

**NEW HAMPSHIRE HOUSING FINANCE AUTHORITY  
DESIGN AND CONSTRUCTION RULES  
HFA 111**

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**HFA 111 PART ONE: Overview, Purpose, Applicability**

HFA 111.01 Overview and Purpose

- (a) The purpose of these Design and Construction Rules for new construction and the rehabilitation of existing structures is intended to advise industry professionals and to ensure a basis for providing safe, sanitary, cost-effective, energy efficient, and decent housing for all occupants as well as protecting the Authority's security interest in the property.
- (b) These Design and Construction Rules establish both general and minimum criteria for the design, construction, and rehabilitation of multi-unit housing developments financed by the Authority.

HFA 111.02 Applicability

- (a) These Design and Construction Rules only apply to Authority-financed multi-unit housing developments for the purposes of design, construction, and rehabilitation.
- (b) The provisions of HFA 101 are incorporated into these HFA 111 rules.
- (c) These Design and Construction Rules will complement or supplement any national, state, or local regulations. In any situation where conflicting standards exist, the stricter standard, as determined by the Authority in its sole discretion, shall apply.

HFA 111.03 Rulemaking

These Design and Construction Rules are generally adopted pursuant to RSA 204-C:9 which empowers the Authority to adopt rules relative to the design and construction of Authority-financed multi-unit housing developments.

HFA 111.04 Additional Requirements

- (a) The Authority requires full conformance with current federal, state, and locally adopted plumbing, electrical, life safety, accessibility, energy, and engineering codes and standards.
- (b) The Authority requires full conformance with all applicable federal, state, and local regulations regarding zoning and subdivisions, floodplains, wetlands, and other environmental concerns.
- (c) All construction drawings and design specifications shall be completed utilizing these Design and Construction Rules and stamped by a licensed architect or professional engineer registered with a permanent licensing number issued by the appropriate State licensing board.

- (d) Inspections shall be required by the architect or engineers of record prior to the concealment of work, and again at completion of work, prior to final payment.
- (e) All primary design professionals must provide proof of insurance to the developer and the Authority prior to the start of construction. The coverage shall provide protection against design errors and omissions and shall have an annual aggregate limit of no less than \$2,000,000.

## **HFA 111 PART TWO: Definitions**

### HFA 111.05 Definitions

In addition to the terms defined in HFA 101, the following words or terms shall have the following meanings in these HFA 111 Rules:

“Construction Management” means method of construction project delivery where the developer contracts with a Construction Management firm to oversee the planning, design, and construction of a project, from its beginning to its end. The only form of Construction Management that can be used on projects with Authority financing is the Construction Management at Risk variation, where the Construction Management firm establishes a Guaranteed Maximum Price acceptable to the developer and becomes the prime contractor during the construction phase. A contractor engaged to provide construction management services is referred to as a “Construction Manager.” All costs and invoices of the Construction Manager are subject to review and approval by the developer and design team.

“General Contracting” means a form of project delivery where the contractor provides a fixed stipulated lump sum (AIA A101) for a scope of work developed by the architectural and engineering design team. A contractor engaged to deliver a construction project using this approach is referred to as a “General Contractor.”

“Guaranteed Maximum Price” means a cost-type contract where the Construction Manager is compensated for actual costs incurred plus a fixed fee subject to a ceiling price. The Construction Manager is responsible for cost overruns.

“Preconstruction Period” means the design and development stages before construction of a project begins as defined by the American Institute of Architects.

“Open Book” as applied to Construction Management contracts entitle the owner, developer, and the Authority full access to the guaranteed maximum price estimate, change order estimates, supplier and subcontract bids, labor estimates, documents that support accounting entries and the cost of the work, including but not limited to payrolls, invoices, subcontracts, proposals, purchase orders, and receipts.

## **HFA 111 PART THREE: General Rules**

### **HFA 111.06 Development Review**

- (a) Prior to the submission of any application for financing, the developer must contact the Authority for consultation.
- (b) The developer must make appropriate arrangements with the Authority to have staff visit the site prior to the submission of the Application. The Authority will review preliminary information about the developer's site, construction/rehabilitation plan, and development team.
- (c) The developer must request a plan review by local code and fire prevention officials prior to submission of final plans to the Authority.

### **HFA 111.07 Procurement**

- (a) Two weeks prior to going out to bid the Developer must submit a copy of the Bid Invitation or Request for Proposal to Authority staff for review and comment. Allow one week for the review.
- (b) Developers must contract for construction services using either the General Contracting or Construction Management method of delivery. In either case, the developer must use a competitive process to select the General Contractor or Construction Manager in accordance with HFA 111.08 or HFA 111.09. Some other funding sources may require publicly advertised bidding which will also be acceptable to the Authority.
- (c) Developers who wish to contract directly with trade contractors for discrete, limited scopes as part of a property recapitalization may do so in accordance with HFA 111.12.
- (d) For projects with construction costs of \$2,500,000 or more, the Authority limits the combined value of the General Contractor's or Construction Manager's overhead, profit, and general conditions to 14% of the Cost of the Work excluding performance and payment bonds and building permits.
- (e) For projects with construction costs of less than \$2,500,000, the Authority limits the combined value of the General Contractor's or Construction Manager's overhead, profit, and general conditions to 16% of the Cost of the Work excluding performance and payment bonds and building permits.
- (f) For projects with construction costs of less than \$1,000,000, the Authority limits the combined value of the General Contractor's or Construction Manager's overhead, profit, and general conditions to 20% of the Cost of the Work excluding performance and payment bonds and building permits.

### **HFA 111.08 Construction Management**

- (a) Developers shall obtain a minimum of three proposals for construction management services. Proposals must include the following:
  - (1) A construction management fee expressed as a percentage of the Cost of the Work. This fee shall be fixed as a lump sum when the Guaranteed Maximum Price is established;

- (2) All pre-construction service fees, expressed as a lump sum inclusive of all costs, including labor, travel expenses, and consumables, incurred during the Preconstruction Period. The developer must define the maximum duration of the Preconstruction Period after which additional reimbursement for preconstruction services may be negotiated between the developer and the Construction Manager with Authority approval if additional preconstruction services are required;
  - (3) A firm price proposal for the General Conditions. The proposal will be based on estimated start and finish dates provided by the developer. An allocation schedule that specifies what costs will be considered Construction Management Fee, General Conditions, and Cost of the Work shall be prepared by the architect of record and included in the Request for Proposal provided to each prospective Construction Manager; and
  - (4) The name of the bonding company, their bonding capacity, and the bonding fee expressed as a percentage of the Cost of the Work. The bonding fee shall be fixed as a lump sum when the Guaranteed Maximum Price is established.
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- (b) Proposals shall be opened publicly at a time and place determined by the developer or the developer's agent. The Construction Manager offering the best combined pricing for the fees and services noted in HFA 111.08(a) will be awarded the project
  - (c) Working with the developer's design team, the Construction Manager will refine the scope of the work based on preliminary plans and specifications, and then manage the competitive bidding process with qualified subcontractors for each construction component, and will develop a Guaranteed Maximum Price to amend to the Construction Management contract. The Construction Manager must obtain a minimum of two bids for all subcontracts with a value less than or equal to \$20,000 and a minimum of three bids for all subcontracts with a value greater than \$20,000. Projects utilizing modular construction will also be required to submit three bids from the modular contractor. The Construction Manager must award the work to the lowest responsible bidder in each case unless authorized to hire a different bidder by the developer and the Authority.
  - (d) A bid summary and all bids shall be provided to the developer and the Authority for review prior to closing.
  - (e) In addition to the Authority's bonding requirements, the Guaranteed Maximum Price shall include assignment of responsibility for acquiring builder's risk insurance with extended coverage in the amount of the Guaranteed Maximum Price and any subsequent modifications from change orders.
  - (f) The Construction Manager may perform the work specified for one or more components provided, however, that at least two other bids are received from other subcontractors and that the Construction Manager's price proposal for that component is the low bid. The Construction Manager may perform miscellaneous other work on the project without competitive bidding provided that the total value of such work does not exceed 2.5% of the guaranteed maximum price. The Construction Manager must be able to provide documentation that the value of the un-bid work does not exceed 2.5% of the guaranteed maximum price.

- (g) Upon completion of the project, all guaranteed maximum price savings are to be returned to the developer.
- (h) Construction Management contingencies shall not exceed 2.5% on Authority projects, and the contingency may not be used to supplement general conditions costs or self-performed work.

#### HFA 111.09 General Contracting Procurement

- (a) Developer may select a General Contractor from a pre-selected list at the developer's discretion provided that a minimum of three bids are obtained. There shall be one mandatory pre-bid meeting that all contractors shall attend. Failure to attend the mandatory pre-bid meeting will disqualify the contractor from bidding on the project.
- (b) Bids shall be opened publicly at a time and place determined by the developer or their agent. The contract shall be awarded to the lowest responsible bidder, using only the base bid amount. Alternates and/or unit costs shall not be considered when determining the lowest bid.
- (c) The General Contractor chosen for the contract award, and all subcontractors selected by the General Contractor shall not appear on HUD's list of debarred contractors. If the General Contractor or any subcontractors are discovered to be on HUD's list of debarred contractors after the acceptance of the bid by the Authority, then the bid will be disqualified by the Authority and the bidding process must be restarted.

#### HFA 111.10 Bids Over Budget

- (a) If the construction bid exceeds the budgeted amount by 10% or less, the developer may negotiate changes with the lowest responsible bidder or Construction Manager provided that all changes be approved by both the design team and the Authority.
- (b) Where bids exceed 10% of the project budget, the developer, architect, low bidder, and the Authority shall meet to review the project and determine the best course to follow. The Authority, in its sole discretion, may require a redesign by the architect, subject to the Authority's approval, and re-bidding in conformance with HFA 111.08 or 111.09. Additional bids may be required if the Authority considers the General Contractor's cost or any subcontractor's costs excessive.

#### HFA 111.11 Identity of Interest

- (a) The Authority may grant permission for a General Contractor or Construction Manager sharing an identity of interest, as defined in 24 CFR §242.1, with the developer to participate in the project. The General Contractor or Construction Manager who shares an identity of interest with the developer must demonstrate appropriate qualifications and experience and must employ an "open book" construction management process including the competitive bidding of all subcontracts as described in these HFA 111 Rules.
- (b) In the case of an approved identity of interest, the Authority may require the payment of an additional inspection or oversight fee to be paid directly to the Authority from non-project

resources.

#### HFA 111.12 Recapitalization of Existing Projects

- (a) As part of the recapitalization of existing affordable housing properties, a developer may contract directly with subcontractors for certain improvements. This will only be permitted when the scope of the work is separate and discrete and is an activity normally undertaken as part of property management. Invasive or extensive renovation through structural work or requiring extensive trade coordination must be procured through a competitive construction management or sealed selective bid process pursuant to HFA 111.08 or HFA 111.09.
- (b) The Authority may allow direct contracting between the developer and subcontractor provided that the following criteria are satisfied:
  - (1) The work must be overseen by a property management firm or an independent Clerk of the Works approved by the Authority. In either case, the supervisor approved by the Authority must be present for a minimum of two hours each day that work is taking place;
  - (2) Supervisory services must be billed on an hourly basis. Fees defined as a percent of the cost of the work are not permitted;
  - (3) All contracts must be between the developer and each individual subcontractor;
  - (4) The Clerk of the Works may not self-perform the work or hire subcontractors;
  - (5) The developer, in cooperation with the Clerk of the Works, must obtain two bids for all subcontracts with a value less than or equal to \$20,000 and a minimum of three bids for all subcontracts with a value greater than \$20,000 and must select the lowest responsible bid unless authorized in writing by the Authority;
  - (6) The scope of the work must be limited to ten or fewer trade contractors; and
  - (7) Developer staff time may not be paid out of project resources.

#### HFA 111.13 Contract Requirements

- (a) For projects using either the Construction Management or General Contracting method in the determination of the total construction costs, the contract between the developer and the General Contractor or Construction Manager must incorporate all items included in the bid packages as well as the standard contract terms and general conditions, bid proposal, and bond and insurance forms, using standard AIA contract documents, or an otherwise acceptable contract as approved by the Authority.
- (b) The General Contractor or Construction Manager shall be responsible for all costs associated with winter conditions incurred by themselves or their subcontractors. All construction contracts, including architectural and design contracts, shall adhere to the requirements in these HFA 111 Rules.
- (c) In the case of a conflict between the contract documents and these HFA 111 Rules, the more stringent requirements, as determined by the Authority in its sole discretion, shall apply. A draft AIA construction contract shall be submitted to the Authority for review and approval prior to

final execution.

- (d) A construction project sign shall be erected in a visible location on the job site as soon as possible after the start date pursuant to the Authority's Technical Standards.

HFA 111.14 Bonding and Insurance

- (a) All construction projects procured by means of sealed selective bids and consisting of 11 or more housing units will require a bid bond in an amount not less than 5% of the base bid.
- (b) Projects consisting of 11 or more housing units will require a 100% payment and performance bond, letter of credit, or other form of surety acceptable to the Authority.
  - (1) Payment and performance bonds must meet the following criteria:
    - (A) Issued by a qualified U.S. bonding company bonding company that is licensed by the New Hampshire Insurance Department;
    - (B) The bonding company must be on the United States Department of the Treasury's Listing of Approved Sureties, Circular 570; and
    - (C) The bonding company must be rated on the A.M. Best Company and have a rating of A minus or better.
  - (2) Letters of credit may be used instead of payment and performance bonds. They must be approved by the Authority and must meet the following criteria:
    - (A) Amount of the letter must be at least 15% of the total construction loan in lieu of a Payment and Performance Bond.
    - (B) Must be kept in place for one year after substantial completion. The amount of the letter of credit may be reduced to 5% of the total construction loan amount after the Authority's final construction signoff.
    - (C) Letter of credit provider must be acceptable and approved by the Authority in writing.
  - (3) The Executive Director may approve other forms of surety on a case-by-case basis. Such approval shall be in writing and shall be at the Executive Director's sole discretion and will be based on the following factors:
    - (A) The existence of an identity of interest between the developer and construction manager
    - (B) Net worth of the person or entity providing surety (as evidenced by financial statements prepared or reviewed by a qualified independent third party) in comparison to the amount of the surety;
    - (C) Existence of other contingent liability (such as other claims or guarantees against a guarantor's assets); and
    - (D) Developer's and Construction Manager's lien waiver policy
- (c) For projects of ten or fewer units, the Authority may require some form of security, the form of which is at the discretion of Authority staff.

- (d) The Authority reserves the right to review the financial statements of contractors performing work on Authority-funded projects.
- (e) The developer, General Contractor or Construction Manager shall procure Builder's Risk Insurance for the project and it shall have a maximum deductible of \$10,000.