

(b) *Procedure in the event of a conflict between requirements.* In the event of a conflict between a requirement contained in this subpart and an applicable requirement set forth in subparts A through E of this part, the requirements of this subpart shall apply, unless HUD otherwise so determines in writing.

(c) *HUD approval.* For purposes of this subpart only, any action or approval that is required to be taken or provided by HUD or by the HUD field office, pursuant to a requirement set forth in subparts A through F of this part, shall be construed to mean that HUD Headquarters shall take such action or provide such approval, unless the field office is authorized in writing by Headquarters to carry out a specific function under this subpart.

(d) *Applicability of requirements pursuant to 24 CFR part 85.* The requirements of 24 CFR part 85 are applicable to this subpart, subject to the following two provisos:

(1) A PHA may select a partner using competitive proposal procedures for qualifications-based procurement (subject to negotiation of fair and reasonable compensation, including TDC and other applicable cost limitations);

(2) An owner entity (which, as a private entity, would normally not be subject to part 24 CFR part 85) shall be required to comply with 24 CFR part 85 if HUD determines that the PHA or PHA instrumentality exercises significant functions within the owner entity with respect to managing the development of the proposed units. HUD may, on a case-by-case basis, exempt such an owner entity from the need to comply with 24 CFR part 85 if it determines that the owner entity has developed an acceptable alternative procurement plan.

[61 FR 19714, May 2, 1996, as amended at 61 FR 38022, July 22, 1996]

#### § 941.604 Definitions.

In addition to the definitions set forth in § 941.602(a)(1), the following definitions are applicable to this subpart:

*Development.* A housing facility consisting of public housing units, and that may also consist of non-public housing units, that has been developed,

or that will be developed, using mixed-finance strategies under this subpart.

*Mixed-finance.* The combined use of publicly and privately financed sources of funds for the development of public housing units under this subpart.

*Owner Entity.* The entity that will own the public housing units, if the PHA holds less than one hundred percent of the ownership interest; or the lessee under a ground lease from the PHA. The owner entity may be a partnership that includes the PHA.

*Participating party.* Any person, firm, corporation, or public or private entity that:

(1) Agrees to provide financial or other resources to carry out the approved proposal, or specified activities contained in the proposal; or

(2) Otherwise participates in the development and/or operation of the public housing units and will receive funds derived from HUD with respect to such participation. The term “participating party” includes an owner entity or partner.

*Partner.* A third party entity with whom the PHA has entered into a partnership or other contractual arrangement to provide for the mixed-finance development of public housing units pursuant to this subpart, and that has primary responsibility with the PHA for the development of the housing units under the terms of the approved proposal.

*Proposal.* For purposes of this subpart only, the term “proposal” means a detailed PHA submission of information under § 941.606.

*Public Housing Agency (PHA).* Any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing under this part. For purposes of this subpart, the term “PHA” also encompasses any agency or instrumentality of the PHA.

*Public housing unit.* A unit that is eligible to receive operating subsidy pursuant to section 9 of the Act (42 U.S.C. 1437g).

#### § 941.606 Proposal.

Each proposal shall be prepared in the form prescribed by HUD and shall