

# BOARD COMMISSIONER TRAINING

# PHA Procurement



**2021**

Developed in 2021 using HUD's Lead the Way training, adapted by Econometrica, as well as other sources.

**ECONOMETRICA, INC.**

# Learning Objectives

After completing this module, you should be able to:

- Discuss the basics of public housing and Housing Choice Voucher (HCV) programs.
- Understand the role of the Board in the public housing agency (PHA) procurement process.
- Recognize where the Federal and PHA procurement regulations and guidelines reside.
- Discern what situations represent a conflict of interest in respect to PHA procurement.
- Understand the cost thresholds for the different procurement methods.
- Describe the four main methods of procurement as well as cooperative and intergovernmental agreements.
- Identify when the board must approve a procurement and what they need to make that decision.



# Today's Agenda



- Public housing recap
- Procurement overview
- Procurement ethics
- Procurement methods
- Cost estimates and price reasonableness
- Making the award



# Public Housing Recap



# Public Housing Overview

- **Authorization:** U.S. Housing Act of 1937 and subsequent acts.
- **Purpose:** Provide decent, safe, sanitary rental housing for low-income families.
- **Ownership:** Funded by federal government. Established by state law. PHA holds property title with conditions without HUD approval.



- **Financing:** By federal subsidy (Operating Fund, Capital Fund, and special purpose grants), rental income from tenants and grants.
- **PILOT:** Payment in lieu of taxes to the city instead of local taxes.
- **Rent:** Based on 30 percent of a family's monthly adjusted income.

# Housing Choice Voucher, Section 8 Program Basics

- **Purpose:** Assist very low-income families to afford decent, safe, and sanitary housing in the private market.
- **Eligibility:** Families at less than 50 percent of area median income eligible, but most are at 30 percent of median income or below.
- **Rent/Housing Subsidy:** Based on PHA determined payment standard. Tenant pays 30 percent of their adjusted income toward rent and HUD pays remainder as a subsidy to the landlord.
- **Voucher Allocation:** Varies based on budget authority provided by HUD and the subsidy amount needed per voucher.



# Key Documents

- **Annual Contributions Contract (ACC)**
  - Mechanism for receiving HUD funding and terms and conditions between the PHA and HUD.
- **PHA Plan, Capital Fund Budget/Plan**
  - Key plans that HUD requires at a minimum every five years if not annually.
- **Admissions and Continued Occupancy Policy (ACOP) and Section 8 HCV Administrative Plan (Admin. Plan)**
  - Core programmatic policy for the low rent public housing and housing choice voucher programs
- **Operational Policies - Procurement, Personnel, Financial, Etc.**
  - Policies for the PHAs core operational functions, at a minimum for procurement, personnel and finances and internal controls
- **PHA Bylaws and Code of Ethics**
  - Created by the Board as their guide for meetings, board structure, etc. and for the Board and staff to commit to an ethical environment and principles.



# Procurement Overview





# Administrative Requirements

- Promote full and open competition.
- Award to “responsible contractors.”
- Perform an independent cost estimate (ICE) for all procurements above micro-purchase.
- Determine price reasonableness by using a price analysis or cost analysis.
- Maintain detailed procurement records.
- Have protest procedures to handle and resolve disputes.

# Procurement Regulations and Guidance

- 2 Code of Federal Regulations (CFR) Part 200.
- PHA's Procurement Policy & Procedures.
- Procurement Handbook for PHAs 7460.8 REV 2, dated March 2007.
- Federal contract provisions (2 CFR § 200.326).
- Additional related requirements:
  - Contracting with small minority firms, women's business enterprises, and labor surplus areas.
  - Section 3 (24 CFR § 135), Mixed Finance (24 CFR § 941(F)), Consortia and Joint Ventures (24 CFR § 943); Contracting with Resident Owned Businesses (24 CFR § 963); Tenant Participation (24 CFR § 964); PHA-owed or leased projects (24 CFR § 965) Development and Modernization requirements (24 CFR § 905) and Public Housing Operating Fund (24 CFR § 990).
  - PIH Notices and other guidance.
  - State and local laws.

# Procurement Roles and Responsibilities

## Board of Commissioners

- Provides general oversight of procurement activities.
- Not directly involved in vendor/contractor selection.
- May approve contracts/agreements that exceed a threshold or address a condition specifically outlined under the PHA's procurement procedures.

## Executive Director

- Has full authority to procure and execute contracts on behalf of the PHA.
- May delegate authority to staff if approved by the board per official resolution.
- Delegations must specify monetary limits and types of actions allowed.

## Contract Administration System

- Provides internal coordination, including of staff, to administer procurement activities.
- Ensures contractor compliance.

# Documentation

- Each significant action.
- Per 2 CFR § 200.333, the **records must detail the history of a procurement:**
  - Rationale for the method of procurement used.
  - Selection of contract type.
  - Selection/rejection of contractor.
  - Basis for contract price.
- Per 2 CFR § 200.333, PHAs must keep records for a minimum of **3 years** from the date of submission of the final expenditure report.
  - Contractors are also required to maintain records 3 years after final payment.



# 10 Basic Procurement Steps

- 1 Develop a statement of work (SOW).
- 2 Complete an independent cost estimate (ICE).
- 3 Determine rationale for procurement method.
- 4 Solicit and receive quotes/bids/proposals.
- 5 Determine responsive/responsible bidder, as applicable.
- 6 Determine price reasonableness.
- 7 Award contract from solicitation.
- 8 Implement contract administration system.
- 9 Close out contract.
- 10 Maintain records for a minimum of 3 years.

# Procurement Ethics



# Ethics in Procurement

- Grantees **must** have a Code of Standards included in the agency's board-approved procurement policy.
- Golden rule: No personal gain!
- Employees, officers, and/or agents must discharge duties impartially.
  - Ensure fair competitive access.
  - Foster public confidence in process integrity.



# Public Housing Conflicts of Interest

- Federal and State laws – Strictest rule applies.
  - NC Statute Chapter 157.7
- 2 CFR §§ 200.317 to 326 – Procurement.
- ACC – HUD-53012A, available at [https://www.hud.gov/sites/dfiles/PIH/documents/new\\_acc\\_hud53012.PDF](https://www.hud.gov/sites/dfiles/PIH/documents/new_acc_hud53012.PDF).





# Conflicts of Interest

- Neither the PHA nor its contractors nor their subcontractors may enter into a contract or subcontract in connection with a project under an ACC where any of the following have an interest:
  - Members/officers of the PHA's governing body.
  - PHA employees in a policymaking position.
  - Public officials, members of local governing body, or State/local legislators.
    - Includes immediate family members of any of the above.
    - Applies to those presently employed/in office and for **1 year following separation** from employment/office.



# Conflicts of Interest (continued)

- No employee, officer, or agent of the PHA shall participate in the **selection, award, or administration of a contract** paid for from Federal funds *if a conflict of interest – financial or otherwise, real or apparent – would be involved.*
- A conflict arises when any of the employees, officers, or agents of a PHA, including their immediate family members or partners, have a **financial or other interest** in a firm selected for award.
- Also includes an organization that:
  - Employs or is about to employ any of the above listed parties.



# Scenario 1: Harrisboro Case Study



- Harrisboro Housing Authority is well run by Executive Director Bill Watts and has solid performance scores.
- The PHA put out an RFP for parking lot sealing using Doty & Sons Engineering to oversee the contract. Doty & Sons is owned by Ben Doty.
- Jones Construction was selected for the contract. Arnold Jones owns Jones Construction.
- Ben Doty and Arnold Jones are stepbrothers.

# Scenario 1: Question 1



- Can Harrisboro Housing Authority award the contract?
- a. Yes, because although the owners of the two companies are stepbrothers, Harrisboro Housing Authority secured the bid by sealed competitive bid.
  - b. Yes, because Ben Doty and Arnold Jones are not immediate family members.
  - c. No, a COI exists because Ben Doty and Arnold Jones are immediate family members.
  - d. No, because Ben Doty will be administering funds being paid to Jones Construction.

*Note: This is a procurement of construction services allowed under 2 CFR 200.317 through 2 CFR 200.326.*

## Scenario 1: Harrisboro Case Study (continued)



- Bill Watts is married to Carol Watts, who runs a freelance website design for small businesses.
- Carol wants to help the PHA by building its website for a low cost.

## Scenario 1: Question 2



What is the appropriate action by the Board in response to this request?

- a. The Board should request that Bill review the COI regulations in the ACC, as well as the PHA bylaws, and only proceed if the executive staff agrees that there is no conflict.
- b. The Board should advise Bill that this “looks like” a conflict under Section 19 of the ACC, Part A, and he would need to disclose his interest in his wife’s contract to the PHA and then request a wavier from HUD.
- c. The Board should approve the request. The Board should not micromanage these processes and focus instead on big picture planning. If a COI issue arises, the Board can reprimand or even fire Bill.

*Note: This is a procurement covered by Section 19 of the ACC.*

# Other Ethical Considerations

- Do not solicit or accept gifts, favors, or anything of monetary value.
  - PHAs may allow unsolicited gifts of nominal intrinsic value if established in the Procurement Policy.
- Report suspected anticompetitive practices by contractors to the Executive Director, HUD Field Office, and appropriate State/local officials.
- Do not disclose confidential information.

*When in doubt, the PHA's Contracting Officer/ Executive Director should obtain legal advice from their attorney or consult with HUD's legal counsel.*



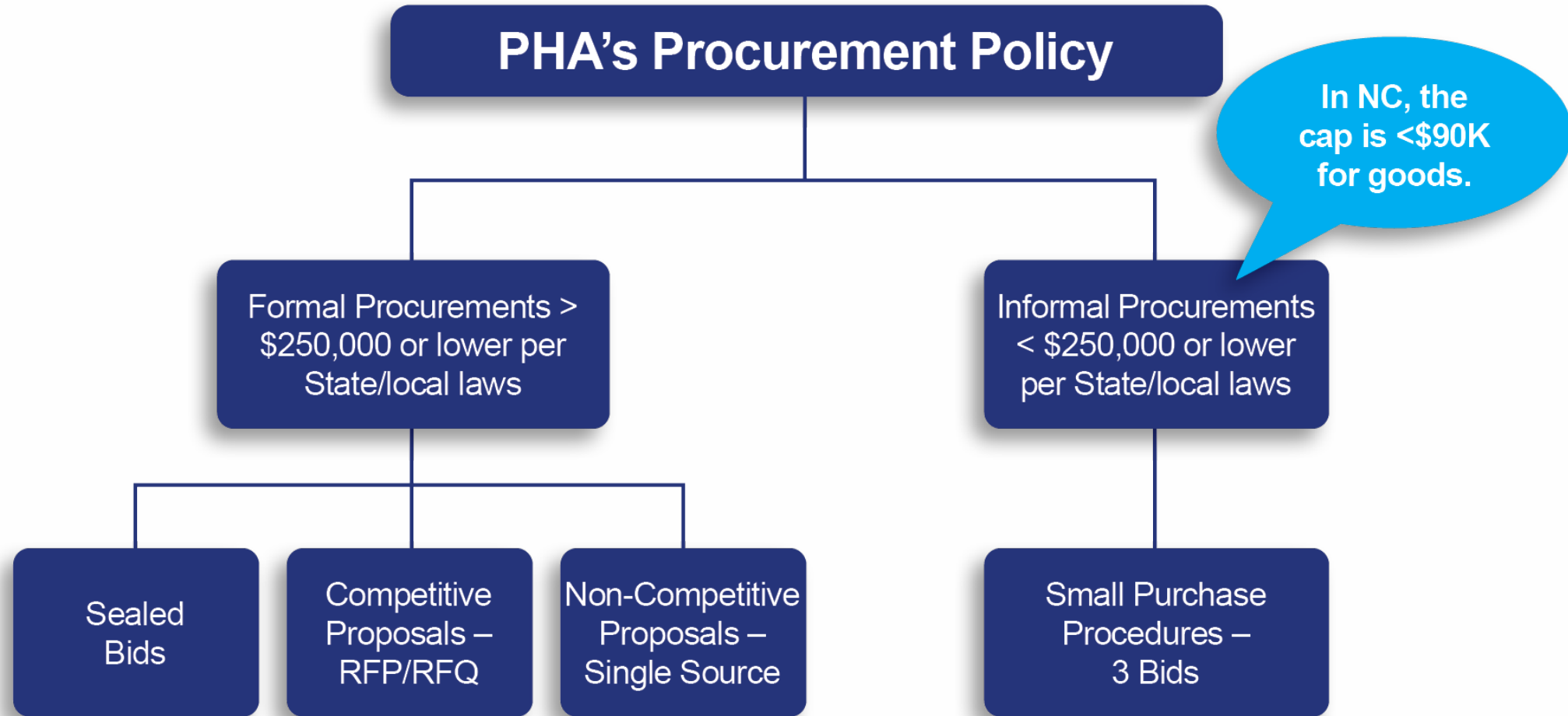


# Methods of Procurement





# Methods of Procurement Flow Chart



# Small Purchase Procedures (SPP)



- ICE is less than the \$250,000 simplified acquisition threshold, or \$90,000 for goods, or a lower threshold as specified in the PHA's Procurement Policy.
- At least an adequate number (three or more) of oral or written quotes via phone, fax or email should be obtained.
- PHAs may obtain equipment or supplies or seek professional services, typically via the formal solicitation process.

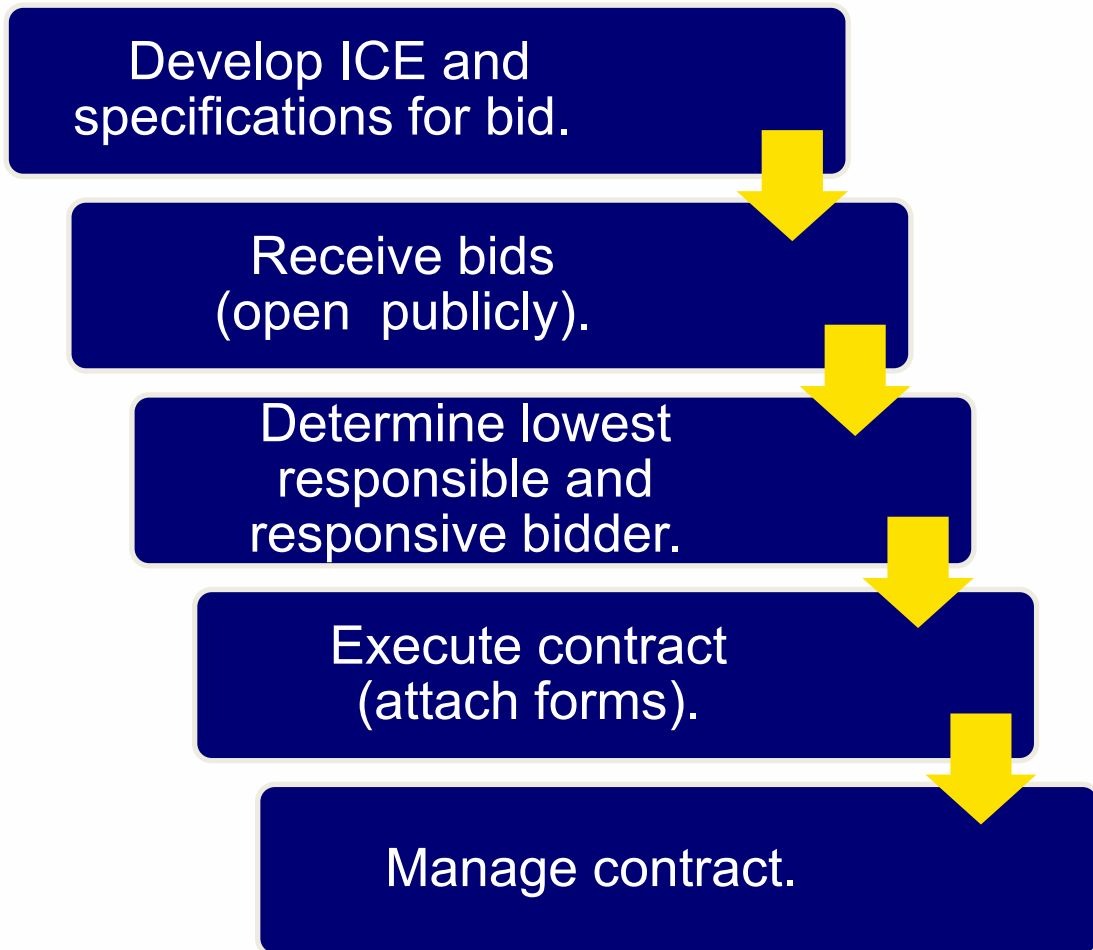
# Micro Purchases

A subcategory of the SPP costing less than \$10,000 (\$2,000 for construction contracts):

- No ICE required.
- One quote if price is reasonable. (Should obtain new quote prior to repeating purchase.)
- Purchases of like items equitably distributed among available suppliers.
- Document with purchase order.
- Wage rates not required.



# Sealed Bids



- Construction contracts and purchases of commodities.
- ICE is *more than* \$250,000 Simplified Acquisition Threshold or lower, as specified in the PHA's Procurement Policy.
- Two or more bidders willing in the open market.
- Awarded based on price.
- Fixed-price contract.

# Competitive Proposals



- Two types of competitive procedures:
  - Price considered during evaluation – Request for Proposal (RFP).
  - Price not considered during evaluation – Request for Qualifications (RFQ) (used for architecture/engineering firms and mixed-finance developers).
- Project based on technical merits and price.
- Award made to the firm with the proposal that is most advantageous when price and other factors are considered.

# Knowledge Check: Question 1



When reviewing a resolution regarding an award of over \$250,000 for a competitive procurement, which of the following should you expect to see?

- a. An RFP or RFQ.
- b. An analysis of the cost using an ICE.
- c. Use of an Evaluation Committee and a rating form.
- d. Verification of no conflicts of interest.
- e. All of the above.

# Non-Competitive Proposals

- Used when other methods are not feasible and one of the following circumstances applies:
  - Item is available only from a single source.
  - An emergency situation or public exigency exists.
  - HUD authorizes before contract award.
  - After solicitation of several sources, competition is determined inadequate (i.e., only one respondent).
- Must be justified in writing.
- Cost analysis must be performed.
- All technical and cost aspects may be “negotiated.”

# HUD Approval Requirements for Non-Competitive Actions

| Types of Noncompetitive Actions per §200.320(f)   | Examples/Conditions   | HUD Review/Approval If Above Established Simplified Acquisition Threshold                                    |
|---|---|--|
| 1. Item is available from one source (i.e., <b>sole-source</b> procurements).                                       | <b>Example:</b> PHA requests bid/offer from only one entity because there is no competition in the open market.   | HUD must approve, since contract is awarded without meeting competition requirements.                        |
| 2. Emergency or public exigency situations do not allow use of competitive solicitations.                           | <b>Condition:</b> PHA needs to mitigate condition because time is of the essence.   | <b>No HUD approval required per ACC provisions.</b>  |
| 3. HUD authorizes use of noncompetitive proposals.  | <b>Examples:</b><br>a) Use of brand name.<br>b) Issuance of contract modifications that change the scope of contract or increase contract amount by more than the Simplified Acquisition Threshold. | HUD must approve based on justified need, since contract is awarded without competition.                     |
| 4. After issuance of solicitations, competition is determined inadequate (i.e., <b>single-source</b> procurements). | <b>Example:</b> One bid/offer received in response to a competitive solicitation issued in the open market.   | Even though PHA intended to meet competition, there is none in the open market; therefore, HUD must approve. |



# Issuing RFPs

- Detailed SOW, ICE.
- Develop evaluation factors, **including price**, and award criteria.
- Advertise the RFP.
  - Local, State, and national newspapers; trade periodicals; agency website; housing industry websites; etc.
  - Mail advertisement to potential entities or firms.
- Hold a pre-proposal conference, if deemed necessary.
- Issue addenda, if necessary (before receiving all bids).
- Receive proposals.
  - Time-date stamp and safeguard.
  - **Do not open publicly!**



# Evaluating RFPs

- Use evaluation factors and scoring range.
- Develop evaluation criteria before the solicitation is advertised.
- Evaluation performed by Evaluation Committee.
  - At least three members and Contracting Officer.
  - No conflicts of interest – Independence.
  - Discussion following individual scoring.
  - Confidential decisions.
- Evaluation Committee uses rating and ranking forms.



# Requests for Qualifications

- Used only for architecture/engineering firms or mixed-finance developers, or when authorized by HUD.
- The RFQ includes only technical qualification statements.
- The evaluation process is similar to that of RFPs, **except there is no factor for price.**
  - Price is negotiated after the best qualified entity has been selected.



## Knowledge Check: Question 2



What methods of procurement do not **HAVE** to involve an RFP/RFQ? (choose all that apply)

- a. Competitive proposals
- b. Micro-purchases
- c. Non-competitive proposals
- d. Small purchases

# Four Methods of Cooperative Purchasing

1. Contracting directly with a government agency.
2. Joining with another government agency to issue/award a competitive solicitation.
3. Buying from General Services Administration (GSA) Schedule 70, Information Technology, and Consolidated Schedule contracts containing IT Special Item Numbers (SINs) only.
4. Entering into a contract with a firm that has a competitively solicited contract with a local government agency (i.e., joinder or piggy-backing).



# Intergovernmental Agreements (“Piggy-Backing”)

- A PHA enters a “cooperative agreement” with a government agency to acquire supplies or services previously procured by the government agency without having to issue a solicitation in the open market.
  - The PHA is subject to the goods/services procured by the government entity. Therefore, the PHA must review the procurement to ensure that it meets the PHA’s needs.
- The PHA may then obtain the supplies or services at the same price, either directly from the vendor or through the government agency via a new “contract agreement.”
- Payment can be made directly to the vendor or through the government agency.



# Intergovernmental Agreements: Conditions of Use

- **Only** for “common supplies and services” of a routine nature at a PHA and government agency.
- Before using this method, the PHA should make a comparative cost analysis of the cost and availability of undertaking procurement in the open market vs. with governmental entity.
- The PHA must ensure that the government agency procured the supplies/services in compliance with 2 CFR Part 200.



## Knowledge Check: Question 3



A PHA can use a piggy-back intergovernmental agreement to procure on-call plumbing repair services.

- a. True.
- b. False.



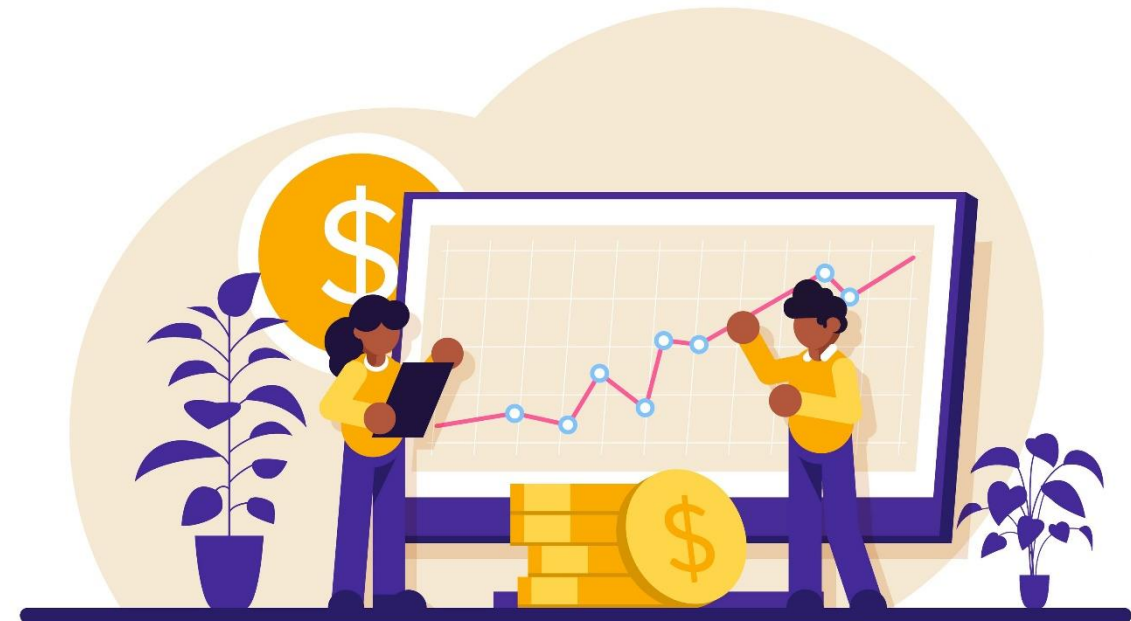


# Cost Estimates and Price Reasonableness



# ICE and Price Reasonableness

- An ICE is required for all procurements of \$10,000 or more (\$2,000 for construction contracts subject to Davis-Bacon).
  - Benchmark for evaluating price reasonableness.
  - Facilitates the selection of the procurement method and contract type.
- Documents that price/cost is reasonable **before** making an award.
- Either a price **or** cost analysis is always required.
- The ICE should always be a reference.



# Price vs. Cost Analysis

## Price Analysis

Simple comparison of prices when competition is adequate.



## Cost Analysis

More detailed analysis of component parts when competition is inadequate.

- Compare profit margins and/or overhead.
- Compare cost of supplies.
- Compare project management versus direct labor.

## Knowledge Check: Question 4



When is an independent cost estimate (ICE) **NOT** required?

- a. Micro-purchase.
- b. Small purchase.
- c. Sealed bid.
- d. Competitive proposal.
- e. Non-competitive proposal.



# Making the Award



# Award and Contract Management

- Board of Commissioners approves the contract/procurement via resolution.
  - PHA Procurement Policy should state a cost threshold for procurements that require their approval.
  - Minimum approval requirement must be the HUD small purchase threshold or lower.
- Contracting Officer's approval of contract award and contract executed by all parties.
- Administer and manage the contract.
  - Pre-award conference or award kickoff.
  - Review schedule of deliverables and expectations.
  - Labor wage rates and Davis-Bacon.
  - Work quality management.

# Contract Types

- Fixed-price (used for sealed bids and goods).
- Time and materials and labor-hour.
- Cost-reimbursement (used for nonprofit organizations).
- Indefinite-delivery.
- Letter contract (mostly used for emergencies for preliminary work).
- **Prohibited Types:**
  - Cost plus percentage of cost.
  - Cost plus percentage of construction cost.



## Knowledge Check: Question 5



Does the board have a role in contract award, once the PHA has determined a winning vendor following an RFP?

- a. True
- b. False





**Thank you**  
for your commitment and service to  
your PHA and its residents!