



Philadelphia Housing Authority
Building Beyond Expectations

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If you have information of possible wrongdoing call, write or visit:

Office of Audit and Compliance
Philadelphia Housing Authority
12 S. 23rd Street, Philadelphia, PA 19103
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INTRODUCTION

The Philadelphia Housing Authority (PHA) spends tens of millions of dollars annually for goods, services, and construction. The contractors/vendors that supply PHA are sometimes unfamiliar with, or unwilling to follow, the standard of conduct expected of them regarding their interaction with PHA staff. In general, the standards of conduct and ethical behavior tend to be stricter in the public sector than in the private sector. Actions and decisions that are acceptable in the private sector may be improper or illegal in the public sector.

PHA's Office of Audit and Compliance (OAC) is providing the following information to advise contractors/vendors that may conduct business with PHA as to the nature and extent of their ethical obligations and what they must expect from PHA's employees. This brochure further explains the purpose and operation of the OAC, offers a guide to recognizing various forms of corruption, and explains how to respond to it. This brochure also reviews the risks of, and penalties for, engaging in corrupt behavior.

What Is the Office of Audit and Compliance?

The OAC is responsible for investigating PHA-related fraud, criminal activity, corruption, conflicts of interest, unethical conduct, waste, mismanagement and misconduct committed by employees, residents, and contractors/vendors doing business with PHA.

PHA's policies require that the OAC be notified of all complaints received within PHA involving alleged corrupt or other criminal activity, conflicts of interest, unethical conduct, misconduct and waste and mismanagement (i) by PHA, (ii) by officers and employees of PHA, or (iii) by persons or entities doing business with PHA, including contractors/vendors. The OAC has jurisdiction to investigate any such complaint.

In accordance with PHA's Anti-Fraud policy, all PHA employees have an affirmative obligation to report, directly and without undue delay, to the OAC, any and all information concerning conduct which they know, or should reasonably know, to involve corrupt or other criminal activity or conflicts of interest, including contractor/vendor offers to engage in unlawful conduct.

Contractors/vendors are reminded that by submitting a bid or proposal to PHA, the bidder represents that it will cooperate with PHA's OAC. Along those lines, if a contractor/vendor knows or reasonably suspects that another contractor/vendor or PHA employee is involved in fraud or questionable activities, the contractor/vendor should inform the OAC.

The OAC strictly enforces these obligations against both PHA employees and those who would induce them to violate their public trust.

What Does PHA Expect From Its Contractors/Vendors?

PHA relies upon open, arms-length, competitive procurements to assure that it spends the public's money wisely. To do business with PHA, contractors/vendors must respect and not undermine that process. PHA also expects contractors/vendors to perform fully, timely, and honestly in accordance with the terms of their contracts, and to demonstrate their "responsibility" through a history of successful and honest performance.

Consider the Following Before Becoming a PHA Contractor/Vendor:

For every proposed PHA contract, PHA is generally required to consider whether the contractor/vendor has the requisite "responsibility" for the contract award. Before engaging in the procurement process, you should take a hard look at your firm's history of business integrity and whether your firm has the capability to fully meet the demands of the work. To do business with PHA, you must:

- Be prepared to demonstrate that your firm has the resources and experience to do the job successfully.
- Be prepared to publicly and truthfully disclose your firm's management and ownership, officers and owners, with an expectation that any of their legal and performance problems will need to be explained.
- Be current on your obligations, including paying corporate, real property, payroll taxes and social security contributions, as well as water, sewer, and other local assessments, and any undisputed contractual claims or other financial obligations due and owing to other contractors, suppliers of materials, or other creditors or laborers.
- Pay prevailing wages, where legally required. Prevailing wage violations and the submissions to PHA of falsified certified payrolls is against the law and will be prosecuted to the fullest extent of the law.

Submitting a Bid or a Proposal

As mentioned earlier, PHA is generally required to conduct competitive procurements and to award solely on the basis of price and merit. Efforts by a contractor/vendor or by a lobbyist acting on behalf of a contractor/vendor to gain an “inside track” by inhibiting competition or exploiting business or political relationships are strictly prohibited.

Contractors/vendors are expected to independently and honestly prepare and submit bids and proposals based upon their own costs and operations without the benefit of knowing what their competitors will do. By this mechanism, PHA obtains the most advantageous price or proposal available among the firms doing business in that market. When offering a bid or a proposal to PHA:

- Do not “co-operate” or share pricing information with competitors when preparing bids. Anti-competitive activity, where competitors agree on the prices to be submitted, is known as “collusive bidding,” “price fixing,” or “bid-rigging,” and is illegal.
- Do not submit artificially high or low bids to make a competitor’s price look more reasonable. This is known as “complementary bidding,” “courtesy bidding,” or “cover,” and is illegal.
- Do not submit bids or proposals that are deceptively attractive with the expectation that after winning the contract you will recover your additional costs or inflate profits through change orders or related contracts in which you then have a “sole source” competitive advantage.
- Do not manipulate unit costs by selectively underbidding particular line item costs with the expectation that their quantities will change afterward.

Sensitive and Protected Information

Unlike private industry, firms competing for PHA business are not permitted to obtain a competitive advantage by learning more about a proposal or contract than what is available to all other bidders and proposers. For each procurement, there is generally a mechanism created to appraise potential contractors/vendors of the information they need to prepare their bids or proposals. Do not circumvent this process by asking or inducing a current or former PHA employee to provide you with information to which you are not entitled. Information relating to the identity of potential bidders, proposal contents, cost/pricing data, proprietary information and trade secrets, technical cost evaluations, and rankings is confidential, at least until the award has progressed to the point where the information is publicly available.

If Your Company is Awarded a PHA Contract

If your company is selected as a winning bidder or proposer, PHA will review your company's past experience and will conduct an appropriate background check in order to assess whether your firm has the requisite business integrity to be awarded public funds.

A contractor/vendor's ethical obligations do not end with the contract award. Gifts and job offers may not be offered to influence PHA employees to approve work, materials, or payments under the terms of the contract. Contractors/vendors are required to perform fully in accordance with the terms of their PHA contracts.

The delivery of goods or services that fall below contractual requirements, and for which the supplier charges as if contractual specifications had been met, is known as "product substitution." Product substitution is a violation of your contract or worse. The following acts are considered product substitution:

- Providing inferior quality or substandard raw materials and finished products.
- Substituting generic or foreign-made products when particular brand name or domestically produced products are required in the contract specifications.
- Submitting for compliance testing, samples or items that are not representative of actual production materials or products.
- Substituting used or refurbished products without authorization.

Job Offers by Contractors/Vendors:

Should you determine that a PHA employee involved in contract procurement or administration, or his or her family member, would make a perfect addition to your firm, you must make sure that the PHA employee is not involved in any capacity with any contract procurement or administration that affects your firm before discussing a job offer, or even the prospect of a job. Wait until the PHA employee is no longer involved with such contract procurement or administration or until that particular procurement or contract is completed before you discuss employment opportunities. Otherwise, your attempt to discuss employment may be considered an attempt to improperly influence such contract procurement or administration.

If you hire a former PHA employee, you should be aware of two restrictions. First, as a general rule, he or she may not represent a person on any matter before the PHA with which he or she has been associated for at least one year after he or she leaves PHA's employment. Second, he or she may not reveal or use for private advantage any confidential information he or she may have about a contract you may hold or for which you may be competing.

CONTRACTORS/VENDORS AND INSPECTORS: A CODE OF CONDUCT

What is Corruption?

Corruption is a broad term encompassing many types of behavior. While the most blatant forms of corruption (e.g. a PHA contractor who offers \$100.00 to a PHA inspector to approve a job) are obvious, there are certain acts, which, while not as clear-cut, are nonetheless corrupt. A corrupt act can be seemingly insignificant as offering lunch to a PHA inspector. Below are some definitions and examples of corruption, which may assist you in recognizing the more subtle forms of corruption.

Bribery, Bribe Receiving, Unlawful Gratuities, and Rewarding Official Misconduct: What Do These Terms Mean?

All these terms can be found in Federal and/or Pennsylvania State Law because they are all crimes. If you are found guilty of committing any of these acts, you may be subject to a sentence of imprisonment.

Bribery is defined as conferring, offering or agreeing to confer, any benefit upon a public servant with an agreement or understanding that such public servant's vote, opinion, judgment, action, decision, or exercise of discretion as a public servant will thereby be influenced. **Note that, for the crime of bribery to occur, it is not necessary that the benefit actually be bestowed upon the public servant.**

Examples of bribery include:

- When a contractor/vendor approaches an inspector and offers or agrees to offer any benefit (e.g. money, sports tickets, free dinners, a car, etc.) in exchange for the inspector, in his or her official capacity, to expedite payment on the contract.
- When the contractor/vendor approaches an inspector with an offer of any benefit in exchange for an inspector approving unwarranted additional work or "signing-off" on work that the contractor/vendor did not perform or complete according to the contract specification.

Again, the offers by the contractor/vendor are bribery — no actual exchange of goods or other benefit needs to take place.

Bribe Receiving occurs when a public servant solicits, accepts, or agrees to accept any benefit from another person, upon an agreement or understanding that his or her vote, opinion, judgment, action, decision, or exercise of discretion as a public servant will thereby be influenced. In this case too, the actual receipt of the benefit is unnecessary to any potential prosecution.

A PHA employee is, by definition, a public servant. Therefore, an inspector would commit the crime of bribe receiving, for example, after approaching a contractor/vendor and soliciting, demanding or requesting that the contractor/vendor give a benefit in exchange for approving completed work that otherwise would not be approved. Once more, it is the mere requesting of or agreement to accept a benefit in exchange for influencing an Inspector's actions, which constitutes a violation of this law.

Giving **Unlawful Gratuities** occurs when a contractor/vendor knowingly confers, or agrees to confer, any benefit upon a public servant for having engaged in official conduct which the public servant was required or authorized to perform, and for which that public servant was not entitled to any special additional compensation.

Examples of unlawful gratuities include:

- When a contractor/vendor gives a PHA employee money or tickets to a sporting event in appreciation for having been awarded a contract (including a purchase order or a certificate for payment) by the employee.
- When a contractor/vendor takes a PHA employee out for drinks or a meal or gives a PHA inspector money following a routine inspection.
- When a contractor/vendor gives a PHA employee a discount on the employee's purchase of tools or supplies for personal use, after the employee purchases items at the contractor's/vendor's store for use at PHA owned properties and facilities.

PHA employees are not allowed to ask for, or receive, any gratuities from contractors/vendors. "Tipping" is not allowed.

Receiving Unlawful Gratuities occurs when a public servant solicits, accepts or agrees to accept, any benefit for having engaged in official conduct that the public servant was required or authorized to perform, and for which there was no entitlement to any special or additional compensation.

Receiving Unlawful Gratuities includes solicitation of gratuities by an inspector before the inspector will perform in a timely manner his or her duties on PHA's behalf under a contract, such as the inspection of one phase of a construction or installation project before an invoice can be processed for payment or the contractor can proceed to the next phase of the project or installation.

The general rule is that a PHA employee cannot accept any gifts from a contractor/vendor with whom PHA does business. PHA employees are expressly prohibited from soliciting or accepting anything of monetary value, including a gift, reward or a promise of future employment.

The impropriety of gift-giving and gratuities is often puzzling to contractors/vendors, especially if they also have private sector work. Government employees operate under a special trust. As a result, even the appearance of favoritism or special treatment is inappropriate. The giver may believe that "one good turn deserves another." In any case, these activities are strictly prohibited and subject to criminal prosecution.

Rewarding Official Misconduct occurs when a person knowingly confers, or offers or agrees to confer, any benefit upon a public servant for having violated the public servant's official duty. An asbestos removal contractor/vendor, for example, would be guilty of this crime if he gave an inspector a "gift" because the inspector failed in his duty to inspect the work site.

Conversely, if a PHA employee or inspector solicits, accepts or agrees to accept, any benefit from another person for having violated his or her duty as a public servant, that inspector would be guilty of receiving reward for official misconduct. In other words, if a PHA inspector approaches a contract/vendor and suggests that the inspector is deserving of a "gift" because he/she did not show up at the work site to inspect it for the removal of asbestos, the inspector would be guilty of receiving a reward for official misconduct.

Why Do Laws Regarding Corruption and Gift Giving Exist?

These laws were written to prevent a public servant from:

- Using his/her public office for private or personal gain
- Giving preferential treatment to any person or firm, which undermines open and fair competition
- Compromising independence or impartiality in the making of official decisions

What Should I Do If Confronted With a Corrupt Overture?

If you believe that you are being asked to become a party to a corrupt act, the following steps are suggested:

1. Try not to accept or refuse the offer; attempt to stall for time.
You may say something like, "I'll get back to you."
2. Terminate the conversation in an appropriate, but unhurried manner.
Obtain a telephone number where you can reach the person.
NEVER give out your home telephone number or address.
3. As soon as it is practical, write notes for yourself detailing what happened and when it happened.
4. Inform the OAC as soon as possible and keep the matter confidential by not discussing it with others, including friend, coworkers or supervisors.

How to Report Corruption to the Office of Audit and Compliance?

In all cases, you must contact the OAC immediately and should not discuss the situation with anyone other than the OAC. All information regarding corruption, fraud, waste, mismanagement, whistleblower retaliation, unfairness, favoritism, or impropriety in any contract should be reported immediately to:

Attn: Complaint Intake Unit
Office of Audit and Compliance
Philadelphia Housing Authority
12 S. 23rd St, 5th floor
Philadelphia, PA 19103
Fraud Hotline: (215) 684-8300
Fax: (215) 684-8315
E-mail: oac@pha.phila.gov



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