

Resolution No. 3

Date: 6/10/2023

City: Washington, DC

NAHB Resolution

Title: HUD Project Based Section 8 Contract Administration Policy
Sponsor: Housing Finance Committee
Submitted by: Steve Lawson

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) Office of Housing funds approximately 17,000 Section 8 Project Based Rental Assistance (PBRA) contracts;

WHEREAS, currently HUD contracts with public housing agencies and state housing finance agencies under the Performance-Based Contract Administration (PBCA) Program to administer the terms and conditions of PBRA Housing Assistance Payment (HAP) contracts with multifamily property owners;

WHEREAS, NAHB members who participate in the PBRA program are directly affected by HUD's contract administration policies;

WHEREAS, a federal court ruling deemed HUD's contracts with Performance-Based Contract Administrators to be "federal procurement contracts" rather than "cooperative agreements;"

WHEREAS, contractors working under federal procurements may not perform "inherently governmental functions;"

WHEREAS, HUD is insufficiently staffed to reabsorb major functions currently performed by PBCAs;

WHEREAS, HUD published a Draft Solicitation for "Housing Assistance Payments (HAP) Contract Support Services (HAPSS)...Solicitation No: 86614622R00001" on July 27, 2022, to receive public comments on a possible federal procurement that is compliant with the Federal Acquisition Regulation;

WHEREAS, NAHB supported a legislative rider in the FY 2023 Omnibus Appropriations bill which prohibited HUD from using appropriations to finalize the Draft Solicitation or a substantially similar solicitation for PBCA contracts; and,

WHEREAS, HUD requested legislative changes to the PBRA program in the FY 2024 Budget Request Performance-Based Contract Administrators (PBCA)

Modifications to permanently authorize HUD to issue PBCA contracts as “cooperative agreements” rather than federal procurement contracts,

NOW THEREFORE BE IT RESOLVED that the National Association of Home Builders (NAHB) support legislative and regulatory measures that enable HUD to award Performance-Based Contract Administration (PBCA) contracts as “cooperative agreements” through a Notice of Funding Opportunity that is not subject to procurement laws or regulations;

BE IT FURTHER RESOLVED that with respect to the Section 8 PBCA Program (or any successor contract administration program), NAHB urge HUD and/or Congress to:

- Provide an opportunity for public comments on the scope of duties, timeframes, and design of the PBCA program;
- Ensure that both HUD and the PBCA have the necessary number of trained staff with the proper skillsets to administer the Section 8 PBRA HAP contracts properly and effectively with timely follow-up to property owners and managers;
- Award at least one PBCA contract per U.S. state or territory;
- Permit incumbent PBCAs that have performed well to compete for new contracts;
- Clarify that having financial interests in a project-based Section 8 property would not, in and of itself, constitute a disqualifying conflict of interest for an incumbent or potential PBCA from serving as a PBCA in the region where the property is located; and
- Provide a 12-month transition between incumbent PBCAs and successor PBCAs; and ensure that in no case should the transition be less than 180 days.

Leadership Council Action:

Resolutions Committee Action:

Housing Finance Committee Action:

Federal Government Affairs Committee Action:

Multifamily Council Board of Trustees Action: