

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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October 19, 2016

The Honorable Julián Castro
Secretary
Department of Housing and Urban Development
451 7th Street SW
Washington, D.C. 20410

Dear Mr. Secretary:

The Government Operations Subcommittee of the Oversight and Government Reform Committee has primary oversight jurisdiction for civilian federal procurement policy and thus has an interest in ensuring agencies appropriately apply federal procurement rules, including promoting full and open competition. As a consequence, the Subcommittee has monitored with interest the Department of Housing and Urban Development's (HUD) operation of the Project-based Rental Assistance program and the litigation related to HUD's efforts to acquire administrative support services through Performance Based Contract Administrator (PBCA) contracts versus cooperative agreements.¹

On January 13, 2016, I wrote to express concern that HUD was not implementing the Court's decision in a timely manner and consequently HUD's failure to act in a timely manner delayed realizing the cost and efficiency benefits of a competitive FAR-based procurement.²

On February 18, 2016, HUD responded to my letter by outlining a timeline and some details about how HUD planned to implement the Court's decision with a Federal Acquisition Regulation (FAR)-based procurement strategy. I appreciate that your response acknowledged "the PBCA services are critical to HUD's efforts to reduce improper payments, perform high

¹ For more than a decade, HUD successfully contracted with public housing agencies across the country to provide administrative support services to HUD in support of its project-based Section 8 housing program. However, in 2012 HUD abruptly changed the rules and for the first time labelled the contracts as "cooperative agreements." In response, the incumbent contractors successfully challenged HUD through litigation at the Government Accountability Office (GAO) and later at the Court of Appeals for the Federal Circuit. In April 2015, the Supreme Court denied HUD's petition for writ of certiorari ending the litigation and upholding the Federal Circuit's holding that HUD should use procurement contracts to administer the project-based Section 8 program. *CMS Contract Mgmt. Servs. v. Mass. Hous. Fin. Agency*, 745 F.3d 1379 (Fed. Cir. 2014) *cert. denied subnom. United States v. CMS Contract Mgmt. Servs.* No. 14-781, 2015 WL 70573 (U.S. Apr. 20, 2015).

² In September 2015, the Court of Federal Claims expressed concern that HUD "has not yet re-initiated a FAR-compliant procurement," and noted the Government was not able to provide a clear timeline for implementing such a procurement process and concluded "it may be years before HUD issues any new procurement." *CMS Contract Mgmt. Servs. v. United States*, No. 12-852C, 2015 WL 5693139 (Fed. Cl. Sept. 29, 2015).

quality Section 8 contract administration, and monitor the condition of Section 8 projects.” HUD also stated that a consultant had been hired to assist HUD in determining the “optimal acquisition strategy to obtain PBCA services.” Finally, HUD projected “a conservative estimate for awards of procurement contracts is Fall 2017.”

While HUD’s February 2016 response provided useful information, HUD’s commitment to make PBCA awards by the Fall of 2017 is questionable. It was not until September 28, 2016, that HUD even published a Request for Information (RFI).³ The publication of an RFI is an important initial step in executing a FAR-based competitive procurement, but this development in September 2016 indicates HUD is far from making any contract awards in the near term. Consequently, I remain concerned about HUD’s efforts thus far and have additional questions.

To assist the Committee in carrying out its oversight of federal contracting and encouraging full and open competition, please respond to the following questions as soon as possible and no later than November 4, 2016:

1. In the February 2016 response, HUD indicated a consultant contract was awarded on January 29, 2016.
 - a. What is the contract period for this consultant work? Are there options?
 - b. What was the scope of work outlined in the statement of work provided to the consultant?
 - c. What is the current status of the consultant work?
 - d. What findings or recommendations have been delivered by the consultant?
2. What are HUD’s current planned milestones and timeframes for transitioning to a competitive procurement process?
3. When does HUD expect to complete this transition and begin a new procurement?
4. When does HUD plan to issue a Request For Proposal?
5. What is HUD’s current estimated timeline for making contract awards?
6. What is the status of the Annual Contribution Contracts between HUD and the current PBCA? Your February 2016 response indicated there had been an extension until June 2016 of the existing arrangements.
7. What steps is HUD taking to ensure the most qualified applicants offering the best value will submit proposals for the new competitive procurement?

³ Performance-Based Contract Administrator (PBCA) Program, Request for Information (Sept. 28, 2016) *available at*: https://www.fbo.gov/index?s=opportunity&mode=form&id=9c6bd0c4e8ce17b474e2961a9952fab&tab=core&_cvi_ew=0

8. In the February 2016 response, HUD acknowledged that its proposed 2012 Notice of Funding Availability (NOFA) included a preference to Public Housing Authorities (PHAs) that “offered to administer Section 8 projects located within the same state in which the PHAs were located” and stated the change was implemented “in response to the large number of opinions issued by state Attorneys General.”
 - a. Is HUD considering an in-state only requirement in the upcoming PBCA FAR-based procurement?
 - b. If so what is the basis for this requirement?
 - c. Are there a sufficient number of qualified contractors to implement an in-state only requirement?
 - d. What state Attorneys General issued the opinions prompting the in-state limitation? Please provide a list of such states with the dates of these opinions.

9. What mechanism[s] does HUD plan to use to effectively monitor the newly awarded PBCA contracts?
 - a. Does HUD plan to offer training for monitoring these contracts?
 - b. Identify how many HUD employees and resources will be required to monitor these contracts.
 - c. Does HUD have a sufficient number of contracting officers and procurement specialists to award and oversee these contracts?

The Committee on Oversight and Government Reform is the principal investigative committee in the U.S. House of Representatives. Pursuant to House Rule X, the Committee has authority to investigate “any matter” at “any time.” If you have questions, please contact Julie Dunne of the Committee staff at (202) 225-5074.

Sincerely,



Mark Meadows
Chairman
Government Operations Subcommittee

cc: The Honorable Gerald E. Connolly, Ranking Member

The Honorable Mario Diaz-Balart, Chairman
Transportation, Housing and Urban Development, and Related Agencies Subcommittee
Committee on Appropriations