



September 28, 2022

The Honorable Marcia L. Fudge
Secretary, U.S. Department of Housing and
Urban Development
451 Seventh Street, SW
Washington, DC 20410

RE: REQUEST FOR INFORMATION MARKET RESEARCH
DRAFT SOLICITATION
Housing Assistance Payments (HAP) Contract Support Services (HAPSS)
(Formerly known as Performance-Based Contract Administrator (PBCA) Program)
SOLICITATION NO: 86614622R00001

Dear Secretary Fudge,

On behalf of its state housing finance agency (HFA) members, the National Council of State Housing Agencies (NCSHA)¹ urges you to withdraw or substantially revise the draft solicitation referenced above, which HUD proposes to procure contractors to provide Housing Assistance Payments (HAP) contract support services (HAPSS) to HUD and help it administer approximately 17,000 project-based rental assistance contracts.

This draft solicitation is deeply flawed and as a result poses significant risks to HUD-assisted properties and residents. No longer would each state have its own service provider. No longer would the entities that play this role in 33 states today, state HFAs, have a fair chance to compete for the opportunity to continue to do so. No longer would public housing agencies, such as state HFAs, that provide critical financing to properties whose residents rely on rental assistance be able to do so without damaging their competitive position in bidding to provide services.

Perhaps, if there were evidence that the current system was not delivering for residents, properties, and HUD, such a radical departure from an arrangement of 20-plus years would be worth considering. There is no such evidence. Perhaps, if there were any basis to believe that the more centralized, command-and-control regime the solicitation suggests would provide better services, program efficiencies, or taxpayer savings. There is no such basis – and in fact HUD's well documented staffing shortage, of which you have spoken, strongly suggests the opposite.

¹ NCSHA is a nonprofit, nonpartisan organization. None of NCSHA's activities related to federal legislation or regulation are funded by organizations that are prohibited by law from engaging in lobbying or related activities.

Even if the department is determined to further cut the administrative fees HUD pays to providers to deliver rental assistance services – which it has ample ability to do, and has done, already – the solicitation’s approach is deeply misguided.

HUD’s inspector general found that when the department tried to assume greater responsibility for some services in the southwest in 2011 – 2016, “HUD paid subsidies to property owners for nonexistent and unsupported tenants based on falsified, inaccurate, and unverified information...because when HUD suspended the reviews of the assisted properties, it removed a major tool used by the contract administrators to verify housing assistance payment subsidies.”²

As poorly conceived as the current solicitation is, we believe it can be revised to best serve HUD properties and residents, as well as the department itself, with the following changes (including the many technical changes proposed through the formal comment process):

Eliminate Unreasonable Conflict of Interest Provision

HUD should remove or modify the draft solicitation’s provision that states entities, including public agencies, which provide financing for or have an ownership interest in properties with covered rental assistance contracts have a conflict of interest making them generally ineligible for the contract administration work. Holding financing on the properties subject to the covered rental assistance increases the contract administrator’s effectiveness in several ways, including fostering greater familiarity with the properties and their owners and managers, adding leverage for enforcement of key management responsibilities, aligning key interests, and building relationships with key stakeholders—including residents and HUD.

The language in the draft solicitation would prevent HFAs and other public housing authorities from even being able to compete to provide services, despite their twenty-plus year track record of administering rental assistance contracts on properties they have financed.

The House Financial Services Committee has also referenced financing as central to the PBCA value proposition, saying PBCAs, “play a critical role in the oversight and preservation of PBRA properties by conducting on-sight management reviews, protecting and engaging tenants, ensuring properties are well-maintained and in decent physical condition, *and leveraging affordable housing resources to recapitalize properties*” (emphasis supplied).³

² Inspector General of the U.S. Department of Housing and Urban Development, “Multifamily Section 8 Project Based Rental Assistance,” February 26, 2020.

³ United State House of Representatives Committee on Financial Services Memorandum, “Safe and Decent? Examining the Current State of Residents’ Health and Safety in HUD Housing,” November 15, 2019.

Allow Applicants to Administer Contracts in Individual States

HUD should allow potential contractors to bid for the work in individual states instead of requiring them to take on a region or sub-region. Consolidating the rental assistance contract administration duties into regions and sub-regions would render bidding for the work difficult for many HFAs, and impossible for some, because their state laws and administrative frameworks require them to operate within geographic limitations and do not allow them to conduct their operations or incur any potential financial liability outside their state borders.

The PBCA program has succeeded on a state-by-state platform, with individual PBCAs meeting—and usually exceeding—performance expectations in large part because of familiarity with their states’ particular laws, regulations, and governance. State entities also possess valuable knowledge of local markets; cultivate strong working relationships with tenants, communities, owners, managers, and other housing policy-makers and stakeholders within their states; and have access to other housing resources, including many they administer themselves, they can bring to bear to support their PBCA portfolios.

Moving the PBCA program away from the state-by-state framework would lead to confusion among stakeholders and increased costs to administer and oversee the program. This move would also adversely impact the ability to preserve and improve properties with Section 8 contracts.

For current owners or potential buyers, state HFA expertise in the intricacies of HAP contracts and potential financing options makes them extremely effective in providing assistance to preserve HAP contracts, facilitating transfers of properties to preservation buyers, and developing plans to address capital needs. Finally, state HFAs are in a unique position to bring together collaborative working groups composed of federal, state, and local public agencies, intermediaries, and owners to preserve specific properties and larger portfolios.

Recent Senate Appropriations report language directs HUD to ensure the solicitation does not impede HFAs from bidding on state-based contracts. HUD’s proposal wildly diverges from this principle. In addition, small business contracting requirements and other stipulations will disadvantage state entities designed to do the full scope of work themselves and result in fragmentation of work better administered in a more holistic manner.

Contract with PHAs and HFAs to Continue the Long-Standing and Successful Partnerships Between HUD and PHAs/HFAs

HUD should establish a requirement or a strong preference to contract with PHAs, including HFAs, to provide the HAP contract support services. The National Housing Act of 1937 authorizes HUD to enter into rental assistance contracts with public housing agencies (PHAs), including state Housing Finance Agencies (HFAs). Compliance with this provision is consistent with federal procurement requirements. Federal agencies are exempt from full and open competition requirements in cases where

limiting eligibility is otherwise expressly authorized by statute, as it is for project-based rental assistance contracts under the Housing Act.

Additionally, contracting with public-purpose, mission-driven entities better meets HUD's goals because these organizations share HUD's affordable housing priorities. Limiting applicants to PHAs and HFAs is reasonable and appropriate to ensure HUD's partners are driven by the same objectives and interests as HUD. Contracting with them likely will also result in less intensive HUD training and capacity-building requirements and minimize HUD's supervisory responsibilities. Because of their mission, HFAs take proactive approaches to reduce non-compliance and leverage their affordable housing resources to improve and preserve properties in their states, resulting in direct federal budget savings.

We recommend HUD eliminate specifications that marginalize PHAs and HFAs and make it more difficult for them to compete, including the past performance and small business subcontracting requirements. These requirements are ill-advised because of their impact on public entities attempting to compete for the work and unnecessary under federal procurement law.

Contracting with PHAs and HFAs will result in the best possible program outcomes. HFAs are familiar with their states' laws, regulations, and governance. They possess valuable knowledge of local markets, maintain strong working relationships with residents, communities, owners, managers, and other housing policymakers and stakeholders. HFAs have access to other housing resources, including many they administer themselves that can be used to support their PBCA portfolios. The results produced by statewide experience, mission commitment, financing tools, and leveraging capabilities cannot be matched by a regional, non-state entity that would be engaged on a narrowly written procurement.

HFAs use excess contract administration revenue to develop new affordable housing, preserve existing affordable housing, fund affordable housing programs, and assist the most vulnerable members of their respective communities. Fees provided to non-public entities will flow to private stakeholders and likely not benefit the residents of the states where the properties are located. This would be an unfortunate waste of government funds.

Delegate More Tasks to Avoid Increased HUD Workload and Bureaucracy

Under the proposed new system, HUD would take over many contract administration tasks PBCAs currently handle and would be required to make a steady stream of time-sensitive and technical decisions. These tasks would increase workload on an already-stretched staff and increase bureaucratic steps with limited benefit or justification. The draft solicitation includes many layers of HUD review and approval of the contractor's work product, sometimes at multiple points within completion of a process, making the system HUD proposes more costly and complicated, less efficient, more likely to bog down at key points, and less responsive to tenants than the current system.

HUD should assign more of these tasks and provide more flexibility and decision-making authority to its contractors. This will allow HUD staff to focus on oversight and monitoring, as under the current system.

We would welcome the opportunity to discuss these concerns and recommendations with you in person. Please let us know if we could schedule a meeting.

Sincerely,



Stockton Williams
Executive Director

cc: Jimmy Fleming-Scott, Chief Procurement Officer
Julia Gordon, Federal Housing Commissioner
Toby Halliday, Office of Asset Management and Portfolio Oversight Director
Ethan Handleman, Deputy Assistant Secretary for Multifamily Housing
Belinda Koros, Assisted Housing Oversight Division Director
Nathan Schultz, Acting Chief of Staff to the Federal Housing Commissioner