

of HUD's estimated date of receipt of the PHA's proposal. The local government's response must state that the comments are to be considered its only response under 24 CFR part 791, subpart C. A copy of the solicitation letter must be included in the PHA's proposal.

(m) *New construction.* If a proposal involves new construction, the PHA must comply with section 6(h) of the Act (42 U.S.C. 1437d). This may be accomplished by the PHA's submission of a comparison of the cost of new construction in the neighborhood where the housing is proposed to be constructed and the cost of acquisition of existing housing (with or without rehabilitation) in the same neighborhood (including estimated costs of lead-based paint activities). Alternatively, the PHA may submit a certification, accompanied by supporting documentation, that there is insufficient existing housing in the neighborhood to develop public housing through acquisition.

(n)(1) *Certifications and assurances.* The PHA shall submit, as part of its proposal, certifications and assurances warranting that it:

(i) Has the legal authority under State and local law to develop public housing units through the establishment or selection of an owner entity, and to enter into all agreements and provide all assurances required under this subpart. In addition, the PHA shall warrant that it has the legal authority necessary to enter into any proposed partnership and to fulfill its obligations as a partner thereunder, and that it has obtained all necessary approvals for this purpose;

(ii) Will use an open and competitive process to select the partner and/or the owner entity and shall ensure that there is no conflict of interest involved in the PHA's selection of the partner and/or owner entity to develop and operate the proposed public housing units. In addition, the PHA shall ensure that:

(A) Any selected partner and/or owner entity complies with all applicable State and local procurement and conflict of interest requirements with respect to its selection of entities to assist in the development, and uses a

competitive process consistent with the requirements set forth in this subpart; and

(B) If the partner and/or owner entity (or any other entity with an identity of interests with such parties) wants to serve as the general contractor for the project or development, it may award itself the construction contract only if it can demonstrate to HUD's satisfaction that its bid is the lowest bid submitted in response to a public request for bids;

(iii) Will be responsible to HUD for ensuring that the public housing units are developed and operated in accordance with all applicable public housing requirements, including the ACC, and all pertinent statutory, regulatory, and executive order requirements, as those requirements may be amended from time to time. The PHA must also warrant that it will provide for a mechanism to assure, to HUD's satisfaction, that the public housing units will remain available for use by low-income families for the maximum period required by law. In addition, the PHA must warrant that any agreement providing for the management of the public housing units by an entity other than the PHA shall require that the units be operated in accordance with all applicable requirements under this subpart for the full term of any low-income use restrictions.

(2) The PHA shall submit a certification of previous participation in accordance with procedures set forth in 24 CFR part 200, subpart H, and shall ensure that a similar certification is submitted to HUD by the participating parties.

[61 FR 19714, May 2, 1996, as amended at 64 FR 50228, Sept. 15, 1999]

EFFECTIVE DATE NOTE: At 61 FR 19715, May 2, 1996, § 941.606 was added. This section contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

**§ 941.608 Technical processing and approval.**

(a) *Initial screening.* HUD shall perform an initial screening to determine that all documentation required as part of the proposal under § 941.606 has been submitted. HUD will advise the

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PHA of any deficiencies in the proposal and indicate that additional information will be accepted if it is received by a specified date.

(b) *Technical processing.* Upon determining that a proposal is acceptable for technical processing, HUD will evaluate the proposal to determine:

(1) Whether the PHA has the legal authority necessary to develop public housing units through the establishment of an owner entity and the use of mixed-finance strategies in accordance with this subpart;

(2) Whether the proposed sources and uses of funds set forth in the proposal are eligible and reasonable, and whether HUD's preliminary assessment of the financing and other documentation establishes to HUD's satisfaction that the mixed-finance development is viable and is structured so as to adequately protect the Federal investment of funds in the development. For this purpose, HUD will consider (among other factors) the PHA's proposed methodology for allocating operating subsidies on behalf of the public housing units; the projected revenues to be generated by any non-public housing units in a mixed-finance development; and the 10-year operating pro forma and other information contained in the proposal;

(3) If applicable, whether the public housing units in the proposed development will be comparable in size, location, external appearance and distribution within the development to the non-public housing units;

(4) If public housing development funds are to be used to pay for more than the pro rata cost of common area improvements, whether the proposal ensures that:

(i) On a per unit basis (taking into consideration the number of public housing units for which funds have been reserved) the PHA will not exceed TDC limits; and

(ii) Any common area improvements will benefit all residents of the development;

(5) Whether the proposal complies with all program requirements including, if applicable, any comments received from the unit of general local government pursuant to section 213 of the Housing and Community Develop-

ment Act of 1974 (42 U.S.C. 1439) (see 24 CFR part 791, subpart C); and

(6) Whether the proposal is approvable following completion by HUD of an environmental review in accordance with the requirements of 24 CFR part 50.

(c) *Proposal approval.* HUD shall send a notification letter to the PHA stating that the proposal has been approved or disapproved. For approved proposals, the letter shall indicate the approved total development cost of the public housing units in the development. HUD will also send to the PHA for execution an ACC amendment and/or a grant agreement. If the PHA has already executed a front-end ACC amendment, HUD will send to the PHA for execution a special ACC amendment for the mixed-finance development (and/or a grant agreement). The PHA shall execute these documents and return them to HUD for execution.

**§941.610 Evidentiary materials and other documents.**

(a) *Submission of documents.* As a condition of the release of grant funds under §941.612, the PHA shall submit to HUD, within the timeframe prescribed by HUD, evidentiary materials and other documentation, as more fully set forth in the special mixed-finance amendment to the ACC (and/or grant agreement). Such materials and documentation shall include, but shall not be limited to:

(1) A copy of executed development-related contracts entered into by the PHA or owner entity with respect to the development, and the PHA-executed ACC amendment or special mixed-finance amendment to the ACC (and/or grant agreement);

(2) Agreements that are necessary to implement the proposal and to ensure that all requirements of this subpart are satisfied. Such agreements must be submitted to HUD for review and approval and shall include, but shall not be limited to:

(i) A deed restriction, covenant running with the land, ground lease, or other arrangement of public record, that will assure to HUD's satisfaction that the public housing units will be available for use by eligible low-income