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SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

January 19, 1981

CITY MANAGER'S OFFICE
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Redevelopment Agency of the
City of Sacramento
Sacramento, California

Honorable Members in Session:

CITY GOVERNING BOARD
PHILLIP L. ISENBERG, MAYOR
LLOYD CONNELLY
BLAINE H. FISHER
THOMAS R. HOEBER
DOUGLAS N. POPE
JOHN ROBERTS
LYNN ROBIE
ANNE RUDIN
DANIEL E. THOMPSON

SUBJECT: Follow-up Reports on Rehabilitation Program Recommendations

SUMMARY

A Resolution approving certain policies for the administration of the Sacramento Housing and Redevelopment Agency (SHRA) Rehabilitation Program was adopted by City Council on September 30, 1980. Additional information on four policy items was also requested to be prepared and resubmitted at a later date.

BACKGROUND

Please review the attached Agency's response on the following requested subject areas:

1. Priorities for Section 312 Loan Program

This policy was approved subject to a report clarifying:

- a. Differentiation between low and moderate income to the loan qualifying criteria.
- b. Reasons why this policy was only applicable to the Section 312 Loan Program.

These issues are clarified in Exhibit I. Staff recommends that you review and file this report as submitted.

2. Formal Dispute Resolution Process Including Binding Independent Arbitration

This policy was approved subject to a report describing the procedure and implementation of the arbitration process.

This process is described in Exhibit II. Staff recommends that you review and file this report as submitted.

APPROVED
SACRAMENTO REDEVELOPMENT AGENCY

Date 2/3/81

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3. Bonding of Contractors

This policy was not approved as submitted. Additional information identifying alternate methods to bonding was requested in a subsequent report.

Staff has reviewed the bonding issues as outlined in Exhibit III and recommends that you require that all contractors participating in the rehabilitation program obtain bonding.

4. Performance Standards

It was also requested that a report regarding the establishment of performance standards for City rehabilitation program consistent with County standards be prepared and submitted to Council.

The City performance standard is clarified in Exhibit IV. Staff recommends that you review and file this report as submitted.

FINANCIAL IMPACT

The policy issues and procedures as described in this report do not require additional funding.

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VOTE AND RECOMMENDATION OF COMMISSION

At its regular meeting of January 19, 1981, the Sacramento Housing and Redevelopment Commission adopted a motion recommending approval of the policies for Bonding of Contractors and Performance Standards for City Rehabilitation Programs. The votes were recorded as follows:

AYES: Coleman, Fisher, Knepprath, Luevano, Serna,
Teramoto, Walton

NOES: None

ABSENT: A. Miller, B. Miller

RECOMMENDATION

It is recommended that you authorize and ratify the aforementioned policies.

Respectfully submitted,



WILLIAM H. EDGAR
Interim Executive Director

TRANSMITTAL TO COUNCIL:



WALTER J. SLIPE
City Manager

Contact Person: Michael Hanamura

RESOLUTION NO. 81-007

Adopted by the Redevelopment Agency of the City of Sacramento

February 3, 1981

REQUIRING BONDING ON REHABILITATION
LOAN AND GRANT CONSTRUCTION CONTRACTS

BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF THE CITY
OF SACRAMENTO:

Section 1. The Agency shall not execute in its own name nor approve for execution by the owner of a property which is the subject of a rehabilitation loan or grant any construction contract which does not require as a condition of performance the provision by the contractor at no cost to the Agency or property owner of a bond insuring faithful performance of that contract. Said bond shall be issued by a company and/or surety satisfactory to the Agency and shall be in an amount equal to the full amount of the contract.

CHAIRMAN

ATTEST:

SECRETARY

APPROVED
SACRAMENTO REDEVELOPMENT AGENCY

Date 2/3/81

EXHIBIT I

PRIORITIES FOR SECTION 312 LOAN PROGRAM

- "A. First priority be given to qualified low and moderate income applicants to the extent that available applications are in proper form.
- B. Second priority should be given to neighborhood revitalization applicants where those applicants' applications are in proper form."

This policy was approved subject to a follow-up report clarifying the differentiation between low and moderate incomes and the reasons why this policy was applicable only to the Section 312 Loan Program.

A. Definitions of Low and Moderate Income

1. Low Income

A low income applicant is one whose gross annual income, adjusted for family size, is between 0% and 80% of the median income for the Sacramento area as established by HUD.

2. Moderate Income

A moderate income applicant is one whose gross annual income, adjusted for family size, is between 81% and 120% of the median income for the Sacramento area as established by HUD.

These income limits are adjusted on an annual basis by HUD. Effective July 1, 1980, the established income limits for Sacramento household qualifying by definition as low or moderate income are as follows:

<u>No. in Household</u>	<u>Low (0-80% of Median)</u>	<u>Median Income</u>	<u>Moderate (81-120% of Median)</u>
1	\$0 - 12,000	\$15,000	\$12,001 - 18,000
2	\$0 - 13,700	\$19,100	\$13,701 - 22,920
3	\$0 - 15,400	\$19,250	\$15,401 - 23,100
4	\$0 - 17,100	\$21,400	\$17,101 - 25,680
5	\$0 - 18,200	\$22,750	\$18,201 - 27,300
6	\$0 - 19,250	\$24,050	\$19,251 - 28,860
7	\$0 - 20,350	\$25,450	\$20,351 - 30,540
8	\$0 - 21,400	\$26,750	\$21,401 - 32,100

B. Reasons Why Policy Addressed Only 312 Loan Program

This policy recommendation spoke only to the Section 312 Loan Program because all of the other rehabilitation program guidelines are specific in this area, and contain their own maximum annual income limits with which to determine eligibility. None of these other programs provide for assistance to households whose annual income exceeds 120% of median income.

EXHIBIT II

DISPUTE RESOLUTION PROCESS

"The homeowner, the contractor and Agency staff should sign an agreement stating the work to be performed and whether that work was completed in a satisfactory manner. This statement should be signed by all parties at the beginning of the work, the middle of the work and the end of the work. If a dispute should arise between the homeowner and the contractor, the Agency should make a determination. If the parties are unwilling to abide by the Agency's decision, the matter should be submitted to binding arbitration. These provisions must be incorporated into the contracts to be signed by the parties."

This recommendation was approved subject to a follow-up report on details of its procedure and implementation.

A Formal Dispute Resolution process is to be implemented and includes binding independent arbitration which is to be agreed upon in writing by both the Property Owner and Contractor.

A. Informal Resolution/Agency Written Determination

If, during the course of the rehabilitation work a controversy arises between the property owner and the contractor, Agency staff shall make every attempt to resolve the controversy by holding meetings at the Agency's offices and/or job site. Should this attempt at informal resolution be unsuccessful, the Agency shall make a written determination regarding the facts causing the controversy..

Both the owner and the contractor shall comply with the Agency's written decision on the controversy, unless within 7 days from the date of the decision either owner or contractor elects to request binding independent arbitration of the controversy as provided below. The owner's refusal to approve payment to the contractor or the contractor's refusal to perform work directed by the Agency, shall be considered as noncompliance with the Agency's decision and an election for binding independent arbitration of the controversy. The decision by the Agency shall be admissible as evidence in the arbitration hearing.

B. Binding Independent Arbitration

Any controversy arising out of the performance, scope, or interpretation of the rehabilitation contract, or any claim of breach of the contract, is subject to binding independent arbitration, if either owner or contractor has not accepted the Agency's decision of the controversy, or if both parties have jointly waived their right to a decision by the Agency.

Arbitrators would be selected from Construction Consultants and from the American Arbitration Association on a rotating basis.

The arbitration hearing(s) shall be held at the Agency offices and/or the contract job site, at such times and under such procedures as the independent arbitrator may direct. The arbitrator shall have the final authority to order work performed or re-performed to order the payment of money from one party to another, and to order money paid from the Agency's rehabilitation trust account to the contractor. The arbitrator shall either order the parties to equally bear the costs of arbitration, or shall order one party to bear the entire costs of arbitration, in his/her discretion.

The Agency shall provide its employees and its records to the arbitration free of charge to either party.

EXHIBIT III

BONDING OF CONTRACTORS

"Bonding of Contractors Not Be Required"

This policy was not approved as submitted. What follows is a report describing both alternatives to bonding and the Sacramento Housing and Redevelopment Agency recommendation to require bonding.

1. Cash Deposit

A cash deposit from a contractor could be required in lieu of a Payment and Performance bond. This deposit, which could total amounts equaling 40%-100% of the total contract amount, would be required prior to the time the rehab contract is executed by the property owner and the contractor. These funds would be held in escrow throughout the term of contract.

Advantages:

- a. If the contractor failed to complete the work, the contractor could be judged to be in default of the contract and these funds could be utilized to assist with the completion of the work.
- b. If the contractor failed to pay any subcontractor these funds could be used to pay these costs, eliminating the filing of a lien by a subcontractor for payment.

Disadvantages:

- a. Requiring a cash deposit could eliminate small contractors from participating in rehabilitation programs.
- b. The amount of the cash deposit may not be sufficient to satisfactorily complete the work.

2. Liquidated Damages and Payment Retention (existing Procedure)

The existing Rehabilitation Contract executed by the property owner and the contractor provides for liquidated damages in the amount of \$20 per day for unexcusable delays by the contractor in the completion of the work. Progress payments will be paid up to eighty percent (80%) of the value of the work satisfactorily completed and inspected up to the time of the requisition for such payment. An amount not to exceed twenty percent (20%) will be withheld by the Agency from each progress and final payment, which will collectively represent approximately 20% of the total contract amount. The money withheld from each payment request will be paid after a 35-day mechanic's lien notice period has expired following the filing of a Notice of Completion by the Owner, but not later than 45 days after final inspection approval. The final payment will include any amounts remaining due under the Contract as adjusted in accordance with approved Change Orders and will be subject to withholding any amount due the Owner for Liquidated Damages and any relocation costs.

Advantages:

- a. Helps to insure that contractors' material and labor suppliers will receive payment, thus eliminating the filing of a subcontractor's lien on the property.
- b. Liquidated damages, if assessed, are deducted from money retained, insuring satisfaction of this assessment.

Disadvantages:

- a. This amount of liquidated damages may not be sufficient to cover actual damages suffered by the owner as a result of the contractor's unexcusable delays in the completion of the work.
- b. The amount of funds retained may not be sufficient to satisfactorily complete the work should the contractor quit the job or go out of business.

B. Performance and Payment Bonds

During its initial review of this matter, the Commission discussed the following major advantages and disadvantages in requiring contractors to furnish bonds:

Advantages:

- a. If the contractor failed to complete the work, the homeowner could look to the insurance company for compensation.
- b. If the contractor failed to pay a subcontractor, the bond company may pay that obligation, thus, eliminating the filing of a lien by a subcontractor for payment.

Disadvantages:

- a. The cost of any bond would be passed on to the homeowner as part of the bid.
- b. The inability to obtain bonding may discourage small contractors from bidding on some projects.

The Commission subsequently adopted a motion recommending that contractors not be required to provide bonds.

3. Recommendation

The rehabilitation program has improved its pre-qualification procedures to ensure the participation of more qualified contractors; However, Agency staff is still concerned about the protection of the homeowner in the completion of the rehabilitation work.

It is felt that the above noted disadvantage described in Section B does not create a problem. For example, the additional cost of bonding that would be passed onto the homeowner would be included in the contractor's bid and, therefore, the cost would be absorbed in the low interest loan or grant. The bond will not be an out-of-pocket expense for the homeowner.

In terms of the inability of small contractors to obtain bonding, it has been identified that a majority of the rehabilitation programs participating contractors have already indicated that they have the ability to obtain bonds. The Agency is also prepared to assist small contractors by referring them to other agencies or companies that specialize in bond assistance for small contractors.

The Agency feels that the bonding of contractors will ensure the completion of all rehabilitation work and pay all sub-contractors and material suppliers. Bonding should also provide an extra incentive to contractors to complete their work in a timely manner since many contractors will be working under a bonding limit which will limit the number of jobs that they may handle at any one time. Therefore, it is recommended by staff that bonding be required and that the following procedures be established.

1. Contracts less than \$2,500
 - a. Do not require bonds.
 - b. Withhold 20% of the total contract price for a 35-day lien period to afford the property owner with protection against subcontractors' liens.
2. Contracts for \$2,500 or more
 - a. Require that contractors provide Performance and Payment bonds. Staff has investigated several possible sources of bonding and counseling assistance for contractors. Should a contractor experience difficulties in obtaining the necessary bonds, the Agency will refer the contractor to several agencies and/or companies that specialize in providing bond assistance to small contractors who do not qualify with standard sureties.
 - b. Reduce the total amount of money to be retained from 20% to 10%. This change would be consistent with revised Section 312 Loan Program regulations which become effective February 15, 1981.

EXHIBIT IV

PERFORMANCE STANDARDS

CITY REHABILITATION PROGRAMS

A report was requested regarding the establishment of performance standards for City funded rehabilitation programs consistent with those recently established for County programs.

1. County Rehabilitation Program Performance Standards

In the 1980-81 Agreement to provide Community Development Services for Housing Rehabilitation, the following performance standards were established for County programs:

- a. Of the \$960,000 in CDBG funds authorized, a maximum of \$376,000 may be utilized by the Agency to administer County CDBG funded rehabilitation programs as well as the SB 966, HOHI, and the Section 312 loan programs.
- b. The Agency is to provide a minimum average of six rehabilitated units per month either through loans or grants or a combination of the two. (For the 1980-81 contract year, the total number of units to be rehabilitated is 72).

2. Recommended Performance Standards for City Rehabilitation Programs

The following performance standards are recommended for City Rehabilitation Programs:

- a. Of the \$1,840,000 in CDBG funds authorized for rehabilitation programs, a maximum of \$717,600 may be utilized by the Agency to administer City CDBG funded rehabilitation programs as well as the SB 966, HOHI, and Section 312 Loan Programs.
- b. For fiscal year 1980-81 (July 1, 1980 -- June 30, 1981), the Agency is to provide a minimum average of 12 rehabilitated units per month, either through loans or grants or a combination of the two. The total number of units to be assisted during the year is 144.