

-CHAPTER 3. GENERAL REQUIREMENTS

3.1 Procurement Planning (24 CFR 85.36 (b)(4))

- A. **General.** Planning is essential to managing the procurement function properly; however, the type and extent of planning will depend on, among other factors, the method and size of the procurement, with larger and more complex procurements requiring more planning.
1. Careful advance planning provides the PHA with adequate time to accomplish its procurement actions. 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.
 2. PHAs should periodically review their record of prior purchases, as well as future needs, to find patterns of procurement actions that could be performed more efficiently or economically. Items purchased repetitively might be obtained more economically through various master contracts. However, consideration should be given to storage, security, and handling requirements when planning these types of purchasing actions. For example, it may not be economical or prudent to buy truckloads of salt in summer months for deep discounts if there is no appropriate storage space or if the cost of handling would exceed the savings in price.
 3. PHAs may enter into intergovernmental agreements with State or local government agencies (including other PHAs) to obtain needed supplies or services if such agreements will foster economy and efficiency. The use of intergovernmental agreements can significantly reduce the amount of time required to contract for supplies or services, while allowing PHAs to take advantage of prices obtained through volume purchasing by State or local agencies. (See Chapter 14.)
- B. **Individual Procurement Plans (IPPs).** For larger, more complex procurements, such as major computer purchases or construction projects, PHAs should establish IPPs. IPPs establish deadlines or milestones for completion of the steps necessary to assure timely delivery or performance and may also include staffing assignments. The scope of the IPP should be determined by the Contracting Officer.
- C. **Equipment Lease or Purchase.** Based on a case-by-case evaluation of costs and other factors, PHAs should consider the leasing of equipment. Those factors would include: length of period the equipment is to be used and the extent of use within that period; financial and operating advantages of alternative types and makes of equipment; cumulative rental payments for the estimated period of use; net purchase price; transportation and installation; maintenance and other service costs; potential obsolescence of the equipment because of imminent technological improvements; availability of the purchase items; trade-in or salvage value; imputed interest; and availability of servicing capability (for example, whether the equipment can be serviced by PHA staff).

3.2 Independent Cost Estimate (ICE) (24 CFR 85.36(f))

- A. The ICE is the PHA's estimate of the costs of the goods or services to be acquired under a contract or a modification. It serves as the PHA's yardstick for evaluating the reasonableness of the contractor's proposed costs or prices.

- B. The ICE also helps the Contracting Officer determine the contracting method to be used. For example, if the costs can be estimated with a high degree of confidence in their accuracy, sealed bidding may be possible.
- C. While the Contracting Officer is responsible for the preparation of the ICE, other personnel (e.g., the end user, or budget and finance) are usually involved and may actually do most of the preparation. The PHA may develop the ICE using its own employees, outside parties (e.g., consultants), or a combination of the two. If any outside party (whether compensated or not) assists in developing the ICE, the PHA must take appropriate steps to ensure that organizational conflicts of interest are avoided and that the outside party does not obtain any competitive advantage from its advance knowledge of the PHA's cost estimate (see also Chapter 4, Ethics in Public Contracting).
- D. The Contracting Officer shall prepare, or have prepared, an ICE commensurate with the purchase requirement. The level of detail will depend upon the dollar value of the proposed contract and the nature of the goods or services to be acquired. The ICE must be prepared prior to the solicitation of offers. The requirements for ICEs are:
 - 1. **For Micro Purchases (below \$2,000)**, the Contracting Officer generally does not need to prepare an ICE. Price reasonableness normally will be based on a comparison with historical prices paid for the item, commercial catalog prices, or other offers.
 - 2. **For purchases above \$2,000 but less than the PHA's small purchase threshold**, documentation should be kept to a minimum. The ICE may be based on prior purchases, commercial catalogs, or detailed analyses (e.g., purchases for services).
 - 3. **For purchases above the PHA's small purchase threshold**, the level of detail will vary but should be commensurate with the size (i.e., dollar value), complexity, and commercial nature of the requirement. ICEs are normally broken out into major categories of cost (e.g., labor, materials, and other direct costs such as travel, overhead, and profit). Commercially available products and services may require less detail as the marketplace tends to provide current reliable pricing information for commercially available products; a PHA may also not need to break out components. Non-commercial type requirements, and work designed specifically for the PHA, will require much more extensive estimation and a detailed ICE.
- E. The ICE serves as the primary in-house gauge of cost and price reasonableness, but it should not be relied upon to the exclusion of other sources of pricing information. Market conditions may fluctuate between the time the ICE is prepared and the receipt of offers. For example, materials or labor costs may have increased or decreased. If a significant period of time has elapsed, or the PHA knows that certain market conditions have changed, the Contracting Officer should request that an updated ICE be prepared to use in evaluating offers.

3.3 Documentation

A. **General 24 (CFR 85.36(b)(9))**. The PHA must maintain records sufficient to detail the significant history of each procurement action. Such documentation is particularly important in the event a protest is lodged against the PHA. It will also facilitate future purchases of similar supplies or services since it will not be necessary to recreate solicitation documents. Supporting documentation shall be in writing and placed in the procurement file. These records shall include, but shall not necessarily be limited to, the following:

1. Rationale for the method of procurement selected. For example, the contract file would not need to state why the Contracting Officer chose small purchase procedures to order a desk but would want to note why non competitive proposals was used for a roofing contract.
2. The solicitation.
3. Selection of contract pricing arrangement, but only if not apparent. For example, the contract file would not need to document why a firm fixed-price was used to obtain building materials.
4. Information regarding contractor selection or rejection, including, where applicable, the negotiation memo, the source selection panel, evaluation report, cost and price analysis, email correspondence (including offers, selections, pertinent pre- and post-award discussions and negotiations, etc.)
5. Basis for the contract price (as prescribed in this handbook), and
6. Contract administration issues/actions.

The level of documentation should be commensurate with the value of the procurement. A sample contract file checklist is included in **Appendix 2**.

B. **Record Retention (24 CFR 85.42(a)&(b))**. PHAs shall retain all significant and material documentation and records concerning all procurements they conduct. These records must be retained for a period of three years after final payment and all matters pertaining to the contact are closed. If any claims or litigation are involved, the records shall be retained until all issues are satisfactorily resolved.

C. **Audits**. HUD and the Comptroller General of the United States have the right to audit all books, documents, papers, and records of the PHA that are pertinent to financial assistance provided by HUD (see section 15 of the Annual Contributions Contract, or ACC). HUD will periodically perform audits and management review of the PHA procurement function to determine whether the PHA's procurement actions meet the requirements set forth in **24 CFR 85.36** and this handbook. Additionally, **24 CFR 85.36(i)(11)** requires PHAs to include in their contracts a clause requiring retention by the contractor of all required records pertaining to the contract. (This clause is discussed in more detail, along with other mandatory contract provisions, in Chapter 10.) These records must be retained for a period of three years after final payment and all others matters pertaining to the contract are closed.

3.4 Funding and Payment

Regardless of the system used (centralized or decentralized purchasing), the PHA must make sure that funds are available for any purchases made and that there is an orderly process to pay contractors promptly.

- Under centralized purchasing arrangements, the Contracting Officer (often a “buyer” in the Purchasing Department) typically must receive approval from the Budget or Finance Department that funds are, indeed, available before making the purchase.
- Under a decentralized system, the Housing Manager is generally the Contracting Officer, who should make sure that funds are available in the property’s approved budget before making a purchase.

To maintain good relations with contractors, a PHA should ensure that work performed is inspected in a timely manner and that contractor invoices for work accepted by the PHA are paid promptly. Unnecessary delays in either inspection or payment can discourage contractors from participating in future PHA procurements or cause them to increase their bid price to account for expected delays in payment. In addition, some States and local governments have passed “Prompt Payment” laws that establish specific time standards for payment of contractor invoices, along with interest penalties for unjustified late payments. Further, in accordance with Office of Management and Budget (OMB) Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments, and cross-referenced in **24 CFR 85.22**, certain penalties and interest cannot be paid with HUD program funds without written advance permission of HUD. The PHA should become familiar with any applicable State or local laws of this nature and incorporate their substance into the PHA’s own operational procurement procedures.

3.5 Internal Controls

PHAs must establish appropriate internal controls to assure the proper expenditure of funds. In centralized purchasing arrangements, these controls often result in the separation of duties between those ordering, those receiving, and those paying for goods and services. In decentralized purchasing arrangements, the Housing Manager is often the person both ordering and receiving the goods/supplies as well as the person authorizing payment. In these latter arrangements, the PHA must establish other means of internal controls, such as site-based budgets and appropriate purchasing thresholds. Additional information regarding conflicts of interest and other ethical considerations is found in Chapter 4, Ethics in Public Contracting.