

CHAPTER 4. ETHICS IN PUBLIC CONTRACTING

4.1 General

Ethical standards apply not only to PHA employees and Contracting Officers but to others with a vested interest in PHA contracts such as members of the Board of Commissioners, other officials and agents of the authority, and contractors with whom the PHA does business.

This chapter explains the specific ethical requirements for PHA contracting 24 CFR 85.36 (b)(3).

4.2 Principles

Members of the Board of Commissioners, PHA employees, and any others serving in an official position or acting as an agent of the PHA (hereafter referred to as employees, officers, or agents) must discharge their duties impartially to ensure fair competitive access to procurement opportunities by responsible contractors. Moreover, employees, officers, and agents should conduct themselves in such a manner as to foster the public's confidence in the integrity of the PHA procurement organization and process. Any attempt to realize personal gain through PHA employment or to serve as an officer or agent of the PHA through actions inconsistent with the proper discharge of duties is a breach of public trust.

4.3 Requirement for a Written Code of Standards (24 CFR 85.36(b)(3))

PHAs must maintain a written code of standards governing the performance of their employees engaged in the award and administration of contracts. These standards shall be included in the PHA's procurement policy.

4.4 Conflicts of Interest (24 CFR 85.36(b)(3) and Section 19 of the ACC)

PHAs must observe the following conflict of interest prohibitions.

- A. No PHA employee, officer, or agent shall participate in the selection, award or administration of a contract supported by Federal funds if a conflict of interest, financial or otherwise, real or apparent, would be involved. Such a conflict would arise when the employee, officer or agent, any member of his or her immediate family; his or her partner; or an organization which employs or is about to employ any of the above, has a financial or other interest in the firm selected for the award.
- B. In addition to any other applicable conflict of interest requirements, neither the PHA nor any of its contractors or their subcontractors may enter into any contract, subcontract, or arrangement in connection with a project under the ACC in which any of the following classes of people have an interest, direct or indirect, during his or her tenure or for one year thereafter:
 1. Any present or former member or officer of the governing body of the PHA, or any member of the officer's immediate family. There shall be excepted from this prohibition any present or former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the resident corporation, the PHA or a business entity.

2. Any employee of the PHA who formulates policy or who influences decisions with respect to the project(s), or any member of the employee's immediate family, or the employee's partner.
 3. Any public official, member of the local governing body, or State or local legislator, or any member of such individuals' immediate family, who exercises functions or responsibilities with respect to the project(s) of the PHA.
(Note: For additional important provisions see Section 19 of the ACC)
- C. No present or former PHA employee, officer, or agent shall engage in selling or attempting to sell supplies, services, or construction to the PHA for one year following the date such employment ceased (see Sections 515 of the old ACC, form HUD-53011, dated 11/69, and Section 19 of the new ACC, form HUD-53012A , dated 7/95). The term "sell" means signing a bid or proposal, negotiating a contract, contacting any PHA employee, officer, or agent for the purpose of obtaining, negotiating, or discussing changes in specifications, price, cost allowances, or other terms of a contract; settling contract disputes; or any other liaison activity with a view toward the ultimate consummation of a sale, although the actual contract is negotiated by another person.

4.5 Gratuities, Kickbacks, and Use of Confidential Information

PHA solicitations and contracts above the Federal small purchase threshold shall include clauses advising prospective contractors of the prohibitions against gratuities and kickbacks (24 CFR 85.36(i)(4)). These rules are designed to protect the integrity of the procurement system and to ensure that contracts are awarded fairly, based on merit, without improper influence.

- A. **Gratuities (24 CFR 85.36(b)(3) and Section 19 of the ACC).** PHA officers, current employees, former employees within one year of employment, or agents shall neither solicit, accept, or agree to accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. PHAs may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. These rules shall be incorporated in the PHA's Procurement Policy.
- B. **Kickbacks and Anticompetitive Practices.** It is a breach of ethical conduct and prohibited for any payment, gratuity, or offer of employment to be made by, or on behalf of, a contractor or subcontractor under contract to the prime contractor, higher tier subcontractor, or any person associated therewith as an inducement for the award of a subcontractor order.

The Contracting Officer shall report to the Executive Director, the HUD Field Office, and the appropriate State and local officials any suspected anticompetitive practices by contractors.

- C. **Use of Confidential Information.** Disclosure of confidential information to any person not authorized by the Contracting Officer to receive such information shall be a breach of the ethical standards. Confidential information includes but is not necessarily limited to: the contents of a bid (prior to bid opening) or proposal (prior to contract award using competitive proposals), names of individuals or firms that submitted bids (prior to bid opening) or proposals (prior to contract award); PHA-generated information related to a procurement (including PHA cost estimates, contractor selection and evaluation plans, specifications [before solicitation is issued]); and any other information the disclosure of which would have a direct bearing upon the contract award or the competitive process. It is a breach of ethical conduct for any current or former employee, officer, or agent to knowingly use

confidential information for actual or anticipated personal gain or for actual or anticipated personal gain of any other person.

4.6 Prohibition Against Contingent Fees (24 CFR 85.36(c) and (24 CFR 85.36(b)(8))

It is a breach of ethical conduct for a person to be retained to solicit or secure a PHA contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for the retention of bona fide employees or a bona fide agency established for the purpose of securing business. This prohibition includes the employment of former PHA officials and employees on a contingency basis to obtain contracts with the PHA by a business seeking PHA contracts. Many States also have specific laws against contingent fees.

4.7 Sanctions (24 CFR 85.36(b)(11) and (12))

The Executive Director and the Board of Commissioners are responsible for establishing sanctions for violation of the ethical standards. As stated previously, many States have passed laws governing the conduct of officials involved in procurement. All such laws shall be enforced by the Executive Director and, in cases where the State or local government has no such rules, appropriate sanctions for violation of the standards of conduct in this Chapter shall be published and imposed.

Civil and administrative remedies should be established for use whenever employees, officials, or agents breach ethical standards. References to State ethics laws, which should be consulted by the PHA in developing and administering sanctions for misconduct, should be included in the Procurement Policy. In addition, the PHA may impose any one or more of the following:

- Oral or written warnings or reprimands;
- Suspension with or without pay for specified period of time;
- Termination of employment; or
- Dismissal from the official or agency position.

The value of anything received by an employee or a non-employee in breach of the ethical standards shall be recoverable by the PHA either by confiscating the items or by charging the violator for any and all gratuities received. All procedures in this Chapter shall be in accordance with due process requirements and existing law. In addition, notice and an opportunity for a hearing shall be provided before imposing any suspension or termination of employment. Remedies against contractors may include suspension and/or debarment, as provided in Chapter 11, Contracts, Contract Clauses, and Contract Administration.

In the case of violations, HUD may exercise any available remedy under the ACC, the federal regulation and statutes, and grant agreements including the U.S. Housing Act of 1937 as amended, **24 CFR Parts 84 and 85**, and sections 17 and 19 of the ACC.

