

Department of Housing and Urban Development
Recovery Act Capital Fund Formula Grant
Frequently Asked Questions #2
As of May 15, 2009

PROCUREMENT

Q5: On a provision of the guidance related to procurement (Notice PIH 2009-12, item 2 on page 6), specifically, “any requirements relating to the procurement of goods and services arising under state and local laws and regulations shall not apply to Capital Fund Stimulus Grants” is not referring to construction contracts, correct? Our state has mandated four-part bidding requirements for construction contracts. Please clarify.

A5: Four part bidding requirements shall not apply to Capital Fund Stimulus Grants. PHAs are to use 24 CFR 85.36 for construction contracts.

Q6: Are you aware of any Federal statutes that would restrict to the use of local preferences for Recovery Act Formula Funds, Capital Funds, or Operating Funds?

A6: As noted in 24 CFR 85.36(c)(2), in state or local geographical preferences are prohibited unless permitted by a Federal statute. In the case of Capital Funds, there are no Federal statutes which would permit or encourage State or local geographical preferences. As such, they are not permitted.

Q7: We would like to get a clarification from you regarding using the same A&E services architect for the Recovery Act Formula Grant. This A&E firm is under contract with us for the next four years to work on the CFP Programs. They were selected by the competitive bidding process and by following the procurement policies. We would like to know whether we can use the same A&E firm for the Recovery Act Grant and without going through the bidding process again, because of the shortage of time. The work items selected to be in the Recovery Act Grant Annual Statement were included in the Five-Year Action Plan.

A7: Yes. Provided that the structure of the contract is such that the PHA is issuing specific tasks against the main contract, the PHA would be able to use this firm to complete work items requested after the obligation start date of the Recovery Act grant. The PHA will need to separately report costs incurred under this contract that are funded with Recovery Act funds.

Q8: From PIH Notice 2009-12 – Please confirm “requirements” definition. *State and Local: Any requirements relating to the procurement of goods and services arising under state and local laws and regulations shall not apply to Capital Fund Stimulus Grants. PHAs shall instead follow the Part 85 requirements.* For example, is this saying that if the state law is \$50,000 for small purchase threshold, PHAs will be allowed to go up to \$100,000 as long as they proceed to amend in writing a Capital Fund Stimulus Grant Procurement Policy?

A8: Yes. State small purchase thresholds are not considered a requirement as described in PIH Notice 2009-12.

Q9: From PIH Notice 2009-12 Section VI, Procurement, item 2: This section states that any state and local procurement requirements that conflict with 24 CFR Part 85 shall not apply to the use of Recovery Act funds. What is the legal citation regarding this federal override of state and local law?

A9: The Public Housing Capital Fund section under the Public and Indian Housing section of the Department of Housing and Urban Development section of Title XII of Division A of the Recovery Act (Public Law 111-5,) enacted February 17, 2009.

Q10: From PIH Notice 2009-12, Section VI, Procurement, item 5: This section provides that a PHA may use a non-competitive proposal to obligate and award Recovery Act funds if other methods are infeasible. Typically, a PHA using non-competitive proposal would be required to obtain prior HUD approval, however, this section of the notice implies that this is not the case: “No HUD pre-award review is required for noncompetitive proposals ...”. Is this intended to be a universally-applicable change to the procurement handbook standard that will apply whenever Recovery Act funds are used for procurement by non-competitive proposal by any PHA?

A10: Yes. PHAs are reminded that they must make available upon HUD's request any documents related to procurement activity as stated in 24 CFR 85.36(g). Some PHAs may be asked to submit documentation for pre-award reviews.

Q11: If the answer to the above question is "yes", what is the standard for documentation of the PHA determination that procurement by competitive method is not feasible?

A11: PHAs must record and document that they have attempted to procure by a competitive method first, and only then use a non-competitive proposal method. The only change to previous procedure is the elimination of HUD pre-award review and this change only applies to Recovery Act funds, unless HUD requests any documents related to procurement activity as stated in 24 CFR 85.36(g). Please refer to PIH Notice 2009-12, Section 5 Non-competitive Proposals and 24 CFR 85.36(d)(4) for process and documentation required for non-competitive proposals.

Q12: Section VI, Procurement, item 7. This section states that the "Buy America" provisions of the Recovery Act apply to ARRA Capital Funds. However, the relevant section of the Recovery Act (1605) refers to Recovery Act funds used for "public buildings and infrastructure". How does a PHA determine whether 1) they are buying material for a "public building", 2) whether a product or contract is likely to include iron, steel and/or manufactured goods subject to the restriction, and 3) whether such materials qualify as "produced in the US in accordance with this provision?"

A12: Product labels and descriptions shall be relied on. If in doubt, contact the manufacturer. For further information, see OMB Interim Final Guidance (2 CFR 176) published April 23, 2009 at 74 Federal Register 18449. (LINK)

Q13: Will the Buy American steel and metal provisions apply to manufactured items such as appliances, heat pumps, generators, etc. If so, what is the process to determine if they meet the standards and what documentation will be required?

A13: Yes. As stated above, and product labels and descriptions shall be relied on. If in doubt, contact the manufacturer.

Q14: What information does a PHA need to include in their contracts regarding the Buy American provision?

A14: PHAs shall follow Buy American requirements of section 1605 of the Recovery Act and use only iron, steel and manufactured goods produced in the United States in their projects. Contract language should reflect this requirement.

Q15: Does the requirements of Sec. 1605 (Buy American) apply to equipment expended from account 1410 (Administration)?

A15: Yes. The Buy American provision applies to all expenditures of the Recovery Act funds.

Q16: Does the Buy American provision extend to heating and cooling units?

A16: Yes. Manufactured goods must be manufactured in the United States, but there is no requirement with regard to the origin of components or subcomponents used in manufactured goods.

Q17: The PHA is interested in purchasing water heaters that are assembled in the U.S. and all parts are manufactured in the U.S. except for the relief valve. Does this meet the Buy American provision?

A17: Yes. These requirements do not apply to iron or steel used as components or subcomponents of manufactured goods used in the project.

Q18: Where can I find additional information on the Buy American provision?

A18: HUD is working on issuing additional guidance on the Buy American provision. In the interim, please refer to OMB Interim Final Guidance "Requirements for Implementing Sections 1512, 1605, and 1606 of the American Recovery and Reinvestment Act of 2009 for Financial Assistance Awards published on April 23, 2009.