

# Corrective Actions for Procurement Deficiencies

January 31, 1992

MEMORANDUM FOR: Anthony M. Villane, Jr., Regional Administrator-  
Regional Housing Commissioner, 2S

ATTENTION: Joan T. Dabelko, Director, Office of  
Community Planning and Development, 2C

FROM: Anna Kondratas, Assistant Secretary for Community  
Planning and Development, C

**SUBJECT: Corrective Actions for Procurement Deficiencies**

This memorandum is in response to the December 20, 1991, resubmission of Joan T. Dabelko's November 8, 1990, memorandum requesting policy guidance regarding the types of corrective actions that may be applied in cases involving procurement deficiencies. The original memorandum was apparently lost.

Ms. Dabelko's memorandum indicates that several cases where communities have failed to comply with the procurement requirements delineated in 24 CFR 85.36 have been found by New York Regional Office staff during monitoring reviews. Guidance is requested concerning what latitude the Regional Office has in deciding whether the costs should be disallowed or whether some other corrective action would be appropriate.

Violations of the procurement requirements outlined at 24 CFR 85.36 are handled in the same manner as any other violation of a Community Development Block Grant (CDBG) requirement. CPD Notice 91-10, issued March 25, 1991, provides overall guidance on addressing performance deficiencies under the CDBG program. As stated in that Notice, each finding of noncompliance with applicable law and regulations requires some form of corrective action. The corrective action should be suitable to the nature and severity of the deficiency. A listing of authorized corrective and remedial actions is contained in Section 570.910 of the CDBG regulations. As stated in paragraph (a) of that section, corrective and remedial actions should be designed to prevent a continuation or recurrence of the performance deficiency and to mitigate, to the extent possible, the adverse effects or consequences of the deficiency.

The Regional Office, therefore, has considerable latitude in determining what corrective action may be appropriate in any particular instance where a procurement deficiency is found. Disallowance of costs may not be appropriate in all cases. Even where it is, the amount of the disallowance would not usually be the entire amount of the contract, but rather an amount that reflects the nature of the deficiency. Each violation must be assessed individually to determine the nature and extent of the deficiency. The selection of an appropriate sanction should also consider whether it is the recipient's first violation of the

requirement and/or an isolated instance as opposed to demonstrating a pattern of noncompliance. The likelihood of recurrence is important to consider in fashioning an appropriate corrective action. Such action should address the root cause of the problem and any concerns with the grantee's management problems that may contribute to the potential for a recurrence of the violation. If disallowance of costs is found to be appropriate, the Regional Office may advise the grantee to reimburse its line of credit by the entire amount involved in the transaction or by some reasonable percentage of that amount. In cases where cost plus a percentage of cost was authorized by the grantee, it would be appropriate to at least disallow that percentage.

In any case, it is important to work with the grantee in an effort to resolve the finding on a voluntary basis, through such actions as mutually agreed upon changes in management procedures or reimbursement by the grantee of its line of credit. There are, of course, instances where efforts to resolve the finding with voluntary actions are unsuccessful. In such cases, the Regional Office should recommend to Headquarters a restriction on the grantee's use of funds or a grant reduction. Any finding has the potential to become the subject of HUD funding sanctions requiring an administrative hearing or litigation. Thus, in each instance where a finding is made, sufficient information must be maintained in the grantee's official file to identify, support, and document all actions which have taken place.

I hope you find this information useful. If you have any questions concerning this guidance, please contact the Entitlement Communities Division at FTS: 458-1577.

cc: Linda Marston, SC