
CHAPTER 11. CONTRACT EXECUTION AND AWARD

Section 1. Introduction

- 11-1. APPLICABILITY. This chapter establishes the requirements for PHA execution and award of contracts for the construction or rehabilitation of public housing projects. These requirements apply to projects involving rehabilitation or new construction under either the conventional or turnkey method but do not apply to the acquisition method. Section 2 applies to projects being developed under the conventional method and establishes the requirements for inviting and evaluating construction bids and PHA execution of the construction contract. Section 3 applies to projects being developed under the turnkey method and establishes the requirements for a contract of sale conference and PHA execution of the contract of sale.
- 11-2. STANDARD PROCESSING TIME. The standard processing time (SPT) for PHA submission and a decision by the Field Office on the contract award documents is as follows: (See Chapter 3, Section 12 for statutory time-frame requirements). *
- a. PHA Submission. The SPT for PHA submission of the contract award documents is the number of calendar days from the date of the Housing Director's construction document approval letter to receipt of the contract award documents by the Field Office.
- (1) Conventional Method. The SPT for projects being developed under the conventional method is sixty (60) days and includes the time for inviting and evaluating bids as well as the PHA preparation and submission of the contract award documents.
- (2) Turnkey Method. The SPT for projects being developed under the turnkey method is thirty (30) days.
- b. Field Office Review. The SPT for Field Office review and decision on the contract award documents is fifteen (15) calendar days from receipt of the contract award documents by the PCR Unit to the date of the Housing Director's letter authorizing the PHA to execute the construction contract (conventional) or the contract of sale (turnkey).
- 11-3. CONTRACT RESPONSIBILITIES. The PHA is responsible for entering into the construction contract (conventional) or the contract of sale (turnkey) and for enforcing the provisions of such contracts to ensure retention of its contract rights. The Field Office is responsible for reviewing and approving
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PHA execution of the contract to ensure compliance with Federal laws and requirements and protection of the Federal Government and PHA interest. The PHA shall not execute the construction contract or contract of sale until written authorization is obtained from the Area Office.

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Section 2. Conventional Method Bids and Contract Award.

11-11. GENERAL. This section establishes the requirements for inviting and evaluating bids for projects involving new construction or rehabilitation under the conventional bid method. In addition, this section establishes the requirements for PHA submission of the contract award documents for Field Office review and approval.

11-12. INVITATION FOR BIDS. The PHA shall publish an invitation for construction bids upon receipt of the Housing Development Division Director's construction document approval letter but only if a copy of the Department of Labor wage rates is attached. Otherwise, the PHA shall publish the invitation immediately upon receipt of the Housing Director's letter transmitting the wage rates.

a. Bid Package. The PHA shall prepare a standard bid package. Each copy of the bid package shall be numbered sequentially for control purposes. A copy of the bid package shall be sent to the Field Office and a copy of the complete bid package shall be provided to each bidder whether or not bids are being invited for a single construction contract or separate trades (e.g., plumbing, electrical, mechanical) contracts. The standard bid package shall consist of the following:

- (1) the PHA invitation for bids, including the day, time, and place that bids will be opened.
- (2) Form HUD 5369, Instructions to Bidders;
- (3) Form HUD 5370, General Conditions;

* (4) Form HUD 2530, Previous Participation Certificate; *

- (5) the bound construction specifications and working drawings;
 - (6) the Department of Labor determination of Davis-Bacon wage rates; and
 - (7) the bid form.
- b. Publication. The PHA shall give full opportunity for open and competitive bidding by publishing the invitation for bids at least once a week for two consecutive weeks in local newspapers and trade journals. A copy of the invitation for bids shall be provided

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to minority media, local community based groups, the local association of minority contractors and businesses meeting the criteria of 24 CFR 135, Employment Opportunities for Businesses and Lower Income Persons in Connection with Assisted Projects. The PHA shall also extend an invitation to contractors who have previously expressed an interest to participate in the housing programs to the PHA or the Field Office.

- c. Bid Period. The PHA shall establish a deadline date for acceptance of construction bids which allows sufficient time for bidders to evaluate the bid package, estimate project construction costs, and submit their bids to the PHA. The bid period shall be for the number of days required by State or local law. Furthermore, for projects being developed under a single construction contract, the bid period shall be at least thirty (30) calendar days from the date of publication of the initial invitation for bids. However, if an addendum is issued within seven (7) calendar days of the deadline date, the bid opening shall be postponed for at least seven (7) calendar days from the date of the addendum.
- d. Deposit. The PHA shall require a deposit in an amount that is based on local practice. The amount of the deposit should at least be sufficient to off-set the cost of reproducing a copy of the bid package. A deposit is not required for bid packages issued to a builder's exchange or similar building service organization. All deposit checks or drafts shall be made payable to the PHA.
- e. Alternate Bids. The PHA is not authorized to request alternate bids without the prior approval of the Field Office. This includes requesting alternate bids for major project components (e.g., two different structural systems), "deductive alternatives" or a "base bid with add-ons" but does not include alternate materials and equipment to the extent provided in the construction specifications.

Field Office approval of requests for alternate bids will be limited to those items where the relative advantage and comparative costs of the alternatives are difficult to determine without going to the competitive bidding process.

- f. Addendum to Bid Package. Changes to the standard bid package shall be issued by the PHA in the form of an addendum. The PHA shall not interpret the meaning of bid documents except by addendum. Each addendum shall be numbered sequentially and a copy provided to each bidder of record.

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to each place where bidding documents are on file and to the Area Office. The addendum shall also specify, if applicable, the revised deadline date for submission of bids.

- g. Control Record. The PHA shall maintain, or authorize the PHA architect to maintain, a record of all bidding documents. This record shall identify the following for each individual or firm that requested a bid package:

- (1) the bid package control number;
- (2) the name and address of the individual or firm;
- (3) if applicable, the number of the addendum and date sent,
- (4) the amount of deposit and the date received, including the return or forfeiture of the deposit;
- (5) the date and time the bid was received; and
- (6) the date the individual or firm was notified as to the successful low bidder.

11-13. BID OPENING. The PHA shall not open the bids until the date and time specified in the invitation for bids. Upon receipt of each bid (including late bids), the PHA shall mark the date and time on the envelope. The bids shall be opened in public and read aloud at the specified time and place. Any bids received after the date and time specified in the invitation for bids shall not be opened and shall be returned to the bidder with a letter indicating that the bid was not received by the specified deadline.

11-14. BID REJECTION OR WITHDRAWAL. The PHA, after the public opening,

shall not reject or disqualify the lowest bidder or allow any bidder to withdraw a bid without the prior written approval of the Area Office.

a. Withdrawal. If a bidder seeks to withdraw a bid before the end of the bid holding period or the execution date of the construction contract, whichever is earlier, the PHA shall submit the following for review and approval by the Area Office:

- (1) a notarized statement from the bidder indicating that an error was made with an explanation of how it occurred;

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- (2) a copy of the bidders cost estimating worksheets or other evidence provided by the bidder in support of the withdrawal request;
- (3) a legal opinion prepared by the PHA's attorney indicating whether or not the bidder is bound by the bid; and
- (4) a letter from the PHA recommending Area Office approval or disapproval, including the reasons, of the withdrawal request.

b. Rejection. The lowest bid shall not be rejected unless the PHA can demonstrate that the bidder should be disqualified. If the PHA proposes to reject the lowest bidder, the PHA shall notify the bidder of the reasons and provide the bidder an opportunity to submit supporting evidence as to why the bid should not be rejected. The PHA shall submit the following for review and approval by the Area Office:

- (1) a copy of the PHA letter advising the bidder of the reasons that the bid is being rejected;
- (2) a written statement from the bidder explaining why the bid should not be rejected by the PHA; and
- (3) a letter from the PHA recommending Area Office approval or disapprovals including a discussion of any statements made by the bidder, the amount of the bid and the amount of the next lowest bid.

c. Bidder Notification. Upon receipt of the Area Office decision, the PHA shall notify the bidder as to whether or not the withdrawal request has been approved or disapproved or whether or not the bid has been rejected. If

authorized by the Area Office, the PHA shall also return the bid guarantee to the bidder.

11-15. REJECTION OF ALL BIDS. The PHA may recommend, because of the high bids received or other justifiable causes, to reject all bids. In such cases, the PHA shall consult with the Area Office and obtain written authorization before rejecting the bids.

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- a. Reasons for Rejection. The PHA, PHA architect and Area Office staff shall review the bids received to determine the reason that the construction contract cannot be awarded. The purpose of this review is to ascertain that;
- (1) the bid amounts for dwelling construction and equipment exceed the project prototype cost limit;
 - (2) the estimated project construction costs exceed the project replacement cost limit;
 - (3) the project is overdesigned;
 - (4) the bids are unreasonably high due to unusual circumstances affecting construction in the housing market area; or
 - (5) the award cannot be made for other causes that are identified.
- b. HUD Cost Limits. If it is determined that the project prototype cost limit or project replacement cost limit are incorrect, the Area Office shall take prompt action to make any necessary corrections prior to the expiration of the bid-holding period.
- c. Overdesign. If it is determined that the high bids are due to project overdesign, the PHA, PHA architect, and the Area Office staff shall identify design modifications that would likely result in lower bids. The PHA will be required to submit revised construction documents for Area Office approval pursuant to Chapter 10. The PHA architect shall be held responsible for making any design modifications pursuant to the terms of the PHA architect's contract.
- d. Invitation for Bids. Upon approval of the revised construction documents by the Area Office (Chapter 10), the PHA shall be authorized to issue a subsequent

invitation for bids pursuant to this chapter.

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- 11-16. PHA SUBMISSION OF CONTRACT AWARD DOCUMENTS. The PHA, after the bid opening, shall submit the following documents as well as any other pertinent information for Area Office review and approval of the contract award:
- a. Bid Tabulation. The bid tabulation shall identify the following for each bid received by the PHA:
 - (1) the name and address of the bidder;
 - (2) the amount of the bid; and
 - (3) the amount and type of bid guarantee.
 - b. Proposed Bid. A copy of the bid (if applicable, a copy of the non-collusive affidavit) that the PHA proposes to accept shall be submitted. The PHA's submission shall be accompanied by the following, if applicable:
 - (1) if the PHA proposes to accept other than the lowest bid, a copy of the PHA's letters and contractor's statement pursuant to paragraph 11-14b; or
 - (2) if the lowest bid is irregular but the PHA nevertheless proposes to accept it, a PHA statement identifying the irregularity of the bid and setting forth the PHA reasons for not disqualifying the bid. The PHA statement shall be accompanied by an opinion from its attorney that the irregular bid may be accepted under state law.
 - c. PHA Resolution. A certified copy of the PHA resolution shall be submitted which authorizes PHA award of the construction contract after Area Office approval.
 - d. Development Cost Budget. The PHA shall submit a Development Cost Budget (Form HUD 52484) in accordance with the requirements of Chapter 3, Section 14. The Form HUD 52484 shall be based on the Analysis of Proposed Main Construction Contract (Form HUD 52396). A copy of the Form HUD 52396 shall accompany the PHA submission. If the PHA is required to award separate contracts for general construction and mechanical trades, a separate Form HUD 52396 shall be prepared for the work under each trade contract as well as a summary Form HUD 52396 for all construction work.

- e. PHA Insurance. The PHA shall submit a certification that it has (or will have upon Field Office approval of the contract award) the PHA insurance required by Chapter 3, Section 3.

11-17. FIELD OFFICE REVIEW OF CONTRACT AWARD DOCUMENTS. The Field Office staff shall review the contract award documents in accordance with the procedures established in this paragraph.

- a. Standard Processing Time. The standard processing time for Field Office staff reviews is ten (10) calendar days from the date the contract award documents are received by the PCR Unit to submission of the Branch Chief's recommendations and completed review checklist to the PCR Supervisor.

- b. General. The contract award documents will normally be reviewed only by the Branches within the Housing Division. However, any potential legal problems or questions shall be submitted to the

* Field Counsel for review (e.g., the PHA must own the site before contract award). The applicable Branch Chiefs shall review the* proposed Development Cost Budget (Form HUD 52484) in accordance with Chapter 3, Section 14. The Branch Chief's recommendations concerning the Form HUD 52484 shall be sent directly to the Mortgage Credit Chief within five (5) working days with a copy to the PCR Unit.

- c. PCR Unit. The PCR unit within one (1) working day shall:

- (1) make copies of the contract award documents and transmit them to each reviewing Branch indicating the contract award document review date; and

* (2) initiate Previous Participation clearance in accordance with Chapter 3, Section 5. *

- d. AE Review. The design representative shall review the contract award documents to ascertain that the bid which the PHA proposes to accept is:

- (1) the lowest bid or, if not the lowest bid, that the PHA supporting documentation is acceptable; and

- (2) consistent with the PHA invitation for bids and bid package previously approved by the Field Office.

- e. Cost Review. The cost analyst shall review the contract award documents to ascertain that:

- (1) the amounts shown on the Analysis of Proposed Main Construction Contract (Form HUD 52396) are correct and are consistent with the bid amounts; and

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- * (2) the bid amount will not result in costs in excess of the cost limits authorized under 24 CFR 941.406; If costs cannot be reduced to an amount approvable by the Field Office, the project must be referred to the Regional Office. *

f. Valuation Branch. The Valuation Branch shall review the contract award documents to ascertain that the project construction cost does not exceed the current project replacement cost identified on Rental Housing Project Income Analysis and Appraisal (Form HUD 92264) as adjusted to reflect actual changes in construction costs to the proposed contract execution date.

g. Mortgage Credit. The Mortgage Credit Branch shall review the Development Cost Budget (Form HUD 52484) in accordance with Chapter 3, Section 14. The financial analyst shall ascertain that the amount for the various accounts are consistent with the applicable amounts identified in the lowest bid.

h. MHP Branch. The MHR shall evaluate the recommendations and findings submitted by all reviewers to determine that there are no recommendations for disapproval. The MHR within fifteen (15) calendar days of the contract award documents receipt date shall prepare a letter for the Housing Director's signature which:

- (1) authorizes the PHA to award the construction contract; requests the PHA to schedule a date, time, and place for the construction conference; and transmits a copy of the approved Development Cost Budget (Form HUD 52484); or
- (2) notifies the PHA that the proposed contract award is not approved, including an explanation of the reasons and, if applicable, actions to be taken by the PHA before the Field Office would reconsider the contract award documents.

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11-18. PHA CONTRACT AWARD. Upon receipt of the Housing Director's letter authorizing award of the construction contract, the PHA shall contact the successful bidder (if separate trade contracts are to be executed, the PHA shall contact each successful bidder) to schedule a date for execution of the construction contract.

- a. Contractor Notification. The PHA shall send a registered letter to the successful bidder indicating:
 - (1) the date, time and place scheduled for PHA and contractor execution of the construction contract;
 - (2) the contractor must provide a performance and payment bond (or other assurance) in the amount identified in the PHA's Instruction to Bidders (Form HUD-5369); and
 - (3) the bond shall bear the same date or a date subsequent to the date of execution of the construction contract and shall be accompanied by a properly executed power of attorney.
- b. Contract Execution. The PHA, prior to executing the construction contract, shall ensure that the performance and payment bond (or other assurances) meets the requirements of the Instructions to Bidders (Form HUD-5369). The PHA shall prepare four original sets of the contract documents (i.e., construction contract, bound construction specifications, bound working drawings, and any addenda). The PHA and contractor (including trade contractors if separate construction contracts are to be executed) shall sign the first and last page of the four sets of construction specifications, working drawings and any applicable addenda. If separate trade contracts are to be executed, each trade contractor shall also be required to sign the first and last page of the applicable trade division of the construction specifications.
- c. Distribution of Executed Documents. The PHA shall retain one original copy of the performance and payment bond, power of attorney, and the contract documents for its files. Two copies shall be sent to the Area Office and the contractor's copy retained for attachment to the PHA's notice to proceed.

- d. Department of Labor Notification. Within ten (10) calendar days of contract award (including subcontracts) for each construction contract of \$10,000 or more, the AE Chief shall send a notice of contract award to the Regional Office of

Federal Contract Compliance Programs of the Department of Labor. This notification is required by Executive Order 11246 and shall include:

- (1) the name, address, and telephone number of the contractor;
 - (2) the employer identification number;
 - (3) the dollar amount of the contract;
 - (4) the estimated construction start and completion dates; and
 - (5) the project number and community in which the project is being built.
- e. Construction Conference. The PHA shall schedule a date (within ten calendar days from the date of contract execution) for a construction conference (Paragraph 12-2) to be held in the Area Office. The PHA in scheduling the construction conference shall consult with the PHA architect, the contractor, and the AE Chief to arrange a date that is acceptable to all parties.
- f. Notice to Proceed. The PHA shall prepare two original copies of the notice to proceed to be issued to the contractor, together with the contractor's set of the executed contract documents, at the construction conference. The notice to proceed is the official PHA order directing the contractor to start work on the project. The contractor shall be requested to sign the notice to proceed, designating receipt and acceptance, and return one signed original to the PHA.

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Section 3. Turnkey Method Contract Award

11-26. GENERAL. This section establishes the requirements for executing the contract of sale for projects involving new construction or rehabilitation under the turnkey method.

11-27. CONTRACT OF SALE CONFERENCE. A contract of sale conference will be held in the Area Office on the date arranged by the PHA to execute the contract of sale. The MHR shall coordinate the meeting and lead the discussion. The PHA Executive Director, or designee, and the turnkey developer and the developer's representatives (e.g., architect, attorney, cost estimator) shall attend the meeting. A representative designated by each Branch

Chief in the Housing Division -- Valuation, Cost, AE, and Mortgage Credit -- the Area Counsel and FHEO Director shall attend to represent their technical areas.

11-28. CONTRACT OF SALE. The Area Office representatives shall discuss the content and requirements (including modifications) of the Contract of Sale (Form HUD-53015) transmitted by the Housing Director's construction document approval letter.

- a. Construction Documents. The approved construction documents (i.e., working drawings, construction specifications, and any addenda approved by the Area Office) shall be incorporated into the contract of sale.
- b. Davis-Bacon Wages. A copy of the Davis-Bacon wage rates issued by the Department of Labor shall be incorporated into the contract of sale.
- c. Developer's Price. The developer's price to be included in the contract of sale shall be the amount determined pursuant to paragraph 10-112. This amount shall be adjusted to reflect any changes (increases or decreases) that would affect the developer's price submitted with the construction documents provided that the adjusted turnkey developer's price does not exceed the project replacement cost determined by the Area Office or that the adjusted developer's amount for dwelling construction and equipment cost does not exceed the project prototype cost limit. The final developer's price shall be adjusted to reflect the:

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- * (1) developer's actual cost of money for construction financing; and *
- (2) developer's project construction costs (except construction financing and site or property acquisition) based on actual changes in construction costs between the construction document receipt date and the actual contract of sale execution date, rather than the projected costs developed in accordance with paragraph 10-98 provided that any delays were not caused by the developer.
- d. Contract Execution. The PHA and turnkey developer shall execute four copies of the contract of Sale (Form HUD 53015). The Housing Director shall indicate HUD approval by signing in the designated space. A copy of the executed contract of sale shall be provided to the PHA, the turnkey developer, and the turnkey developers lender. One copy of

the executed contract shall be sent to the PCR Unit for the project construction document file.

- e. Department of Labor Notification. within ten (10) calendar days of contract award (including subcontracts) for each construction contract of \$10,000 or more, the AE&C Chief shall send a notice of contract award to the Regional office of Federal Contract Compliance Programs of the Department of Labor. This notification is required by Executive Order 11246 and shall include:
- (1) the name, address, and telephone number of the contractor;
 - (2) the employer identification number;
 - (3) the dollar amount of the contract;
 - (4) the estimated construction start and completion dates; and
 - (5) the project number and community in which the project is being built.
- f. Construction Conference. All parties shall agree to a date and time for a construction conference (paragraph 12-2) to be held in the Field Office. The scheduled date shall be no later than ten (10) calendar days from the date of execution of the contract of sale.

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11-29. PHA ANNOUNCEMENT. Upon receipt of the executed contract of sale, the PHA shall prepare a public announcement of the award. The announcement shall identify the turnkey developer, the street location and the total price for the project, and shall be published in the same newspapers in which the PHA request for proposals was published.

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