

## CHAPTER 2. CONTRACTING PROCEDURES

### 2-1. FULL AND OPEN COMPETITION

- A. Policy - It is HUD policy to obtain maximum competition consistent with the nature of the procurement. FAR Part 6 and HUDAR Part 2406 set Federal and HUD policies, respectively.
- B. Other Than Full and Open Competition - Any procurement action above the small purchase ceiling which is processed using other than full and open competitive procedures must be supported by a written justification based on one of the circumstances in FAR 6.302. The concept of other than full and open competition includes sole-source situations and any situation where FAR/HUDAR requirements for full and open competition are not met (e.g., competition among a limited number of sources which was not announced in the Commerce Business Daily).
1. Justification content/form - All justifications must be documented on Form HUD-24012, "Justification for Other Than Full and Open Competition" (see Appendix 2).
  2. Justification approval - Specified on Form HUD-24012. Also, see FAR 6.304/HUDAR 2406.304-71. For Field Office procurements, the approval levels are:

Value of Action	Approval Level
-----------------	----------------

\$25,000 - \$100,000	One level above the contracting officer
----------------------	---

\$100,001 - \$1 million	Competition Advocate (The Regional Contracting Officer, Office of Administration)
-------------------------	---

\$1 million - \$10 million Deputy Regional  
Administrator

Over \$10 million Senior Procurement Executive  
(Assistant Secretary for  
Administration)

3. Regional Procurement Review Board (PRB) (HUDAR 2406.304-72(c)). - In addition to the above requirements any justification for a sole-source award above the small purchase ceiling must also be approved by the Regional PRB. PRB procedures are issued at the Regional level consistent with directions issued by the Senior Procurement Executive.

2-1

3/89

---

2-2. TYPICAL PD CONTRACTS - Property Disposition contracts generally fall into five categories: property management; services; supplies; construction; and, architect/engineer.

- A. Property management contracts set forth the scope of services required to manage single family or multifamily properties Pre-bid/proposal conferences are recommended for these contracts to clarify the requirements and procedures of the particular area/project and the local office staff. Pre-bid/proposal conferences should be held as early as possible after issuance of the solicitation and before receipt of bids/offers. Oral advice given by HUD officials during the conference may not contradict solicitation requirements. Should this occur, an amendment to the solicitation or a clarification must be issued. After a pre-bid/proposal conference, a written record of the conference must be issued to all potential offerors.

Property management contracts include:

1. Area Manager Broker (AMB) - provides management services for single family properties (1-4 family units).
2. Project Manager (PM) - provides management services on multifamily projects (5 or more units) and may cover properties already acquired or those which the Secretary has custody of the project prior to acquiring title (Mortgagee in-Possession (MIP)). A PM contract may cover a single project or several projects within a geographic area.
3. Nursing Home Administrator - requires performance of various administrative services in operating and managing a nursing home.
  - a. Nursing Home Administrator contracts should be competitively negotiated to obtain a highly qualified administrator.
  - b. The Service Contract Act applies to all authorized service contract employees. (see paragraph 2-8 A.2.)
4. If necessary to obtain property management services without sufficient advance notice to allow full and open competition, an emergency 120-day property management contract may be competitively negotiated following FAR Part 6.3. Because of the uncertainties involved in the multifamily property acquisition process, the use of

---

indefinite-quantity contracts to acquire property management services for a specific geographic area is encouraged. Also, refer to FAR Part 7 and paragraph 1-6 of this Handbook for procurement planning requirements which will minimize the need for temporary emergency contracts.

5. Formats for the above property management contracts are issued by Headquarters Single Family and Multifamily Property Disposition Divisions. Formats which deviate from specifications and requirements prescribed by Headquarters require the prior consent of the Director, Multifamily Property Disposition Division,

B. Services - Typical types of service contracts used are:

Single Family	Multifamily
Advertising	Advertising
Yard maintenance	Grounds maintenance
Board-up	Glass and screen replacement
Winterizing	Air conditioning and heating maintenance
Lock boxes and keys	Elevator maintenance
System checks	Security guards
Security guards	Janitorial services
Demolition	Termite treatment
Glass replacement	Pest control
Sales closings	Trash collection
	Fuel oil and burner service
	Swimming pool maintenance

1. The Service Contract Act (SCA) applies to service

contracts if the total dollar value for the full contract term exceeds \$2,500, except for advertising services and sales closings which primarily use administrative or professional employees. See paragraph 2-8 A.2. for further information.

2. If there is a continuing need for any service, solicit a competitive contract for a specific period (not to exceed five years). Note the SCA requirement for contracts in excess of two years, which requires obtaining updated wage determinations and renegotiation of wages, if required by a change in these wage determinations.
3. Establish a tickler file to assure proper follow-up on repetitive services. Allow sufficient lead time for the contracting process to assure continuation of services.

2-3

3/89

---

C. Supplies - Such as ranges, refrigerators and locks- use General Service Administration's Federal Supply Schedule contracts to the extent possible.

D. Construction - Covers any standard construction trade including alteration, repair or painting.

1. In developing repair specifications, the following can be used as guides:

Handbook 4910.1, Minimum Property Standards

24 CFR 886.307, Section 8 Housing Quality Standards  
(for multifamily properties)

HUD-T9767(583), National Specification System  
Catalog of Specifications for  
Reconditioning HUD Acquired Property

Other National, State, or local housing/building  
sanitary codes

2. The Davis-Bacon Act applies to all construction contracts in excess of \$2,000. See paragraph 2-8 A.1. for further information.
- E. Architect/Engineer (A/E) services are occasionally required on multifamily projects for investigative work on the physical condition of the project, development of plans and specifications, and inspection of repairs. FAR Part 36 provides policies and procedures for A/E contracts.
1. A/E contracting Procedures must not be used to obtain single family property inspection services. A service contract (see B above) should be used to obtain these services.
  2. Indefinite-quantity contracts should be used where all of the following conditions are met. Sample formats are available from Headquarters Multifamily Property Disposition, Management Branch.
    - a. The services are expected to be needed on more than one project;
    - b. There is a specified geographic area for performance;

- c. There is a specified period of time covered by the contract; and,
- d. Similar types of professional expertise are required in multiple instances.

2-3. CONTRACTING METHODS - After determining the services/supplies required, the contracting method must be determined.

Contracting Officers must exercise good judgment in selecting the method of contracting that best meets HUD needs. These methods are:

A. Sealed Bidding - FAR Part 14 (previously known as formal advertising). This method employs competitive bids, public opening of bids and award to the lowest priced responsive, responsible offeror. Contracting Officers shall solicit sealed bids if:

- 1. Time permits the solicitation, submission, and evaluation of sealed bids;
- 2. The award will be made on the basis of price and other price-related factors;
- 3. It is not necessary to conduct discussions with the responding offerors about their bids; and,
- 4. There is a reasonable expectation of receiving more than one sealed bid.

B. Negotiation - FAR Part 15. This method includes solicitation of proposals, evaluation of factors other than price, permits, discussions/bargaining with offerors, and generally offers them a chance to revise their proposals before award. Negotiation must be concluded on a competitive basis unless one of the exceptions cited in FAR Part 6.3 is met. The contract file must also "document the

reasons sealed bidding is not appropriate" (FAR 6.401).  
Property Disposition personnel shall follow the procedures specified in Chapter 5 of Handbook 2210.3, Procurement Policies and Procedures, when contracting by negotiation.

C. Small Purchases - FAR Part 13

1. All small purchases originated by PD personnel, regardless of dollar value, must be authorized by the issuance of a Form HUD-2542, "Purchase Order Authorization and Payment." However, for construction purchases above \$2,000, award using Form SF-1442, Solicitation, Offer and Award (Construction, Alteration or Repair) is recommended (see Paragraph 2-6 A 3).

3/89

2-5

- 
2. In emergency situations, authorized personnel may provide a vendor with a verbal notice to proceed and issue a confirming purchase order afterwards. In such cases, in addition to a description of the required goods/services, the Form HUD-2542 must contain a note as follows:

CONFIRMING ORDER - Work authorized by telephone on 5/31/88 by Jane Doe, Senior Realty Specialist

3. The practice of issuing a purchase order for all purchases originated by PD personnel is not inconsistent with AMB/PM purchasing authority. In each case, written contractual coverage is normally required before work commences. The AMB/PM contract is the written authority to manage HUD properties and to incur (and be reimbursed for) certain expenses associated with that management. The FAR requires similar written advance authorization for any direct HUD

purchase. In addition to complying with the FAR, the written purchase order serves as an internal control mechanism and as a ready basis for distinguishing itself from an AMB/PM purchase. The only exceptions to this procedure are utility and tax payments paid directly by HUD.

4. Competition for small purchases must comply with FAR 13.106 Purchases under \$1,000 may be accomplished without competition provided the price is considered reasonable. The file must be documented as to how the determination of reasonableness was made. This dollar ceiling may be further limited at the discretion of the HCA. All such purchases must be equitably distributed among available sources.
5. Purchases between \$1,000 and \$25,000 may be limited to solicitation of at least three sources. Additional competition should be solicited as necessary to ensure reasonable prices. If only one source is solicited, an explanation for the absence of competition must be attached to the office's copy of the order.
6. Quotes for small purchased should be solicited orally unless:
  - a. Complex specifications are involved which, if communicated orally, may result in offers which are not comparable in scope;

3/89

2-6

- 
- b. The Contracting Officer determines that written quotations are more practical for a particular transaction;

- c. A large variety of supplies or services are required;
  - d. The purchase is for construction services over \$2,000;
  - e. The purchase is for services covered by the Service Contract Act (over \$2,500 - see paragraph 2-8A.2) and the wage determination is lengthy and best conveyed in writing; or,
  - f. Further limitations have been established locally by the Head of the Contracting Activity.
7. If oral quotes are obtained, the following documentation must be attached to the office's file copy of the purchase order:
- a. A list of firms/individuals from which quotes were obtained;
  - b. The price(s) quoted by each;
  - c. Name(s) of the PD staff member(s) obtaining the quotes and the persons who provided the quotes; and,
  - d. The date(s) the quotes were requested and received.
8. Quotes are not bids. The Contracting Officer is encouraged to negotiate to obtain the most reasonable price available for the goods or services.
9. Quotes must be kept strictly confidential and not disclosed to competitors. After award of the

purchase order, the purchase order price(s) may be disclosed to interested parties.

10. Further controls may be established locally for small purchases originated by AMBs or PMs.

2-4. COST ESTIMATES - shall be established for all purchases.

They can range from simplified estimates to definitive cost estimates.

- A. Simplified estimates based on previous experience, current price lists, or any other reasonable basis may be used for:

2-7

3/89

---

1. Supplies and services below the small purchase ceiling; and,
  2. Construction \$5,000 and under.
- B. Definitive cost estimates are required for all purchases above the threshold in paragraph A above. They must include breakdowns for each cost element. Supporting data must be included to show how the amounts were determined. Cost elements include: Material, Labor, Overhead, and Profit.
  - C. The requirement for an independent estimate of construction costs (FAR 36.203) applies to all construction purchases in excess of the small purchase ceiling.
  - D. Knowledge of cost estimates is restricted to Government personnel whose official duties require such knowledge. Cost estimates must not be revealed to any bidder/offeror.

E. Sources of cost data:

1. Cost analysts and other profession staff.
2. Contract files can be consulted for past experience with the same work.
3. Trade journals, catalogs, Dodge Reports, price lists, or other publications which tabulate costs.
4. Oral requests to suppliers, wholesalers, and distributors. Care must be taken to ensure such requests are not construed as a bid solicitation.
5. Boeckh Building Cost Modification, Marshall Swift Valuation Service, or similar publications.

2-5. PUBLICIZING PROCUREMENT ACTIONS

A. Each solicitation in excess of \$25,000 must be:

1. Synopsized in the Commerce Business Daily (FAR Part 5); and,
2. Posted in the lobby or public space of the HUD Field Office.

B. FAR 5.101(b) list additional methods for publicizing procurement actions which should be considered when previous solicitations have resulted in insufficient competition.

3/89

2-8

---

2-6. SOLICITATION PROCEDURES for formal contracts (above the small

purchase ceiling) are set forth in FAR Parts 14, Sealed Bidding and 15, Negotiation. See paragraph 2.7 for information on the solicitation/award numbering systems.

A. Forms/Formats

1. Property management contract formats and some service contract formats are available from Headquarters Multifamily Property Disposition, Management Branch.
2. Services/Supplies may be purchased by sealed bid, negotiation or small purchase procedures.
  - a. Sealed bid and negotiation require the use of Form SF-33.
  - b. Small purchases -
    - (1) If oral solicitation is used, award on Form HUD-2542.
    - (2) If written solicitation, use Form SF-18 and award on Form HUD-2542.
    - (3) Develop a specification as required in FAR Part 10.
    - (4) Applicable clauses are pre-printed on reverse of Form HUD-2542.
3. Construction contracts may use either sealed bid, negotiation, or small purchase procedures.
  - a. HUDAR 2419.503 requires that all construction purchases under the Property Disposition Program with an estimated cost of less than \$1 million be reserved exclusively for small businesses as a

class set aside. If the Contracting Officer determines that any individual procurement falling within this class set-aside requirement is unsuitable for such a setaside in part or in total, the set-aside may be withdrawn with the concurrence of the HCA. Proposed procurements for construction which exceed an estimate of \$1 million shall be considered for set aside on a case-by-case basis.

- b. For small purchases under \$2,000, solicit quotes orally or in writing using Form SF-18 and award on Form HUD-2542.

3/89

2-9

- 
- c. Above \$2,000 but below \$25,000, award using Form SF-1442 is recommended; however, Form HUD-2542 with applicable construction contract clauses attached may also be used. (Format available from the Management Branch, Multifamily Property Disposition Division.) (See FAR Parts 13 and 36).
  - d. Above \$25,000, award using Form SF-1442.
  - e. Develop specifications following FAR Part 10 and those standards referenced in paragraph 2.2D.
  - f. See FAR Part 52 for solicitation and contract provisions to include in fixed price construction contracts.
4. Architect /Engineer - Use Form SF-252, Architect-Engineer Contract, to solicit and award A/E contracts (FAR Part 36).

## 2-7. SOLICITATION/AWARD NUMBERING SYSTEM

### A. Solicitation/Contracts

1. Log. A solicitation/contract log containing the following information must be maintained:
  - a. Solicitation number
  - b. Date of opening
  - c. Project/area identification
  - d. Project area/location
  - e. Nature of work
  - f. Set aside for labor surplus or small business
  - g. Contract award date
  - h. Competition (Identify the FAR Subpart used—either 6.1 or 6.3. FAR Subpart 6.3 must be further broken down to the relevant competition exception used, i.e., FAR 6.302-1, 6.302-2, or 6.302-5.)
  - i. Contract number
  - j. Contract price (fixed or estimated amount)

k. Contractor name and identification re:

Small or large business  
Minority designation  
Women-owned business

2. Numbering System

- a. Solicitation - assign in chronological order beginning at number one at the start of each fiscal year. The numbering system is the sequential number, dash, fiscal year (two digits), and the office projective code (e.g., 1-85-021).
- b. Solicitation Amendments - must be sequentially numbered and issued on a SF-30. Any IFB amendment which may affect a material factor (price, quality, quantity or delivery) must be acknowledged with the bid (FAR 14.208).
- c. Contracts - assign in chronological order beginning at number one and continuing sequentially. Contract numbers revert back to number one only after 9,999 are issued. The numbering system: the office projective code, dash, fiscal year (two digits), sequential number (one to five digits, as necessary) (e.g., 021-85-155).

B. Purchase Orders

- 1. Log. A purchase order log containing the information listed below must be maintained.
  - a. Purchase order number

- b. Dollar amount
- c. Date of award
- d. Name of contractor
- e. Minority designation
- f. Women owned business
- g. Small or large business
- h. Case number

2-11

3/89

---

- i. Property address
  - j. AMB/PM name
  - k. Nature of work
  - l. Delivery date
  - m. Follow-up action
  - n. Assignee (if applicable)
  - o. Remarks (include reasons for amendments, cancellations, delays)
2. Numbering. A new series of numbers shall be started each fiscal year, starting with number one and continuing consecutively. Each number shall be preceded by the two-digit fiscal year and a hyphen (example: 85-1).

3. Review. The CPO must review the log quarterly and maintain a review file. This review must check for:
  - a. Timely processing of additions and deletions;
  - b. Indications of bid splitting;
  - c. Frequency of sole-source procurements;
  - d. Excessively priced items;
  - e. Delinquent performance; and,
  - f. Other signs of abuse.

## 2-8. KEY LABOR STATUTES/REGULATIONS AFFECTING PD CONTRACTING

- A. Labor Regulations - are set forth in FAR Part 22. The major areas affecting property disposition are:
  1. Davis-Bacon Act - applies to all construction contracts estimated to exceed \$2,000. Implementing regulations are contained FAR Subpart 22.4. Applicable wage determinations must be included in each solicitation. Handbook 1344.1, Federal Labor Standards Compliance in Housing and Community Development Programs, sets HUD policies and instructions on the Davis-Bacon Act. Wage determination requests must be coordinated with the Regional Labor Relations Specialist.

3/89

2-12

- 
2. Service Contract Act (SCA) - applies to all service

contracts estimated to exceed \$2,500. Applicable wage determinations must be included in each solicitation.

- a. 29 CFR Part 4 contains SCA regulations.
- b. Forms SF-98 and 98a must be used to request a wage determination.
- c. The SCA applies to all contracts which the principal purpose is to furnish services, other than persons employed in an executive, administrative, or professional capacity. (See 29 CFR 29). The SCA shall apply regardless of any contractual relationship that may exist between the contractor and his employees.
- d. The SCA applies to PM contracts when five or more project employees will be used. In some instances, advance notice of project acquisition is not sufficient to permit obtaining a wage determination prior to award of the PM contract. In such event, the Contracting Officer must immediately request a wage determination. Upon receipt, the contract must be modified to incorporate the wage determination and provide appropriate restitution and adjustment of wages.
- e. The SCA does not apply to AMB contracts unless the AMB contract requires performance of service-type work (e.g., lawn maintenance).
- f. At present, the FAR does not include Service Contract Act coverage. A FAR revision adding the appropriate contract clauses is pending. In the interim, the following options are available for covered solicitations and contracts:

(1) Incorporate the Service Contract Act in Section I of the solicitation/contract by reference to FPR Temporary Regulation 76; or,

(2) Incorporate the current clause in full text.  
Copies are available from Headquarters Multifamily Housing Management Branch.

3/89

2-13

---

- g. DOL publishes an SCA Directory of Occupations which is purchased and mailed to each Field Office by the Management Branch, Multifamily Property Disposition Division. Consult this Directory when processing a request for wage determinations to choose the appropriate labor classification. These classifications should meet PD needs. The only classification not covered, Rental Clerk/Senior Rental Clerk, has been provided to DOL for inclusion in the Directory when updated. Copies of this classification are available from the Management Branch.
- h. At least 30 days must be allowed for the Department of Labor (DOL) to respond to a request for a wage determination.
- i. The Department of Labor (DOL) must be notified of the award of all contracts subject to the Service Contract Act by filing a Form SF-99. DOL is responsible for enforcement. Questions or complaints should be referred to the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210.
- j. Areawide Wage Determinations Reserved

3. Walsh-Healey Public Contracts Act (See FAR 22.6) applies to supply contracts over \$10,000.
  - a. Minimum wage determinations are not required.
  - b. Requires overtime payments for over 40 hours worked in one week.
  
4. Affirmative Action - FAR Subpart 22.8 sets procedures for Equal Opportunity and Affirmative Action Programs in Government contracts and implements the requirements of Executive Order 11246 and the Office of Federal Contracts Compliance Programs' (Department of Labor) regulations in 41 CFR 60-1 and 60-4.

The prescription for clauses in support of these programs is found at FAR 22.810. This prescription requires that the Contracting Officer insert certain provisions in solicitations when the contract will include the Equal Opportunity clause at FAR 52.222-26 (presently all contracts over \$10,000). While the FAR implements DOL affirmative action and equal opportunity requirements for all contracts, the requirements for construction contracts are more substantive. For example, the Contracting

3/89

2-14

---

Officer must insert specific goals for minority and female participation in construction contracts over \$10,000. This requirement is implemented by:

- a. FAR 52.222-23, "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity," which sets forth in solicitations

the goals for minority and female participation for the contractor's aggregate work force in each trade on all construction work in designated covered area(s). The appropriate goals must be inserted into paragraph (b) of this Notice. The goals are based on U.S. Census data and are published approximately every ten (10) years in the Federal Register. Appendix 3 contains the most recent goals which were published in 1980. Goals for female participation apply nationwide. Goals for minority participation apply only in the designated areas. In those areas not covered by a minority goals, amend Paragraph (b) of FAR 52.222-23 to include appropriate female goals and a notation that a minority goal has not been established. Appendix 3 will be updated when revised goals are published by DOL's Office of Federal Contract Compliance Programs (OFCCP).

- b. FAR 52.222-27, "Affirmative Action Compliance Requirements for Construction," provides that all construction contracts and subcontracts at any tier which are estimated to exceed \$10,000 must include this clause and the above Notice containing the goals for female and minority participation.

## 2-9. EVALUATION

- A. Small purchases - See FAR 13.106 for requirements for documenting reasonableness of costs for small purchases.
- B. Purchases above \$25,000 - Evaluation of bids/offers submitted in response to a solicitation must consider the following issues. (Evaluation under the negotiated process does not require consideration of responsiveness; such issues are covered by the solicitation's evaluation

criteria.)

1. Responsiveness - (Sealed bids only) relates to the bid as submitted. A bid must comply in all material respects with the IFB. A non-responsive bid is one that modifies the requirements of the IFB, or limits a bidders liability to HUD. FAR 14.404.2 provides bases for rejecting bids as non-responsive.

3/89

2-15

---

2. Responsibility - FAR 9.1 sets forth general standards a prospective contractor must meet to be determined responsible.
  - a. Decisions concerning responsibility shall be preceded by a competent and thorough investigation of past performance, current workload, integrity, and financial capacity. See FAR 9.105 for procedures for making determinations of responsibility.
  - b. The Contracting Officer must determine a bidder's responsibility. The Contracting Officer may request the bidder to submit data to assist in this determination. Submission of this data can be requested to be submitted with the bid; however, submission with the bid cannot be mandatory to be considered for award. (A matter of responsibility cannot be made into a matter of responsiveness.) The following should be reviewed as part of the responsibility determination:
    - (1) Performance report files; and,
    - (2) GSA's Lists of Parties Excluded from Federal

Procurement or Nonprocurement Programs.

- c. Any special qualification standards contained in the IFB/RFP (See paragraph 2.11) must be applied equally to all offerors/bidders.
  - d. Determination of non-responsibility of any small business concern must be referred to the Small Business Administration for consideration under Certificate of Competency procedures (FAR 19.6).
3. Technical Evaluation of proposals received under a negotiated procurement is performed by a Technical Evaluation Panel (TEP) or Source Evaluation Board (SEB) in accordance with Chapter 5 of Handbook 2210.3, Procurement Policies and Procedures. Each TEP or SEB should secure the guidance and advice of a contract specialist experienced in the use of competitive negotiations.
4. Reasonableness - The Contracting Officer must document the file as to the steps taken to assure the reasonableness of the price/cost bid/offered.
- a. Sealed bid situations:

3/89

2-16

---

- (1) If the low bid is within ten percent of HUD's estimate, the Contracting Officer may proceed with the award of the contract.
- (2) If the low bid differs any more than ten percent from HUD's estimate, the estimate must be reviewed. If review verifies the estimate, the Contracting Officer must then

request the bidder to verify the bid (FAR 14.406).

b. Negotiated contracts:

- (1) The Contracting Officer must document the selection per the factors for award in the RFP as well as the basis for determining the negotiated price fair and reasonable. These and others issues must be part of the Price Negotiation Memorandum (FAR 15.808) contained in the contract file.

## 2-10. UNUSUAL PRICING ISSUES

A. Buy-in Bids. (See FAR 3.501) A buy-in bid refers to the practice of submitting a bid below anticipated costs or market norms to ensure contract award. When a buy-in bid is submitted (occasionally on AMB contracts), the bidder expects to recover losses through an anticipated advantage on property sales, through other compensation stipulated in the contract, or by attempting to increase the price after award. GENERALLY, the Contracting Officer should minimize the opportunities for buying in by seeking a price commitment for as much of HUD's requirement as is practical. The following must be considered when confronted with a buy-in bid:

1. A bid shall not be rejected solely because it is below an estimated dollar base or because the local office staff believes that the bid is too low.
2. Bid verification shall be obtained pursuant to mistake in bid procedures prescribed in FAR 14.406.
3. The bidder should be instructed to document a correlation of costs in the bid price to the

requirements of the solicitation.

4. The Contracting Officer must determine whether satisfactory performance can reasonably be expected at the price bid, disregarding any other income anticipated by the bidder.

2-17

3/89

---

5. If potential constructive losses are apparent, the source of income from which the bidder expects to make up those losses must be determined to be not objectionable to HUD. A bid predicated on anticipated acquired property sales income to recover losses is speculative and provides no such assurance. A bidder's planned and anticipated loss for other legitimate business reasons does not justify rejection of an otherwise acceptable bid.

6. Where poor or non-performance is a possible result of a buy-in bid, the Contracting Officer may determine that the bidder is not a responsible contractor and should proceed to comply with FAR Subpart 9.1.

- B. Bid Errors. Bids must be examined individually and collectively to assure full compliance with the requirements of the IFB/RFP. When the low bid is considerably below HUD's estimate or the other bids received, the Contracting Officer should bring this to the attention of the bidder and request written verification of the bid (FAR 14.406).

## 2-11.USE OF BONDS (FAR PART 28)

- A. General Requirements

1. The Miller Act requires performance and payment bonds for any construction contract over \$25,000. If determined by the Contracting Officer to be in HUD's best interest, they may be required for construction contracts of less than \$25,000.
2. The use of performance and payment bonds in contracts other than construction is generally discouraged (See FAR 28.103-1). However, performance bonds may be requested when necessary to protect the Government's interests. The most frequent situation prompting their use in PD contracts is under demolition contracts with considerable salvage value.
3. Bid guarantees (FAR 28-101) are required for sealed bid procurements when the resultant contract will require a performance bond or a performance and payment bond. A bid guarantee is a form of security which assures that the bidder: (a) will not withdraw a bid within the period specified for acceptance; and, (b) will execute a written contract and furnish required bonds, including any necessary coinsurance or reinsurance agreements, within the time specified in the bid, unless a longer time is

allowed, after receipt of the specified forms. For construction contracts, only separate bid guarantees are acceptable. For other supply or service contracts, all types of bid guarantees (see FAR 28.001) may be used when deemed appropriate by the Contracting Officer.

4. Bonding is not required for AMB or PM contracts. If a debt or other loss of proceeds occurs, direct collection efforts must be pursued by the local office staff.

Collection difficulties must be reported to the Regional Inspector General for Investigation and to the Claims Collection Officer.

5. Forms. Bid guarantees, performance bonds, and payment bonds shall use Forms SF-24, SF-25 and SF-25A, respectively. Executed copies of each shall be placed in the contract file.

6. Sureties

- a. Definition. "Surety" means an individual or corporation legally liable for the debt, default, or failure of a contractor ("principal" on the bond) to satisfy a contractual obligation. FAR Subpart 28.2 defines types of sureties and sets requirements for determining their acceptability.
- b. Acceptable Surety Companies. Each Field Office must maintain a current copy of Treasury Circular 570, "Surety Companies Acceptable on Federal Bonds." Copies are available from:

Surety Bond Branch  
Finance Division  
Bureau of Government Financial Operations  
Department of Treasury  
Washington, DC 20226

B. Options in Lieu of Sureties (FAR 28.203)

A contractor may elect to deposit the types of security listed below instead of furnishing corporate or individual sureties on performance or payment bonds. When they are deposited as security, a statement shall be incorporated in the bond form pledging the security. Options in lieu of sureties are:

1. U.S. bonds or notes in an amount equal at their par value to the penal sum of the bond. (See FAR 28-203-1).

2-19

3/89

---

2. Certified or cashier's checks, bank drafts, money orders or currency in an amount equal to the penal sum of the bond. Checks, drafts, or money orders must be drawn to the order of HUD. Security in this form must not be retained in the Field Office; it must be deposited in the office's designated local depository. It must be recorded on Form HUD-2022 (Schedule of Collections) as a "Cash Security in Lieu of Surety," and identified with the Office Code followed by the next available serial number within the 1201 series, "Real Estate Tax Refunds on Acquired Home Properties." (See Handbook 4110.1, Chapter 21).
3. Irrevocable Letter of Credit. HUDAR 2428.203-70 permits acceptance of an irrevocable letter of credit as an option in lieu of a surety. It must:
  - a. Specifically identify the contract;
  - b. Be drawn to the order of the HUD local office;
  - c. State that it is irrevocable;
  - d. State that liability is governed by the terms on the bond forms (SF-25 and 25A);
  - e. Be in an amount equal to the penal sum of the bond.
  - f. State that the issuing financial institution must be liable to the same extent as a corporate or

individual surety; and,

g. Be reviewed by local counsel before acceptance.

C. Fidelity Bonds. Fidelity Bonds (or Financial Guarantee Bonds) are not "bonds" in the sense described in FAR Part 28. Rather, they represent a form of insurance and provide protection against losses resulting from dishonest acts of the contractor and his/her employees. Such coverage is required under closing agent contracts. The amount of coverage shall be determined in accordance with program guidelines.

2-12. AWARD - Contracting Officers must ensure that each award is made following applicable laws, regulations and within the scope of their authority.

3/89

2-20

---

A. Supporting Documentation

1. Documentation for a sealed bid award required by FAR 14.407-1 may be handwritten notes on the bid abstract form. These notes, with copies of letters to unsuccessful and rejected bidders and a determination of nonresponsibility, must clearly justify the award. If unusual circumstances are involved, the documentation should be summarized in a file memorandum.
2. Documentation for a negotiated award must include a Price Negotiation Memorandum (FAR 15.808) and other requirements per HUD Handbook 2210.3, Chapter 5.

B. Log Entries. Both the contract and performance record logs must be updated to reflect the contract award.

C. Inspection Schedule. A tentative inspection schedule and follow-up on completion dates must also be established during the award process.

D. Award Notices. A written award notice, signed by the Contracting Officer, must be sent to the successful bidder(s)/offeror(s) for all service (i.e., covered by the Service Contract Act) and construction contracts. The notice must contain:

1. The solicitation number;
2. The price accepted;
3. Authorization of when to proceed;
4. Any applicable labor provisions;
5. Any other information helpful to the contractor; and,
6. The following posters as attachments:
  - a. Equal Opportunity Poster - contracts over \$10,000;
  - b. Notice of Employees Working on Government Contracts service contracts over \$2,500 and supply contracts over \$10,000; and,
  - c. Notice to Employees Working on Federal or Federally Financed Construction Projects - Construction contracts \$2,000 or over.

E. Distribution - The original of all contracts must be kept at the local office and one copy sent, with an award letter, to the contractor. Additional distribution must be made as follows:

1. AMB Contracts - one copy of the face sheet, with original signatures and the price schedules, must be forwarded to the Office of Finance and Accounting, Financial Control and Accounting Division.
2. PM Contracts - one copy of the face sheet and price schedule must be forwarded to the PMS Service Center with a PMS Form 105.
3. Service (including construction) and Supply Contracts- one copy of the face sheet and bid schedule to the property case file. On multifamily projects - send one copy of face sheet and bid schedule with a PMS Form 105 to the PMS Service Center.
4. Purchase Orders (Form HUD-2542) - Distribution as shown on the face sheet of the form. For multifamily projects, the PMS copy must be accompanied by a PMS Form 105.

F. Contract File Organization - FAR 4.8 requires establishing files for all contract actions. To assure uniformity and completeness of records, the following is a suggested format for contract files:

1. Section A - Solicitation data: original solicitation; solicitation amendments; copies of advertisements; CBD notice; original bids/offers; abstract or bids/offers; letters to unsuccessful or rejected bidders/offerors; any applicable pre-award determinations and justifications.

2. Section B - Modification support data: any applicable pre-execution determinations or justifications; contractor price proposal, if applicable; negotiation memorandum/memorandum to file.
3. Section C - Inspection data: all inspection reports with appropriate notation as to follow-up on deficient performance.
4. Section D - Correspondence: all general correspondence subsequent to award filed in chronological order.

3/89

2-22

---

5. Section E - Payment and Closeout Records: payment record log; copies of all invoices/vouchers submitted for payment; release of claims.
6. Section F - Official Contract: an original signed copy of the contract; original signed copies of all subsequent modifications filed in sequential order on top of the contract.

If multiple-part file folders are not available to accommodate Sections A-F above in one folder, use standard file folders, appropriately tabbed and referenced.

3/89

2-23

---