

**NEW HAMPSHIRE HOUSING FINANCE AUTHORITY
DESIGN AND CONSTRUCTION POLICY 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 Policy Rules for new construction and the rehabilitation of existing structures are intended to advise developers and their teams (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 NH Housing's security interest in the property.
- (b) These Design and Construction Policy Rules establish both general and minimum criteria for the design, construction, and rehabilitation of supportive housing and multifamily housing developments financed by NH Housing.

HFA 111.02 Applicability

- (a) These Design and Construction Policy Rules only apply to NH Housing-financed developments for the purposes of design, construction, and rehabilitation.
- (b) The provisions of HFA 101, General Management and Development Program Rules, are incorporated into these HFA 111 rules.
- (c) These Design and Construction Policy Rules will complement or supplement any national, state, or local regulations. In any situation where conflicting standards exist, the stricter standard, as determined by NH Housing in its sole discretion, shall apply.
- (d) Any waiver of these rules will be implemented in accordance with HFA 117.

HFA 111.03 Rulemaking

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

HFA 111.04 Additional Requirements

- (a) NH Housing requires full conformance with current federal, state, and locally adopted plumbing, electrical, life safety, accessibility, energy, and engineering codes and standards.
- (b) NH Housing 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 Policy 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 NH Housing 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:

“Choice Limiting Action” is defined as a choice that may have an adverse impact on the environment or limit the choice of reasonable alternatives. A choice limiting action may include, but is not limited to, signing a lease agreement, signing construction contract, real property acquisition, rehabilitation, repair, demolition, disposition, or new construction.

“Construction Management” means a 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 NH Housing 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 NH Housing, 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 (AIA A133) 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.

“Design-Build” is a construction delivery method (AIA A141) where the prime contractor, architect, mechanical engineer, plumbing engineer, electrical engineer, and structural engineer share one contract with the developer. The civil engineer may or may not be included in the design-build contract.

“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 and Design-Build contracts entitle the owner, developer, and NH Housing 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.

“Clerk of the Works” for the purpose of these HFA 111 rules shall be the owner’s representative with duties that include but are not limited to - review contract documents, report on work progress relative to the approved contract, report on work progress relative to the approved schedule, review and approve pay applications and change orders, review submittals and shop drawings when necessary.

HFA 111 PART THREE: General Rules

HFA 111.06 Development Review

- (a) Prior to the submission of an application for financing, the developer must contact NH Housing for consultation.
- (b) The developer shall make appropriate arrangements with NH Housing to have staff visit the site prior to the submission of the Application. NH Housing 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 NH Housing.

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 (RFP) to NH Housing staff for review and comment. Allow up to two weeks for the review. The developer shall pre-qualify contractors before extending a bid invitation.
- (b) Developers must contract for construction services using either the General Contracting, Construction Management, or in some cases Design-Build method of delivery. In all cases, the developer must use a competitive process to select the General Contractor, Construction Manager or Design-builder in accordance with HFA 111.08, HFA 111.09, or HFA 111.10. Some other funding sources may require publicly advertised bidding which will also be acceptable to NH Housing.
- (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 111.13.
- (d) For projects with construction costs of \$3,000,000 or more, NH Housing 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 \$3,000,000 but greater than \$1,300,000, NH Housing 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 \$1,300,000 or less, NH Housing 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.
- (g) A contract for construction services (general contractor, construction manager, or design-build) may not be awarded until after NH Housing has received the Environmental Review Release (ERR) from the U.S. Department of Housing and Urban Development (HUD) to avoid a Choice Limiting Action. For Construction Management, a contract for preconstruction services may be executed at any time regardless of the status of the ERR.

HFA 111.08 Construction Management Procurement

- (a) Developers shall obtain a minimum of three proposals for construction management services. The proposals shall include competitive bidding. The developer shall complete Appendix A incorporating the bid information and provide a narrative supporting the scoring in Appendix A - Other Selection Criteria (Teams and Experience, Preconstruction Services, and Contract Administration). The highest scoring bidder with sufficient qualifications shall be awarded the project.
 - (1) Competitive Bidding – the developer will furnish the construction budget and anticipated construction duration for the project to each Construction Manager bidding the project. Based on the budget and duration, the following will be provided by each construction manager.
 - 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.
 - All the pre-construction service fees, expressed as a lump sum inclusive of all costs, including labor, travel expenses, and consumables, incurred during this Preconstruction Period. The developer's RFP should indicate how many estimates are required and when they are required. 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 NH Housing's approval.
 - 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 Work shall be prepared by the architect of record and included in the RFP; and
 - The name of the bonding company, their bonding capacity, and the bonding fee expressed as a percentage of the Cost of Work. The bonding fee shall be fixed as a lump sum when the Guaranteed Maximum price is established.

(2) Appendix A – Construction Management Selection Worksheet

- Bid results shall be entered into the Construction Management Selection Worksheet . The low bidder will receive 50 points. Other bidders will be awarded points based on the competitiveness of their bids. The spreadsheet will automatically calculate the points.
- Team and Experience (30 points), Preconstruction Services (10 points), and Contract Administration (10 points) will be scored by the development team based on interviews and proposals.
- The developers shall provide a narrative supporting scoring for these categories; 1.) Team and Experience, 2.) Preconstruction Services, and 3.) Contract Administration.
- All of the above will be submitted to NH Housing’s Construction Analyst for review.

- (b) 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 of \$50,000 or less and a minimum of three bids for all subcontracts with a value greater than \$50,000. A request can be made to the Executive Director to waive these bidding requirements if reasonable efforts were made to obtain the required number of bids and it is in the best interest of the project to accept less than the minimum number of bids required. Such a request must be in accordance with HFA 117 and policies and procedures published by New Hampshire Housing. Projects utilizing modular construction will also be required to submit three bids from modular contractors. 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 NH Housing.
- (c) A leveled bid summary for each trade along with all related bids shall be provided to the developer and NH Housing for review at least one week prior to closing.
- (d) In addition to NH Housing’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.
- (e) The Construction Manager may perform the work specified for one or more components provided that at least two other bids are received from 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 5.0% of the contract total on new construction projects and 10% on rehabilitation projects. The Construction Manager must provide clear documentation.
- (f) Upon completion of the project, all guaranteed maximum price savings are to be returned to the developer for the benefit of the project. Any savings may be used to pay down a developer fee loan, a NH Housing capital subsidy loan, or other use as approved by NH Housing staff.

- (g) Construction Management contingencies shall not exceed 3.50% and the contingency may not be used to supplement general conditions costs or self-performed work.
- (h) All Construction Management contracts must include the following requirement:
 - (1) The Construction Manager may be awarded a contract for preconstruction services. The Construction Manager selected for preconstruction services may be awarded a separate contract for construction services. The contract for construction services shall not be awarded until after New Hampshire Housing has received the Environmental Review Release from the U.S. Department of Housing and Urban Development (HUD), which will signify the completion of the Environmental Review and the proposed project's compliance with the provisions of the National Environmental Policy Act of 1969 and HUD regulations at 24 CFR Part 58. There is no guarantee the construction services contract will be awarded.

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 General 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, then the bid will be disqualified by NH Housing and the bidding process must be restarted.

HFA 111.10 Design-Build Procurement

- (a) Design-Build will be considered on a case-by-case basis, and will require the approval of NH Housing's Executive Director. The developer must submit a written request outlining why Design-Build is beneficial over other project delivery methods. Factors that must be considered in the request should include – cost benefit versus traditional approaches, scheduling benefits, open book reporting, competitive bidding of subcontracts, and qualifications of the owner's construction representative.
- (b) Design-Build service selection shall be done in a competitive manner. The developer shall submit a copy of their RFP to NH Housing for approval before issuing it. The procurement process shall be modeled after the Construction Management process (HFA 111.08). Bidding shall account for at least fifty percent of the score. The balance of the score shall be based on Team Experience, Preconstruction Services, and Contract Administration, similar to Appendix A utilized in Construction Management.

- (c) The Design-Builder's overhead, profit, and general conditions shall be in line with competitively bid similar projects as determined by NH Housing.

HFA 111.11 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 NH Housing.
- (b) Bids that exceed 10% of the project budget, the developer, architect, low bidder, and NH Housing shall meet to review the project and determine the best course of action. NH Housing, in its sole discretion, may require a redesign by the architect, subject to NH Housing's approval, and re-bidding in conformance with HFA 111.08, 111.09 or 111.10. Additional bids may be required if NH Housing considers the General Contractor's cost or any subcontractor's costs excessive.

HFA 111.12 Identity of Interest

- (a) NH Housing may grant permission for a Construction Manager or General Contractor sharing an identity of interest (as defined in 24 CFR §242.1) with the developer, to participate in the project. Requests will be evaluated on a case-by-case basis with the approval of NH Housing's Executive Director. Requests must be made in accordance with HFA 117 and policies and procedures published by New Hampshire Housing, and address the following.
 - (1) Qualifications and previous experience as a team with affordable housing. Describe the experience of the team and why an Identity of Interest should be approved. The following criteria will also be considered:
 - A. Successful completion of at least one multifamily development project of similar size.
 - B. Have appropriate staffing to successfully complete the project.
 - (2) The only form of surety that will be accepted is a 100% Performance and Payment Bond. Other forms of surety outlined in HFA 111.15 will not be accepted.
 - (3) Demonstrate the open book construction management process.
 - (4) Discuss subcontractor bidding.
 - (5) The builder's overhead, profit, and general conditions shall be in line with competitively bid similar projects as determined by NH Housing.
- (b) In the case of an approved identity of interest, NH Housing may require the payment of an additional inspection or oversight fee to be paid directly to NH Housing from non-project resources.

HFA 111.13 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, 111.09, or 111.10.

- (b) NH Housing 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 NH Housing. In either case, the supervisor approved by NH Housing 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 of \$50,000 or less and a minimum of three bids for all subcontracts with a value greater than \$50,000 and must select the lowest responsible bid unless authorized in writing by NH Housing through a waiver request submitted in accordance with HFA 117 and policies and procedures published by New Hampshire Housing;
 - (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 111.14 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.
- (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 NH Housing in its sole discretion, shall apply. A draft AIA construction contract shall be submitted to NH Housing 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 NH Housing's Technical Standards.

HFA 111.15 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 NH Housing.

- (1) Payment and performance bonds must meet the following criteria:
 - (A) Issued by a qualified U.S. 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 in lieu of payment and performance bonds on a case-by-case basis. The use of a letter of credit must be approved by NH Housing's Executive Director and must meet the following criteria:
 - (A) Amount of the letter must be at least 15% of the total construction.
 - (B) The letter of credit 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 NH Housing's final construction signoff.
 - (C) Letter of credit provider must be acceptable and approved by NH Housing in writing.

- (3) The Executive Director may approve other forms of surety on a case-by-case basis. Request for such approval shall be submitted in accordance with HFA 117 and policies and procedures published by New Hampshire Housing, and will be based on the following factors:
 - (A) The 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;
 - (B) The existence of other contingent liability (such as other claims or guarantees against a guarantor's assets); and
 - (C) The Developer's and Construction Manager's lien waiver policy.

- (c) For projects of ten or fewer units, NH Housing may require some form of security, the form of which is at the discretion of NH Housing staff.

- (d) NH Housing reserves the right to review the financial statements of contractors performing work on NH Housing -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 \$25,000.