



Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**

Charles Baker, Governor ♦ Karyn Polito, Lt. Governor ♦ Janelle L. Chan, Undersecretary

Public Housing Notice 2018-13

To: All Local Housing Authority Executive Directors
From: Amy Stitely, Associate Director for Public Housing
Subject: Force Account Work and Materials Procurement
Date: July 31, 2018

The purpose of this Public Housing Notice is to provide clarification on the allowable use of bond funds (including Formula Funding) and operating funds for Local Housing Authority (LHA) modernization and maintenance through "Force Accounts". This particularly clarifies procurement rules for the purchase of supplies by LHA intended for use in a construction project.

1. Guidelines on the use of bond funds for paying in-house workforce on capital projects (aka "Force Account" work); and
 2. Text from the original bond authorization bill and the relevant statute.
 3. Text from MGL Ch 30 Sec 39M; construction materials procurement
-

1. Guidelines on Use of Bond Funds for "Force Account" Work

LHAs completing a capital work project which is included in the DHCD approved CIP with their own in-house work force (known as "Force Account" work), may request reimbursement from their Formula Funding funds for the actual cost for labor hours spent on the project and for the cost of materials. The LHA should indicate in its CIP project description that it will be completing the work in-house, if that information is known at the time the CIP is submitted, and the project budget should reflect that method of completing the work.

Please note that the intent of this Force Account option is to maximize the efficient use of capital funds, but it is not intended to reduce the portion of the LHA's operating budget devoted to regular and extraordinary maintenance. Any "savings" in operating budget costs (for example, maintenance staff salaries paid by capital funds) must be used to fund other maintenance or extraordinary maintenance costs, whether for labor, materials or contracted work.

Hourly rate: For work completed within the regular work week, hours are to be billed at the employee's regular hourly rate. This includes hours by part-time staff who are working beyond their regular hours up to what would be a full-time week (40 hours). DHCD discourages the use of overtime hours for completing capital projects but recognizes there are times when use of overtime may make sense for the LHA. If the LHA is using

overtime, it should document in its procurement record the reason for its use. Please note that capital funds such as Formula Funding grants can NOT be used to reimburse LHA staff retirement benefits. These costs must be paid from the operating budget.

Materials Procurement

Per Massachusetts General Law and the Attorney General’s guidance, purchased materials are considered “construction materials” if they are purchased for a specific construction project. As such, they fall subject to construction procurement rules under MGL Ch 30 Sec 39M: 1) for materials valued less than \$10,000, use sound business practices or purchase from a statewide or blanket contract; 2) for materials valued from \$10,000 - \$50,000, use a written scope of work to solicit written responses from no fewer than 3 vendors who customarily sell the materials you seek and advertise in the Central Register, COMMBUYS, Authority’s website, and post at the Authority’s office. Advertising can be waived if at least 2 written responses are obtained from vendors on a statewide or blanket contract; 3) for materials valued at more than \$50,000, use a sealed bid process, advertising in the newspaper, Central Register, COMMBUYS and post at the Authority’s office. See below for statute.

Housing Authorities may use materials that they have in stock through normal course of business but cannot procure materials for force account work as non-construction supplies under MGL Ch30B. DHCD will only reimburse Housing Authorities for materials procured in accordance with state law.

DHCD review of the work: If the estimated cost of the work exceeds \$10,000, contact your project manager to arrange for a DHCD construction advisor to review comparable work done by the same personnel. Do not start the work unless you have received approval from your construction advisor. If the cost of the work will exceed \$25,000, you need to submit a detailed request to your project manager for approval by DHCD. Requests should include the following information:

- Qualifications: Names & job titles of the employees who will carry out and supervise the work, including experience on similar projects
- Scope: A brief description of the scope including performance specs for the materials to be chosen
- Budget: A breakout of the CIMS budget between materials, labor and soft costs
- Schedule: A proposed time frame for the scope of work to be executed, if different than the schedule in CPS, including an assessment of the LHA’s ability to complete this work and regular maintenance activities.
- Proposed solicitation for materials if cost for materials will exceed \$10,000

Request for payment: Along with a Certificate of Compliance, the request for Formula Funding reimbursement should include an invoice for labor hours indicating the name of the staff person(s) that completed the work, number of hours worked, the date(s), the hourly rate (excluding retirement benefits), and indicate whether it is a regular or overtime rate. Include invoices for all materials for which the LHA is seeking reimbursement.

Accounting: Costs for wages and materials for capital projects may be expensed in the ‘construction’ portion of the Form 80 and are not subject to the 10% cap on administrative costs. Employee benefits for force account can be expensed in this line and are restricted to the following:

- FICA – Employer’s share of social security tax
- FUTA – Employer’s share of unemployment tax

- GIC – Employer’s share of group health insurance.

2. Reference: Main Bond Authorization Bill and Relevant Statute

CHAPTER 99 of the Acts of 2018

7004-0054: For state financial assistance in the form of grants for projects undertaken pursuant to clause (j) of section 26 of chapter 121B of the General Laws; provided, that contracts entered into by the department of housing and community development for those projects may include, but shall not be limited to, projects providing for renovation, remodeling, reconstruction, redevelopment and hazardous material abatement, including asbestos and lead paint, and for compliance with state codes and laws and for adaptations necessary for compliance with the Americans with Disabilities Act of 1990, the provision of day care facilities, learning centers and teen service centers and the adaptation of units for families and persons with disabilities; provided further, that priority shall be given to projects undertaken for the purpose of compliance with state codes and laws or for other purposes related to the health and safety of residents; provided further, that funds may be expended from this item to make such modifications to congregate housing units as may be necessary to increase the occupancy rate of those units; provided further, that the department shall continue to fund a program to provide predictable funds to be used flexibly by housing authorities for capital improvements to extend the useful life of state-assisted public housing; and provided further, that not less than 25 per cent of the funds made available in this item shall be used to fund projects which preserve or produce housing for families and individuals with incomes of not more than 30 per cent of the area median income, as defined by the United States Department of Housing and Urban Development

CHAPTER 121B, Section 26, (j)

To undertake as a separate project the renovation, remodeling, reconstruction, repair, landscaping and improvement of an existing housing project or part thereof, including the reduction of undesirable unit densities in an existing housing project as deemed necessary by the department for the improvement of an existing housing project assisted by the commonwealth pursuant to section thirty-four or forty-one; provided, that an equal number of low-rent relocation units are provided to replace those occupied units which are removed in the reduction of an undesirable unit density; and provided, further, that the plans for each such project shall be undertaken in accordance with rules and regulations promulgated by the department for such projects; and provided, further, that notwithstanding the provisions of any other law, where the funding for such project or any similar state or federally funded undertaking with respect to low-rent housing exceeds fifteen million dollars, the number of households living on the original site when funds are or were committed exceeds two hundred and a receiver has been appointed for the housing authority pursuant to section one hundred and twenty-seven H of chapter one hundred and eleven, the award of construction, reconstruction, installation, demolition, maintenance, alteration, remodeling or repair contracts shall be governed by the provisions of section thirty-nine M of chapter thirty, and shall include a requirement for certification of ability to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work, and shall not be subject to the provisions of sections forty-four A to forty-four H, inclusive, of chapter one hundred and forty-nine.

3. Reference: MGL Chapter 30 Section 39 M: Procurement Law

Section 39M: Contracts for construction and materials; manner of awarding

Section 39M.

(a) Every contract for the construction, reconstruction, alteration, remodeling or repair of any public work, or for the purchase of any material, as hereinafter defined, by the commonwealth, or political subdivision thereof, or by any county, city, town, district or housing authority that is and estimated by the awarding

authority to cost less than \$10,000 dollars shall be obtained through the exercise of sound business practices as defined in section 2 of chapter 30B. The awarding authority shall make and keep a record of each procurement that, at a minimum, shall include the name and address of the person from whom the services were procured. An awarding authority that utilizes a vendor on a statewide contract procured through the operational services division, or a blanket contract procured by the awarding authority pursuant to this section, shall be deemed to have obtained the contract through sound business practices.

Every contract for the construction, reconstruction, alteration, remodeling or repair of any public work, or for the **purchase of any material**, as hereinafter defined, by the commonwealth, or political subdivision thereof, or by any county, city, town, district or housing authority that is estimated by the awarding authority to cost not less than \$10,000 but not more than \$50,000 shall be awarded to the responsible bidder offering to perform the contract at the lowest price. The awarding authority shall make public notification of the contract and shall seek written responses from no fewer than 3 persons who customarily perform such work. For purposes of this subsection, the term "public notification" shall include, but need not be limited to, posting, at least 2 weeks before the time specified in the notification for the receipt of responses, the contract and scope-of-work statement: (1) on the website of the awarding authority, (2) on the COMMBUYS system administered by the operational services division, (3) in the central register published pursuant to section 20A of chapter 9 and (4) in a conspicuous place in or near the primary office of the awarding authority; provided, however, that if the awarding authority obtains a minimum of 2 written responses from a vendor list established through a blanket contract or a statewide contract procured through the operational services division, and the lowest of those written responses is deemed acceptable to the awarding authority, public notification is not required. The solicitation shall include a scope-of-work statement that defines the work to be performed and provides potential responders with sufficient information regarding the objectives and requirements of the awarding authority and the time period within which the work shall be completed. The awarding authority shall record the names and addresses of all persons from whom written responses were sought, the names of the persons submitting written responses and the date and amount of each written response.

An awarding authority may utilize a vendor list established through a statewide contract procured through the operational services division to identify 1 or more of the persons from whom it will seek written responses for purposes of this subsection. An awarding authority may also procure a blanket contract to establish a listing of vendors in certain defined categories of work that are under contract to provide services for multiple individual tasks of not more than \$50,000 each, and from whom written responses will be sought. Any such blanket contract procured by the awarding authority shall be procured pursuant to this section or sections 44A to 44J, inclusive, of chapter 149 which are applicable to projects over \$50,000.

Every contract for the construction, reconstruction, alteration, remodeling or repair of any public work, or for the **purchase of any material**, as hereinafter defined, by the commonwealth, or political subdivision thereof, or by any county, city, town, district or housing authority that is estimated by the awarding authority to cost more than \$50,000, and every contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building by a public agency, as defined by subsection (1) of section 44A of chapter 149, estimated to cost more than \$50,000 but not more than \$150,000, shall be awarded to the lowest eligible responsible bidder on the basis of competitive bids publicly opened and read by the awarding authority forthwith upon expiration of the time for the filing thereof; provided, however, that such awarding authority may reject any and all bids, if it is in the public interest to do so. Every bid for such contract shall be accompanied by a bid deposit in the form of: (1) a bid bond, (2) cash, or (3) a certified check on, or a treasurer's or cashier's check issued by, a responsible bank or trust company, payable to the awarding authority. The amount of the bid deposit shall be 5 per cent of the value of the bid. Any person submitting a bid pursuant to this section shall, on such bid, certify as follows:

The undersigned certifies under penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this paragraph the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

(Name of person signing bid)

(Company)

This subsection shall not apply to the award of any contract subject to the provisions of sections 44A to 44J, inclusive, of chapter 149 and every such contract shall continue to be awarded as provided therein. In cases of extreme emergency: (1) caused by enemy attack, sabotage or other such hostile actions or (2) resulting from an imminent security threat explosion, fire, flood, earthquake, hurricane, tornado or other such catastrophe, an awarding authority may, without competitive bids and notwithstanding any general or special law, award contracts otherwise subject to this subsection to perform work and to purchase or rent materials and equipment, all as may be necessary for temporary repair and restoration to service of any and all public work in order to preserve the health and safety of persons or property; provided, that this exception shall not apply to any permanent reconstruction, alteration, remodeling or repair of any public work.

(b) Specifications for such contracts, and specifications for contracts awarded pursuant to the provisions of said sections forty-four A to forty-four L of said chapter one hundred and forty-nine, shall be written to provide for full competition for each item of material to be furnished under the contract; except, however, that said specifications may be otherwise written for sound reasons in the public interest stated in writing in the public records of the awarding authority or promptly given in writing by the awarding authority to anyone making a written request therefor, in either instance such writing to be prepared after reasonable investigation. Every such contract shall provide that an item equal to that named or described in the said specifications may be furnished; and an item shall be considered equal to the item so named or described if, in the opinion of the awarding authority: (1) it is at least equal in quality, durability, appearance, strength and design, (2) it will perform at least equally the function imposed by the general design for the public work being contracted for or the material being purchased, and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the said specifications. For each item of material the specifications shall provide for either a minimum of three named brands of material or a description of material which can be met by a minimum of three manufacturers or producers, and for the equal of any one of said name or described materials.

(c) The term "lowest responsible and eligible bidder" shall mean the bidder: (1) whose bid is the lowest of those bidders possessing the skill, ability and integrity necessary for the faithful performance of the work; (2) who shall certify, that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work; (3) who shall certify that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; (4) who, where the provisions of section 8B of chapter 29 apply, shall have been determined to be qualified thereunder; and (5) who obtains within 10 days of the notification of contract award the security by bond required under section 29 of chapter 149; provided that for the purposes of this section the term "security by bond" shall mean the bond of a surety company qualified to do business under the laws of the commonwealth and satisfactory to the awarding authority; provided further, that if there is more than 1 surety company, the surety companies shall be jointly and severally liable.

(d) The provisions of this section shall not apply (1) to the extent that they prevent the approval of such specifications by any contributing federal agency, (2) to materials purchased under specifications of the state department of highways at prices established by the said department pursuant to advertisement and bidding in connection with work to be performed under the provisions of chapter eighty-one or chapter ninety, (3) to any transaction between the commonwealth and any of its political subdivisions or between the commonwealth and any public service corporation, and (4) to any contract of not more than \$50,000 awarded by a governmental body, as defined by section two of chapter thirty B, in accordance with the provisions of section five of said chapter thirty B; and (5) to any contract solely for the purchase of material awarded by a governmental body, as defined by section 2 of chapter 30B, in accordance with section 5 of said chapter 30B, or procured through the operational services division pursuant to sections 22 and 52 of chapter 7.

(e) The word "material" as used in this section shall mean and include any article, assembly, system, or any component part thereof.