

**HUD-compliant Best Value Services Procurement:  
Focus on an Annual Audit Services RFP**  
*Michael S. Gifford, C.P.M., CPSD - 2015 ©*

**Presenter**

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

- A better understanding of what HUD and the public requires pertaining to RFP's; specifically, an RFP for Annual Audit Services.
- A renewed commitment to ensure that RFP's conducted by your housing agency are completed in an open, fair, reasonable, and justified HUD-compliant procurement.
- An ability to locate in the regulations what HUD wants pertaining to RFP's—hence, a better understanding of HUD requirements.
- As a result, improved relationships with our Board, our ED, our clients, our contractors, and the public at large.

2

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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."

3

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Herein:

- HUD Handbook 7460.8 REV 2:
  - 7460.8 issued by HUD to explain Part 85.36 in further detail.
  - Hereinafter "7460.8" or "HPH."
  - Specific references herein within "[ ]."
- 24 CFR §85.36:
  - Max Date: 12/31/2015
  - 2 CFR §200: Required after 1/1/16
  - aka the Common Rule.
  - Hereinafter "§85.36 or §200."
  - Specific references herein within "{ }."

4

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**HUD Procurement Handbook  
7460.8 REV 2**

**Chapter 7  
Competitive Proposals**

5

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**Chapter 7: Competitive Proposals -  
aka as Request For Proposals (RFP's)**

- Within CFR's: "Competitive Proposals."
- HUD: Typically "Request For Proposals" or "RFP."
- HUD: Also sometimes called "Negotiated Procurement."
- General. [HPH: 7.1]
  - HUD: Chapter only applies to procurements > \$100,000, though:
    - ✓ Is appropriate to use ANYTIME the HA feels a formal solicitation is appropriate.
    - ✓ HA may implement any of the procedures into a small purchase.
  - Recommend use for any formal (advertised) solicitation that is not an IFB or RFQ.

6

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**Chapter 7: Competitive Proposals (con'd)**

- **Description.** [HPH: 7.1.A/B]
  - Award to top-rated responsive and responsible firm, after considering price and other technical factors.
  - Preferred method to procure services, both professional and non-professional.
- **Justification.** [HPH: 7.1.C]
  - Best to put rationale as to why RFP rather than IFB in file.
- **Bonding.** [HPH: 7.1.D]
  - Not typically required unless for construction services.

7

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**Chapter 7: Competitive Proposals (con'd)**

- **Method of Solicitation.** [HPH: 7.1.F]
  - Advertising in newspapers or other printed media.
  - Advertising in various trade journals or publications.
  - eProcurement.
- ❖ <Competitive Solicitation Advertisement-RFP; Competitive Solicitation Advertisement-RFQ/QBS>
- ❖ <Competitive Solicitation Outreach-RFP (Contractors)>
- ❖ <Competitive Solicitation Outreach-RFP(Chambers/Depositories)>
- **Time Period for Solicitation.** [HPH: 7.1.G]
  - Generally, once per week for two consecutive weeks.
  - State/local law may impose additional requirements.
  - Make it a small effective advertisement.

8

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**Chapter 7: Competitive Proposals (con'd)**

- **Competitive Proposal Process.** [HPH: 7.2.A]  
{ §85.36(d)(3) (i-v); §200.320(d)(1-5) }
  - RFP Document, including sections addressing:
    - ✓ Reservation of Rights;
    - ✓ Scope of Work/Technical Specifications;
    - ✓ Proposal Submittal Format;
    - ✓ Proposal Evaluation;
    - ✓ Contract Award.
  - Form of Proposal.
  - Profile of Firm Form.
  - Section 3 Form.
  - Instructions to Proposers & Contractors.
  - Sample Contract Form.
  - HUD-mandatory forms (see following PPT frames 73-76)
- ❖ <See many HAPA-created Sample Competitive Solicitations within the "Documents" area of [procurementassistance.org](http://procurementassistance.org)>

9

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### Chapter 7: Competitive Proposals (con'd)

- **Mandatory (HUD-required) forms** [HPH: 7.2.B]
  - **RFP – Construction:**
    - ✓ form HUD-5369 (10/2007), *Instructions to Bidders for Contracts, Public and Indian Housing Programs*;
    - ✓ form HUD-5369-A (11/92), *Representations, Certifications, and Other Statements of Bidders, Public and Indian Housing Programs* (NOTE: Must be fully completed and submitted as a part of the bid submittal);
    - ✓ form HUD-5370 (1/2014), *General Conditions for Construction Contracts – Public Housing Programs*.
- ❖ <The above sample forms are available on hud.gov or request from Mike Gifford>

10

### Chapter 7: Competitive Proposals (con'd)

- **Mandatory (HUD-required) forms (con'd)** [HPH: 7.2.B]
  - **PLEASE NOTE!** Per HUD [HPH: 7.2.B], "Only under limited circumstances would construction services be procured by competitive proposals."
    - ✓ Often, HAS use the RFP method for construction instead of more appropriately using the IFB method so that they can evaluate the proposals and then inappropriately eliminate a bidder who they do not want to get the job due to past poor performance by that proposer.
    - ✓ Instead, do an IFB for construction.
    - ✓ RFP's for construction are appropriate for developer or "turn-key" solicitations, NOT regular every-day construction projects.

11

### Chapter 7: Competitive Proposals (con'd)

- **Mandatory (HUD-required) forms (con'd)** [HPH: 7.2.B]
  - **RFP – Non-construction, with Maintenance Work:**
    - ✓ form HUD-5369-B (8/93), *Instructions to Offerors, Non-Construction*.
    - ✓ form HUD-5369-C (8/93), *Certifications and Representations of Offerors, Non-Construction Contracts* (NOTE: Must be fully completed and submitted as a part of the proposal submittal).
    - ✓ form HUD-5370-C (01/2014), *General Conditions for Non-Construction Contracts, Section I – (With or without Maintenance Work)*.
    - ✓ form HUD-5370-C (1/2014), *General Conditions for Non-Construction Contracts, Section II – (With Maintenance Work)*.
- ❖ < The above sample forms are available on hud.gov or request from Mike Gifford >

12

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**Chapter 7: Competitive Proposals (con'd)**

- **Mandatory (HUD-required) forms (con'd)** [HPH: 7.2.B]
  - RFP – Non-construction, without Maintenance Work:
    - ✓ form HUD-5369-B (8/93), *Instructions to Offerors, Non-Construction*.
    - ✓ form HUD-5369-C (8/93), *Certifications and Representations of Offerors, Non-Construction Contracts* (NOTE: Must be fully completed and submitted as a part of the proposal submittal).
    - ✓ form HUD-5370-C (01/2014), *General Conditions for Non-Construction Contracts, Section I – (With or without Maintenance Work)*.
- ❖ < The above sample forms are available on [hud.gov](http://hud.gov) or request from Mike Gifford >

13

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**Chapter 7: Competitive Proposals (con'd)**

- **Submission Requirements** [HPH: 7.2.C]
  - Ensure that the submission requirements are consistent with the published evaluation factors
- **Evaluation Factors, Non-Price** [HPH: 7.2.D]  
(§85.36(d)(3)(iii); §200.320(d)(3))
  - HA must ensure that a "clear written statement" of the evaluation factors is published.
  - Strongly recommend not just brief phrases such as "Past Experience," but narrative descriptions such as, "Demonstrated successful past performance (including meeting costs, schedules, and performance requirements) of contract work substantially similar to that required by the solicitation as verified by reference checks or other means." [HPH: 7.2.D.4.f]

14

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**Chapter 7: Competitive Proposals (con'd)**

- **Evaluation Factors, Non-Price (con'd)**
  - Factors are "tailored <by the HA> to fit each" RFP.
  - Non-Price Factors are also called Technical Factors.
- **Evaluation Factors, Price.** [HPH: 7.2.E]  
(§85.36(d)(3)(iii)/§85.36(f); §200.320(d)(1)/§200.323)
  - "Price MUST be factor in making awards."
  - Two options:
    - ✓ Where Price is Assigned an Explicit Point(s); and
    - ✓ Where Price and Other Technical Factors are Considered.
  - ✓ I recommend the former ONLY—I do NOT recommend the latter and will not advise on it (the latter is NOT easy to apply and does not comply with the CFR).

15

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**Chapter 7: Competitive Proposals (con'd)**

➤ **Evaluation of the Price Factor and the Non-Price Factors**

- The Price Factor is OBJECTIVE in nature, meaning the evaluation is based on mathematical fact, not opinion.
  - ✓ Accordingly, it is most appropriate for the evaluation of the objective factors to be conducted by a skilled person other than the appointed evaluation committee.
  - ✓ Factors pertaining to Section 3 and disadvantages businesses is also objective in nature.
- The Non-Price Factors (Technical Factors) are typically SUBJECTIVE in nature, meaning the evaluation is based on opinion, not fact.
  - ✓ Accordingly, technical factors are most appropriately evaluated by the appointed evaluation committee.

16

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**Chapter 7: Competitive Proposals (con'd)**

➤ **Amending and Canceling the RFP** [HPH: 7.2.F]

- Amendments Before the Proposal Due Date.
  - ✓ WARNING: In this case, "Amendment" is really "Notice." Cannot "amend" after submittal deadline.
  - ✓ "Notice" must be in writing, sent to all potential respondents (e.g. those who have received the RFP documents), with receipt confirmed in writing.
- Amendments After the Proposal Due Date.
  - ✓ WARNING: In this case, "Amendment" is really "Notice." Cannot "amend" after submittal deadline.
  - ✓ "Notice" must be in writing, sent to all respondents (e.g. those who submitted a proposal), with receipt confirmed in writing.

17

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**Chapter 7: Competitive Proposals (con'd)**

➤ **Amending and Canceling the RFP (con'd)**

- Amendments After Determination of the Competitive Range.
  - ✓ WARNING: In this case, "Amendment" is really "Notice." Cannot "amend" after submittal deadline.
  - ✓ "Notice" must be in writing, sent to all potential respondents (e.g. those who have received the RFP documents), with receipt confirmed in writing.
- Changes Requiring Cancellation of the RFP.
  - ✓ Must be in writing, sent to all potential and/or actual respondents (e.g. those who received the RFP Documents), and receipt confirmed in writing.
  - ✓ Frequent cancellations create a lack of confidence by the public in the HA.
  - ✓ Shall be fully documented to the file.

18

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## Chapter 7: Competitive Proposals (con'd)

- Receiving Proposals [HPH: 7.2.H]
  - Documenting Amendments and Cancellations.
    - ✓ Amendments and Cancellations must be fully documented to the file.
    - ✓ Remember Gifford's Gospel, "If it ain't written, it don't exist!"
- ❖ <Amendment (aka Addendum)>
- Pre-proposal Conference. [HPH: 7.2.G]
  - Same as HPH: 6.7 (Page 26 herein).
- ❖ <Pre-proposal Conference Agenda>
- ❖ <Pre-proposal Conference Sign-In>

19

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## Chapter 7: Competitive Proposals (con'd)

- Pre-Proposal Conference. [HPH: 7.2.G]
  - Typically held no less than 2 weeks after issuing the RFP and no less than 2 weeks prior to the submittal deadline.
  - Normally for larger or more complex solicitations only.
  - Sign-in sheet and Agenda.
  - Strongly, strongly recommend that attendance is NOT mandatory (would be restrictive).
  - Cover ONLY what has already been issued in writing—if an attendee brings up something new, do NOT speculate, but ask to be submitted in writing, then make a decision and respond to all RFP holders by written addendum.
- ❖ <Sample Forms, Pre-proposal Conference Agenda and Pre-proposal Conference Sign-in may be obtained from Mike Gifford>

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## Chapter 7: Competitive Proposals (con'd)

- Receiving Proposals [HPH: 7.2.H]
  - DO NOT disclose to any inquiry as to how many proposals have been received.
  - Each proposal received must be date- and time-stamped by the HA when received.
  - Stored in a secure place (e.g. locked file cabinet) to ensure not opened or mishandled prior to the submittal deadline.
  - 10 minutes prior to the submittal deadline, standby at front desk to address potential issues pertaining to last minute submittals.
  - DO NOT receive or open any proposal submittal received after the submittal deadline (train staff—especially at the front desk—to understand and comply)—NO MATTER HOW MUCH THE LATE RESPONDENT BEGS!!!!

21

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## Chapter 7: Competitive Proposals (con'd)

- Late Submissions. [HPH: 7.2.I]
  - HA can receive a late proposal if it is the only proposal received.
  - However, remember that receipt of a single proposal can be difficult to justify.
- Confidentiality. [HPH: 7.2.J]
  - DO NOT, at any time prior to award, disclose to anyone other than those who the CO determines "need to know:"
    - ✓ Who has obtained the RFP documents (except for construction).
    - ✓ Who has submitted a proposal and/or who has decided to "No Bid."

22

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## Chapter 7: Competitive Proposals (con'd)

- Evaluation Process. [HPH: 7.2.K]  
(§85.36(d)(3); §200.320(d))
  - The evaluation MUST only be based upon the evaluation factors published in the RFP—factors not written in the RFP MUST NOT be considered.
  - Unlike sealed bids, proposals are NOT opened publicly (nor is the identity of the proposers publicly disclosed unless required by law—try to avoid as could lead to intimidation).
  - Be alert to attempts by the proposers to change the published RFP requirements--sometimes called "conditioning offers." You may (and probably will) reject such proposals as non-responsive.

23

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## Chapter 7: Competitive Proposals (con'd)

- Evaluation Process (con'd)
  - The evaluation MUST be fully documented to the file, including (Typical Evaluation Package):
    - ✓ Instructions to Evaluators, with required confidentiality and proprietary agreement;
    - ✓ Proposal Tabulation Form;
    - ✓ Written Narrative Justification;
    - ✓ Recap of Proposal Responsiveness;
    - ✓ Portions of the RFP Document, most typically "Specifications" and "Evaluation Factors."
- ❖ <RFP Evaluation Documents; RFQ/QBS Evaluation Documents>

24

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## Chapter 7: Competitive Proposals (con'd)

### ➤ Evaluation Process (con'd)

- The Evaluation Committee - I recommend:
  - ✓ The User Department recommend the specific Evaluation Committee Members (ECM) to the Executive Director (ED)—recommend always an odd number of ECM (to lessen the chance of ties).
  - ✓ The ED approves the evaluators.
  - ✓ The ECM conducts the evaluation in one of the following noted methods.
  - ✓ The CO advises (but does NOT influence) the ECM and prepares the Evaluation Report.

[HPH: 7.2.L](Part 85.36(b)(9); §200.318(i))

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## Chapter 7: Competitive Proposals (con'd)

### ➤ Evaluation Process (con'd)

- The ECM - I strongly recommend (con'd):
  - ✓ If possible, the staff member conducting the RFP process DOES NOT serve on the ECM (may not be possible for smaller HA's). This is good because it allows:
    - that person to be a facilitator, assisting both HA staff and prospective proposers.
    - the facilitator to conduct the debriefing from a less defensive standpoint.
  - ✓ If reasonable, smaller HA's can trade courtesies with other HA's: help them evaluator their RFP's, they help you evaluate your RFP's.

26

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## Chapter 7: Competitive Proposals (con'd)

### ➤ Evaluation Process (con'd)

- The ECM - I strongly recommend (con'd):
  - ✓ Always an odd number of evaluators (e.g. 3; 5; 7; etc.) to lessen the chance of ties.
  - ✓ Should the User department staff be on an evaluation committee? I strongly recommend that they are not only ALWAYS on the committee, but the department director (or similar) recommend to the ED the committee members. Some say such is a conflict—I say that it is not only NOT a conflict, it is a MUST (its their money—they should decide how to spend it, not live with what someone else decides for them)!

27

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## Chapter 7: Competitive Proposals (con'd)

### ➤ Evaluation Process (con'd)

- The ECM - I strongly recommend (con'd):
  - ✓ HUD encourages resident participation on evaluation committees when appropriate. Could be especially helpful for RFP's like janitorial services and landscaping services where residents have a vested interest.
  - ✓ Who is appropriate to serve on evaluation committees?
    - HA staff (especially the User Department for the service).
    - Staff from other governmental agencies (especially other HA's).
    - HA Residents (if they are competent to serve—read and write).
    - In certain conditions, retained consultants.
    - Always ensure that the number of HA staff on an evaluation committee "constitutes the Majority membership of the committee." [HPH: 16.9.B]

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## Chapter 7: Competitive Proposals (con'd)

### ➤ Evaluation Process (con'd)

- ECM Format No. 1: MEET TOGETHER-SEPARATE EVALUATIONS Format:
  - ✓ The ECM meet together.
  - ✓ Review the proposals together and share thoughts and views, then . . .
  - ✓ Each person completes the Tabulation and Narrative Justifications separately and in confidence.
  - ✓ The completed forms are then delivered to the CO who completes the compilation and ensuing Evaluation Report to the ED.
  - ✓ NOTE: Strongly recommend that the ECM only evaluated the Subjective or Technical Factors—the CO evaluates the Objective Factor (e.g. proposed cost; Section 3; WMBE).
  - ✓ My opinion, typically the preferred method!

29

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## Chapter 7: Competitive Proposals (con'd)

### ➤ Evaluation Process (con'd)

- ECM Format No. 2: MEET TOGETHER-ONE EVALUATION Format:
  - ✓ Much the same as the preceding MEET TOGETHER-SEPARATE EVALUATION Format except the ECM appoints one of the members as a Recorder who completes the Tabulation and Narrative Justifications based upon the combined opinion of the ECM.
  - ✓ My opinion, typically NOT the preferred method because a dominant personality can more easily dominate the evaluation!

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## Chapter 7: Competitive Proposals (con'd)

### ➤ Evaluation Process (con'd)

- ECM Format No. 3: DO NOT MEET TOGETHER-SEPARATE EVALUATIONS Format
  - ✓ Much the same as the preceding MEET TOGETHER-SEPARATE EVALUATIONS Format except the ECM DO NOT meet together and share information nor do they typically know the identity of the other evaluators
  - ✓ My opinion, not the typical preferred method but can be a useful method if the issue is political and the HA needs to insure complete impartiality in the evaluation process!
- Evaluation of Price. [HPH: 7.2.M] (Part 85.36(f))
  - ✓ Will address in detail in Chapter 10.
  - ✓ Most properly conducted by the CO rather than the ECM.

31

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## Chapter 7: Competitive Proposals (con'd)

### ➤ Evaluation Process (con'd)

- Competitive Range [HPH: 7.2.N] (§85.36(f); §200.323)
  - ✓ Competitive Range is, "those proposals that have a reasonable chance of being selected for award" as a result of the evaluation (e.g. the total points awarded).
  - ✓ Per HPH: 7.2.R, a competitive range need not be established "If, after the initial evaluation of proposals, there is a clear winner, and there is no need to negotiate or obtain further clarification or information from the offeror (e.g., the price is reasonable), the <CO> may proceed directly to award."

32

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## Chapter 7: Competitive Proposals (con'd)

### ➤ Evaluation Process (con'd)

- Competitive Range (con'd)
  - ✓ However, if the HA wishes to negotiate with offerors the HA shall (document every thing in writing to the file):
    - Rank the proposers based on points awarded, then decide who is in the competitive range, the firms that the HA decides "should be kept in the running for negotiations and possibly award."
    - Decide if each firm in the range is "Acceptable," Potentially acceptable," or "Unacceptable" and eliminate each firm in the latter category ("eliminate" by sending them a written notice, confirmed back, that they are no longer "in the running").

❖ <Notice to Proposers Deemed Not in the Competitive Range>

33

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## Chapter 7: Competitive Proposals (con'd)

### ➤ Evaluation Process (con'd)

- **Competitive Range (con'd)**
  - ✓ **Conduct Negotiations (aka Oral Interviews):** [HPH: 7.2.P]
    - May be in-person or by telecon—stay consistent, unless proposer chooses the telecon.
    - Set interviews a sufficient time in between that proposers do not cross-paths (perhaps 1½ hours apart).
    - Typically, keep brief, perhaps an hour—stick to the schedule—as much as possible, give each of the proposers equal time.
    - Typically best, but not required, if the interview panel is the same ECM that conducted the original evaluation process.
    - DO NOT have different proposers in the room at the same time! Such tends to create a “circus” atmosphere—it is NOT appropriate to “play proposers off against each other.”

34

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## Chapter 7: Competitive Proposals (con'd)

### ➤ Evaluation Process (con'd)

- **Competitive Range (con'd)**
  - ✓ **Conduct Negotiations (aka Oral Interviews):** (con'd)
    - Have the proposer introduce their staff to the interview panel, but DO NOT introduce the interview panel members to the proposer staff.
    - During the interview the HA may ask questions of the proposer and answer questions to the proposer (exchange of information). As with the Pre-proposal Conference, do not issue new information but clarify information already issued.
    - You may discuss to the proposed costs with the proposer (but I strongly recommend that you do not); however, you MUST NOT disclose one proposer's proposed cost to another. DO NOT disclose where each proposer placed as a result of the initial evaluation or how many each received.

35

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## Chapter 7: Competitive Proposals (con'd)

### ➤ Evaluation Process (con'd)

- **Competitive Range (con'd)**
  - ✓ **Best and Final Offers** [HPH: 7.2.Q]
    - At the end of each Interview invite the proposer, in writing, to, based on the Interview and discussions, either supplement or revise his/her proposal, including proposed costs, if he/she wishes.
    - The proposer may also choose to not supplement or revise the proposal or proposed costs. In such case, the initial offer shall be deemed to be the Best and Final offer.
    - Give the proposer a definitive deadline (e.g. by no later than 5:00pm this coming Monday)—the same deadline for all proposers.
    - Most typically, Best and Final Offers are only requested once during the Best and Final process, but may be repeated in “exceptional circumstances.”

❖ **<Notice of Best and Final Offers>**

36

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## Chapter 7: Competitive Proposals (con'd)

### ➤ Evaluation Process (con'd)

#### ▪ Competitive Range (con'd)

##### ✓ Best and Final Evaluation

- Conduct the evaluation in "essentially the same manner" as the initial evaluation.
- Strongly recommend that the ECM that conducted the Interviews also conduct the Best and Final evaluation.
- Once the Best and Final evaluation is complete, the firm receiving the most points is deemed the top-rated or apparent successful proposer.
- At this points, to arrive at the top-rated proposer, DO NOT combine the points awarded as a result of the initial evaluation with the points awarded as a result of the Best and Finals evaluation (they are two separate process).

#### ❖ <RFP (or RFQ/OBS) Evaluation Documents: Competitive Range/Best and Finals Evaluation>

37

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## Chapter 7: Competitive Proposals (con'd)

### ➤ Contract Award

[HPH: 7.2.S]{§85.36 (b)(8); §200.318(h)}

#### ▪ General

[HPH: 7.2.S.1]

- ✓ The HA shall ensure that all documentation is in place, in writing, to ensure that the solicitation has been received and evaluated and the contract is awarded in a compliant manner.

Remember Gifford's Gospel: "If it ain't written, it don't exist."

#### ❖ <Determination of Proposer Responsiveness and Contractor Responsibility>

38

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## Chapter 7: Competitive Proposals (con'd)

### ➤ Contract Award (con'd)

#### ▪ Notice to Unsuccessful Offerors

[HPH: 7.2.S.2]

- ✓ After award, all proposers shall receive a notice, confirmed back:
  - Identify the successful proposer.
  - Identify where all proposers placed as a result of the evaluations (both the initial and Best and Finals, if applicable).
  - Identify the proposed costs submitted by all proposers (both the initial and Best and Finals, if applicable).
  - Inform each proposer of his/her right to a debriefing and remind each of the right to protest—be sure to set a deadline to submit each (10 days from receipt?!)

#### ❖ <Notice of Successful Offeror>

39

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Focus on an Annual Audit Services RFP  
Michael S. Gifford, C.P.M., CPSD - 2015 ©**

**Chapter 7: Competitive Proposals (con'd)**

➤ **Contract Award (con'd)**

▪ **Debriefing Offerors**

[HPH: 7.2.S.3]

✓ **Recommended Techniques:**

- May be conducted in-person or by telecom.
- First have the proposer sign and date an acknowledgement that the debriefing was received.
- Review the proposal submittal and tell the proposer of any obvious weaknesses and strengths. Paraphrase the information on the Written Narrative Justifications completed by the ECM (DO NOT allow the proposer to see or read those Justifications nor of the identities of the ECM)
- If the proposer is defensive or combative, DO NOT respond in kind—you have no reason to be defensive, as the HA has the right to retain whoever they wish (also, as the debriefer is NOT an evaluator, there is no reason to be defensive—you are only trying to help the proposer understand his/her deficiencies).

❖ **< Acknowledgement of Receipt of a Debriefing >**

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**Chapter 7: Competitive Proposals (con'd)**

➤ **Contract Award (con'd)**

▪ **Debriefing Offerors (con'd)**

✓ **Recommended Techniques (con'd):**

- During the debriefing, compare the proposal to the requirements of the RFP, NOT to the other proposals (DO NOT DISCUSS the other proposers or their proposals).

▪ **Protests**

[HPH: 7.2.T]

- ✓ Addressed in more detail in Chapter 10 herein.
- ✓ If, prior to requesting a debriefing, an unsuccessful proposer states his/her intent to protest, encourage them to first request a debriefing so that you can address their concerns and explain to them the parameters of filing a protest (e.g., no frivolous or "fishing expedition" protests are allowed by the protest procedures in the Instructions to Bidders).

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**Chapter 7: Competitive Proposals (con'd)**

➤ **Procurement of Legal Services by PHAs (con'd)**

▪ **Time and Material Contracts**

[HPH: 7.4.D]

- ✓ The contract is priced per the hour, with reimbursement for actual additional costs such as copying; mailing; etc.
- ✓ Typically a Requirements or Indefinite Quantities contract (see following Chapter 10).
- ✓ Only use when the HA determines that no other contract type is suitable.
- ✓ Includes a Not-to-exceed (NTE) ceiling price when that the contractor exceeds at its own risk.

42

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## Chapter 7: Competitive Proposals (con'd)

### ➤ Procurement of Legal Services by PHAs (con'd)

- **Contracts for Litigation Services** [HPH: 7.4.F]
  - ✓ "Litigation," meaning legal services that actually involve litigating in court—a court action has been, may or will be filed.
  - ✓ HUD Litigation Handbook 1530.1 REV 5.
  - ✓ If a litigation contract with a private attorney is expected to or does exceed \$100,000, prior HUD approval must be obtained (remember, in writing!).
  - ✓ The HUD Regional Counsel MUST be "approved by the Headquarters Program Associate General Counsel" for litigation contracts expected to or that do exceed \$300,000.

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## Chapter 7: Competitive Proposals (con'd)

### ➤ Procurement of Legal Services by PHAs (con'd)

- **Contracts for Litigation Services (con'd)**
  - ✓ Appendix 11 of the Handbook contains clauses that HUD strongly recommends that all HA's include in any litigation services contract.

44

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## Chapter 7: Competitive Proposals (con'd)

### ➤ Procurement of Legal Services by PHAs (con'd)

- **Obtaining Legal Services by Procurement or Employment Methods** [HPH: 7.4.E]
  - ✓ The HA has a choice to retain an "outside counsel" by competitive procurement (recommend the RFP) or to hire an "in-house counsel" by traditional employee hiring methods.
  - ✓ If the HA retains an in-house counsel, it still may retain additional outside counsel, if necessary, by competitive procurement (and MUST do so if the additional outside counsel is required—remember, typically no attorney practices every type of law).

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## Chapter 7: Competitive Proposals (con'd)

- **Contracts for Litigation Services** [HPH: 7.4.F]
- **General Requirements and Regional Counsel Approval:** [HPH: 7.4.F.1]
  - ✓ Litigation contracts (e.g. argued in court) exceeding \$100,000 must have the prior written approval of the HUD Regional Counsel.
- **Headquarters Program Associate General Counsel Approval:** [HPH: 7.4.F.2]
  - ✓ Litigation contracts exceeding \$300,000 must have the prior written approval of the HUD Headquarters Program Associate General Counsel.

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## Chapter 7: Competitive Proposals (con'd)

- **Contracts for Litigation Services (con'd)**
- **Use of Fixed-Price Contracts:** [HPH: 7.4.F.3]
  - ✓ It appears from the language that HUD prefers an Indefinite Delivery-type of contract pricing (see Section 10.1.C.3 within the Handbook).
  - ✓ The referenced HUD Litigation Handbook is 1530.01 REV-5, which can be found at hud.gov.
- **Contract Addendum – Legal Services Protocol:** [HPH: 7.4.G]
  - HUD recommends this clause—I recommend you consider it's inclusion carefully (e.g. have a legal counsel other than your current retained legal counsel review and advise).

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## Chapter 7: Competitive Proposals (con'd)

- **Legal Fee Management Service Contracts.** [HPH: 7.4.F.3]
  - Encouraged by HUD for HA's with "heavy demand or high local priorities or other conditions <that> merit secure oversight of legal services."
- **Employment Contracts:** [HPH: 7.5]
  - **Employment vs. Independent Contracts.** [HPH: 7.5.A]
    - ✓ If a person is an employee of the HA, retention and oversight by the HA is "part of the personnel process and is subject to those rules and regulations."
    - ✓ If a person is a retained independent contractor (e.g. not an employee of the HA), retention and oversight is considered a "procurement action, subject to the standards in 24 CFR 85.36."
  - **Executive Directors.** [HPH: 7.5.B]
    - ✓ HA can employ and ED as either an employee or an independent contractor.
    - ✓ Contracts in excess of 2 years require written approval from local HUD office.

48

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**Chapter 7: Competitive Proposals (con'd)**

**Let's take a look at a sample Legal  
Services RFP**

**<PLEASE NOTE: Sample Forms may be  
obtained from Mike Gifford' website,  
[procurementassistance.org](http://procurementassistance.org)>**

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I hope this information is of a  
help!

Thank you!

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