

Asst. Secy., for Public and Indian Housing, HUD

§ 941.600

(2) Submit schedules for completing the work identified in its proposal and report periodically on its progress in meeting the schedules;

(3) Notwithstanding 24 CFR 941.205(c), 24 CFR 941.402(a) and 24 CFR 85.36(g), submit to HUD documents for prior approval, which may include, but are not limited to:

(i) Complete design, construction and bid documents (prior to soliciting bids);

(ii) Complete rehabilitation drawings/specifications or work write-ups;

(iii) Development budgets, including modifications;

(iv) Proposed award of contracts, including construction contracts, turn-key contracts of sale, letters of commitment, and contracts with the architect/engineer (prior to execution);

(4) Submit additional material in support of one or more of the statements, resolutions, and certifications submitted as part of the PHA proposal, or periodic performance report;

(5) Not incur financial obligations, or to suspend payments for one or more activities;

(6) Reimburse, from non-HUD sources, one or more program accounts for any amounts improperly expended;

(f) *Failure to take corrective action.* In cases where HUD has ordered corrective action and the PHA has failed to take the required actions within a reasonable time, as specified by HUD, HUD may take one or more of the following steps:

(1) Terminate future draw downs and/or advances to the PHA. In such case, the amount of advances made to the PHA shall be repaid by the PHA from any funds or assets available for that purpose;

(2) Require alternative management of development functions by an entity other than the PHA;

(3) Cancel the fund reservation if the PHA fails to start (begin construction or rehabilitation), or complete (acquisition) within 30 months from the date of the fund reservation pursuant to section 5(k) of the Act;

(4) Recapture for good cause any grant amounts previously provided to a PHA, based upon a determination that the PHA has failed to comply with the

requirements of the development program.

(g) *Right to appeal.* Before taking any of the actions described in paragraph (f) of this section, HUD shall notify the PHA and give it an opportunity, within a prescribed period of time, to present any arguments or additional facts and data concerning the proposed action.

[61 FR 38021, July 22, 1996]

Subpart F—Public/Private Partnerships for the Mixed Finance Development of Public Housing Units

SOURCE: 61 FR 19714, May 2, 1996, unless otherwise noted.

§ 941.600 Purpose.

(a)(1) This subpart authorizes a PHA to use a combination of private financing and public housing development funds to develop public housing units, and is designed to enable PHAs and their partners to structure transactions that make use of private and/or public sources of financing. Many potential scenarios for ownership and transaction structures exist, ranging from the PHA or its partner(s) holding no ownership interest, a partial ownership interest, or 100 percent of the ownership interest of the public housing units that are to be developed. PHAs and/or their partner(s) may choose to enter into a partnership or other contractual arrangement with a third-party entity for the mixed-finance development and/or ownership of public housing units. If this entity has primary responsibility along with the PHA for the development of these units, it is referred to for purposes of this subpart as the PHA's "partner." The entity that ultimately owns the public housing units, whether or not the PHA retains an ownership interest, is referred to as the "owner entity." The resulting "mixed-finance" developments may consist of 100 percent public housing units, or may consist of public housing and non-public housing units.

(2) This subpart sets forth the requirements that must be met by the PHA and its partner(s) before HUD can approve a proposal for mixed-finance

§ 941.602

development, and also sets forth continuing requirements that apply throughout the development and operation of the development by the owner entity.

(b) Under this subpart, public housing units that are built in a mixed-finance development must be comparable in size, location, external appearance, and distribution to the non-public housing units within the development.

§ 941.602 Applicability of other requirements.

(a) *Relationship of this subpart to other requirements in 24 CFR part 941.* The requirements contained in this subpart apply only to the development of public housing units using mixed-finance development methods under this subpart and to the operation of public housing units that are owned, or that will be owned, by an owner entity under this subpart. Other requirements for the development of public housing, as set forth in subparts A through E of this part, shall not apply to the development of public housing units pursuant to this subpart, except as may be required by HUD. Applicable requirements include, but shall not be limited to, the following:

(1) Section 941.103 (“Definitions”) (definitions of the following terms only shall apply to this subpart: “Annual Contributions Contract (ACC),” “cooperation agreement,” “design documents,” “reformulation,” and “Total Development Cost (TDC).”

(2) Section 941.201 (“PHA eligibility”) (except that specific requirements governing the cooperation agreement, as set forth in § 941.201(c), shall be determined in accordance with this subpart);

(3) Section 941.202 (“Site and neighborhood standards”);

(4) Section 941.203 (“Design and construction standards”);

(5) Section 941.205 (“PHA contracts”) (except that the reference to “development related contracts entered into by the PHA” shall be construed to mean “development related contracts entered into by the PHA or the owner entity”);

(6) Section 941.207 (“Relocation and acquisition”);

24 CFR Ch. IX (4–1–10 Edition)

(7) Section 941.208 (“Other Federal requirements”);

(8) Section 941.209 (“Audit”);

(9) Section 941.306 (“Maximum development cost”);

(10) Section 941.402 (“Project design and construction”);

(11) Section 941.403 (“Acceptance of work and contract settlement”);

(12) Section 941.404 (“Completion of development”); and

(13) Section 941.501 (“HUD review of PHA performance; sanctions”).

(b) *Procedure in the event of a conflict between requirements.* In the event of a conflict between a requirement contained in this subpart and an applicable requirement set forth in subparts A through E of this part, the requirements of this subpart shall apply, unless HUD otherwise so determines in writing.

(c) *HUD approval.* For purposes of this subpart only, any action or approval that is required to be taken or provided by HUD or by the HUD field office, pursuant to a requirement set forth in subparts A through F of this part, shall be construed to mean that HUD Headquarters shall take such action or provide such approval, unless the field office is authorized in writing by Headquarters to carry out a specific function under this subpart.

(d) *Applicability of requirements pursuant to 24 CFR part 85.* The requirements of 24 CFR part 85 are applicable to this subpart, subject to the following two provisos:

(1) A PHA may select a partner using competitive proposal procedures for qualifications-based procurement (subject to negotiation of fair and reasonable compensation, including TDC and other applicable cost limitations);

(2) An owner entity (which, as a private entity, would normally not be subject to part 24 CFR part 85) shall be required to comply with 24 CFR part 85 if HUD determines that the PHA or PHA instrumentality exercises significant functions within the owner entity with respect to managing the development of the proposed units. HUD may, on a case-by-case basis, exempt such an owner entity from the need to comply with 24 CFR part 85 if it determines that the owner entity has developed an