

## CHAPTER 5 – INFORMAL PROCUREMENT METHODS



### 5.1 GENERAL (2 CFR 200.320(a))

Informal procurement methods are simplified means for PHAs to acquire supplies, materials, and services, including professional and construction services. The informal procurement methods are “micro-purchases” and “simplified acquisition procedures.” When available, PHAs may use informal procurement to expedite their transactions and minimize formal procurement’s administrative burden and cost.

### 5.2 INFORMAL PROCUREMENT DOLLAR LIMITS

Generally, PHAs can only use informal procurement methods when the property or service’s value does not exceed the simplified acquisition threshold. 2 CFR 200.320(a)(2)(ii). As of this Handbook’s publication, the simplified acquisition threshold is \$350,000. See 48 CFR Part 2, Subpart 2.1 (i.e., the FAR). While this ceiling applies to both informal procurement methods, micro-purchases and simplified acquisition procedures (as sub-categories of informal procurement) have their own thresholds. Additionally, in some cases, PHAs may establish different ceilings within the regulatorily-prescribed thresholds.

- A. **Micro-purchases:** The general micro-purchase threshold in the FAR at this Handbook’s publication is \$15,000. For procuring construction and maintenance subject to the Davis Bacon and Related Acts (40 U.S.C. §§ 3141 et. seq.), the micro-purchase threshold is \$2,000. PHAs may establish a micro-purchase threshold higher than the FAR limit but must do so in accordance with 2 CFR 200.320(a)(1)(iv) (up to \$50,000) or 2 CFR 200.320(a)(1)(v) (higher than \$50,000). In addition to the requirements in these regulatory provisions, PHAs wishing to employ these higher thresholds must retain documentation justifying why acquiring goods or services through full and open competition would be unreasonable.

- B. **Small Purchases or Simplified Acquisitions:** The “floor” for Small Purchases or Simplified Acquisitions is a PHA’s micro-purchase threshold, and the ceiling is the PHA’s simplified acquisition threshold (currently a maximum of \$350,000 per the FAR, or any lower amount set by the State or locality with jurisdiction over the PHA). In all cases, PHAs must not adopt a State- or locally approved threshold exceeding \$350,000.

### 5.3 COMPETITION REQUIREMENTS

- A. **Micro-purchases (2 CFR 200.320(a)(1)).** PHAs may award micro-purchases without soliciting competitive quotations if the Contracting Officer considers the goods or services’ price to be reasonable based on recent research, experience, purchases, or other information and documents it files accordingly. To the maximum extent practicable, PHAs shall distribute micro-purchases equitably among qualified suppliers. Purchase cards can be used for micro-purchases if procedures are documented and approved by HUD.
- B. **Simplified Acquisitions (2 CFR 200.320(a)(2)).** The PHA must solicit price quotes from an “adequate” number of qualified sources. HUD has determined that no fewer than three qualified (responsible) sources are “adequate.” The PHA’s Procurement Policy shall in accordance with 2 CFR 200.320(a)(2) state any specific policy for what it considers to be “adequate” (e.g., a requirement for three offers).
- C. **Prohibition Against Bid Splitting.** The PHA cannot separate procurements which, in the aggregate, cost more than the simplified acquisition or micro-purchase threshold into multiple purchases that are individually less than the applicable threshold. This is called “bid splitting” or “unbundling,” and its underlying rationale is to permit informal procurement methods and/or avoid requirements that apply to purchases exceeding those thresholds. Section 200.320 (b) notes formal procurement methods, and the prohibition detailed here explains that a PHA can’t split or unbundle bids that are above the simplified acquisition threshold to avoid formal procurement methods.
- *Exception* – PHAs may separate larger requirements into smaller ones to give small and minority businesses, women’s business enterprises, veteran-owned businesses and labor surplus area firms the opportunity to participate in the PHA’s procurements (see 2 CFR 200.321(b)(3)). The Contracting Officer shall document the reasons for breaking larger requirements into smaller ones in the contract file.

### 5.4 METHOD OF SOLICITATION FOR SIMPLIFIED ACQUISITIONS

PHAs may obtain quotations for simplified acquisitions in writing (hard copy or email), orally, by fax, via catalogs, by letter, electronically (e.g., the Internet), through paid advertisement, or by displaying the solicitation in a public place. The method should be appropriate for the purchase (e.g., obtaining price quotes by phone for a commercially available item). PHAs may establish dollar thresholds or other requirements for when their staff must use written and oral solicitations in their procurement policies. PHAs should use written solicitations when they need to provide vendors with detailed information that

cannot be easily conveyed orally (e.g., by phone), or when the PHA needs to collect detailed quotation evaluation information.

## 5.5 QUOTATION EVALUATION

- A. **Price Reasonableness.** While 2 CFR 200.324(a) only requires cost analysis for purchases above the Simplified Acquisition Threshold, before making an award using an informal procurement method, the Contracting Officer should determine that the proposed price is fair and reasonable. For most micro-purchases and Simplified Acquisition Threshold purchases, an offeror's price or rate quotations provide Contracting Officers with sufficient information to make that determination. However, although not regulatorily required, in cases when the PHA purchases services or items of a noncommercial nature (e.g., a special training course for the PHA's employees), HUD encourages Contracting Officers to decide whether submitting cost details and a cost analysis is necessary. See Chapter 10, Section 10.3.
- 1) *Micro-Purchases.* Though not required, cost/price analysis normally consists of comparing the quoted price to prices recently paid for the same or similar items, price lists, or catalog prices. The Contracting Officer's signature on the purchase order or contract signifies their determination that the price is reasonable based on prior purchases of a similar nature or other sources of information.
  - 2) *Simplified Acquisitions.* Though not required, cost/price analysis consists of comparing quotations to each other and to other sources (e.g., past prices paid or catalog prices). If the Contracting Officer only receives one response to the PHA's solicitation, they should include a statement of reasonableness in the contract file based on market research, comparing the proposed price with reasonable prices on previous purchases, current price lists, catalogs, advertisements, similar items in a related industry, the ICE, or the Contracting Officer's personal knowledge at the time of purchase. Contracting Officers may also rely on any additional reasonable basis.
    - Please note that while the ICE is no longer Federally required for purchases below the simplified acquisition threshold unless preparing for a bid or proposal, Contracting Officers may still find it helpful and/or necessary to conduct an ICE in many cases.
- B. **Other Factors.** If using "price and other factors" to determine which offeror should receive the award, the Contracting Officer has broad discretion to fashion suitable evaluation procedures. In these situations, the Contracting Officer should ensure that they can evaluate quotations in an efficient and minimally burdensome fashion. Contracting Officers should not use competitive proposal-type procedures (e.g., formal evaluations, determining competitive ranges, conducting detailed negotiations, or requesting best and final offers) for informal procurement. Contracting Officers may use information to evaluate the quotation such as their knowledge of, and previous experience, with the supply or service being purchased, the contractor's past performance for the PHA, or customer surveys.
- C. **Evaluating Contractor Responsibility.** PHAs must make awards only to responsible contractors possessing the ability to perform successfully under the proposed procurement's terms and

conditions. 2 CFR 200.318(h). Contracting Officers have broad latitude to evaluate contractor responsibility, including basing their evaluation on the officer's personal knowledge of, or past experiences with, the contractor, but must consider contractor integrity, public policy compliance, proper classification or employees, past performance record, and financial and technical resources. See 2 CFR 200.318(h). The Contracting Officer's signature on the purchase order or contract signifies that the Contracting Officer has determined the contractor is responsible. See Section 10.2 for more detailed information on contractor responsibility.

- D. Documentation (2 CFR 200.318(i)).** PHAs' documentation of informal procurements should be as minimal as practicable while still conforming to 2 CFR 200.318(i)'s requirements. See Section 3.3.
- 1) *Micro-purchases.* If a PHA requests a quotation from more than one source and makes an award to any party other than the lowest quote, the PHA's documentation to support its contractor selection or rejection should identify the solicited vendors and briefly explain why it awarded the contract to a more expensive vendor.
  - 2) *Simplified Acquisitions.* PHAs should retain information supporting their purchases (in paper or electronic form, as they see fit) to the minimum extent and duration needed for PHA management review purposes (tracking purchasing activity) and compliance with record retention requirements in 2 CFR 200.334. The following illustrate the extent to which PHAs should keep quotation information:
    - a. Oral solicitations/quotations. The Contracting Officer should establish and maintain written records of oral price quotations that clearly reflect the propriety of placing the orders at the price paid with the particular contractor. In most cases, this should be limited to writing down the Contacted Contractors' names, as well as the prices and terms and conditions they quoted.
    - b. Written solicitations/quotations. The Contracting Officer should limit the written records of solicitations or quotations to summaries showing the vendors contacted, the prices quoted, delivery, references to printed price lists used, and any other pertinent information.
    - c. Special situations. In the following circumstances, PHAs should include additional statements—
      - Explaining the absence of competition if only one offer is received; or
      - Supporting the award decision if the PHA considered more than price-related factors in selecting the contractor.

## 5.6 PETTY CASH PURCHASES

- A. General.** Petty cash purchases, an unofficial subset of micro-purchases, occur when PHAs make very small, one-time purchases using money from a "petty cash fund" (i.e., a small pool of money set aside to make these kinds of purchases). If PHAs wish to facilitate petty cash purchases, the PHA's Procurement Policy must establish a petty cash fund that is subject to a petty cash policy and contains enough funds to cover very small purchases over a reasonable period (e.g., one month).

- B. **Petty Cash Policy.** Before using petty cash, PHAs must approve written safeguards and procedures to ensure they are only used for intended purposes (e.g., limiting the types or number of purchases).

## 5.7 PURCHASE CARDS

- A. **General.** Purchase cards (e.g., debit or credit cards) are payment methods, not methods of procurement. Purchase cards can reduce transaction costs when used to pay for micro-purchases. Because they are simply a method of payment, PHAs wishing to use purchase cards to pay contractors must still follow all applicable rules for informal procurement.
- B. **Card Management/Internal Controls.** Before using purchase cards, PHAs must approve written safeguards and procedures to ensure they are only used for intended purposes (e.g., limiting the types or number of purchases with credit cards). See 2 CFR 200.320(a)(1)(ii). PHAs should make sure these procedures include guidelines for selecting purchase card merchants/vendors, tracking purchases, and card payment/settlement procedures.

## 5.8 BONDING REQUIREMENTS

Construction contracts over \$350,000 are subject to the same bonding requirements as formal procurements using sealed bids. See Section 6.11 of this Handbook for these requirements including 2 CFR 200.326 and 24 CFR 905.316(d).

## 5.9 PURCHASE ORDERS

- A. **General.** A purchase order is the buyer's first official offer to a seller indicating the types, quantities, and agreed prices for products or services. Most PHAs using informal procurement will send or give the contractor a purchase order to initiate an item's delivery or the performance of service(s). A PHA's issuance of a purchase order and its acceptance by the contractor (either through performance or signature) constitute a contract. Therefore, it is crucial that the purchase order clearly specify the item(s) or service(s) being purchased and the purchase's terms and conditions.
- B. **Form.** PHAs should issue purchase orders on a standard form. At minimum, the purchase order should contain information regarding the scope of work/service to be provided, the price for the work/item, when delivery will occur, the method of payment, how the PHA will inspect the service or item, and the PHA's desired method of acceptance. The PHA may add more terms and conditions depending on the work's nature and complexity. Regardless of whether the PHA chooses to use a standard form or not, PHAs must include all necessary contract clauses in their purchase orders (or request for quotes, providing the request will be referenced by and made part of the purchase order). These mandatory provisions are provided in Section 5.10 below.

- C. **Modification.** PHAs may wish to modify a purchase order before it is accepted. For more information about purchase order modification, please see Chapter 11.4 below.

## 5.10 MANDATORY CONTRACT CLAUSES

- A. **General.** Except for bid specifications and construction or maintenance contracts exceeding \$2,000 (see paragraphs B and C, below), any contract or purchase order for which the PHA used an informal procurement method only needs to include the mandatory clauses contained in Table 5.1 (see end of Chapter 5). State or local requirements may necessitate additional provisions. See Chapter 14.
- B. **Mandatory Requirements for Construction Contracts greater than \$2,000 but not more than \$350,000.** PHAs must incorporate the clauses contained in form HUD-5370-EZ, General Contract Conditions for Small Construction/Development Contracts, and the applicable Davis-Bacon wage decision. HUD designed Form HUD-5370-EZ for small construction jobs. PHAs may use Form HUD-5370 in lieu of HUD-5370-EZ if the former is more appropriate.
- C. **Mandatory Requirements for Maintenance Contracts (including non-routine maintenance work) greater than \$2,000 but not more than \$350,000.** PHAs must incorporate the clauses contained in Table 5.1, Section II of form HUD-5370-C, General Conditions for Non-Construction Contracts, and the applicable HUD wage decision.
- D. **Acceptable Methods of Incorporation.** PHAs may use either of the following methods to incorporate the mandatory clauses and applicable wage decisions into bid specifications and contracts but must use at least one. PHAs may:
- 1) Incorporate the clauses/text of the applicable HUD form and wage decision directly into the text of the PHA's own forms (and bid specifications, if applicable).
  - 2) Incorporate the HUD forms and/or any applicable Davis-Bacon or HUD wage decision by reference in the PHA's forms (and bid specifications, if applicable). The reference must specify the exact clauses or form(s) that are incorporated, and the form(s) must be attached to the document. A Davis-Bacon wage decision may be incorporated by reference to <https://SAM.gov/wage-determinations> and to the specific number, modification number, and the date of the wage decision. HUD maintenance wage decisions are not available at HUD's website; however, a PHA may post any applicable HUD wage decision to its own website and reference that site. PHAs must provide hard copies of any referenced clauses, forms, and/or wage decisions on request.

## 5.11 USE OF INDEFINITE-DELIVERY CONTRACTS

PHAs may avoid making repetitive small purchases by awarding indefinite-delivery contracts, sometimes referred to as “blanket” or “open-end” contracts. PHAs may use indefinite delivery contracts when the PHA has a recurring need for items or services (e.g., cleaning supplies) and wants to have them delivered as needed within a specific time period (e.g., one year). The contract specifies what the PHA may buy and

establishes the prices. The PHA then orders the supplies or services from the contractor as needed. This type of contract avoids the administrative cost of making numerous separate purchases. See Chapter 10, Section 10.1.C.3 for guidance on these contracts.

## 5.12 NEGOTIATIONS

Contracting Officers may, and are encouraged to, negotiate price and other terms of purchases when appropriate, other than the mandatory contract clauses (see Section 5.10). See Chapter 7 for more information on negotiations.

## 5.13 REJECTION & NOTIFICATION OF UNSUCCESSFUL OFFERORS

When rejecting offers, PHAs should follow good business practices. For example, for informal procurement, and particularly micro-purchases, it is a common business practice that vendors understand they did not receive an award if they are not notified quickly. In such situations, a formal rejection letter is not necessary. However, this may not be the accepted business practice in all fields or locales, and as such, PHAs should determine when such formality is appropriate.

## 5.14 APPEALS

The PHA's procurement policy should indicate the appeal processes for informal procurement methods. PHAs are encouraged to adopt informal appeal procedures for these methods.

## 5.15 RECEIVING GOODS & SERVICES & APPROVING PAYMENTS

PHAs must establish systems for ensuring that the contracted-for goods or services are received in accordance with contract terms. PHAs are highly encouraged to process payments promptly to allow for discounts, where applicable, and to maintain good relations with contractors. See Chapter 11.

**TABLE 5.1 MANDATORY PROVISIONS FOR ALL PROCUREMENT CONTRACTS**

In addition to other provisions required by HUD, all contracts made by the PHA under the Federal award must contain provisions covering the clauses in 2 CFR 200 Appendix II ( and Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. HUD is permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy. The PHA and contractor is also subject to other Federal laws including the 1937 Act, as amended, Federal regulations, and State law and regulations.