

***Contract Administration: Your work ain't over  
when you sign a contract—it's just beginning***  
*Michael S. Gifford, C.P.M., CPSD 2010 ©*

**Instructor**  
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**What will we accomplish during this presentation?**

- A renewed commitment to conduct all housing agency (HA) procurement and contract activities in an open, fair, reasonable, justifiable and HUD-compliant manner.
- An ability to locate in the Handbooks and regulations what HUD wants and requires; hence, a better understanding of the applicable law(s).
- Be more prepared for a HUD/OIG audit.
- A renewed commitment to ensuing: "What we buy is what we get."
- Contract documents that better meet the needs of the HA and the contractor community (herein, contractor shall also mean supplier, vendor, consultant, etc.).
- Improved relationships with your Board, your ED/CEO, your clients (staff), your contractors, and the public at large.
- Learn and implement "Gifford's Gospels."

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**Gifford's Gospels**

- No. 1: "If it ain't written, it don't exist.
- No. 2: "There are no coincidences in life—everything happens for a reason."
- No. 3: "Whatever we do must be open, fair, reasonable and justified."
- No. 4: "Contractors are not our friends—they are our partners."
- No. 5: "Nothing is free—there is a price to pay for everything."
- No. 6: "Be prepared—if something can go wrong, it will happen at the worst possible moment."
- No. 7: "Luck is where preparation and opportunity meet."
- No. 8: "He/she who writes the contract, the contract is in favor of."

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## Chapter 1: Introduction

- Important!!!! Remember, within contracts: [HPH: 1.2]
  - "Shall" and "must" mean that an action or item is mandatory and is required by statute or regulation.
  - "Should" and "may" mean that the action or item serves to provide guidance and/or best practices but is not mandatory.

### **!!!PLEASE NOTE-BEWARE!!!**

- HUD has used the term "should" a number of times in the HPH and then in another part of the HPH use the term "shall" or "must" in reference to the same issue—an auditor will most likely go with the stricter reference as the requirement.

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## Chapter 2: Procurement Authority

- Delegation of Authority: [HPH: 2.3]
  - Executive Director (ED): per ACC, always the Contracting Officer (CO).
  - Must be in writing.
    - ✓ Date.
    - ✓ Name.
    - ✓ Limits (\$ amount; types).
    - ✓ Restrictions.
    - ✓ Signature.

❖ <See HAPA Sample Form SF-11: *Delegation of Purchasing Authority*>

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## Chapter 2: Procurement Authority ... (con'd)

- Responsibility of the Contracting Officer. [HPH: 2.4]
  - Sound judgment.
  - Ensure fair, impartial and equitable treatment.
  - Compliance with all laws and Policy.
  - Best value and greatest overall benefit.

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## Chapter 2: Procurement Authority ... (con'd)

- Contracting Officer Signature/Obligation of Funds. [HPH: 2.5]
  - Each procurement action must be approved by a person authorized to procure (delegated authority).
  - Remember, a signature signifies a "legal commitment" to bind the HA.
  - No delegation—no signature!

❖ <See HAPA Sample Form SF-28: *Procurement Requisition Form*>

- Staffing and Training. [HPH: 2.6]
  - Hey, you're here!!!!

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## Chapter 3: General Requirements

- Funding and Payment. [HPH: 3.4]
  - Must ensure that funds are available for each purchase: Requisitions (See HAPA Sample Form SF-28)
  - Work inspected in a timely manner
  - Invoices paid promptly
  - Per OMB Circular A-87 (HUD Sample Form ND-40) and 24 CFR 85.22, late payment interest and penalties cannot be paid with Federal funds

- Internal Controls. [HPH: 3.5]
  - To ensure proper expenditure of funds.
  - Separation of duties.

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## Chapter 4: Ethics

- Requirements for a Written Code of Standards. [HPH: 4.3] (Part 85.36(b)(3))
  - Must be in HA's Procurement Policy.
- Conflicts of Interest. [HPH: 4.4] (Part 85.36(b)(3))
  - Real or Actual Conflicts vs. Apparent or Perceived Conflicts.
  - No procurements/contracts with firms associated with HA employees, BOC's or with life partner or immediate family members.
  - No procurements/contracts with former employees within one year of termination or separation.

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**Chapter 4: Ethics . . . (con'd)**

- **Gratuities, Kickbacks, and Use of Confidential Information** [HPH: 4.5]
  - "Contracts are <to be> awarded fairly, based on merit, without improper influence"
- **Gratuities** (Part 85.36(b)(3))
  - HUD sets standard of "no more than \$25." [HPH: Appendix 1]
  - Gifford recommends "No" to \$25—nothing more than a logo hat or pen.
  - "It all begins with lunches."
- **Kickbacks and Anticompetitive Practices**
  - "Breach of ethical conduct and prohibited."
  - Must be reported (in writing) to ED, BOC or HUD (whichever is appropriate).

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**Chapter 4: Ethics . . . (con'd)**

- **Use of Confidential Information.**
  - Don't tell potential contractors stuff that they don't need to know.
  - Personal gain not allowed.
- **Prohibition Against Contingent Fees.** (Part 85.36(c)&(b)(8))
  - No *quid pro quo* in awarding contracts.
- **Sanctions.** (Part 85.36(b)(11)&(12))
  - Written, in Procurement Policy.

Gifford's Gospel: Everything we do must be open,  
fair, reasonable and justifiable.

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**Chapter 5: Small Purchase Procedures**

- **Standard Forms/Mandatory Contract Clauses.** [HPH: 5.10]
  - Small Purchases, Non-construction: Table 5.1.
  - Small Purchases, Non-construction, with Maintenance work: Table 5.1; form HUD-5370-C, Section II; if applicable, appropriate Maintenance Wage Rate Determination.
  - Small Purchases, Construction: form HUD-5370-EZ; appropriate wage decision; perhaps bonds.
- ❖ <See HUD Sample Form NF-10: *HUD Table 5.1*>
- ❖ <See HUD Sample Form CF-14: *form-HUD 5370-EZ*>
  - **Acceptable Methods of Incorporation.** [HPH: 5.10.D]
    - ✓ Attach as printed (I strongly recommend this method);
    - ✓ Incorporate text into PHA's own forms (not recommended due to potential entry errors or forms changing); and/or
    - ✓ Incorporate by reference (least desirable!); the HA must physically provide the forms if requested by the potential offerors.

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**Chapter 5: Small Purchase Procedures (con'd)**

- **Receiving Goods/Services and Approving Payments.** [HPH: 5.15]
- Received in proper order.
  - Payments made properly, taking discounts when offered.
  - Thereby maintaining good relations with contractors.

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**Chapter 10: Miscellaneous Requirements**

- **Mandatory Contract Clauses (For purchases above the Federal Small Purchase Threshold).** [HPH: 10.5]
- form HUD-5370 (11/2006), *General Conditions for Construction Contracts – Public and Indian Housing Programs* (IFB, RFP, > \$100,000). (CF-13)
  - form HUD-5370-C (10/2006), *General Conditions for Non-Construction Contracts, Section I – (With or without Maintenance Work)* (IFB, RFP, > \$100,000). (NF-4)
  - form HUD-5370-C (10/2006), *General Conditions for Non-Construction Contracts, Section II – (With Maintenance Work)* (IFB, RFP, > \$100,000). (NF-5)
  - form HUD-51915 (9/98), *Model Form of Agreement Between Owner & Design Professional* (RFQ/QBS, </> \$100,000). (AED-1)
- ❖ <Please note the CF, NF or AED number for each form above>

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**Chapter 10: Miscellaneous Requirements (con'd)**

- **Performance Standards.** [HPH: 10.7]
- HA is allowed to offer a contractor "cost incentives to motivate the contractor."
  - "Performance incentives increase the efficiency of contractor performance. For example, there could be a monetary bonus for early delivery."
  - If used, strongly recommend that such potential incentives are set on the Form of Bid so that each offeror has the opportunity to propose his/her best offer. Accordingly, it is not appropriate to negotiate such with just the lowest responsive and responsible bidder—another bidder may offer the HA a better deal.

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## HUD Procurement Handbook 7460.8 REV 2

### Chapter 11 Contract Administration

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### Chapter 11: Contract Administration

- General. [HPH: 11.1]
  - The goal of good contract administration is to ensure that the contracted services are "successfully performed, and that the PHA receives the required supplies or services."
- Administering Construction Contracts. [HPH: 11.2]
  - See HUD Handbook 7417.1 REV-1, Public Housing Development Handbook, Chapter 12: Project Construction and Completion for "information regarding contract administration."

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### Chapter 11: Contract Administration (con'd)

- Administering Construction Contracts (con'd)
  - Pre-construction Conference and the Notice to Proceed [HPH: 11.2.A]
    - ✓ Follows award but before work starts.
    - ✓ Thoroughly discuss key construction and contract-related issues.
    - ✓ I issue a written Notice-To-Proceed (NTP), with at least two copies, each executed by both the HA and the contractor.
    - ✓ HA shall place its original signature copy in the file.
- ❖ <See HAPA Sample Form SF-25: *Notice to Proceed (NTP)-Construction Contract*>

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## **Chapter 11: Contract Administration (con'd)**

### **➤ Administering Construction Contracts (con'd)**

- **Progress Meetings.** [HPH: 11.2.B]
  - ✓ Meet with contractor at least weekly.
  - ✓ Recap written record of discussions and place in file.
- **Inspections.** [HPH: 11.2.C]
  - ✓ If a firm is retained to conduct the contract administration (especially an A/E), "the PHA must hold the firm accountable for carrying out the inspections and monitoring" and filing the appropriate written reports.
  - ✓ Strongly recommended that the HA staff supervising the work walk the site daily (with the A/E) and complete the required construction log.

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## **Chapter 11: Contract Administration (con'd)**

### **➤ Administering Construction Contracts (con'd)**

- **Inspections (con'd)**
  - ✓ **Inspection Reports.** [HPH: 11.2.C.1]
    - "All progress inspections <SHALL> be documented" in detail to the HA file.
  - ✓ **Deficiencies.** [HPH: 11.2.C.2]
    - Upon being notified (by the A/E or HA staff or HUD) of any "construction deficiencies, the HA shall promptly notify the contractor in writing, <and that> failure to make timely corrections will be an infraction of the contract and that the contractor will be held liable for any resulting losses or delays."

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## **Chapter 11: Contract Administration (con'd)**

### **➤ Administering Construction Contracts (con'd)**

- **Labor Standards.** [HPH: 11.2.D]
  - ✓ PHA is responsible to enforce, as detailed within Section 10.8.E herein and as detailed within HUD Handbook 1344.1 REV 1, Chg1.
- **Progress Payments.** [HPH: 11.2.E]
  - ✓ Remember, follow the stricter of State statute and HUD regulation.
  - ✓ Be sure to establish specifically in the contract prior to execution.

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**Chapter 11: Contract Administration (con'd)**

➤ **Administering Construction Contracts (con'd)**

- **Delays and Time Extensions.** [HPH: 11.2.F]
- ✓ The contractor is responsible for completing the work within the time frame established.
- ✓ The HA is responsible for monitoring the contractor to ensure that the work is completed as scheduled.
- ✓ The PHA can approve justifiable time extensions without HUD approval. (as detailed within forms HUD-5370, 5370-C and 5370-EZ (e.g. justifiable due to weather, NOT negligence, incompetence or anything within the control of the contractor).
- ✓ As with everything, time extensions shall be justified in writing in the file.

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**Chapter 11: Contract Administration (con'd)**

➤ **Administering Construction Contracts (con'd)**

- **Delays and Time Extensions (con'd)**
- ✓ **Construction Log.** [HPH: 11.2.F.1]
  - Daily reports of temperature; amount of precipitation; delays in obtaining labor and material, including by each trade; delays experienced by others such as the City or power company; fires; floods; vandalism; court orders; etc.
- ✓ **Time Extension Criteria.** [HPH: 11.2.F.2]
  - Contractor shall "submit written notice to the HA within 10 calendar days of the start of the delay."
  - A decision that the severity and extent of adverse weather could not have been reasonably foreseen by the contractor.
  - The cause of the delay must have been beyond the contractor's control.

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**Chapter 11: Contract Administration (con'd)**

➤ **Administering Construction Contracts (con'd)**

- **Delays and Time Extensions (con'd)**
- ✓ **Documentation.** [11.2.F.3]
  - Ensure that any correspondence sent to the HA by the contractor is responded to and acknowledged by the HA to the contractor.
  - Justification of the HA's response must be in the file in writing.

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## Chapter 11: Contract Administration (con'd)

### ➤ Administering Construction Contracts (con'd)

- Completion of Work. [HPH: 11.2.G]
  - ✓ Required Formal Procedures.
  - Notification.
  - Final Inspection.
  - Post-Inspection Meeting.
  - Documentation.
- Final Payment. [HPH: 11.2.H]
- Construction Warranties. [HPH: 11.2.I]

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## Chapter 11: Contract Administration (con'd)

### ➤ Administering Non-Construction Contracts.

[HPH: 11.3]

- Post-award Conference. [HPH: 11.3.A]
  - ✓ Follows award but before work starts. Might immediately follow contract execution.
  - ✓ Thoroughly discuss key work and contract-related issues.
  - ✓ Nothing said verbally is applicable—it must be in writing, delivered and confirmed received by the contractor as a formal modification to the contract or it does not exist.
  - ✓ Only the CO (or his/her designee) has the authority to execute a contract modification.

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## Chapter 11: Contract Administration (con'd)

### ➤ Administering Non-Construction Contracts (con'd)

- Establishing a System for Receiving Supplies, Equipment, and Services. [HPH: 11.3.B]
  - ✓ The HA needs written procedures for receiving stuff and staff trained in those procedures. Teach staff: don't sign anything unless you know what you are signing for and you are authorized. Set deadlines within the procedure (e.g. 5 days from receipt to inspect and pass the receiving documents on to accounting).
  - ✓ The specific deliver location for whatever the HA procures must be listed in the contract (including, PO's).
  - ✓ Typically, use PO copy with contractor's or contractor's shipping slip attached, as the receiving document.
  - ✓ For services, recommend Task Order forms with contractor review area.

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**Chapter 11: Contract Administration (con'd)**

➤ **Administering Non-Construction Contracts (con'd)**

- **Monitoring and Inspecting Supplies and Services.** [HPH: 11.3.C]
  - ✓ Compare what was received with the contract (PO)—is what was received what was ordered?
  - ✓ Document every poor performance or incorrect items to the file in writing. Accordingly, seek refund from contractor when appropriate.
  - ✓ In extreme cases, notify HUD of a contractor's failure to comply. Remember: The HA does NOT have any right to threaten a contractor with placement on the HUD LDP or GSA EPLS—such placements are at the sole discretion of the Federal government. However, the HA DOES have the right to internally (within the HA) bar a contractor.

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**Chapter 11: Contract Administration (con'd)**

➤ **Administering Non-Construction Contracts (con'd)**

- **Enforcing Specifications and Timelines.** [HPH: 11.3.D]
  - ✓ Again: written procedures—staff trained—supervisor periodically does checks.
  - ✓ HA is NOT contractually obligated to pay for something that it has not received as ordered.
  - ✓ If the HA has NOT fully followed its receipt procedures, "it may have waived its rights to future rejection based on that particular defect."

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**Chapter 11: Contract Administration (con'd)**

➤ **Administering Non-Construction Contracts (con'd)**

- **Enforcing Specifications and Timelines (con'd)**
  - ✓ Nonconformance. When stuff has not been received as ordered, three response options:
    - Reject the items;
    - Require the contractor to correct; or
    - Conditionally accept.
- **Labor Standards.** [HPH: 11.3.F]
  - ✓ Posting Wage Rates: a copy of the applicable HUD wage decision is displayed at the job site.
  - ✓ Compliance Monitoring. HA has certain compliance monitoring responsibilities (see discussion in Chapter 10 herein).

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**Chapter 11: Contract Administration (con'd)**

- **Administering Non-Construction Contracts (con'd)**
  - **Control of Payments.** [HPH: 11.3.G]
    - ✓ The HA MUST NOT pay for items or services unless they were actually received.
- **Contract Modifications.** [HPH: 11.4]
  - **General.** [HPH: 11.4.A]
    - ✓ Also called contract change orders.
    - ✓ Two types:
      - Unilateral. Signed only by the HA. NOT the preferable method, but may be necessary if the contractor is not cooperating.
      - Bilateral. Signed by both parties. Preferred method.

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**Chapter 11: Contract Administration (con'd)**

- **Contract Modifications (con'd)**
  - **Process.** [HPH: 11.4.B]
    - ✓ For unforeseen conditions within the general scope of the project (e.g. hidden conditions on a roof job that were not known (and would not have been known under normal inspection) prior to the award.
    - ✓ The Changes clause is included in forms HUD-5370 (for construction); form HUD-5370-C-1/11 (for non-construction); and form HUD-5370-EZ (for small construction)—all HUD-mandatory forms.
    - ✓ Again addresses unilateral and bilateral forms.
    - ✓ Must be detailed (see Section 11.4.B.4).

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**Chapter 11: Contract Administration (con'd)**

- **Contract Modifications (con'd)**
  - **Limitation on Change Orders.** [HPH: 11.4.C]
    - ✓ For unforeseen conditions, within the original general scope.
  - **Modification Register.** [HPH: 11.4.D]
    - ✓ Such a register must be in each contract file, fully detailed as described herein.
- ❖ **<See HAPA Sample Form SF-8: Contract Modification Register>**
- **HUD Approval of Modifications.** [HPH: 11.4.E]
  - ✓ HUD must give prior approval for any modifications that are not in complete conformance with the Changes clause described herein and within the noted HUD forms; and any contract modifications greater than \$100,000, either singularly or in total.

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## Chapter 11: Contract Administration (con'd)

- Contract Claims. [HPH: 11.5]
  - General. [HPH: 11.5.A]
    - ✓ Typically, a claim by the contractor against the HA, usually as the result of a dispute.
    - ✓ The 5370 forms describes the types as well as how the claims will be processed.
  - Filing Claims. [HPH: 11.5.B]
    - ✓ The HA must "make every effort to resolve claims informally and expeditiously to avoid time losses or expensive delays." Mutual agreement is best.
    - ✓ If such does not work:
      - The contractor MUST submit to the CO in writing by the deadline.
      - The written claim MUST detail the nature and scope of claim and what the contractor wants from the HA.

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## Chapter 11: Contract Administration (con'd)

- Contract Claims (con'd)
- Rendering Decisions on Claims. [HPH: 11.5.C]
  - ✓ CO shall review, "secure any necessary assistance from legal, technical, or other advisors and shall issue a final written decision promptly" (within the time frame detailed in the contract).
  - ✓ Be aware of the 60-day time limit!
  - ✓ The written decision MUST be delivered to the contractor and shall include:
    - Description of claim;
    - Reference the pertinent contract clauses;
    - Statement of the factual areas of agreement/disagreement;
    - Statement of CO's decision, with support rationale; and
    - Description of appeal rights.

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## Chapter 11: Contract Administration (con'd)

- Contract Claims (con'd)
- Records of Claims. [HPH: 11.5.E]
  - ✓ The HA MUST maintain a construction log. Protects the HA in case of a dispute or claim.
  - ✓ The log at a minimum will list:
    - A complete and detailed job records; and
    - A fully detailed disputes and claims file.

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## Chapter 11: Contract Administration (con'd)

- Contract Terminations. [HPH: 11.6]
- General. [HPH: 11.6.A]
  - ✓ As detailed on the HUD-5370 forms, two types of termination only:
    - Convenience [HPH: 11.6.C], meaning the HA no longer has the money to pay for the services or the HA no longer needs the services.
      - Accordingly, if you terminate for convenience you cannot immediately retain another contractor to provide the same services.
    - Cause or Default [HPH: 11.6.D], meaning, because of poor performance, the HA no longer wishes the contractor to provide the services.
      - If you terminate for cause you must ensure that the contractor receives written notice that they are ineligible to offer such services to the HA again—no bidding.

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## Chapter 11: Contract Administration (con'd)

- Contract Terminations (con'd)
- Termination Notice. [HPH: 11.6.B]
  - ✓ Shall only be delivered to the contractor in writing, "by certified mail, return receipt requested."
  - ✓ Shall state at a minimum:
    - Terminated for convenience or default, citing the appropriate contract clause;
    - Whether termination is in whole or in part;
    - If for cause or default, detail the acts or omissions that justify such;
    - Effective date of the termination;
    - Contractor's right to proceed under the non-terminated portion of the contract (if applicable);
    - Any special instructions; and
    - If bonded, copies of termination notice sent to the surety.

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## Chapter 11: Contract Administration (con'd)

- Contract Terminations (con'd)
- Termination Notice (con'd)
- ❖ <See HAPA Sample Forms SF-23a: *Notice of Contract Termination for Convenience*; SF-23b: *Notice of Contract Termination for Default (Cause)*>

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I hope this information is of a  
help!

Thank you!

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