

loan is part of a transaction that will ensure the continued operation of the project, until the original maturity date of the loan, in a manner that will provide rental housing for the elderly and handicapped on terms at least as advantageous to existing and future tenants as the terms required by the original Section 202 loan agreement and any other loan agreements entered into under other provisions of law.

§ 891.535 Requirements for awarding construction contracts.

(a) Awards shall be made only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed construction contract. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(b) Each Borrower is permitted to use either competitive bidding (formal advertising) in selecting a construction contractor or the negotiated non-competitive method of contract award under paragraph (c) of this section. In competitive bidding, sealed bids are publicly solicited and a firm, fixed-price contract is awarded (in accordance with the requirements of this paragraph (b)) to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price. Regardless of which method a Borrower uses, there should be an opportunity for minority owned and women owned businesses to be awarded a contract.

(1) Bids shall be solicited from an adequate number of known contractors a reasonable time prior to the date set forth for opening of bids. In addition, the invitation shall be publicly advertised.

(2) The invitation for bids shall specify:

- (i) The name of the Borrower;
- (ii) A brief description of the proposed project and the proposed construction contract;
- (iii) A preliminary estimate of cost;
- (iv) That bids will be received at a specified place until a specified time at which time and place all bids will be publicly opened;

(v) The location where the proposed forms of contract and bid documents, including plans and specifications, are on file and may be obtained on payment of a specified returnable deposit;

(vi) That a certified check or bank draft or satisfactory bid bond in the amount of 5 percent of the bid shall be submitted with the bid;

(vii) That the successful bidder will be required to provide assurance of completion in the form of a performance and payment bond or cash escrow; and

(viii) That the Borrower reserves the right to reject any or all bids and to waive any informality.

(3) The bid form, which must be submitted by all bidders, must specify:

- (i) The name of the project;
- (ii) The name and address of the bidder;

(iii) That the bidder proposes to furnish all labor, materials, equipment and services required to construct and complete the project, as described in the invitation for bids (including the contents of all documents on file), for a specified lump-sum price;

(iv) That the security specified in paragraph (b)(2)(vi) of this section accompanies the bid;

(v) The period after the bid opening during which the bid shall not be withdrawn without the consent of the Borrower;

(vi) That the bidder will, if notified of acceptance of such bid within a specified period after the opening, execute and deliver a contract in the prescribed form and furnish the required bond within ten days thereafter;

(vii) That the bidder acknowledges any amendments to the invitation for bids; and

(viii) That the bidder certifies that the bid is in strict accordance with all terms of the invitation for bids (including the contents of all documents on file) and that the bid is signed by a person authorized to bind the bidder.

(4) Bidding shall be open to all general contractors who furnish the security guaranteeing their bid, as described in paragraph (b)(2)(vi) of this section.

(5) All bids shall be opened publicly at the time and place stated in the invitation for bids, in the presence of the

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HUD Regional Administrator or his designee.

(6) A firm, fixed-price contract award shall be made by written notice to the responsible bidder whose bid, conforming to the invitation for bids, is lowest. The contract may provide for an incentive payment to the contractor for an early completion.

(c) A Sponsor or Borrower may award a negotiated, noncompetitive construction contract.

§ 891.540 Loan disbursement procedures.

(a) Disbursements of loan proceeds shall be made directly by HUD to or for the account of the Borrower and may be made through an approved lender, mortgage servicer, title insurance company, or other agent satisfactory to the Borrower and HUD.

(b) All disbursements to the Borrower shall be made on a periodic basis in an amount not to exceed the HUD-approved cost of portions of construction or rehabilitation work completed and in place (except as modified in paragraph (d) of this section), minus the appropriate holdback, as determined by the field office.

(c) Requisitions for loan disbursements shall be submitted by the Borrower on forms to be prescribed by the Assistant Secretary and shall be accompanied by such additional information as the field office may require in order to approve loan disbursements under subpart E of this part, including but not limited to evidence of compliance with the Davis-Bacon Act, Department of Labor regulations, all applicable zoning, building, and other governmental requirements, and such evidence of continued priority of the mortgage of the Borrower as the Assistant Secretary may prescribe.

(d) In loan disbursements for building components stored off-site, the term *building component* shall mean any manufactured or preassembled part of a structure as defined by HUD and that the Assistant Secretary has designated for off-site storage because it is of such size or weight that storage of the components required for timely construction progress at the construction site is impractical, or weather damage or other adverse conditions prevailing at

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the construction site would make storage at the site impractical or unduly costly. Each building component must be specifically identified for incorporation into the property as provided under paragraph (d)(1)(ii) of this section.

(1) *Storage.* (i) A loan disbursement may be made for up to 90 percent of the invoice value (to exclude costs of transportation and storage) of the building components stored off-site if the components are stored at a location approved by HUD.

(ii) Each building component shall be adequately marked so as to be readily identifiable in the inventory of the off-site location. It shall be kept together with all other building components of the same manufacturer intended for use in the same project for which loan disbursements have been made and separate and apart from similar units not for use in the project.

(iii) Storage costs, if any, shall be borne the general contractor.

(2) *Responsibility for transportation, storage and insurance of off-site building components.* The general contractor of the project shall have the responsibility for:

(i) Insuring the components in the name of the Borrower while in transit and storage; and

(ii) Delivering or contracting for the delivery of the components to the storage area and to the construction site, including payment of freight.

(3) *Loan disbursements.* (i) Before a loan disbursement for a building component stored off-site is made, the Borrower shall:

(A) Obtain a bill of sale for the component;

(B) Provide HUD with a security agreement pledged by a first lien on the building components with the exception of such other liens or encumbrances as may be approved by HUD; and

(C) File a financing statement in accordance with the Uniform Commercial Code.

(ii) Before each loan disbursement for building components stored off-site is made the manufacturer and the general contractor shall certify to HUD that the components, in their intended use,