

PART 963—PUBLIC HOUSING— CONTRACTING WITH RESIDENT-OWNED BUSINESSES

Subpart A—General beginning with PHA fiscal years that commence on or after January 1, 2001.

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AUTHORITY: 42 U.S.C. 1437 and 3535(d).

SOURCE: 57 FR 20189, May 11, 1992, unless otherwise noted.

Subpart A—General

§ 963.1 Purpose.

The purpose of this part is to enhance the economic opportunities of public housing residents by providing public housing agencies with a method of soliciting and contracting with eligible and qualified resident-owned businesses (as defined in this part) for public housing services, supplies, or construction. The contract award method provided by this part is based on the established procurement procedures set forth in 24 CFR 85.36, with solicitation as provided by these procedures limited to resident-owned businesses. The contract award method provided by this part is not a requirement. It is an alternative procurement method available to public housing agencies, subject to the conditions set forth in this part, and subject to permissibility under State and local laws.

§ 963.3 Applicability.

The policies and procedures contained in this part apply to public housing developments that are owned by public housing agencies (PHAs) and that are covered by Annual Contributions Contracts (ACC) with the Department. Public housing contracts eligible to be awarded under the alternative procurement process provided by this part are limited to individual contracts that do not exceed \$1,000,000. Resident owned businesses eligible to participate in the alternative procurement process are limited to those that meet the eligibility requirements of § 963.10. The policies and procedures contained in this part are consistent with the objectives of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and similar Federal requirements imposed on public housing programs. (See 24 CFR 941.208(a) and 24 CFR 968.110(a)). [57 FR 20189, May 11, 1992, as amended at 59 FR 33895, June 30, 1994]

§ 963.5 Definitions.

The terms *HUD* and *Public housing agency (PHA)* are defined in 24 CFR part 5. *Act*. The U.S. Housing Act of 1937 (42 U.S.C. 1437).

Alternative procurement process. The alternative method of public housing contract award available to public housing agencies and eligible resident owned businesses under the conditions set forth in this part.

Annual Contributions Contract (ACC). See definition in 24 CFR 968.105.

Certification. A written assertion based on supporting evidence, which shall be kept available for inspection by the Secretary, the Inspector General, and the public, which assertion shall be deemed to be accurate for purposes of this part, unless the Secretary determines otherwise after inspecting the evidence and providing due notice and opportunity for comment.

Contract or public housing contract. Any contract awarded by a PHA for services, supplies, or construction necessary for the development, operation, modernization, or maintenance of public housing.

Management officials. The individuals who possess the power to make the day-to-day, as well as major, decisions on matters of management, policy, and operations of the resident-owned business.

Principal. An owner, partner, director, or management official of the resident-owned business with the power and authority to represent the business and to execute contract, leases, agreements, and other documents on behalf of the business.

§ 963.10 24 CFR Ch. IX (4–1–11 Edition)

Public housing or public housing development.

Any public housing development which is owned by a Public Housing Agency (PHA) and is receiving funds under an Annual Contribution Contract (ACC).

Public housing resident. Any individual who resides in public housing as a signatory on a public housing lease, or as a member of the family of the individual (s) who is the signatory on the public housing lease. Resident-owned business. Any business concern which is owned and controlled by public housing Residents. (The term “resident-owned business” includes sole proprietorships.) For purposes of this part, “owned and controlled” means a business:

- (1) Which is at least 51 percent owned by one or more public housing residents; and
- (2) Whose management and daily business operations are controlled by one or more such individuals.

All securities which constitute ownership or control of a corporation for purposes of establishing the business as a resident-owned business shall be held directly by the public housing residents.

No securities held in trust, or by any guardian for a minor, shall be considered as held by the public housing resident in determining the ownership or control of a corporation.

[57 FR 20189, May 11, 1992, as amended at 61

FR 5215, Feb. 9, 1996]

Subpart B—Contracting With Resident-Owned Businesses

§ 963.10 Eligible resident-owned businesses.

To be eligible for the alternative procurement process provided by this part, a business must meet the following requirements, and must submit evidence to the PHA, in the form described below, or as the PHA may require, that shows how each requirement has been met.

(a) Legally formed business. The business shall submit certified copies of any State, county, or municipal licenses that may be required of the business to engage in the type of business activity for which it was formed. Where applicable (as for example, in the case of corporations), the business also shall submit a certified copy of its corporate charter or other organizational document that verifies that the business was properly formed in accordance with State law.

(b) Resident-owned business. The business shall submit a certification that it is a resident-owned business as defined by this part. The business shall disclose to the PHA all owners of the business, and each owner's percentage of ownership interest in the business. The business also shall disclose all individuals who possess the power to make the day-to-day, as well as major, decisions on matters of management, policy, and operations (management officials). The business shall identify all owners and management officials who are not public housing residents, and shall disclose any relationship that these owners and officials may have to a business (resident- or non-resident-owned) engaged in the type of business activity with which the resident-owned business is engaged. For purposes of this part, "relationship" means employment by, or having an ownership interest in, a business. The business also shall submit such evidence as the PHA may require to verify that the owner or owners identified as public housing residents reside within public housing of the PHA.

(c) Responsibility to complete contract. The business shall submit evidence sufficient to demonstrate to the satisfaction of the PHA that the business has the ability to perform successfully under the terms and conditions of the proposed contract. Consideration will be given to various factors, including but not limited to those identified in 24 CFR 85.36(b)(8) and also to such matters as proof of completion of courses in business administration or financial management, and proof of job training or apprenticeship in the particular trade, business, profession, or occupation.

(d) Limitation on alternative procurement contract awards. The business shall submit a certification as to the number of contracts awarded, and the dollar amount of each contract award received, under the alternative procurement process provided by this part. A resident-owned business is not eligible to participate in the alternative procurement process provided by this part if the resident-owned business has received under this process one or more contracts with a total combined dollar value of \$1,000,000.

[57 FR 20189, May 11, 1992, as amended at 59 FR 33895, June 30, 1994]

§ 963.12 Alternative procurement process.

(a) Method of procurement. In contracting with resident-owned businesses, the PHA shall follow the applicable method of procurement as set forth in 24 CFR 85.36(d), with solicitation limited to resident-owned businesses. Additionally, the PHA shall ensure that the method of procurement conforms to the procurement standards set forth in 24 CFR 85.36(b).

(b) Contract awards. Contracts awarded under this part shall be made only to resident-owned businesses that meet the requirements of § 963.10, and that comply with such other requirements as may be required of a contractor under the particular procurement and the Department's regulations. An award shall not be made to the resident-owned business if the contract award exceeds the independent cost estimate required by 24 CFR 85.36(f), and the price normally paid for comparable supplies, services, or construction in the project area.

(c) Contract requirements. Any contract entered into between a PHA and a resident-owned business under this part shall comply with: the contract provisions of 24 CFR 85.36(i); the provisions of 24 CFR 85.36(h), 24 CFR 968.240(d) or 24 CFR 968.335(c)(1) governing bonding requirements, where applicable; and such other contract terms that may be applicable to the particular procurement under the Department's regulations. In addition to the recordkeeping requirements imposed by 24 CFR 85.36(i), the PHA also shall maintain records sufficient to detail the significant history of the procurement made under this part. These records will include, but are not necessarily limited to the following:

The independent cost estimate and comparable price analysis as required by paragraph (b) of this section; the basis for contractor selection, including documentation concerning the eligibility of the selected resident-owned business under § 963.10; and the basis for determining the reasonableness of the proposed contract price.

PART 964—TENANT PARTICIPATION AND TENANT OPPORTUNITIES IN PUBLIC HOUSING
Subpart A—General Provisions

§ 964.140 Resident training.

(a) Resident training opportunities.

HUD encourages a partnership between the residents, the HA and HUD, as well as with the public and non-profit sectors to provide training opportunities for public housing residents. The categories in which training could occur include, but are not limited to:

- (1) Community organization and leadership training;
 - (2) Organizational development training for Resident Management Corporations and duly elected Resident Councils;
 - (3) Public housing policies, programs, rights and responsibilities training; and
 - (4) Business entrepreneurial training, planning and job skills.
- (b) Local training resources.* HUD encourages the use of local training resources to ensure the ongoing accessibility and availability of persons to provide training and technical assistance. Possible training resources may include:
- (1) Resident organizations;
 - (2) Housing authorities;
 - (3) Local community colleges, vocational schools; and
 - (4) HUD and other Federal agencies and other local public, private and nonprofit organizations.

Source: HUD Handbook No. 7460.8 REV 2 - 2007

Chapter 15. Employment & Training Opportunities and Contracting with Residents, Resident-Owned, Small, Minority, and Other Disadvantaged Businesses

15.1 General

HUD strongly supports a policy of providing training and employment opportunities to residents and contracting with residents and resident-owned businesses, including RMCs, whenever possible. In addition, HUD encourages PHAs to establish goals for contract awards to small and minority-owned businesses and minority business enterprises (MBEs), women's business enterprises (WBEs), and businesses in labor surplus areas.

15.2 Section 3 of the Housing and Urban Development Act of 1968 (24 CFR 135)

- A. Overview. The purpose of Section 3 is to ensure that, to the greatest extent feasible, employment, training, and business opportunities created by HUD financial assistance be directed to low and very-low income persons. Efforts to promote Section 3 objectives must be consistent with existing Federal, State and local laws and regulations.
- B. Covered Programs. Section 3 requirements apply to:
 - 1. PHA utilization of funds for public housing development, operations, and capital fund programs; these requirements do not apply to Section 8; and
 - 2. In addition, certain Notification of Funding Availability (NOFA) and grant agreements governing assistance to PHAs may contain Section 3 requirements.
- C. Covered Work. Section 3 covers contracts for work and does not apply to contracts for the purchase of supplies and materials. However, contracting with PHA resident-owned businesses for the purchase of supplies and materials is considered providing an "other business related economic opportunity" under 24 CFR 135.40, which can be used to satisfy a PHA's overall Section 3 obligations. Additionally, if the contract includes installation of purchased equipment, the contract would be covered by Section 3.
- D. Mandatory Section 3 Contract Clause. The mandatory Section 3 contract clause can be found at 24 CFR 135.38, which applies to all contracts covered by Section 3. Covered contracts described at 24 CFR 135.3(a) include developments, operating and modernization assistance. This clause is included in forms HUD-5370, HUD-5370-C, and HUD-5370-EZ
- E. Annual Report. Pursuant to 24 CFR 135.90, PHAs must submit to, the Assistant Secretary for Fair Housing and Equal Opportunity, an annual report using the Section 3 Data Reporting System on form HUD-60002- Economic Opportunities for Low- and Very Low-Income persons.

15.3 Resident-Owned Businesses

A. A resident-owned business is any business concern that is owned and controlled by public housing residents.

B. HUD strongly encourages PHAs to contract with resident-owned businesses to the maximum extent feasible.

C. The regulation at 24 CFR Part 963 allows PHAs to use an alternative procurement process when contracting with businesses owned in substantial part by PHA residents (resident-owned businesses) for public housing services, supplies, or construction. The alternative procurement process must comply with procedures and requirements as set forth in HUD's procurement regulations at 24 CFR 85.36, except that solicitations are limited to resident-owned businesses. Use of this alternative procurement process is not a requirement.

D. The alternative procurement process under 24 CFR Part 963 is as follows:

1. The PHA prepares an ICE for the procurement.
2. The PHA selects the appropriate method of procurement (small purchase, sealed bidding, competitive proposals, or noncompetitive proposals).
3. The PHA solicits a bid, proposal, or offer from one or more resident-owned businesses.
4. The PHA receives offer(s) from one or more resident-owned businesses and ensures that:
 - a. The offeror has submitted the required certification described in 24 CFR Part 963 regarding previous contracts received under the alternative procurement process and the total amount of such previous contracts is less than \$1,000,000;
 - b. The PHA performs a cost or price analysis of the offer(s) received and determines that the price is reasonable, i.e., the price that normally would be paid for comparable supplies, services, or construction in the project area;
 - c. The PHA makes an award to the responsive and responsible bidder/offeror/respondent whose bid/offer/proposal is most advantageous overall to the PHA, consistent with the evaluation factors stated in the solicitation. The resident-owned business must be capable of performing satisfactorily; and
 - d. The PHA documents the procurement file and complies with all other procurement requirements of 24 CFR 85.36, including the requirement for economy and efficiency.

15.4 Contracting with an Resident Management Corporation (RMC)

A. A PHA may enter into a contract with an RMC to provide property management under 24 CFR Part 964, Tenant Participation and Tenant Opportunities in Public Housing. As with any other property management contract, the management agreement must specify the functions for which the RMC will be responsible.

B. The property management contract between the PHA and the RMC is administered as any other contract for services, and is subject to any collective bargaining agreement provisions. However, the requirements for competitive procurement and prior written contract approval by HUD, where applicable (see Chapter 12), do not apply to the decision of a PHA to contract with an RMC for property management.

C. In order for the PHA to make a sole source award to an RMC, certain conditions must be met that differentiate an RMC from a resident-owned business. They are:

1. The duly elected resident council or councils of the development(s) and a majority of the residents must officially approve the RMC;
2. If no resident council exists, a majority of the residents of the development must approve the RMC;
3. The RMC's voting members must be 18 years of age, or heads of households (of any age) whose name appears on the lease of the development to be represented by the RMC;
4. The RMC must be a validly incorporated nonprofit organization; and
5. The RMC must be governed by an elected Board of Directors and include representatives from each participating Resident Council. It must have by-laws stating qualification of officers, frequency of elections, and procedures for recall. Elections must be held at least every three years.

D. Before making a sole source award, the PHA must ensure that the organization meets all criteria to qualify as an RMC, that the RMC can demonstrate that it is capable of performing the proposed work, and that the price is reasonable.

E. The RMC is obligated to provide fidelity bond coverage and insurance or equal protection to the PHA and HUD against loss, theft, embezzlement or fraudulent acts by the RMC or its employees.

F. In performing services, the RMC must comply with the requirements of 24 CFR Part 84. The RMC must also be audited each year by a licensed CPA and submit the audit report to HUD and the PHA within 30 days of issuance.

15.5 Assistance to Small and Other Disadvantaged Businesses

A. Required Efforts. Consistent with Presidential Orders 11625, 12138, and 12432, the PHA shall make every feasible effort to ensure that small businesses MBEs, WBEs, and labor surplus area

businesses participate in PHA contracting. Suggested steps are included in the sample Procurement Policy in Appendix 1.

B. Goals. PHAs are encouraged to establish goals by which they can measure the effectiveness of their efforts in implementing programs in support of Section 3 and contracting with disadvantaged firms. It is important to ensure that the means used to establish these goals do not have the effect of limiting competition and should not be used as mandatory set-aside or quota, except as may otherwise be expressly authorized in regulation or statute. Some localities have adopted minority contracting set-aside policies or geographic limitations, which may be in conflict with Federal requirements for full and open competition.

C. Form HUD-2516, Contract and Subcontract Activity Report. PHAs are required to report MBE progress on this form semi-annually. Where the prime contract is awarded to a MBE, the PHA counts the entire dollar amount of the contract toward the MBE goal. Where the prime contract is not awarded to a MBE, but one or more of the subcontracts are awarded to a MBE, the PHA counts the dollar value of such subcontract(s) toward the MBE goal. The dollar value of the prime contract and each of its subcontracts are not to be double counted.

When developing an outreach program for small, WBE, MBE, or labor surplus area, or Section 3 businesses, consider how to ensure that the program has the effect of enhancing competition by increasing the number of potential bidders and contractors capable of competing effectively for work generated by the PHA. Among the steps that have proved effective in some PHAs are:

1. Study the existing barriers facing low-income persons and disadvantaged businesses;
2. Examine PHA policies and procedures that may contribute to these barriers and determine how to improve those policies and procedures;
3. Communicate directly with disadvantaged firms and resident-owned businesses about contracting opportunities, the standards the PHA requires for quality work at a reasonable cost, and how to succeed in bidding for PHA work;
4. Maintain a list of disadvantaged and resident-owned firms and notify them of planned procurement activities;
5. Establish partnerships with other community agencies, Federal, State and local agencies, and educational institutions. Many have as their mission the fostering of job creation, training, and business development; and
6. Consider partnering in a consortium or interagency agreement with other PHAs or units of local government to enhance capacity to achieve Section 3 and disadvantaged contracting goals.
- 7.

Remember that the best programs will serve the needs of the PHA, assist resident-owned businesses and low-income persons, and promote a more competitive environment.

A list is provided in Appendix 16 that includes sources of information on working with resident-owned businesses.

END