

§ 963.5

§ 963.5 Definitions.

The terms *HUD* and *Public housing agency (PHA)* are defined in 24 CFR part 5.

Act. The U.S. Housing Act of 1937 (42 U.S.C. 1437).

Alternative procurement process. The alternative method of public housing contract award available to public housing agencies and eligible resident-owned businesses under the conditions set forth in this part.

Annual Contributions Contract (ACC). See definition in 24 CFR 968.105.

Certification. A written assertion based on supporting evidence, which shall be kept available for inspection by the Secretary, the Inspector General, and the public, which assertion shall be deemed to be accurate for purposes of this part, unless the Secretary determines otherwise after inspecting the evidence and providing due notice and opportunity for comment.

Contract or public housing contract. Any contract awarded by a PHA for services, supplies, or construction necessary for the development, operation, modernization, or maintenance of public housing.

Management officials. The individuals who possess the power to make the day-to-day, as well as major, decisions on matters of management, policy, and operations of the resident-owned business.

Principal. An owner, partner, director, or management official of the resident-owned business with the power and authority to represent the business and to execute contract, leases, agreements, and other documents on behalf of the business.

Public housing or public housing development. Any public housing development which is owned by a Public Housing Agency (PHA) and is receiving funds under an Annual Contribution Contract (ACC).

Public housing resident. Any individual who resides in public housing as a signatory on a public housing lease, or as a member of the family of the individual(s) who is the signatory on the public housing lease.

Resident-owned business. Any business concern which is owned and controlled by public housing residents. (The term "resident-owned business" includes

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sole proprietorships.) For purposes of this part, "owned and controlled" means a business:

(1) Which is at least 51 percent owned by one or more public housing residents; and

(2) Whose management and daily business operations are controlled by one or more such individuals.

All securities which constitute ownership or control of a corporation for purposes of establishing the business as a resident-owned business shall be held directly by the public housing residents. No securities held in trust, or by any guardian for a minor, shall be considered as held by the public housing resident in determining the ownership or control of a corporation.

[57 FR 20189, May 11, 1992, as amended at 61 FR 5215, Feb. 9, 1996]

Subpart B—Contracting With Resident-Owned Businesses

§ 963.10 Eligible resident-owned businesses.

To be eligible for the alternative procurement process provided by this part, a business must meet the following requirements, and must submit evidence to the PHA, in the form described below, or as the PHA may require, that shows how each requirement has been met.

(a) *Legally formed business.* The business shall submit certified copies of any State, county, or municipal licenses that may be required of the business to engage in the type of business activity for which it was formed. Where applicable (as for example, in the case of corporations), the business also shall submit a certified copy of its corporate charter or other organizational document that verifies that the business was properly formed in accordance with State law.

(b) *Resident-owned business.* The business shall submit a certification that it is a resident-owned business as defined by this part. The business shall disclose to the PHA all owners of the business, and each owner's percentage of ownership interest in the business. The business also shall disclose all individuals who possess the power to make

the day-to-day, as well as major, decisions on matters of management, policy, and operations (management officials). The business shall identify all owners and management officials who are not public housing residents, and shall disclose any relationship that these owners and officials may have to a business (resident- or non-resident-owned) engaged in the type of business activity with which the resident-owned business is engaged. For purposes of this part, "relationship" means employment by, or having an ownership interest in, a business. The business also shall submit such evidence as the PHA may require to verify that the owner or owners identified as public housing residents reside within public housing of the PHA.

(c) *Responsibility to complete contract.* The business shall submit evidence sufficient to demonstrate to the satisfaction of the PHA that the business has the ability to perform successfully under the terms and conditions of the proposed contract. Consideration will be given to various factors, including but not limited to those identified in 24 CFR 85.36(b)(8) and also to such matters as proof of completion of courses in business administration or financial management, and proof of job training or apprenticeship in the particular trade, business, profession, or occupation.

(d) *Limitation on alternative procurement contract awards.* The business shall submit a certification as to the number of contracts awarded, and the dollar amount of each contract award received, under the alternative procurement process provided by this part. A resident-owned business is not eligible to participate in the alternative procurement process provided by this part if the resident-owned business has received under this process one or more contracts with a total combined dollar value of \$1,000,000.

[57 FR 20189, May 11, 1992, as amended at 59 FR 33895, June 30, 1994]

§ 963.12 Alternative procurement process.

(a) *Method of procurement.* In contracting with resident-owned businesses, the PHA shall follow the applicable method of procurement as set

forth in 24 CFR 85.36(d), with solicitation limited to resident-owned businesses. Additionally, the PHA shall ensure that the method of procurement conforms to the procurement standards set forth in 24 CFR 85.36(b).

(b) *Contract awards.* Contracts awarded under this part shall be made only to resident-owned businesses that meet the requirements of §963.10, and that comply with such other requirements as may be required of a contractor under the particular procurement and the Department's regulations. An award shall not be made to the resident-owned business if the contract award exceeds the independent cost estimate required by 24 CFR 85.36(f), and the price normally paid for comparable supplies, services, or construction in the project area.

(c) *Contract requirements.* Any contract entered into between a PHA and a resident-owned business under this part shall comply with: the contract provisions of 24 CFR 85.36(i); the provisions of 24 CFR 85.36(h), 24 CFR 968.240(d) or 24 CFR 968.335(c)(1) governing bonding requirements, where applicable; and such other contract terms that may be applicable to the particular procurement under the Department's regulations. In addition to the recordkeeping requirements imposed by 24 CFR 85.36(i), the PHA also shall maintain records sufficient to detail the significant history of the procurement made under this part. These records will include, but are not necessarily limited to the following: The independent cost estimate and comparable price analysis as required by paragraph (b) of this section; the basis for contractor selection, including documentation concerning the eligibility of the selected resident-owned business under §963.10; and the basis for determining the reasonableness of the proposed contract price.

PART 964—TENANT PARTICIPATION AND TENANT OPPORTUNITIES IN PUBLIC HOUSING

Subpart A—General Provisions

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