

§ 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

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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

source”) to select a joint venture partner to perform an administrative or management function of its public housing program or to provide or arrange to provide supportive or social services covered under this part, under the following circumstances:

(1) The proposed joint venture partner has under its control and will make available to the partnership substantial, unique and tangible resources or other benefits that would not otherwise be available to the PHA on the open market (*e.g.*, planning expertise, program experience, or financial or other resources). In this case, the PHA must maintain documentation to substantiate both the cost reasonableness of its selection of the proposed partner and the unique qualifications of the partner; or

(2) A resident group or a PHA subsidiary is willing and able to act as the PHA’s partner in performing administrative and management functions or to provide supportive or social services. This entity must comply with the requirements of part 84 of this title (if the entity is a nonprofit) or part 85 of this title (if the entity is a State or local government) with respect to its selection of the members of the team and the members must be paid on a cost-reimbursement basis only. The PHA must maintain documentation that indicates both the cost reasonableness of its selection of a resident group or PHA subsidiary and the ability of that group or subsidiary to act as the PHA’s partner under this provision.

§ 943.150 What procurement standards apply to a PHA’s joint venture partner?

(a) *General.* A joint venture partner is not a grantee or subgrantee and, accordingly, is not required to comply with part 84 or part 85 of this title in its procurement of goods and services under this part. The partner must comply with all applicable State and local procurement and conflict of interest requirements with respect to its selection of entities to assist in PHA program administration.

(b) *Exception.* If the joint venture partner is a subsidiary, affiliate, or identity of interest party of the PHA, it is subject to the requirements of

part 85 of this title. HUD may, on a case-by-case basis, exempt such a joint venture partner from the need to comply with requirements under part 85 of this title if HUD determines that the joint venture has developed an acceptable alternative procurement plan.

(c) *Contracting with identity-of-interest parties.* A joint venture partner may contract with an identity-of-interest party for goods or services, or a party specified in the selected bidder’s response to a RFP or RFQ (as applicable), without the need for further procurement if:

(1) The PHA can demonstrate that its original competitive selection of the partner clearly anticipated the later provision of such goods or services;

(2) Compensation of all identity-of-interest parties is structured to ensure there is no duplication of profit or expenses; and

(3) The PHA can demonstrate that its selection is reasonable based upon prevailing market costs and standards, and that the quality and timeliness of the goods or services is comparable to that available in the open market. For purposes of this paragraph (c), an “identity-of-interest party” means a party that is wholly owned or controlled by, or that is otherwise affiliated with, the partner or the PHA. The PHA may use an independent organization experienced in cost valuation to determine the cost reasonableness of the proposed contracts.

§ 943.151 What procurement standards apply to a joint venture itself?

(a) When the joint venture as a whole is controlled by the PHA or an identity of interest party of the PHA, the joint venture is subject to the requirements of part 85 of this title.

(b) If a joint venture is not controlled by the PHA or an identity of interest party of the PHA, then the rules that apply to the other partners apply. See § 943.150.