Memorandum

To: Ms. Carol Galante, Acting Commissioner, Federal Housing Administration
Ms. Janet Golrick, Acting Deputy Asst. Secretary, Office of Multifamily Housing Programs
Ms. Deborah Lear, Dir. of Office of Housing Assistance Contract Administration Oversight

From: Jonathan B. Zimmerman, Senior Policy Advisor – Housing Assistance Programs / NAHRO
Date: October 14, 2011
Re: Pending NOFA for the Section 8 Performance-Based Contract Administration (PBCA)

We are writing on behalf of the members of the National Association of Housing and Redevelopment Officials (NAHRO) regarding HUD’s pending Notice of Funding Availability (NOFA) for Contract Administrators and Annual Contributions Contract (ACC) revisions under the Section 8 Performance-Based Contract Administration (PBCA) Initiative. In addition to the concerns and recommendations we made on October 11, 2011 with the Council of Large Public Housing Authorities (CLPHA) and the Public Housing Authorities Directors Association (PHADA), we are recommending the following additional measures to ensure a fair and open competition process:

Level Playing Field

Together, we believe that our members at both local and state levels, as well as their subsidiaries and instrumentalities - have served as outstanding performers under the PBCA program. In addition, they have a strong and proven track record in both providing these services to HUD as well as performing the applicable functions required of PBCAs through their good works on a range of HUD-assisted affordable housing programs. HUD’s PBCA application process is designed to award contracts to all agency types that demonstrate an ability to preserve the ongoing physical and financial strength of Section 8 properties, reduce improper subsidy payments, ensure compliance with HUD’s policies and procedures, and reduce the Department’s costs and workload. PHAs and HFAs have demonstrated effective program management in their capacity statements, including but not limited to high performance in administering the Section 8 voucher programs, Project-Based Section Rental Assistance Program, Project-Based Voucher program and all of the attendant program functions including contract renewals, dealing with landlords and owners. With this in mind, we strongly support fair and open competition for all eligible applicants. To this end, we commend the Department for not having a special preference or set aside for certain bidders by agency or organization type in its March 23, 2011 invitation for PBCA applications.

The performance of both local PHAs and state HFAs under the PBCA program as well as the quality of both types of PBCA applicant agencies, underscores that HUD can attract and select outstanding bids without a priority by agency type. As such, we urge you to continue a competitive process without any explicit priority or de facto priority through the application scoring process for any particular agency or organization type. In designing your pending PBCA competition, we encourage the Department to focus on performance and outcomes versus partnership structure. We urge you to carry out a competition that is equitable and transparent to those agencies, organizations and partnerships choosing to submit responses to a NOFA.

In the Department’s last PBCA application the preamble stated that it encouraged applicant agencies to partner with qualified agencies, but in some cases HUD’s evaluations of PBCA’s proposals deducted
points for applicants that partnered with another private entity. In the previous round, agencies that did not include private partners in their PBCA proposals, still conduct other affordable housing and community development work outside of the PBCA competition, with private contractors. Regardless of the PBCA agency, partnerships are important to performing the series of responsibilities under the contract. HUD should not penalize PBCAs with private partners. In designing your pending PBCA competition, we believe the Department should remove any deductions and not add any bonus points for applicant agencies that partner with qualified partners, and instead emphasize performance and outcomes. Partner references should be allowed as well as PHAs’ references. If at some point in the future, a private partner does not perform under their contract with a PBCA, the PBCA would take appropriate actions and secure a different qualified contractor.

In the last round, recommendations were required from the Department with a preference given for recommendations by front-line staff in the HUD’s Office of Multifamily Housing Programs. Valuing all PBCA applicants’ applicable experience across HUD’s program offices is important. In the first round, HUD’s Technical Evaluation Panels (TEPs) did not assign a higher ranking to recommendations from personnel with the Office of Multifamily Housing Programs over applicable recommendations from other HUD offices. As a result, recommendations from personnel working in other HUD offices including but not limited to the Office of Public and Indian Housing (PIH), were as valid and carried equal weight as references from front line staff in HUD’s Office of Multifamily Housing Programs. We believe that the equal weighting applied by HUD’s Technical Evaluation Panels (TEPs) should be restored in HUD’s pending competition.

**Transparency and Improved Communication**

The opportunity provided by HUD under the application process in the Capability Statement Section to identify previous performance for competitive consideration was well done. That being stated, we believe it would be helpful to all PBCA applicant agencies and the Department, if HUD conducted a briefing/training for bidders, with ample time for questions and answers. For example, the Department has held such briefings/trainings for the Family Unification Program, ROSS Service Coordinators, and Public Housing Family Self-Sufficiency, among others.

For the pending competition, we recommend HUD include detailed scoring information on the relative importance that the Department will give to each applicant’s fee in relation to the technical ratings for elements associated with each factor. HUD provided this calculation with its final award and denial letter, but we are asking that the entire formula (including impact of fees on the final score) be enumerated in the pending application scoring system.

**Consistency**

In an attempt to provide consistency regarding information available to bidders, and to compensate for the information already provided by the Department to some, but not all PBCA applicants in July 2011, we request that assigned points, proposed fee percentage and a final score for all applications for the last competition be posted for review by all.

Among other things, we have become aware of instances where some of our member agencies have received requests under the Freedom of Information Act (FOIA) on several occasions regarding their respective PBCA applications. In response, some PBCA competitors have responded in kind. Needless to say, this practice makes affected agencies’ pending PBCA proposals to HUD during the
pending competition problematic. Receipt of PBCA competitors’ proposals has provided agencies with a competitive advantage. At this point, there is no easy way to “put the genie back into the bottle” for agencies engaged in and affected by this process. Some PBCA applicants report that the number of their Full-Time Employees (FTEs) and bid price obtained by a competitor through the FOIA process, wrote appeal letters stating and/or implying that that this information demonstrated an inadequate capacity for their competitor to adequately perform the tasks required of PBCAs, if awarded the contract. We understand that there were instances where an agency’s protest letter to GAO and HUD following the prior round of competition, included a critique of their competitors’ proposal by obtaining information through the FOIA process or by obtaining other confidential information HUD sent out to other PBCA applicants inadvertently. In these instances where HUD officials have been exposed to this information, they may have been adversely biased by it. In light of this information, how does HUD plan to overcome this problem during the Department’s pending evaluation and review of PBCAs’ proposals?

Given the volume of pending PBCA applications, HUD is urged to continue a fair and objective process with nationally representative teams of qualified HUD officials to evaluate all PBCA proposals. To address concerns from the last awards we recommend a quality control team within HUD to perform a review of all scores to ensure consistency.

**Putting Management and Occupancy Reports (MORs) Into Newly Awarded ACCs**

The formula HUD used to score and rank PBCA applicants’ proposals is highly technical. The tasks performed under PBCA contracts are rigorous. For these reasons, we understand why designing a fair and thorough competitive process is necessary. Nevertheless, we urge the Administration to move quickly and efficiently through the new bidding process, because people have or will lose their jobs on a national basis, as a result of the Management and Occupancy Report (MOR) being removed from existing PBCA’s contracts during HUD’s six month contract extensions. Including the MORs in HUD’s new bidding process and newly awarded ACCs will help prevent: PBRA properties from falling into bad physical condition, an increase in improper payments and funding requests, a reduction in monitoring and oversight of tenant-protection vouchers.

We understand that HUD has ceased speaking with all PBCA applicants around the Department’s pending competition. As representatives of a large number of PBCA applicants, we feel it is critically important that meet with you to discuss this matter further. We appreciate your consideration of our concerns and recommendations.

cc: Secretary Shaun Donovan  
The Honorable Spencer Bachus  
The Honorable Barney Frank  
The Honorable Judy Biggert  
The Honorable Luis Gutierrez  
Senator Tim Johnson, Chairman, Senate Committee on Banking, Housing & Urban Affairs  
Senator Richard C. Shelby, Ranking Member, Senate Committee on Banking, Housing & Urban Affairs  
Saul N. Ramirez, Jr., Chief Executive Officer / NAHRO  
Jeff Falcusan, Director of Policy and Program Development / NAHRO