

must provide a term of occupancy of at least five years.

Comment

We received two comments in which the respondents stated that a minimum lease term of five years was not sufficient to protect the Federal interest in the case of high cost major renovations and that this provision should be more stringent. We agree that, depending on the cost of the renovation, it would be a prudent business practice to require that grantees negotiate lease terms in excess of five years. As provided in the policies of the Department of Health and Human Services, the responsible HHS official will only agree to expenditure of Head Start funds for major renovation of a leased facility when the lease is long enough for the full value of the grant-supported improvements to benefit the grant activity. We have shifted the statement on the requirement for the length of the lease to § 1309.21(d)(1).

Section 1309.51—Approval of Drawings and Specifications

Paragraph (a)

This paragraph requires that grantees submit final working drawings and specifications to the responsible HHS official for approval before advertising for bids and contracting for construction or major renovation work.

Comment

One respondent commented that requiring HHS approval of final drawings would add a delay in the construction or renovation process. The respondent added that since technical drawings had to be approved by local officials it should not be necessary for HHS to also approve final drawings. The respondent suggested that the Rule be written to state that HHS should require a written statement by an architect or engineer that final drawings meet all Head Start and local licensing requirements.

Response

By reserving the right to approve final construction and renovation working drawings, HHS is reserving the right to determine that the final plans remain within the scope and costs of the project for which funding has been or will be made available. In order to make our intention clear on this point we have revised the wording of § 1309.51 to read:

(a) The grantee may not advertise for bids or award a contract for any part of the construction or major renovation funded by grant funds until the grantee has submitted to the responsible HHS official final working drawings and

written specifications for the project, a written certification by a licensed engineer or architect as to the technical appropriateness of the proposed construction or renovation and the conformity of the project as shown in the final working drawings and specifications with Head Start programmatic requirements, and a written estimate of the costs of the project by a licensed architect or engineer.

(b) The responsible HHS official may authorize the grantee to advertise bids or award a contract after receiving the information provided under paragraph (a) and determining that sufficient funding is, or will be, available to cover the costs of the project as estimated by the architect or engineer, and that the scope of the project as described in the drawings and specifications is appropriate to the needs of the grantee.

The revised wording of the regulation clarifies what the grantee must provide before the responsible HHS official can authorize the issuance of bids or the signing of a contract. Paragraph (b) clarifies the role of the responsible HHS official as being concerned with whether the scope of the project is appropriate to the grantee's needs and whether Head Start funding is available to meet the estimated costs of the project.

Section 1309.52—Procurement Procedures

Paragraph (b)

This paragraph requires that the HHS official approve contracts for construction and renovation of acquired facilities.

Comment

In reviewing this requirement a respondent stated that this provision did not require the approval of contracts for all construction and major renovation including those in leased facilities or facilities not owned or acquired by the grantee.

Response

It was our intention to require written approval by the HHS official for any use of Head Start funds for renovation and construction activities whether or not the Head Start grantee owns the property to be improved. We are making a change in this provision and paragraph (b) is being amended to read "All contracts for construction or major renovation of a facility to be paid for in whole or in part with Head Start funds require the prior, written approval of the responsible HHS official and shall be on a lump-sum fixed-price basis."

Paragraph (c)

This paragraph requires grantees to obtain written approval for unsolicited modifications that would materially alter the costs of a project or increase the amount of grant funds needed to complete a project.

Comment

We received one comment from a respondent who stated that this paragraph was not clear. The respondent was concerned that the Rule implies that routine "change orders" which are normally encountered when conducting renovation and construction projects would need to be approved which would cause delays in the implementation of projects.

Response

Our intention in this provision is to ensure that funds would be available to complete projects and that the responsible HHS officials would be notified of significant changes which could result in project cost increases. It is not our intention to require grantees to submit routine change orders to the responsible HHS official for prior approval. In order to make this intention clear we are rewording section (c) to state that "Prior written approval of the responsible HHS official is required for modifications that would change the scope or objective of the project or would materially alter the costs of the project by increasing the amount of grant funds needed to complete the project."

Section 1309.54—Davis-Bacon Act

This section conforms with the statute in requiring that all laborers and mechanics employed by contractors and subcontractors in the construction or renovation of Head Start facilities be paid wages as determined by the Secretary of Labor in accordance with 40 U.S.C. 276a (*et seq.*), commonly referred to as the Davis-Bacon Act.

Comment

We received two comments from two respondents suggesting that wages paid for incidental alterations and renovations should be excluded from the requirements of the Davis-Bacon Act.

Response

We cannot adopt this recommendation because the statute provides no authority for exempting from the Davis-Bacon Act any class of construction or renovation activities.