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April 27, 2012

Ms. Marie Head
Deputy Assistant Secretary
Multifamily Housing
U.S. Department of Housing and Urban Development
451 Seventh Street S.W.
Washington, DC 20410

Dear Deputy Assistant Secretary Head:

I am writing to express NAHMA's concerns regarding HUD's Fiscal Year (FY) 2012 Notice of Funding Availability (NOFA) for the Performance-Based Contract Administrator (PBCA) Program. As always, NAHMA remains neutral on the question of which organizations should win the PBCA rebid contracts. Nevertheless, we are concerned about the NOFA's restrictions on competition for out-of-state applicants.

In our previous communications, NAHMA strongly urged HUD to provide a level playing field for all PBCA applicants. We believe a level, competitive playing field is essential to ensure that HUD receives value-driven proposals and that owners and managers receive a higher level of customer service. Specifically, we urged HUD not to include any defined preferences in the NOFA except for consideration of the applicants':

- Ability to perform the contract administration responsibilities;
- Strong record of customer service;
- Knowledge of HUD programs; and ideally,
- Knowledge about standard industry operating procedures in property management.

For these reasons, we are very concerned about preferential treatment the NOFA offers to bids on a PBCA contract from applicants headquartered in the state covered by the contract. For each of the 42 states and U.S. territories subject to the PBCA rebid, the NOFA is open to applicants which are "Public Housing Agencies" as defined by the United States Housing Act of 1937. In fact, we are unaware of any previous restriction on serving as a PBCA based **solely** on an applicant's status as an out-of-state entity, provided that the applicant satisfied the definition of a "public housing agency" in the U.S. Housing Act of 1937. It is significant that the NOFA's restriction on bids from out-of-state PHAs is not the result of any statutory changes, court decisions, formal rule-making or any "good government initiatives" such as improving services or saving taxpayer dollars.

Although the NOFA explicitly acknowledges PHAs are eligible to bid on contracts outside their own states, it essentially discriminates between PHAs based on their location. The NOFA states:

PROTECTING THE INTERESTS OF AFFORDABLE HOUSING PROPERTY MANAGERS AND OWNERS

“HUD believes that nothing in the 1937 Act prohibits an instrumentality PHA that is authorized to engage in or assist in the development or operation of public housing within the meaning of section 3(b)(6)(A) of the 1937 Act from acting as a PHA in a foreign State. However, HUD will consider applications from out-of-State applicants only for States for which HUD does not receive an application from a legally qualified in-State applicant. Receipt by HUD of an application from a legally qualified in-State applicant will result in the rejection of any applications that HUD receives from an out-of-State applicant for that state.”

This shift in policy is particularly surprising given the history of the program. In late 2009, HUD’s Office of the Inspector General (OIG) issued a report which concluded that the Department did not obtain the best value through its PBCA contracts. (See “HUD’s Performance Based Contract Assistance Program Was Not Cost Effective,” OIG Report No. 2010-LA-001 November 12, 2009, which is available at <http://www.hudoig.gov/pdf/Internal/2009/ig1090001.pdf>). HUD’s response to the OIG, which is incorporated in the report, stated its plan to address these failings included saving money by re-competing the PBCA program as follows:

- Obtaining “market driven” savings through **competition** (emphasis added);
- Increasing the number of applicants; and
- Having PBCAs be operational in various geographic service areas to obtain cost efficiencies with economies of scale.

The Department now appears to be taking the opposite approach by limiting competition. As currently written, the NOFA will effectively result in sole-source contracting in certain states. The NOFA arbitrarily rejects out-of-state bids in favor of in-state PHAs. Likewise, when local housing authorities do not have state-wide jurisdiction, the state housing finance agency remains the sole “in-state qualified bidder.” If HUD intends to achieve significant cost savings in the rebid, the Department should seriously reconsider its decision to limit competition through in-state applicant preferences. Such artificial selection criteria would likely reduce any cost savings in the PBCA program which the rebid was supposed to achieve without improving the quality of services provided.

It is essential for the Department to arrive at a fair, transparent and final resolution of the PBCA competition. NAHMA strongly urges HUD to amend this NOFA by removing arbitrary selection criteria which limit competition, and work with its industry partners to ensure that all qualified PBCA applicants are able to compete on a level playing field.

Sincerely,



Kris Cook
Executive Director

cc: Kerry Hickman, Director, Office of Housing Assistance and Contract Administration Oversight