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August 31, 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,

On behalf of the National Affordable Housing Management Association (NAHMA), I am writing to express NAHMA's position on the Government Accountability Office's (GAO) decision to sustain the protests filed against the Fiscal Year (FY) 2012 Notice of Funding Availability (NOFA) for the Performance-Based Contract Administrator (PBCA) Program. We strongly urge HUD to adopt the GAO's recommendations, and to reinstate the Management and Occupancy Reviews (MORs) in the incumbent PBCA contract extensions.

During the application period of the PBCA NOFA, a number of protests were filed with the GAO against HUD's use of the NOFA as the award mechanism for the PBCA contracts. On August 15, 2012, the GAO sustained the protests. The Office determined that HUD's use of a NOFA to award the PBCA contracts to administer the project-based Section 8 HAP contracts "was improper because the 'principal purpose' of the NOFA was to obtain contract administration services for HUD's direct benefit and use, which should be acquired under a procurement instrument that results in the award of a contract."

To that end, GAO recommended that HUD cancel the NOFA and award the PBCA contracts through a procurement instrument. GAO also recommended that HUD "should address the other concerns expressed by the protesters to the extent appropriate." Finally, the Office recommended that HUD reimburse the protesters for their costs of filing and pursuing the protests. Protestors certified claims for costs—which must detail the time expended and costs incurred—must be submitted to HUD within 60 days of the decision.

NAHMA strongly urges the Department to adopt the GAO's recommendations and to award future PBCA contracts through a procurement instrument. NAHMA is very concerned that this rebid process has been overshadowed by controversy, which has thrown the entire transition into uncertainty. We do not believe it is in the best interest of the Department, property owners and management agents (O/A), residents, or the PBCA applicants to further delay the resolution of this matter.

We also believe that HUD should address the application fairness concerns raised in the protests. Although the NOFA explicitly stated that PHAs are eligible to bid on contracts outside their own states, it arbitrarily rejected out-of-state bids in favor of in-state PHAs. Likewise, when local housing authorities did not have state-wide jurisdiction, the state housing finance agency remained the sole "in-state qualified bidder" for the NOFA, effectively limiting applicant competition. NAHMA strongly encourages HUD to ensure the new PBCA contract process is both fair and transparent and that all qualified PBCA applicants are able to compete on a level playing field.

NAHMA is aware that HUD has exercised its option to renew the incumbent PBCA contracts for a third term, October 1 through December 31, 2012. This extension will ensure that project-based Section 8 properties are not burdened by late HAP payments, delayed special claims, or extra time spent filling information gaps for new PBCAs due to HUD's ongoing decisions related to the PBCA transition.

In addition, NAHMA strongly recommends that HUD resume the MORs for the 42 states that have not completed the PBCA transition as soon as possible. Ideally, HUD could achieve this goal by amending the incumbent PBCAs' contract extensions. Property owners and management agents may have to bear the burden of any unintended consequences if MORs continue to be suspended. Property managers spend considerable time to prepare for their scheduled MORs. We fear that property operations may be seriously disrupted when MORs do resume, particularly if HUD directs a high volume of MORs to be completed by an arbitrary deadline after the extended lull. Furthermore, the MOR is an extremely important tool that helps monitor the physical and financial status of the portfolio, as well as measure the effectiveness of HUD's project-based Section 8 management agents. The reviews provide assurances to policymakers, property owners, and investors that the project-based Section 8 portfolio is under sound management. The MORs help ensure that taxpayer dollars are being used in an effective and efficient manner, which is incredibly important considering the difficult budget environment currently facing the government.

Once MORs are rescheduled—either due to the completion of the PBCA transition or the reinstatement in incumbent PBCAs' contract extensions—NAHMA urges HUD to:

- Ensure that they are scheduled over a reasonable period of time which allows O/As to adequately prepare for the review;
- Ensure that the MORs are conducted by reviewers who:
 - Are knowledgeable about:
 - Commonly accepted on-site property management practices;
 - HUD regulations, policies and procedures applicable to project-based Section 8 housing; and
 - Have demonstrated a strong commitment to quality customer service in existing housing-related operations.

Finally, NAHMA members are directly affected by HUD's PBCA selections. For this reason, it is imperative that HUD select its new PBCAs based on their:

- Ability to perform the contract administration responsibilities;
- Knowledge of standard operating procedures in property management;
- Knowledge of HUD policies applicable to project-based Section 8 housing; and
- Commitment to quality customer service in existing housing-related operations.

We would also ask HUD to prohibit PBCAs from imposing additional regulatory requirements on owner/agents beyond what is required by HUD regulations.

As always, NAHMA continues to remain neutral on the question of which organizations should win the PBCA rebid contracts.

Please feel free to contact me if you have any questions regarding our comments. Thank you in advance for your consideration of our feedback.

Sincerely,



Kris Cook, CAE
Executive Director

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