

(b) The lead agency must not be a PHA that is designated as a “troubled PHA” by HUD, that has been determined by HUD to fail the civil rights compliance threshold for new funding, or that has had a PHAS designation withheld for civil rights or other reasons. The lead agency is designated to receive HUD program payments on behalf of participating PHAs, to administer HUD requirements for administration of the funds, and to apply the funds in accordance with the consortium agreement and HUD regulations and requirements.

**§ 943.124 What elements must a consortium agreement contain?**

(a) The consortium agreement among the participating PHAs governs the formation and operation of the consortium. The consortium agreement must be consistent with any payment agreements between the participating PHAs and HUD and must specify the following:

(1) The names of the participating PHAs and the program categories each PHA is including under the consortium agreement;

(2) The name of the lead agency;

(3) The functions to be performed by the lead agency and the other participating PHAs during the term of the consortium;

(4) The allocation of funds among participating PHAs and responsibility for administration of funds paid to the consortium; and

(5) The period of existence of the consortium and the terms under which a PHA may join or withdraw from the consortium before the end of that period. To provide for orderly transition, addition or withdrawal of a PHA and termination of the consortium must take effect on the anniversary of the consortium’s fiscal year.

(b) The agreement must acknowledge that the participating PHAs are subject to the joint PHA Plan submitted by the lead agency.

(c) The agreement must be signed by an authorized representative of each participating PHA.

**§ 943.126 What is the relationship between HUD and a consortium?**

HUD has a direct relationship with the consortium through the PHA Plan process and through one or more payment agreements, executed in a form prescribed by HUD, under which HUD and the participating PHAs agree that program funds will be paid to the lead agency on behalf of the participating PHAs. Such funds must be used in accordance with the consortium agreement, the joint PHA Plan and HUD regulations and requirements.

**§ 943.128 How does a consortium carry out planning and reporting functions?**

(a) During the term of the consortium agreement, the consortium must submit joint five-year Plans and joint Annual Plans for all participating PHAs, in accordance with part 903 of this chapter. HUD may prescribe methods of submission for consortia generally and where the consortium does not cover all program categories.

(b) The consortium must maintain records and submit reports to HUD, in accordance with HUD regulations and requirements, for all of the participating PHAs. All PHAs will be bound by Plans and reports submitted to HUD by the consortium for programs covered by the consortium.

(c) Each PHA must keep a copy of the consortium agreement on file for inspection. The consortium agreement must also be a supporting document to the joint PHA Plan.

**§ 943.130 What are the responsibilities of participating PHAs?**

(a) *Responsibilities, generally.* Despite participation in a consortium, each participating PHA remains responsible for its own obligations under its ACC with HUD. This means that the PHA has an obligation to assure that all program funds, including funds paid to the lead agency for administration by the consortium, are used in accordance with HUD regulations and requirements, and that the PHA program is administered in accordance with HUD regulations and requirements. Any breach of program requirements with respect to a program covered by the consortium agreement is a breach of

**§ 943.140**

the ACC with each of the participating PHAs, so each PHA is responsible for the performance of the consortium.

(b) *Applicability of independent audit and performance assessment system requirements to consortia.* Where the lead agency will manage substantially all program and activities of the consortium, HUD interprets financial accountability to rest with the consortium and thus HUD will apply independent audit and performance assessment requirements on a consortium-wide basis. Where the lead agency will not manage substantially all programs and activities of a consortium, the consortium shall indicate in its PHA Plan submission which PHAs have financial accountability for the programs. The determination of financial accountability shall be made in accordance with generally accepted accounting principles, as determined in consultation with an independent public accountant. In such situations, HUD will apply independent audit and performance assessment requirements consistent with that determination. With respect to any consortium, however, HUD may determine (based on a request from the consortium or other circumstances) to apply independent audit and performance requirements on a different basis where this would promote sound management.

**Subpart C—Subsidiaries, Affiliates, Joint Ventures in Public Housing**

**§ 943.140 What programs and activities are covered by this subpart?**

(a) This subpart applies to the provision of a PHA's public housing administrative and management functions, and to the provision (or arranging for the provision) of supportive and social services in connection with public housing. This subpart does not apply to activities of a PHA that are subject to the requirements of part 941, subpart F, of this title.

(b) For purposes of this subpart, the term "joint venture partner" means a participant (other than a PHA) in a joint venture, partnership, or other business arrangement or contract for services with a PHA.

(c) This part does not affect a PHA's authority to use joint ventures, as may

**24 CFR Ch. IX (4-1-06 Edition)**

be permitted under State law, when using non-1937 Act funds.

**§ 943.142 In what types of operating organizations may a PHA participate?**

(a) A PHA may create and operate a wholly owned or controlled subsidiary or other affiliate; may enter into joint ventures, partnerships, or other business arrangements with individuals, organizations, entities, or governmental units. A subsidiary or affiliate may be a nonprofit corporation. A subsidiary or affiliate may be an organization controlled by the same persons who serve on the governing board of the PHA or who are employees of the PHA.

(b) The purpose of any of these operating organizations would be to administer programs of the PHA.

**§ 943.144 What financial impact do operations of a subsidiary, affiliate, or joint venture have on a PHA?**

Income generated by subsidiaries, affiliates, or joint ventures formed under the authority of this subpart is to be used for low-income housing or to benefit the residents assisted by the PHA. This income will not cause a decrease in funding provided under the public housing program, except as otherwise provided under the Operating Fund and Capital Fund formulas.

**§ 943.146 What impact does the use of a subsidiary, affiliate, or joint venture have on financial accountability to HUD and the Federal government?**

None; the subsidiary, affiliate, or joint venture is subject to the same authority of HUD, HUD's Inspector General, and the Comptroller General to audit its conduct.

**§ 943.148 What procurement standards apply to PHAs selecting partners for a joint venture?**

(a) The requirements of part 85 of this title are applicable to this part, subject to paragraph (b) of this section, in connection with the PHA's public housing program.

(b) A PHA may use competitive proposal procedures for qualifications-based procurement (request for qualifications or "RFQ"), or may solicit a proposal from only one source ("sole