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# CHAPTER 11

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# Contract Administration



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# Introduction

- Contract Administration:
  - Refers to all activity subsequent to awarding a contract to ensure it is performed successfully and PHA receives supplies or services contracted
- HUD-required forms must be attached or incorporated by reference to each contract
  - HUD-5370 – Construction
  - HUD-5370-C – Non-construction
  - HUD-5370-EZ – Small construction/development



# Administering Construction Contracts

- Contractor is responsible for completing work within contractually required timeframes
- PHA responsible for monitoring contractor to ensure work is completed as scheduled, on budget, and within acceptable quality standards



# Monitoring and Inspections

- Pre-construction Conference
  - Discuss all key construction and contract administration issues
  - Issue a “Notice to Proceed” that includes start date and expected completion date
  - May address mobilization, if appropriate
- Progress Meetings
  - Regularly occurring meetings
  - Discuss progress, delays, payments, etc.



# Monitoring and Inspections, cont.

- Inspections
  - PHA responsible for ensuring regular inspections of work are completed
  - May be completed by a qualified third party (e.g., retained architect; retained construction manager)
  - “Inspection Report” must be completed for each inspection to document results, address payments for work completed, and record identified deficiencies



# Fair Labor Standards

- HUD Handbook 1344.1, Rev. 2, Chg. 2 as required by Labor Dept. regulations applicable to Davis-Bacon–covered work (29 CFR 5)
- PHA responsible for administration and enforcement of labor standards



# Progress Payments

- PHA responsible for making progress payments to contractor based on approved schedule
- Require contractor to prepare construction progress schedule after issuing Notice to Proceed
  - PHA may use HUD-5372, Construction Progress Schedule or another appropriate form
- PHA/third party review and approve schedule





## Progress Payments, cont.

- PHA requires contractor to prepare schedule of payments
  - HUD-51000 Schedule of Amounts for Contract Payment
- PHA and contractor will have signed copies of schedule for their files
  - Guides payment process as work is completed and passes PHA inspections



# Prior to Issuing a Payment

- Review:
  - Request is consistent with PHA–approved schedule of amounts for contract payments
  - Request does not include amount to be retained by PHA
  - Work completed in accordance with construction documents
  - Form HUD-51001, Periodic Estimate for Partial Payment, is properly executed, and all applicable supporting documentation submitted
  - Contractor submitted required reports (e.g., payroll reports)



# Delays and Time Extensions

- PHA may authorize justifiable time extensions
  - HUD approval is not necessary unless PHA is subject to HUD–established threshold less than requested amount
- Time extensions must be formalized via written modification to contract
- Requests for time extensions should:
  - Be submitted in writing within 10 calendar days of start of delay
  - Include explanation of how delay was beyond contractor’s control



## Delays and Time Extensions, cont.

- Send a letter acknowledging receipt of request
- CO and PHA staff will review request, perhaps assisted by architect, and compare details with PHA's "Construction Log"
- PHA can approve request if information provided by contractor is accurate, justifies delay, and additional time requested is reasonable based on facts



# Completion of Work and Closing

- Notification
  - Contractor will provide written notification to PHA when all work is complete
- Final Inspection
  - PHA should conduct final inspection of all work within 10 days of receiving written notification of completion



# Completion of Work and Closing, cont.

- Post-Inspection Meeting
  - Inspection Team meets after final review
    - Discuss deficiencies, incomplete work, or work not done in accordance with construction documents
  - Document items that need to be addressed by contractor as a punch list or as major deficiencies to be corrected



# Final Payment

- PHA should have notarized certificate and release from each construction contractor to assure all work was completed in full compliance and all expenses have been paid
- PHA should ensure all payroll and wages have been made prior to issuing final payment to contractor



# Final Payment, cont.

- Documents to be submitted for final payment:
  - Certificate of Occupancy (if applicable)
  - Contractor's release certification (notarized) that indicates:
    - Work completed in accordance with construction documents
    - Total amount due the contractor and separately stated amount for each unsettled claim against the PHA
    - PHA is released of all claims
    - Wages paid—no outstanding claims for unpaid wages
    - All guarantees and warranties assigned to PHA





# Construction Warranties

- Warranty period for all construction work should be at least 365 days from date of final acceptance
  - Could be longer for complex equipment—a 2-year period is usually reasonable
- Have a warranty inspection 1 month prior to warranty expiration
- Notify contractor of deficiencies found during warranty period
- It is contractor's responsibility to address any faulty equipment or poor workmanship.



# Administering Non-Construction Contracts

- Oversight and monitoring of non-construction contracts vary depending on complexity of assigned work
- Carefully planned solicitations can be undermined by weak contract administration



# Post-award Conference

- Complex projects should have a post-award conference soon after contract award
  - Ensure contract's performance requirements are understood by all parties
  - Any changes to contract must be authorized by CO and documented in writing in formal modification to contract.
- Confirm key processes during contract execution:
  - Establish a system for receiving supplies, equipment, and services
  - Monitoring and inspection supplies and services by the PHA
  - Enforcing specifications and timelines
  - Accepting supplies and services



# Monitoring and Inspecting Supplies and Services

- Document receipt of supplies
- Receiving reports typically contain (at a minimum):
  - Contract or PO number
  - Item number and description
  - Date and place of receipt
  - Name of receiving official
  - Date of inspection
  - Name of inspection official
  - Whether item was accepted and if not, reasons for rejection
- After goods or services are received, PHA continues to monitor performance to ensure they are of sound quality and meet contract standards



# Enforcing Specifications and Timelines

- PHA must enforce contract scope of work, specifications, and timelines
- PHA has a right to inspect prior to payment and acceptance
- After inspection, PHA can:
  - Reject
  - Require correction
  - Conditionally accept
- Acceptance is assumed to have occurred if PHA does not protest delivery and/or makes full payment after a reasonable time



# Contract Modifications

- Two types of modifications:
  - Unilateral modification
    - Signed by CO and can cover administrative modification
  - Bilateral modification (preferred method)
    - Signed by CO and contractor when mutually agreeing to contract changes



# Process for Modification or Change Order

- Change orders include the following (at a minimum):
  - Description of proposed change
  - Reference to specifications or drawings as needed
  - Price changes
  - Estimate of time
  - Breakdown of price, including materials and labor



# Modification Register

- Accurate records and documentation regarding contract modifications
  - Number of modifications
  - Brief description of each change
  - Cost of proposed change
  - Date submitted to HUD for approval (if applicable) and resulting date of HUD approval or denial
  - Additional time required by contract based on modification
- PHAs must submit to HUD, for prior approval, any proposed modification that increases contract by more than federal small-purchase threshold





# Contract Claims

- Disputes regarding breach of contract, mistakes, misrepresentation, or other causes for contract modifications that occur after contract has been executed
- Required to have a provision in procurement policy that explains how claims and disputes are handled
- Handle these claims informally whenever possible



## Contract Claims, cont.

- CO is responsible for formal process of reviewing claims and rendering final decisions
- CO will provide a copy of final decision that includes:
  - Description of claim
  - Reference to pertinent contract clauses
  - Statement of factual areas of agreement or disagreement
  - Statement of CO's decision with supporting rationale
  - Statement referencing appeal rights as provided in the PHA's Procurement Policy



## Contract Claims, cont.

- Maintain records for 3 years
  - Relevant correspondence
  - Correspondence related to rejection or acceptance of goods and services
  - Payment records
  - Weather records that affect contract performance
  - Notes from architects or inspectors indicating deficiencies
  - Photographic evidence
  - Permit history
  - Meeting minutes from PHA meetings with internal staff or with architects and others involved in project or service delivery



# Contract Terminations

- Two types of contract terminations:
  - Termination for Convenience
  - Termination for Default
- Same notification requirements
  - CO sends a written notice via certified mail



# Termination Notice

- Notification to contractor of termination with contract citation authorizing termination
- Whether contract termination is partial or for entire contract
- Default terminations must include acts or omissions constituting default and contractor's appeal rights
- Effective date of termination
- Copies of notice should be sent to contractor's surety and any assignee



# Termination for Convenience

- Occurs when PHA no longer needs supplies or services under contract or can no longer fund procurement
- CO must negotiate fair and prompt settlement with contractor, including payment for lost profit for work contracted but not yet completed



# Termination for Default

- Occurs when contractor fails to perform contractual obligations or CO reasonably anticipates contractor will fail to meet obligations
- CO must provide contractor a written notification of failure to perform (“Cure Notice”)
  - Provide a reasonable timeframe to “cure” deficiency
  - CO will proceed with default termination if contractor is unable to address failure to perform
- Alternative to termination by default include:
  - Entering into arbitration or mediation if both parties agree
  - Allowing for modified delivery schedule
  - Allowing contractor to bring a sub to complete work
  - No-cost settlement agreement

