

Chapter 12

HUD review requirements This is a pretty short chapter. Contents: We're going to talk about PHA submissions for HUD approval. When you send stuff to HUD to get prior approval because HUD has dictated it or because it's prudent to do so. Contract actions requiring prior HUD approval. Exemption from pre-award review. Introduction. HUD's review of your PHA procurement activities is limited to actions that are funded with federal money. I know this is very true because there came a point where I got some auditors, both HUD and OIG, that were not as sophisticated about these issues, and they demanded to see our books and other issues related to our non-aided program. And at that point, we didn't like to fight with auditors. We had to draw a line. And the auditors we told them, "Call your attorney." They said, "We don't need to." So our attorney called theirs, and their attorney called the HUD field office, you, Director, and he called them and said, "No. "There is no federal money in that. "Move on." Yeah. And I've seen this in a number of other agencies. Some of them, most of them, did not involve that the HUD or OIG auditor thought that they could be involved.

It involved the housing, Do you guys have non-federal money, right? Yeah. A lot of you do. It involved things that were done with the non-federal money that HUD thought was questionable. - Should we have a separate account for that? Some of you all do a, what's that account called where you put everything in one... You put everything in one account and then make disbursements out based on the allocated amounts for each account. What's that called? - I don't know. Let me answer your question this way. Should we have separate accounts? The answer is yes. Yes. There's an old-fashioned way of doing it where we kept everything in one account and then just made journal entries to say how much was in each, but we did get a problem with that many years ago. So the answer is yes. If you've got non-federal monies, they need to go into a separate account. In my opinion. I can't tell you the financial rules about that, but the answer is yes. However, when you don't have separate accounts, I know from experience that it could open some of those things up not to potential audit but to confusing the auditors. Remember, HUD can at any time do a review of your stuff. And a lot of my clients call me and whisper in the phone, "Mike, HUD just dropped in." I said, "Why?" They said, "Well, they were going from here to here." And I go, "Okay. "Well, what do you want? "Talk to 'em. "Show 'em your records." "I don't have everything caught up." "Well, (chuckles) I wish you the best." Yeah.

You know something, if you don't have time to place everything organized into a file, open up the three-ring binder, 'cause I use three-ring binders, and there's flaps, and put it in right there. It's now in the file. (chuckles) It's still tied to it. What's really bad is when they come in, and maybe there's drop-ins 'cause people are going from here to there and they got some extra time, and they want to do a little cursory review 'cause they've seen problems at other authorities in certain areas. That's all what auditors do. However, what will bother them is if you say, "Oh yeah, I've got that stuff." And you go over here and get some information, over here and over there and under the chair. And, "Ooh, I put this in the trash. "Here's another piece." No. Have a file for everything, and put everything in the file. Auditors can take the file and just turn pages and see you've got stuff. Contracts that are expected to exceed the federal small purchase threshold that have to have, these are contract actions requiring prior HUD approval. Now stay with me on this. The HUD small purchase threshold is how much? - \$250,000 Small purchase threshold is \$250,000. The micro-threshold is how much? - 10? These are all actions that are expected to exceed 250. "But Mike, in Oklahoma we got to bid it at \$50,000." Has nothing to do with this. If it's over 50, it does not require prior HUD approval. Now remember, these figures are in the aggregate. Are you with me on that thought? In the aggregate. Non-competitive procurements. When there is not full competition of how many?

Three. I wouldn't worry too much about two, clients do treat it as a non-competitive. But one certainly is a problem. Three. If it's non-competitive, you've gotta get prior HUD approval if it exceeds \$250,000.

Now remember, if you receive three bids, and two of the bids did not have a bid bond, so they're rejected but you still have one bid left, that's not non-competitive because you had three bids. It's not non-competitive when a bid comes in wrong, or a proposal comes in wrong. You did receive it. It was just messed up. Brand name only procurements. Now remember, if you say brand name or equal, it is not brand name only. It's or equal. So this did not say brand name procurements. It says brand name only. Contracts over 250 that are awarded to other than the apparent low bidder. So we get three bids in. 256. 261. 264. And the one 256 did not include a bid bond (chuckles). That was the apparent low bidder, but upon inspection of the bid, they were non-responsive so you must reject them. You must have prior HUD approval before you award it. But let me tell you in that case. That's an open and shut case because HUD, you know that they can't go get the bid bond. after the bid opening, right? We all know that. Bid bonds have to be turned in before the bid opening. Right? Okay. So this is the way I wrote that one to HUD when it occurred for me recently with a client. Email to HUD person. The purpose of this correspondence is to inform you that pursuant to section 212 point two point A point whatever it is, we are notifying you that we are proceeding with an award to other than the apparent low bidder. Here's a list of our bids received. This low bid did not include a bid bond. Here's a copy of the notice we sent to them informing them of the rejection of their bid, and we're moving on to the other person. This is a time-sensitive issue because we have money to be allocated.

If we do not hear from you next Friday. Now I don't do this with everything, but with this one 'cause it's going to be open and shut most likely, "please let us know if we're to hold. "Otherwise next Friday we're going to go ahead "and complete that award and sign the contract." Now this one happened to have an allocation deadline of some sort. And maybe it was last year. But we couldn't wait for a long time. You know the HUD person just replied, "Looks good to me." Now that's not specific expression of approval, Now that's not specific expression of approval, but I think it's enough. Actually, I think the person was probably glad to get the information they got. 'Cause we put other information in about the bid. Our independent cost estimate, they're going to want to see that. Our cost price analysis. We put all that in the thing, and this is what we're going forward on. Now I don't do that with everything, 'cause some things require, for instance anything to exceed five years, I don't go, "I'm going to extend for another year "unless I hear from you next Tuesday." No, that's a different issue. That's not an open and shut case. That requires HUD to make a decision and to give us actual permission. But there isn't much decision on if they didn't have a bid bond, right? So we just went ahead and did that. Proposed contract modifications have to have prior HUD approval if they change the contract scope beyond what we published or increase the contract amount by more than 250. You know what they're looking for there? That you didn't do a quote at \$249,000. Were you there by restricting competition from certain people, not advertising it, and then turn around and give them change orders to take it above that amount. But regardless, if any contract change order takes it over 250, you have to get prior HUD approval. Use of the QBS or RFQ method for procurements other than A and E or developer related services or joint ventures or energy service contracts.

HUD must approve it for you to do an RFQ for legal or for accounting. And by the way, you're not going to get that permission. Why? Because it's not allowed. The RFQ can only be done for those four things. Architects and engineers is kind of a broad thing. Some HUD offices have approved surveying as an engineering function. I got not problem with that. However, the HUD

handbook specifically says that PNA's are not, even though architects do them, PNA's are not an architectural design function. They're a professional service and must be competed per an RFP, most likely RFP. Any procurements for legal litigation that exceed \$100,000 must have prior HUD approval. Procurements that exceed the amount included in the HUD approved development cost budget or where HUD has required you because of a notice of deficiency or corrective already action under the Capital Fund Program. So they're just reminding you, "We've already told you "you have to get approval from us on everything "'cause you're under some sort of a corrective action." - No. - Legal is three years. Now I'm looking in the PowerPoint. You're looking in the handbook. - That's for only PHAs operating under the old ACC.

In 1994, HUD raised the performance, the contract period allowed from two years to five years if we signed the new ACC. Some housing authorities did not. Now it's my understanding something has been done since then where they're starting to grandfather those housing authorities in after all these years. But that's only under if you're under the old ACC. You guys got that? Fourth bullet point from the bottom in the guidebook? - You'd go to your end contributions contract and see what the execution date is. It's in your file somewhere. If not, you can get it from HUD. Well. It might. It might be in the trashcan, but I hope not. Contracts that exceed five years including options must have prior HUD approval. Period. By the way, energy performance contracts will not get done in five years. 10 to 15 is much more likely. But that's okay because when you're doing an energy performance contract, you have to work with HUD every step of the way. Ken O'Connor, do you know that name? Yeah, Ken I think is still heading that office. He's now a contractor to HUD. Yeah, and he's got to approve you every step of the way. HUD gives you that assistance because so many people got taken advantage of. So he helps with the solicitation. You do it. He just gives you advice and then getting the contract executed. Gives you advice. Just to keep you guidance going. But Ken O'Connor represents that office so you've got HUD approval each step of the way. And then any solicitation or contract by any PHA whose procedures fail to comply with the CFR or the handbook. (laughs) That's a good one.

Anything you're doing you're not supposed to be doing has to have prior HUD approval. By the way, on the sample procurement policy, I have deleted that clause where I self-certify. I think that's the next thing we're going to go to. No, we'll go to it in a minute. If you're in the old ACC, you've got quite a few restrictions on things that you can do. - Any agreement or contract for professional management fee accountings, this is under the old CC, where the term exceeds two years. Under the old CC, you're limited to two I've still got about three clients who are trying to get that taken care of. They're going to sign the new ACC. Now, exemption from pre-award review. you can exempt yourself from HUD approvals if you declare that you are completely in compliance with all HUD rules and regulations. What's the risk there? Who's 100% in compliance? You find one little thing off, and you've lied. I tell all of my housing authorities, "Take this out of your procurement policy." I had it in mine. I was exempted from pre-award review, and I got a finding for lying to the federal government. I meaning my agency. We lied. 'Cause we were not 100% in compliance. I couldn't get to the board fast enough to change our policy and get that out. Do not put this in your policy. In the sample policy, it is the last clause. Don't do it. That's my advice. Exemptions are granted for one year and may be automatically renewed each year unless you have ever been found to not be in compliance or you request the exception be rescinded. Any time HUD asks you, any time you said something to HUD, and they ask you for documentation, you have got to send it to them. The HUD will review that documentation and decide whether or not it's appropriate to exempt you. Asked for exemptions from HUD forms or waivers must be sent to HUD headquarters, will be sent to HUD headquarters for review. Now each field office decides which items fall under that, and

usually when we ask for exemptions for like the one year grace period rule for employees and such, I've never known my field office to send that to anywhere, but they address it themselves.