

## **Supreme Court Declines HUD's Challenge in Performance-Based Contract Administrator (PBCA) Procurement Practices Case**

Today the United States Supreme Court announced that it has declined to hear HUD's latest challenge to a previous federal appeals court decision which requires the agency to follow standard procurement practices in the Performance-Based Contract Administrator (PBCA) Program.

In the past, HUD managed the PBCA Program through competitively awarded contracts. Then in 2012, HUD re-cast the procurement contracts as cooperative agreements through a Notice of Funding Availability (NOFA). During the application period of the PBCA NOFA, 42 states filed protests with the Government Accountability Office due to HUD's use of the NOFA as the award mechanism for the PBCA contracts. On August 15, 2012, the GAO sustained the protests. The GAO determined that HUD's use of a NOFA to award the PBCA contracts to administer the project-based Section 8 HAP contracts "was improper because the 'principal purpose' of the NOFA was to obtain contract administration services for HUD's direct benefit and use, which should be acquired under a procurement instrument that results in the award of a contract."

After a long series of appeals from both HUD and the plaintiffs, on March 25, 2014, the US Court of Appeals for the Federal Circuit ruled that the PBCAs are procurement agreements, not cooperative agreements as HUD had argued. HUD filed a petition for a writ of certiorari, or a cert. petition, with the Supreme Court, asking the court to consider this appeal. However, with the Supreme Court declining to hear this cert. petition, the series of legal challenges has now concluded and the next step will be for HUD to reinstate a formal, competitive procurement process in the PBCA Program.