance with 2 CFR 200
  - A PHA's procurement files should contain a copy of the Intergovernmental Agreement and other documentation relevant to the specific procurement

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Solicitation Provisions

- Provisions required by HUD, as applicable, are included on forms:
  - HUD-5369, Instructions for Bidders and
  - HUD-5369-A, B Representations, Certifications, Other Statements
  - HUD-5369-B Instructions to Offerors Non-Construction

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Evaluation & Contract Award

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Evaluation & Award

- Evaluation
  - Analysis of required submission elements
  - Methodology for evaluating technical factors
  - Bid tabulation and scoring
  - Who does the evaluating?
    - Contract officer
    - Staff panel
    - NOT THE BOARD

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Evaluation & Award

- Contractor responsibility
  - Background and references
  - Extent of verification based on size, complexity, etc.
  - Can't make awards to suspended or debarred contractors
    - www.hud.gov/enforce - list of LDP
    - www.sam.gov – list of suspended or debarred

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Evaluation & Award

- Approval
  - Prepare for contract approval
    - Project information
    - Bid tabulation and score
    - Award recommendation
  - Executive Director approval – under PHA threshold
  - Board approval – over PHA threshold
  - HUD Approval – Chapter 12.2 (7460.8 REV 2)

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Evaluation & Award

- Contract Award
  - Board resolution or minutes documenting approval
  - Obtain necessary signatures
  - Notify financial department
  - Contracts signed

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Contract Administration

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Contract Administration

- You've made it! You have a signed contract for goods or services! Now what?
- The Executive Director (or designee) has the responsibility to administer and enforce the contract
- The amount of oversight and monitoring will vary with the complexity of the work
- Efforts to develop good specifications and a carefully planned solicitation can be undermined by weak contract administration

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Non-Construction Contracts

- Post-award conference
  - For relatively complex projects
  - Meet to make sure all parties understand the contract's performance requirements
  - Terms of the contract thoroughly discussed
  - Document resulting contract changes, if any
  - Formal minutes should be recorded

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Non-Construction Contracts

- Establish systems for receiving goods and services
  - Ensure items required by the contract are delivered
  - Determine who checks the delivery for completeness
  - Document the delivery of goods or services
    - Contract number
    - Date
    - Receiving employee
    - Acceptable condition
    - Reasons for rejection or dissatisfaction

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Non-Construction Contracts

- Inspecting Supplies and Services
  - Supplies or services should be inspected in accordance with contract specifications
  - Make note of any discrepancies or performance issues

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Non-Construction Contracts

- Enforcing Specifications and Timelines
  - PHA is not obligated to pay for or accept supplies or services until its had the opportunity to fully inspect
  - Such inspection and any subsequent rejection should be made within a reasonable time of delivery

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Non-Construction Contracts

- Enforcing Specifications and Timelines (continued)
  - Rules of law may relieve a contractor of any liability if the PHA failed to regularly monitor the contractor's performance before final acceptance
  - Acceptance may be assumed to have occurred if after a reasonable time to inspect has passed the PHA has failed to make any notification to the contractor that the supplies or services do not conform to the requirements

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Non-Construction Contracts

- Acceptance of Supplies and Services
  - The Contracting Officer should ensure the supplies received from vendors are inspected and accepted, the performance of services was satisfactory, and the receiving documents are processed for payment
  - This should not be delayed
  - Some contracts allow for a discount if prompt payment within a specified amount of days

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Non-Construction Contracts

- Non-Conformance
  - When supplies, services, or construction items do not conform to the contract, the PHA has three response options:
    - Conditionally accept the items
    - Require contractor to correct the issue
    - Reject the items

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Non-Construction Contracts

- Control of Payments
  - Establish process and method for accepting payment
  - Payment should only be made for delivered supplies and completed services are found to be satisfactory
  - Documentation
    - Receipts
    - Purchase Order
    - Request for Payment

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Pre-Construction Conference

- Thoroughly discuss key construction and contract administration-related issues
- Safety issues also discussed
- Notice to proceed issued
  - Prepare at least two copies
  - Official signatures obtained
  - PHA retains the original

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Pre-Construction Conference

- Start and completion dates agreed upon
- Labor relations specifics
- Section 3 requirements, if applicable
- Protest, appeals, and remedies
  - PHA required to have procedures to handle disputes in the procurement policy
  - PHA alone is responsible for settlement of disputes

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Pre-Construction Conference

- Contract terminations
  - Cause
  - Convenience
  - Effective date
  - PHA and Contractor obligations
  - Written notice
  - Alternatives to termination?

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Construction Contracts

- Progress meetings
  - PHA should meet with the architect and contractor on a regular basis
  - Discuss progress, payments, problems, schedule
  - Frequency varies with the complexity of the project
  - Documented for the construction file

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Construction Contracts

- Inspections
  - Conducted by the PHA or the A/E firm
  - Inspector must have expertise in building systems and methods utilized
  - Quality of the inspection is critical

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Construction Contracts

- All inspections should be documented
  - Work completed commensurate with schedule
  - Acceptability of completed work
  - Quantities of delivered materials verified
- Promptly notify the contractor of deficiencies

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Construction Contracts

- Progress Payments
  - Payment schedules, generally monthly
  - Contractor required to submit progress report
  - PHA/Architect review progress report for completion and reasonableness of request
  - Payment should only be for completed work and verified quantities of shipped materials

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Construction Contracts

- Delays and Extensions
  - PHA is responsible for monitoring the contractor to ensure that work will be completed as scheduled
  - PHA may authorize justifiable time extensions
  - Forms HUD-5370, 5370-C and 5370-EZ prescribes the conditions under which a time extension may be granted
  - Formalized in written modification to the contract

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Construction Contracts

- Completion of Work
  - Contractor provides written notification of the date the work is substantially completed
  - PHA/Architect conducts the final inspection
  - Post-inspection meeting to identify completion and any minor items of unsatisfactory work
  - Determine final punch list

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Construction Contracts

- Final Payment
  - PHA ensures all certificates and releases received
  - Make sure all certified payroll reports have been received and discrepancies resolved
  - Upon receipt of certificate of completion, PHA is authorized to make final payment
  - Final payment amount does not include any retainage for disputed items or punch list work until all is completed and found to be satisfactory

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Warranties

- Products and services may, and usually do, come with warranties
- PHA is expected to comply with all warranty procedures to ensure useful life
- Warranty periods will vary based on complexity of goods and services received
- Conduct a warranty inspection one month prior to the expiration of any warranty

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Labor Standards

- Maintenance contracts in excess of $2,000 require the payment of HUD-determined wage rates
- Applicable HUD wage decision must be displayed at the job site in an accessible place
- Contracting officer is responsible to ensure compliance and enforcement with all wage determinations

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Labor Standards

- Davis-Bacon and Related Acts
  - Construction contracts in excess of $2,000
    - Construction
    - Alteration
    - Repair (including painting and decorating)
  - Must pay locally prevailing wages and benefits
  - DBA sets a level playing field for contractors who are bidding on federally funded projects

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Labor Standards

- DBA – PHA Responsibilities
  - Identify correct wage determination
  - Inspections and employee interviews
  - Review and maintain certified payroll reports
  - Report criminal activity

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Labor Standards

- DBA– Contractor Responsibilities
  - General/Prime contractor responsible for compliance of subs
  - Pay wages equal to, or more than wage decision
  - Post the wage decision onsite
  - Pay weekly
  - Complete and submit weekly payroll certifications
  - Maintain payroll records for 3 years
  - Make records available for HUD and Dept. of Labor (DOL) review

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Labor Standards

- Davis-Bacon and Related Acts
  - Department of Labor DB website
    - http://www.dol.gov/whd/govcontracts/dbra.htm
  - Davis Bacon Resource Book
    - http://www.dol.gov/whd/recovery/pwrb/toc.htm
  - Wage Determinations Online
    - http://www.wdol.gov/

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Contract Modifications

- Occasionally, it is necessary to modify a contract or purchase order to reflect changes in the required effort, period of performance, or price

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Contract Modifications

- Unilateral (or administrative) modification
  - Only contracting officer signs
  - Change orders per contract clause
  - Administrative changes e.g. Address

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Contract Modifications

- Bilateral
  - Contractor and contracting officer sign
  - Supplemental agreement

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Contract Modifications

- Change Orders
  - Must be in writing
  - Within original scope of project purpose
  - Changes clause
    - Form HUD - 5370
    - Form HUD - 5370A
  - Contracting officer issues/approves after determining justification is reasonable

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Contract Modifications

- Change Order Content
  - Detailed description of the proposed change in work
  - Reference or changes to the applicable working drawings and specifications, when applicable,
  - Price (credit, debit, or no change) for the change in contract work
  - Estimate of additional time, if any, required to complete the work,
  - Itemized breakdown of the cost of materials and labor

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Contract Clauses

- HUD required contract clauses
  - **HUD-5370**, General Conditions of the Contract for Construction Public and Indian Housing
  - **HUD-5370-C**, General Contract Conditions Non-Construction
  - **HUD-5370-EZ** General Contract Conditions for Small Construction/Development Contracts

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Procurement Steps

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Procurement Steps

- Requisition-Identify Fund Source
- Specifications
- Independent Cost Estimate – ICE
- Verification of Funds
- Solicitation
- Bid Analysis
- Price Reasonableness - Price or Cost Analysis

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Procurement Steps

- Contractor Responsibility
- Contract or Purchase Order
- Delivery of Product of Service
- Inspection of Quantity and Quality
- Approval to Pay
- Performance Rating
- Documentation

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Micro Purchases

- Issue Purchase Order
- Enter on Procurement Log for Small Purchases
- Receive and verify merchandise/services
- Sign and date approval
- Send invoice to Finance for payment
- File Documentation

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Micro Purchase Notes

- HUD requires minimum documentation
- Your policy may require more
- HUD is not giving you a license for indiscriminate buying sprees
- With more freedom comes more responsibility
- Use Small Purchase process appropriate to the individual purpose
- As much as possible, distribute repeated micro purchases among a variety of vendors

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Procurement Steps

- Small Purchase Process
  - Determine the need
  - Independent Cost Estimate-ICE
  - Create requisition
  - Solicit quotes
  - Issue Purchase Order

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Small Purchase Process

- Enter on Procurement Log for Small Purchases
- Receive and verify merchandise/services
- Sign and date approval
- Send to Finance for payment
- File Documentation

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Small Purchase Process – Do's

- An ICE above micro level
- Solicit/Get quotes (3 preferred)
- Pay reasonable and competitive prices
- Record all activities in a Small Purchase Log

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Small Purchase Process – Don'ts

- Use for repetitive purchases which exceed $ threshold. (bid splitting)
- Split larger contracts to come under small purchases to avoid competition requirements
- Forget to document (at minimum level)

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Sealed Bid Process

Step 1: Develop the requisition (Independent Cost Estimate (ICE), specifications, approvals)

Step 2: Determine if A/E services will be required; if so, see RFP process

Step 3: Construction – obtain Davis-Bacon approved labor wage rates, prepare job specifications, coordinate with A/E

Step 4: Prepare invitation for bid package

Step 5: Publicize

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Sealed Bid Process

Step 6: Send IFB to ALL entities who request one

Step 7: Keep a list of all who were supplied a solicitation package (solicitation mailing list)

Step 8: Pre-bid conference (allow adequate time for preparation of bids)

Step 9: Receive bids

Step 10: Conduct public bid opening

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Sealed Bid Process

Step 11: Analyze bids

Step 12: Contractor responsibility determination

Step 13: Develop the contract package

Step 14: Obtain approval to award contract for BOC, required

Step 15: Document approval and corresponding board resolution

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Sealed Bid Process

Step 16: Obtain appropriate signatures/dates (PRIOR to award)

Step 17: Award contract to the lowest responsive bidder

Step 18: Notify finance of contract approval. Send copies of signed/dated contract and board resolution

Step 19: CONTRACT ADMINISTRATION

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Competitive Proposal Process

Step 1: Prepare statement of work

Step 2: Certify source/availability funds

Step 3: Prepare requisition or purchase request, including ICE

Step 4: Submit to purchasing/contracting officer

Step 5: Establish evaluation criteria and an evaluation plan

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Competitive Proposal Process

Step 6: Publicize the procurement

Step 7: Appoint evaluation panel or board

Step 8: Issue solicitation (RFP or RFQ)

Step 9: Conduct pre-proposal meeting

Step 10: Receive proposals (proposals are not publicly opened, and ALL information must be kept confidential

Step 11: Evaluate proposals on criteria in RFP

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Competitive Proposal Process

Step 12: Contracting officer establishes the competitive range

Step 13: Notify offerors whose proposals are outside the competitive range

Step 14: Establish the negotiation objective

Step 15: Conduct negotiation session

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Competitive Proposal Process

Step 16: Request "best & final offers"

Step 17: Evaluate best and final offers

Step 18: Select best proposal

Step 19: Board approval (if required)

Step 20: Prepare contract for award

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Section 3

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Section 3

- Purpose:
  - Economic Opportunities for Low Income Persons in the geographic region where project is located

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Section 3

- PHAs shall:
  - To the greatest extent feasible, consistent with Federal, State and local law, be directed to low income and very low income persons and businesses
  - particularly persons who are recipients of HUD assistance for housing and to business concerns that provide such opportunities to low and very low-income persons

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Section 3 Requirements

- 24 CFR 135
- PHA wide and by contract
- Contractors must comply with 24 CFR 135
- Not applicable to supply (only) Contracts
- Numeric Goals. 24 CFR 135.30
  - Employment and Training – 30% of new hires
  - Contracting – 10% all construction contracts
  - All other contracts – 3 %

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Section 3 Requirements

- 24 CFR 135, Appendices I, II, III
  - Includes examples of procurement methods to provide economic opportunities including:
    - A bid differential for Section 3 Business Concerns
    - Making Section 3 an evaluation criteria in competitive proposals

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Section 3

- Annual Reporting to HUD
  - SPEARS System
  - Due within 60 days after PHA's FYE

HAVE A PLAN FOR COMPLYING WITH SECTION 3!

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Ethics in Procurement

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Ethical Standards
PH Program Funding

- Not only is it the right way to do business, it's the required way to do business
  - 24 CFR 200.318(c)
  - Public housing ACC (form HUD-53012A)
  - PIH Procurement Handbook 7460.8 REV2
- Doing what's right and fair, especially when no one is looking

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Ethical Standards
PH Program Funding

- PHAs must maintain standards of ethics governing conduct of its staff and Board of Commissioners
  - Standards of Conduct
  - Conflicts of Interest
  - Gratuities, kickbacks and use of confidential information
- Executive Directors play a central role in developing these standards and enforcing them

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Ground Rules of Procurement

- Maintain Separation of Duties
  - Different staff for different roles
    - Ordering
    - Receiving
    - Paying
    - Bookkeeping
  - What about agencies with limited staff?

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Ground Rules of Procurement

- Provide Training
  - Staff should be sufficiently trained
    - Federal requirements
    - State and Local requirements
    - Up-to-date procurement policies
  - Make certain new hires have appropriate experience
  - Continuing education is a MUST

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Ground Rules of Procurement

- Good Record Keeping
  - Clearly defined policies regarding level of documentation required
    - More $, more paper!
    - All original documents available and accessible

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Ground Rules of Procurement

- Good Record Keeping
  - Periodically review reports on procurement activities
    - Not required, but helps ensure integrity and transparency
    - What types of reports?

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Ground Rules of Procurement

- Ensure Maximum Competition
  - Open and fair competition
  - Multiple quotes or bids
  - ICE
  - Specifications shouldn't be unreasonably narrow
  - Adequate timeframe for bids
  - Outreach
  - What should you avoid?

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Ground Rules of Procurement

- Uphold Ethics
  - Written Code of Standards contained within your procurement policy
  - Federal, State, and Local requirements
  - Conflicts of interest
  - Strong financial controls

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Ground Rules of Procurement

- Stay Alert
  - Complaints, protests, and unusual circumstances usually shed light on issues
  - Address audit findings in a timely manner
  - Be knowledgeable and vigilant
  - Allowable isn't always acceptable
  - When in doubt, consult your counsel or HUD

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Ground Rules of Procurement

- Why all the fuss?
  - Violations of procurement laws and regulations may result in:
    - Increased monitoring visits and scrutiny by HUD
    - Reviews by the Office of the Inspector General (OIG)
    - Agency reimbursing funds to HUD from NFF
    - Loss of employment
    - Fines
    - Incarceration

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Ground Rules of Procurement

- Why all the fuss?
  - ED and Board are responsible for establishing sanctions for ethics violations
  - Civil and administrative penalties should be imposed for ethics violations
    - Oral or written warnings or reprimands
    - Suspension with or without pay for specified periods of time
    - Termination of employment
    - Dismissal from official agency position

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Procurement Records

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Records Retention & Storage

- Documentation, documentation, documentation
- Contract Files, Purchase Orders
- Must maintain records for **3 years after** final expenditure report – 2 CFR 200.333
- Must provide Federal government access to PHA records- 2 CFR 200.336

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Records Retention & Storage

- Rationale for procurement method
- Solicitation documents
- Selection of contract pricing
- Selection and rejection of offerors
- Basis for the contract price (ICE)
- Contract administration actions/issues

The level of documentation should be commensurate with the value of the procurement!

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Questions

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THANK YOU!

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Mark Your Calendars…
The 19th Annual
Nelrod Consortium Conference
March 27 – 29, 2019
SOUTH POINT
Las Vegas, Nevada
Information at
www.nelrod.com
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