

§968.140

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

shall furnish a bid guarantee from each bidder equivalent to 5% of the bid price; and one of the following:

- (1) A performance and payment bond for 100 percent of the contract price; or
- (2) Separate performance and payment bonds, each for 50% or more of the contract price; or
- (3) A 20% cash escrow; or
- (4) a 25% irrevocable letter of credit.

(c) *Construction solicitations.* For CIAP only and notwithstanding 24 CFR 85.36(g), a PHA shall comply with HUD requirements to either:

(1) Where the estimated contract amount exceeds the HUD-established threshold, submit a complete construction solicitation for prior HUD approval before issuance; or

(2) Where the estimated contract amount does not exceed the HUD-established threshold, certify receipt of the required architect's/engineer's certification that the construction documents accurately reflect HUD-approved work and meet the modernization and energy conservation standards and that the construction solicitation is complete and includes all mandatory items.

(d) *Contract awards.* (1) For CIAP only, a PHA shall obtain HUD approval of the proposed award of a contract if the contract work is inconsistent with the originally approved modernization program or the procurement meets the criteria set forth in 24 CFR 85.36(g)(2)(i) through (iv). In all other instances, a PHA shall make the award without HUD approval after the PHA has certified that:

(i) The solicitation and award procedures were conducted in compliance with State or local laws and Federal requirements;

(ii) The award does not meet the criteria in 24 CFR 85.36(g)(2)(i) through (iv) for prior HUD approval; and

(iii) The contractor is not on the Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs;

(2) For CGP only, a PHA shall obtain HUD approval of the proposed award of a contract if the procurement meets the criteria set forth in 24 CFR 85.36(g)(2)(i) through (iv).

(e) *Contract modifications.* For CIAP only and notwithstanding 24 CFR

85.36(g), except in an emergency endangering life or property, a PHA shall comply with HUD requirements to either:

(1) Where the proposed contract modification exceeds the HUD-established threshold, submit the proposed modification for prior HUD approval before issuance; or

(2) Where the proposed contract modification does not exceed the HUD-established threshold, certify that the proposed modification is within the scope of the contract and that any additional costs are within the total HUD-approved CIAP budget amount.

(f) *Construction requirements.* Where indicated by poor performance, a PHA may be required to submit to HUD periodic progress reports and, for prior HUD approval, construction completion documents above a HUD-specified amount. For CGP only, a PHA is notified of additional construction requirements by a notice of deficiency or a corrective action order.

(g) *Reward for high performers.* For CIAP only, if a PHA is both an overall high performer and a modernization high performer under the Public Housing Management Assessment Program (PHMAP), HUD will not establish thresholds, and the PHA is not required to obtain prior HUD approval, under paragraphs (a), (c), and (e) of this section.

[61 FR 8741, Mar. 5, 1996]

§968.140 On-site inspections.

It is the responsibility of the PHA, not HUD, to provide, by contract or otherwise, adequate and competent supervisory and inspection personnel during modernization, whether work is performed by contract or force account labor and with or without the services of an architect/engineer, to ensure work quality and progress.

[58 FR 13938, Mar. 15, 1993. Redesignated at 61 FR 8741, Mar. 5, 1996]

§968.145 Fiscal closeout.

(a) *Actual modernization cost certificate (AMCC).* Upon expenditure by the PHA of all funds, or termination by HUD of the activities funded in a modernization program, a PHA shall submit the AMCC, in a form prescribed by HUD, to

HUD for review and approval for audit. After audit verification, HUD shall approve the AMCC.

(b) *Audit.* The audit shall follow the guidelines prescribed in 24 CFR part 44, Non-Federal Government Audit Requirements. If the pre-audit or post-audit AMCC indicates that there are excess funds, a PHA shall immediately remit the excess funds as directed by HUD. If the pre-audit or post-audit AMCC discloses unauthorized or ineligible expenditures, a PHA shall immediately take such corrective actions as HUD may direct.

[61 FR 8741, Mar. 5, 1996]

Subpart B—Comprehensive Improvement Assistance Program (For PHAs That Own or Operate Fewer Than 250 Units)

SOURCE: 61 FR 8741, Mar. 5, 1996, unless otherwise noted.

§ 968.205 Definitions.

In addition to the definitions in § 968.105, the following definitions apply to this subpart:

Emergency Modernization (CIAP). A type of modernization program for a development that is limited to physical work items of an emergency nature that poses an immediate threat to the health or safety of residents or is related to fire safety, and that must be corrected within one year of CIAP funding approval.

Management capability. A PHA has management capability if it is:

(1) Not designated as Troubled under part 901 of this chapter, Public Housing Management Assessment Program (PHMAP); or

(2) Designated as Troubled, but has a reasonable prospect of acquiring management capability through CIAP-funded management improvements and administrative support. A Troubled PHA is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the performance targets established in its memorandum of agreement or equivalent under § 901.140 of this chapter or has obtained alternative oversight of its management functions.

Modernization capability. A PHA has modernization capability if it is:

(1) Not designated as Modernization Troubled under part 901 of this chapter, PHMAP; or

(2) Designated as Modernization Troubled, but has a reasonable prospect of acquiring modernization capability through CIAP-funded management improvements and administrative support, such as hiring staff or contracting for assistance. A Modernization Troubled PHA is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the performance targets established in its memorandum of agreement or equivalent under § 901.140 of this chapter or has obtained alternative oversight of its modernization functions. Where a PHA does not have a funded modernization program in progress, the Field Office shall determine whether the PHA has a reasonable prospect of acquiring modernization capability through hiring staff or contracting for assistance.

Other Modernization (modernization other than emergency). A type of modernization program for a development that includes one or more physical work items, where HUD determines that the physical improvements are necessary and sufficient to extend substantially the useful life of the development, and/or one or more development specific or PHA-wide management work items (including planning costs), and/or lead-based paint activities.

Work item. Any separately identifiable unit of work constituting a part of a modernization program.

[61 FR 8741, Mar. 5, 1996, as amended at 64 FR 50229, Sept. 15, 1999]

§ 968.210 Procedures for obtaining approval of a modernization program.

(a) *HUD notification.* After modernization funds for a particular FFY become available, HUD will notify PHAs of the time frame for submission of the CIAP application and other pertinent information.

(b) *Distribution of funding.* HUD will distribute the available funding under this subpart to every eligible PHA that responds to the notice issued pursuant to paragraph (a) of this section based