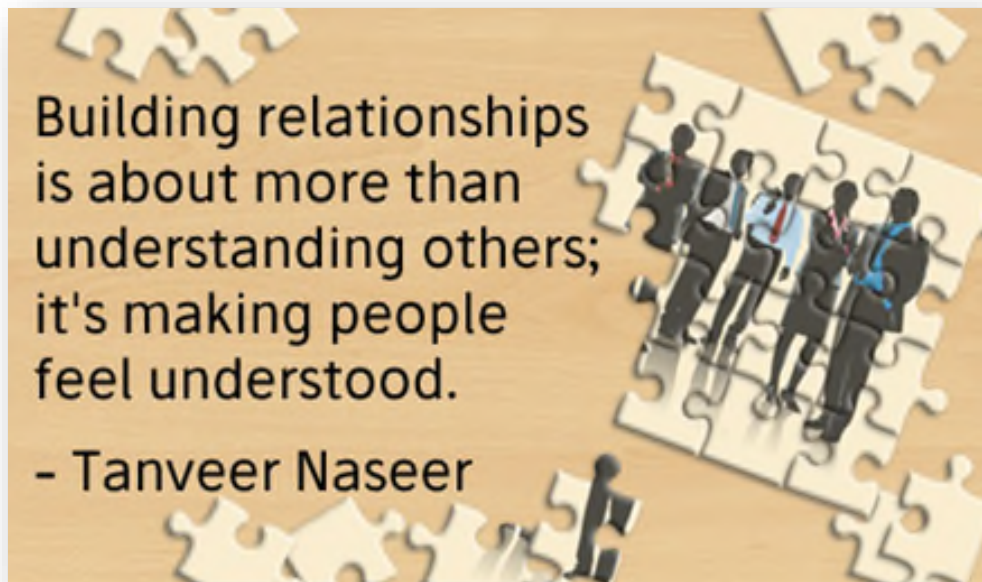


CHAPTER 15 – COOPERATIVE BUSINESS RELATIONSHIPS



15.1 GENERAL

PHAs can choose to coordinate, collaborate, partner, or contract with various types of public or private entities to administer or manage any or all of their programs or to handle procurement matters. This chapter assists PHAs in recognizing the benefits of these relationships and explains how the Federal procurement regulations apply.

Please note that, for PHAs to access various interagency purchasing agreements, the underlying contract(s) must have been procured in accordance with 2 CFR 200.317-327 and 2 CFR 200.417. This is a particularly important requirement if PHAs are entering into intergovernmental agreements with states rather than local governments; the state would not otherwise be required to comport with 2 CFR 200.317-327 when procuring services or property for its own use; therefore, if the PHA is intending to use the underlying State contract, the PHA is responsible for meeting all of its usual 2 CFR 200.317-327 requirements.

To foster greater economy and efficiency, 2 CFR 200.318(e) encourages PHAs to enter into state and local intergovernmental agreements or inter-entity agreements, where appropriate, for procurement or use of common or shared goods and services. Use of cooperative and interagency agreements can often greatly simplify and expedite the procurement process by relieving the PHA of developing specifications or issuing solicitations. These cooperative arrangements can also offer substantial discounts over what a PHA might be required to pay if it purchased the items on its own. However, these intergovernmental agreements must still meet the requirements of 2 CFR 200.317-327. The difference will be the economies of scale and efficiency and another local entity assist in the procurement process. These agreements must follow the procedures of either competitive or noncompetitive procurement methods.

Please note that requirements of a PHA associated with a mixed-finance development process are addressed separately in Chapter 17 of this Handbook.

15.2 INTERGOVERNMENTAL AGREEMENTS FOR PROCUREMENT ACTIVITY

- A. **Requirements.** A PHA may enter into intergovernmental or interagency purchasing agreements as long as they meet the competitive or non-competitive procurement requirements of 2 CFR Part 200 and provided the following conditions are met:
- 1) The agreement provides for greater economy and efficiency and results in cost savings to the PHA. Before utilizing an interagency agreement for procurement, the PHA should compare the cost and availability of the identified supplies or services on the open market with the cost of purchasing them through another unit of government to determine if it is the most economical and efficient method;
 - 2) The agreement is used for common supplies and services that are of a routine nature only. In deciding whether it is appropriate for the PHA to obtain supplies or services through an intergovernmental agreement rather than through a competitive procurement, the nature of the required supplies or services will be a determining factor. Intergovernmental agreements may be used only for the procurement and use of common supplies and services. If services, required by the PHA, are provided by the State or locality and are part of that government's normal duties and responsibilities, it is permissible for the PHA to share the services and cost of staff under an agreement. For example, a PHA could enter into an intergovernmental agreement to use the services of a local government's accounting office to conduct an annual audit of its books or to use the services of a city health agency to provide advice about drug abuse prevention strategies;
 - 3) PHAs must take steps to ensure that any supplies or services obtained using another agency's contract are purchased in compliance with 2 CFR 200.317-327;
 - 4) A PHA's procurement files should contain a copy of the Intergovernmental Agreement and documentation showing that cost and availability were evaluated before the agreement was executed, and these factors are reviewed and compared at least annually with those contained in the agreement; and
 - 5) The agreement must be between the PHA and a state or local governmental agency, which may be another PHA.
- B. **Examples.** Types of intergovernmental agreements may include but are not limited to:
- 1) Paying a city for the cost of additional police patrols (i.e., special "community policing" efforts) so long as those patrols are above and beyond those that the police department would provide under the PHA's Cooperation Agreement with the city (see Appendix 16 for sample intergovernmental agreement);
 - 2) Using the city's recreation department to operate an afterschool sports program for residents of public housing;
 - 3) Using the services of the city's accounting office to conduct an internal audit;
 - 4) Sharing warehouse space with the city;

- 5) Purchasing supplies and services through a local, county, or State government's supply, service, or equipment contractor;
- 6) Using a local, county, or State governmental unit, including another PHA, to perform procurement activities for the PHA; or
- 7) Using bonding services from a state Housing Finance Agency.

C. Process for Using Intergovernmental Agreements. Typically, the process for entering into intergovernmental agreements is as follows:

- 1) The government agency solicits bids or proposals, then enters into contracts with vendors for a variety of supplies or services;
- 2) The PHA enters into an agreement with the government agency whereby the PHA is able to order supplies and services from the vendors who have a contractual agreement to furnish the supplies and services to the government agency. Note: some States/localities allow for PHAs to access State/ local contracts directly without any formal agreement between the PHA and the lead agency;
- 3) The PHA orders the supplies or services covered by the government contract at the prices specified;
- 4) Depending on the agreement structure, PHAs may order the supplies or services either directly from the vendor or indirectly from the government agency; and
- 5) Again, depending on the agreement structure, the vendor will bill the PHA directly and payment will be made to the vendor or, if ordered through the sponsoring agency, the PHA will reimburse the agency directly.

D. Terms of Agreement. Most government agencies will have their own intergovernmental agreement forms. However, the PHA should review any standard agreements to make sure that all applicable procurement regulations are met and that the PHA's interests are protected. PHAs should consider inclusion of the following provisions in their intergovernmental agreements:

- 1) Identification of the parties;
- 2) Effective date;
- 3) Basic purpose of the agreement;
- 4) Procedures for providing lists of needed items;
- 5) Description of items to be purchased;
- 6) Identification of lead party in the procurement;
- 7) Rules or codes that should be followed in the procurement (i.e., PHA procurement policy, State procurement code, and Federal Regulations);
- 8) Delivery terms;
- 9) Types of contract (e.g., indefinite quantity);
- 10) Warranty terms;
- 11) Any fees to be paid to the lead agency;
- 12) Procedures for resolving disputes with contractors;
- 13) Procedures for resolving disputes between the parties;
- 14) Procedures for bilateral modification or early termination of the agreement.
- 15) Any provisions for meetings on specification issues;

- 16) Non-exclusivity clause (right to conduct separate procurements, notwithstanding the existence of a cooperative purchasing agreement); and
- 17) Authorized signatures and titles.

- E. **Evaluating the Use of Intergovernmental Agreements.** PHAs should compare cost and availability of the items procured using the intergovernmental agreement annually to determine if the terms of the agreement continue to pass the tests of economy and efficiency.
- F. **Federal Supply Schedule Contracts.** The Federal government's General Services Administration (GSA) awards a wide variety of contracts under which Federal agencies may purchase supplies and services from pre-priced schedules: [https://www.acquisition.gov/far/part-38#:~:text=\(a\)%20The%20Federal%20Supply%20Schedule,using%20competitive%20procedures%20to%20firms.](https://www.acquisition.gov/far/part-38#:~:text=(a)%20The%20Federal%20Supply%20Schedule,using%20competitive%20procedures%20to%20firms.)

Note: These contracts may provide supplies or services despite the name Federal Supply Schedule. Section 211 of the E-Government Act of 2002 only allows for State and local government entities (including PHAs) to purchase from GSA Schedule 70, Information Technology (IT), and Consolidated (formerly Corporate Contracts) Schedule contracts containing IT Special Item Numbers. State and local government entities may not purchase information technology from any other GSA Schedules. No other schedule contracts are available to PHAs. In addition, PHAs may not purchase items from GSA Schedule contractors on a noncompetitive basis. PHAs may solicit GSA contractors for prices for supplies and services when conducting competitive procurements, but they shall be considered only another potential source.

15.3 INTER-ENTITY AGREEMENTS FOR JOINT PROCUREMENT ACTIVITY

The procedure described in Section 15.2 usually applies when one entity already has a procurement relationship that meets the requirements of 2 CFR 200.317-327. In other instances, two or more non-Federal entities may agree to enter into an agreement to use a single solicitation and enter into a single contract with a vendor. These solicitations and contracts must meet the competitive or non-competitive procurement requirements of 2 CFR Part 200. These agreements should also meet the economy and efficiency requirements as described above in Section 15.2.

15.4 SELECTING JOINT VENTURE PARTNERS

Pursuant to 24 CFR 943.148(b), in connection with the provision of PHA administrative or management functions of public housing, or the provision of supportive and social services, PHAs may use one of the following options for the selection of joint venture partners:

- A. The QBS method, using an RFQ, subject to the negotiation of a fair and reasonable price; or
- B. The solicitation of a single-source proposal, under the following conditions:
 - 1) The proposed joint venture partner has under its control and will make available to the partnership substantial, unique, and tangible resources or other benefits that would not

otherwise be available to the PHA on the open market (such as planning expertise, program experience, or financial or other resources). In this case, the PHA must carefully and thoroughly document both the cost reasonableness and the unique qualifications offered by its proposed partner; or

- 2) A resident group or a PHA affiliate is willing and able to act as the partner in performing the administrative or management function or to provide supportive or social services. A resident group or a PHA affiliate must comply with the requirements of 2 CFR Part 200 (if the entity is a nonprofit or a State or local government) in selecting members of the team. Team members must be paid on a cost reimbursement basis only. The PHA must document the cost reasonableness of its selection of a resident group or affiliate and the group's ability to act as a PHA partner.

15.5 CONFLICT OF INTEREST CONSIDERATIONS FOR JOINT VENTURES, SUBSIDIARIES, & AFFILIATES

Federal, and often State and local procurement laws, contain various conflict of interest provisions barring PHAs from obtaining supplies and services from persons or entities with certain conflicts.

- A. In addition, the PHA, recipients, and subrecipients must follow the conflict-of-interest provisions of 2 CFR 200.318(c) if Federal grant funds are involved.
- B. In addition to Federal conflict-of-interest provisions in the public housing ACC and in 2 CFR 200.318(c), all joint venture partners and the joint venture as a whole must comply with State and local procurement and conflict of interest requirements in conducting activities to acquire supplies and services. A person who is a member of both a PHA's Board of Commissioners and another entity's governing board may not participate in actions by the PHA Board that are incidental agreements with the entity and may present a conflict of interest, real or apparent.
- C. Disclosures of conflict must be made to HUD and waivers of conflict under the public housing ACC and exceptions under 2 CFR 200.318(c) must be submitted to the HUD field offices for approval by HUD Headquarters if the field office recommends approval. HUD Headquarters will determine if good cause exists for approving a waiver under the public housing ACC or an exception under 2 CFR 200.318(c).
- D. Exceptions (24 CFR 943.150): If the joint venture partner is an affiliate or identity-of-interest party of the PHA, it is subject to the requirements of 2 CFR Part 200. HUD may, on a case-by-case basis, exempt such a joint venture partner from the need to comply with requirements under 2 CFR Part 200 if HUD determines that the joint venture has developed an acceptable alternative procurement plan. For purposes of part 943, identity-of-interest party means a party that is wholly owned or controlled by, or that is otherwise affiliated with the partner or the PHA. The PHA may use an independent organization experienced in cost valuation to determine the cost reasonableness of the proposed contracts.

- E. Contracting with identity-of-interest parties. A joint venture partner may contract with an identity-of-interest party for goods or services, or a party specified in the selected bidder's response to a RFP or RFQ (as applicable), without the need for further procurement if:
 - 1) The PHA can demonstrate that its original competitive selection of the partner clearly anticipated the later provision of such goods or services;
 - 2) Compensation of all identity-of-interest parties is structured to ensure there is no duplication of profit or expenses; and
 - 3) The PHA can demonstrate that its selection is reasonable based upon prevailing market costs and standards, and that the quality and timeliness of the goods or services is comparable to that available in the open market.
- F. The ability of a PHA Board to act at all in these cases will be determined by whether a quorum of Board members is left after the abstentions of common board members who have conflicts.

15.7 CONTRACTING WITH PHA SUBSIDIARIES, AFFILIATES, & JOINT VENTURE PARTNERS

A PHA may, in connection with public housing, contract with a joint venture partner or affiliate to perform: (1) administrative or maintenance services, (2) the provision of social and supportive services, or (3) other services only after compliance with 2 CFR 200.317-327 (i.e., full and open competition).

15.8 CONSORTIA


The 1998 Quality Housing and Work Responsibility Act (QHWRA) created a new Section 13 of the Housing Act of 1937 that authorizes PHAs to form a special type of consortium, called a Section 13 Consortium. Regulations on Consortia can be found at 24 CFR Part 943, Subpart B.

- A. Under a Section 13 Consortium, participating PHAs enter into a consortium agreement, submit joint PHA Plans to HUD, and may combine all or part of their funding and program administration.
- B. Although PHAs do not need to comply with 2 CFR 200.317-327 to enter into consortia, the consortium itself must comply.

15.9 CONSIDERATIONS

A PHA should consider several factors before deciding to participate in a particular type of operating organization, including:

- A. The complexity of the program(s) to be managed and administered;
- B. Technical capability of staff;
- C. PHA financial strength;
- D. PHA willingness to assume financial risk;

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- E. PHA statutory and contractual powers;
 - F. Identity-of-interest and conflict of interest issues; and
 - G. State law. PHAs are typically created through State-enabling legislation and governed by State statutes. As a result, contractual powers may vary significantly. For this reason, PHAs should have legal counsel investigate the specific limitations, liabilities, and authority available under State law before entering into any cooperative business relationship.