

CHAPTER 4 – ETHICS IN PUBLIC CONTRACTING

4.1 GENERAL

Ethical standards apply not only to PHA employees and Contracting Officers but to others with a vested interest in PHA contracts such as members of the Board of Commissioners, other officials and agents of the authority, and contractors with whom the PHA does business. This chapter explains the specific ethical requirements for PHA contracting, 2 CFR 200.318(c)(1).



4.2 PRINCIPLES

Members of the Board of Commissioners, PHA employees, and any others serving in an official position or acting as an agent of the PHA (hereafter referred to as employees, officers, or agents) must discharge their duties impartially to ensure fair competitive access to procurement opportunities by responsible contractors. Moreover, employees, officers, and agents should conduct themselves in such a manner as to foster the public's confidence in the integrity of the PHA procurement organization and process. Any attempt to realize personal gain through PHA employment or to serve as an officer or agent of the PHA through actions inconsistent with the proper discharge of duties is a breach of public trust.

4.3 REQUIREMENT FOR A WRITTEN CODE OF STANDARDS (2 CFR 200.112 & 2 CFR 200.318(c)(1))

PHAs must maintain a written code of standards governing the performance of their Board of Commissioners and employees engaged in the award and administration of contracts. These standards shall be included in the PHA's procurement policy. Additionally, these standards must provide for disciplinary actions to be applied for violations of standards. PHAs must disclose in writing any potential conflict of interest to HUD.

4.4 CONFLICTS OF INTEREST (2 CFR 200.318(c)(1))

PHAs must observe the following conflict of interest prohibitions.

- A. **The non-Federal entity** must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration

of a contract supported by a Federal award if they have a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

B. Additional Public Housing Conflicts of Interest:

Pursuant to Section 18 of the ACC (53012, 2023 version) PHAs shall maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts for which program receipts will be or are expended. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The PHA's procedures must avoid the acquisition of unnecessary or duplicative items. The PHA must disclose in writing any potential conflict of interest to HUD. Further, the PHA, its contractors and subcontractors shall not enter into any contract, subcontract, or arrangement in connection with a project under the ACC in which any of the following classes of people has an interest, direct or indirect, during his or her tenure or for one year thereafter:

- 1) Any present or former member or officer of the governing body of the PHA, or any member of the officer's immediate family. There shall be excepted from this prohibition any present or former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the resident corporation, the PHA or a business entity.
- 2) Any employee of the PHA who formulates policy or who influences decisions with respect to the Project(s), or any member of the employee's immediate family, or the employee's partner.
- 3) Any public official, member of the local governing body, State or local legislator, or any member of such individuals' immediate family, who exercises functions or responsibilities with respect to the project(s) or the PHA.
- 4) Any member of these classes of persons must disclose the member's interest or prospective interest to the PHA.
- 5) The requirements of this subsection may be waived by HUD for good cause, if the prohibited contract, subcontract or arrangement is otherwise permitted under State and local law. No person for whom a waiver is requested may exercise responsibilities or functions with respect to the contract, subcontract or arrangement to which the waiver pertains.

- 6) **Pursuant to Section 19(A) of the 1995 version of ACC**, (Form HUD-53012A), neither the PHA nor any of its contractors or their subcontractors may enter into any contract, subcontract, or arrangement in connection with a project under the ACC in which any of the following classes of people have an interest, direct or indirect, during his or her tenure or for one year thereafter:
 - a. Any present or former member or officer of the governing body of the PHA, or any member of the officer's immediate family. There shall be excepted from this prohibition any present or former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the resident corporation, the PHA or a business entity.
 - b. Any employee of the PHA who formulates policy or who influences decisions with respect to the project(s), or any member of the employee's immediate family, or the employee's partner.
 - c. Any public official, member of the local governing body, State or local legislator, or any member of such individuals' immediate family, who exercises functions or responsibilities with respect to the project(s) of the PHA.
- 7) **Pursuant to Section 515 of the 1969 ACC**, no present or former PHA employee, officer, or agent shall engage in selling or attempting to sell supplies, services, or construction to the PHA for one year following the date such employment ceased. (See Form HUD-53011, dated 1.) The term "sell" means signing a bid or proposal, negotiating a contract, contacting any PHA employee, officer, or agent for the purpose of obtaining, negotiating, or discussing changes in specifications, price, cost allowances, or other terms of a contract; settling contract disputes; or any other liaison activity with a view toward the ultimate consummation of a sale, although the actual contract is negotiated by another person.

C. Additional Section 8 HCV and PBV Conflicts of Interests: The regulations at 24 CFR 982.161 contain conflict of interest requirements applicable to both the HCV and PBV programs. Section 13 of the HCV HAP contract (HUD-52641 or HUD-52642) contains conflict of interest requirements for the HCV program. Section 19 of the PBV HAP Contract (HUD-52530B Part 2 or HUD-52530A Part 2) and Section 1.20 of the Agreement to enter into HAP contract (AHAP) (HUD-52531A) contain conflict of interest requirements for the PBV program. While the language related to conflicts of interest in the HAP contracts and AHAP and 24 CFR 982.161 is not identical, the two provisions contain the same fundamental standard with respect to conflicts of interest.

- 1) Pursuant to 24 CFR 982.161(a), neither the PHA nor any of its contractors or subcontractors may enter into any contract or arrangement in connection with the program in which any of the following classes of persons has any interest, direct or indirect, during tenure or for one year thereafter: (1) Any present or former member or officer of the PHA (except a participant commissioner); (2) Any employee of the PHA, or any contractor, subcontractor or agent of the PHA, who formulates policy or who influences decisions with respect to the programs; (3) Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs; or (4) Any member of the Congress of the United States.
- 2) Section 13 of the HCV HAP contract provides the following:

13. Conflict of Interest

a. "Covered individual" means a person or entity who is a member of any of the following classes:

(1) Any present or former member or officer of the PHA (except a PHA commissioner who is a participant in the program);

(2) Any employee of the PHA, or any contractor, sub-contractor or agent of the PHA, who formulates policy or who influences decisions with respect to the program;

(3) Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the program; or

(4) Any member of the Congress of the United States.

b. A covered individual may not have any direct or indirect interest in the HAP contract or in any benefits or payments under the contract (including the interest of an immediate family member of such covered individual) while such person is a covered individual or during one year thereafter.

c. "Immediate family member" means the spouse, parent (including a stepparent), child (including a stepchild), grandparent, grandchild, sister or brother (including a stepsister or stepbrother) of any covered individual.

d. The owner certifies and is responsible for assuring that no person or entity has or will have a prohibited interest, at execution of the HAP contract, or at any time during the HAP contract term.

e. If a prohibited interest occurs, the owner shall promptly and fully disclose such interest to the PHA and HUD.

f. The conflict-of-interest prohibition under this section may be waived by the HUD field office for good cause. g. No member of or delegate to the Congress of the United States or resident commissioner shall be admitted to any share or part of the HAP contract or to any benefits which may arise from it.

g. No member of or delegate to the Congress of the United States or resident commissioner shall be admitted to any share or part of the HAP contract or to any benefits which may arise from it.

4.5 GRATUITIES, KICKBACKS, & USE OF CONFIDENTIAL INFORMATION

PHA solicitations and contracts above the Federal simplified acquisition threshold shall include clauses advising prospective contractors of the prohibitions against gratuities and kickbacks (2 CFR 200 Appendix II(D)). These rules are designed to protect the integrity of the procurement system and to ensure that contracts are awarded fairly, based on merit, without improper influence.

- A. **Gratuities (2 CFR 200.318(c)(1)).** PHA officers, employees, officers, board members, and agents shall neither solicit, accept gratuities, favors, or anything of monetary value from contractors. PHAs may set standards where the financial interest is not substantial, or the gift is an unsolicited item of nominal value. These rules shall be incorporated in the PHA's procurement policy. These standards must also provide for disciplinary actions to be applied for violation by its employees, officers, agents, or board members.
- B. **Kickbacks and Anticompetitive Practices.** It is a breach of ethical conduct and prohibited for any payment, gratuity, or offer of employment to be made by, or on behalf of, a contractor or

subcontractor under contract to the prime contractor, higher tier subcontractor, or any person associated therewith, as an inducement for the award of a subcontractor order. The Contracting Officer shall report to the Executive Director, the HUD field office, and the appropriate State and local officials any suspected anticompetitive practices by contractors.

- C. **Use of Confidential Information.** Disclosure of confidential information to any person not authorized by the Contracting Officer to receive such information shall be a breach of ethical standards. Confidential information includes but is not necessarily limited to: the contents of a bid (prior to bid opening) or proposal (prior to contract award using competitive proposals), names of individuals or firms that submitted bids (prior to bid opening) or proposals (prior to contract award); PHA-generated information related to a procurement (including PHA cost estimates, contractor selection and evaluation plans, specifications [before solicitation is issued]); and any other information the disclosure of which would have a direct bearing upon the contract award or the competitive process. It is a breach of ethical conduct for any current or former employee, officer, or agent to knowingly use confidential information for actual or anticipated personal gain or for actual or anticipated personal gain of any other person.

4.6 PROHIBITION AGAINST CONTINGENT OR REFERRAL OR RETAINAGE FEES

It is a breach of ethical conduct for a person to be retained to solicit or secure a PHA contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for the retention of bona fide employees or a bona fide agency established for the purpose of securing business. This prohibition includes the employment of former PHA officials and employees on a contingency basis to obtain contracts with the PHA by a business seeking PHA contracts. Many States also have specific laws against contingent fees. The ACC also prohibits this type of conduct for one year after the individual leaves the employ or under a contract with the PHA.

“Contingent Fees” means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

4.7 SANCTIONS

The Executive Director and the Board of Commissioners are responsible for establishing sanctions when someone within the PHA violates the ethical standards of the procurement policy. As stated previously, many States have passed laws governing the conduct of officials involved in procurement. All such laws shall be enforced by the Executive Director and, in cases where the State or local government has no such rules, appropriate sanctions for violation of the standards of conduct in this Chapter shall be published and imposed.

Civil and administrative remedies shall be established for use whenever employees, officials, or agents breach ethical standards. References to State ethics laws, which shall be consulted by the PHA in

developing and administering sanctions for misconduct, shall be included in the PHA's administrative or human resources policy. Such as:

- Oral or written warnings or reprimands;
- Suspension with or without pay for specified period of time;
- Termination of employment; or
- Dismissal from the official or agency position.

The value of anything received by an employee or a non-employee in breach of the ethical standards should be recovered by the PHA either by confiscating the items or by charging the violator for any and all gratuities received. All procedures in this Chapter shall be in accordance with due process requirements and existing law. In addition, notice and an opportunity for a hearing shall be provided before imposing any suspension or termination of employment. Remedies against contractors may include suspension and/or debarment, as provided in Chapter 11.

In the case of violations, HUD may exercise any available remedy under the 1937 Act, the ACC, the Federal regulations (e.g., 2 CFR Part 200 and 24 CFR Parts 905 and 907) and statutes, and program grant agreements.