



New York City Housing Authority Office of the Inspector General



Contractors and Vendors Anti-Corruption Guide



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An Anti-Corruption Guide for New York City Housing Authority Contractors/Vendors
From The Office of the Inspector General

Introduction:

The New York City Housing Authority (“NYCHA”) spends hundreds of millions of dollars annually for goods, services, and construction. The contractors/vendors that supply NYCHA are sometimes unfamiliar with, or unwilling to follow, the standard of conduct expected of them regarding their interaction with NYCHA 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 decision-making that are accepted in the private sector may be improper or illegal in the public sector.

The Office of the Inspector General (“OIG”) is providing the following information to advise NYCHA contractors/vendors as to the nature and extent of their ethical obligations and what they can expect from NYCHA employees. This brochure further explains the purpose and operation of the OIG, offers a guide for 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 the Inspector General?

The OIG is responsible for investigating NYCHA-related criminal activity, corruption, conflicts of interest, unethical conduct, and misconduct committed by employees, residents, and contractors/vendors doing business with NYCHA. The New York City Department of Investigation (“DOI”) has supervisory responsibility over the OIG, and the NYCHA Inspector General reports to the DOI Commissioner, pursuant to a long-standing agreement between NYCHA and DOI (the “Agreement”).

Mayoral Executive Order Number 16, made applicable to NYCHA by the Agreement, requires that the Inspector General be notified of all complaints received within NYCHA involving alleged corrupt or other criminal activity, conflicts of interest, unethical conduct, misconduct and incompetence (i) by NYCHA, (ii) by officers and employees of NYCHA, or (iii) by persons or entities dealing with NYCHA, including contractors/vendors. The Inspector General has jurisdiction to investigate any such

complaint. Every NYCHA employee has the **affirmative** obligation to report, directly and without undue delay, to the OIG, 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 NYCHA, the bidder represents that it will cooperate with NYCHA. Along those lines, if a contractor/vendor knows or reasonably suspects that another contractor/vendor or NYCHA employee is involved in questionable activity, the contractor/vendor should inform the OIG.

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

What Does NYCHA Expect From Its Contractors/Vendors?

NYCHA relies upon open, arms-length, competitive procurements, to assure that it spends the public's money wisely. To do business with NYCHA, contractors/vendors must respect and not undermine that process. NYCHA 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.

Before You Consider Becoming a NYCHA Contractor/Vendor:

For every proposed NYCHA contract, NYCHA 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 NYCHA, 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; and
- Pay prevailing wages, where legally required. Prevailing wage violations and the submissions to NYCHA of falsified certified payrolls is against the law and prosecuted to the fullest extent of the law.

Offering a Bid or a Proposal:

As stated earlier, NYCHA 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 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, NYCHA obtains the most advantageous price or proposal available among the firms doing business in that market. When offering a bid or a proposal to NYCHA:

- Do not "cooperate" 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; and
- Do not manipulate unit cost awards by selectively underbidding particular line item costs in the expectation that their quantities will change afterward.

Sensitive and Protected Information:

Unlike private industry, firms competing for NYCHA 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 apprise 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 NYCHA employee to provide you with information to which you are not entitled. Information relating to the identity of potential offerors, 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 the contract:

If your company is selected as a winning bidder or proposer, and the contract exceeds a certain dollar threshold, you will have to submit VENDEX Questionnaires to the NYC Mayor’s Office of Contract Services, and the OIG will conduct a background check in order to assess whether your firm has the requisite business integrity to be awarded public funds. The VENDEX Questionnaires are sworn statements made on behalf of the firm and its principals, and should be answered truthfully and with full disclosure.

A contractor/vendor’s ethical obligations do not end with the contract award. Gifts and job offers may not be offered to influence NYCHA 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 NYCHA contracts.

The unauthorized 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; or
- Substituting used or refurbished products without authorization.

Job Offers by Contractors/Vendors:

Should you determine that a NYCHA 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 NYCHA 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 NYCHA employee is no longer involved with such contract procurement or administration or until that particular procurement or contract is completed before you discuss employment prospects. Otherwise, your attempt to discuss employment may be considered an attempt to improperly influence such contract procurement or administration.

If you hire a former NYCHA employee, you should be aware of three restrictions. First, as a general rule, he or she may not communicate in any form with NYCHA for at least one year after he or she leaves NYCHA’s employ. Second, he or she may never work of a particular matter that he or she personally and substantially worked on while in NYCHA’s employ. Third, 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 NYCHA contractor who offers \$100.00 to a NYCHA 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 NYCHA 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 the New York State Penal 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 upon 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; or
- 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 offer by the contractor/vendor is bribery – no actual exchange of goods or to 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 NYCHA Inspector 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 which 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 NYCHA 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 NYCHA Inspector out for drinks or a meal or gives a NYCHA Inspector money following a routine inspection;
- When a contractor/vendor gives a NYCHA 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 NYCHA owned properties and facilities.

NYCHA Inspectors 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 obligations on NYCHA'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 term "benefit" includes gifts. The general rule is that a NYCHA Inspector cannot accept any gifts from a contractor/vendor with whom NYCHA conducts business.

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 NYCHA 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 NYCHA Inspector approaches a contract/vendor and suggests that the Inspector is deserving of a "gift" because he 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 gain;
- Giving preferential treatment to any person or firm; and
- 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 action, the following steps are suggested:

- Try not to accept or refuse the offer. Attempt to stall for time. You may say something like, "I'll get back to you."
- 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;
- As soon as it is practical, write notes for yourself detailing what happened and when; and
- Inform the OIG as soon as possible and keep the matter confidential to others.

How Do You Report Corruption to the Office of the Inspector General?

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

Office of the Inspector General

180 Maiden Lane 19th floor

New York, NY 10038

Phone: (212) 306-3355 or (212) 306-3356

Fax: (212) 306-6484

Email: ig@nycha.nyc.gov