

**SUBMITTAL TO THE RIVERSIDE COMMUNITY HOUSING CORP.  
BOARD OF DIRECTORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



507

**FROM:** Riverside Community Housing Corp.

**SUBMITTAL DATE:**  
October 15, 2015

**SUBJECT:** Approve the Fiscal Year 2014-15 Annual Report; All Districts; [(\$104,387)]; City Emergency Solutions Grant Funds 81%; County Emergency Solutions Grant Funds 19%; Project is CEQA Exempt

**RECOMMENDED MOTION:** That the Board of Directors:

1. Find that the project is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061(b)(3);
2. Approve of the attached Fiscal Year 2014-15 Annual Report (Annual Report); and
3. Approve of the budget decrease in the amount of (\$104,387) for fiscal year 2014-15 as part of the attached Annual Report.

**BACKGROUND:**

Summary  
(Commences on Page 2)

Robert Field  
Chief Executive Officer

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
<b>COST</b>	\$ (104,387)	\$	\$ (104,387)	\$	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
<b>NET COUNTY COST</b>	\$	\$	\$	\$	

**SOURCE OF FUNDS:** City Emergency Solutions Grant Funds 81%;  
County Emergency Solutions Grant Funds 19%

**Budget Adjustment:** No  
**For Fiscal Year:** 2014/15

**C.E.O. RECOMMENDATION:**

APPROVE

BY:   
Rohini Dasika

County Executive Office Signature

**MINUTES OF THE RIVERSIDE COMMUNITY HOUSING CORP. BOARD OF DIRECTORS**

On motion of Director Ashley, seconded by Director Jeffries and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

**Ayes:** Jeffries, Tavaglione, Washington and Ashley  
**Nays:** None  
**Absent:** Benoit  
**Date:** October 27, 2015  
**xc:** RCHC

Kecja Harper-Ihem  
Clerk of the Board  
By:   
Deputy

Prev. Agn. Ref.:

District: ALL

Agenda Number:

14-1

FORM APPROVED COUNTY COUNSEL 10/7/15  
DATE  
BY: GREGORY P. PRIAMOS

Departmental Concurrence

A-30  
 Positions Added  
 4/5 Vote  
 Change Order

**SUBMITTAL TO THE RIVERSIDE COMMUNITY HOUSING CORP. BOARD OF DIRECTORS,  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

**FROM:** Riverside Community Housing Corp.

**FORM 11:** Approve the Fiscal Year 2014-15 Annual Report; All Districts; [(\$104,387)]; City Emergency Solutions Grant Funds 81%; County Emergency Solutions Grant Funds 19%; Project is CEQA Exempt.

**DATE:** October 15, 2015

**PAGE:** 2 of 2

**BACKGROUND:**

**Summary**

Pursuant to the Bylaws of the Riverside Community Housing Corp. (RCHC), which were adopted by the RCHC Board of Directors (Board) on September 9, 2014, the Board shall cause an Annual Report to be sent to each Director within 120 days after the end of the corporation's fiscal year. The purpose of such report is to summarize the corporation's activities during the previous fiscal year.

In satisfaction of this requirement of the Bylaws, a copy of RCHC's Fiscal Year 2014-15 Annual Report (Annual Report) is attached hereto for your consideration and approval. The Annual Report includes a financial summary of the corporation's activities for fiscal year 2014-15; a budget decrease in the amount of \$104,387; a review of RCHC's risk management plan; and a review of RCHC's procurement policy.

Pursuant to the California Environmental Quality Act (CEQA), the Annual Report was reviewed and determined to be categorically exempt from CEQA under State CEQA Guidelines Section 15061(b) (3), General Rule or "Common Sense" exemption. It can be seen with certainty that there is no possibility that the approval of this Annual Report may have a significant effect on the environment, as the Annual Report has only financial and administrative effects, and will not lead to any direct or reasonably indirect physical environmental impacts. A Notice of Exemption will be filed by RCHC staff with the County Clerk following the approval of the Annual Report.

Staff recommends that the Board approve RCHC's Fiscal Year 2014-15 Annual Report including a budget decrease in the amount of \$104,387, attached hereto, and find that the project is CEQA exempt.

**Additional Fiscal Information**

The total amount indicated on page 1 of this Form 11 in the Financial Data table is (\$104,387), which is the amount of the budget adjustment and represents the difference between the budgeted total from the approved Fiscal Year 2014-15 Budget and actual revenues and expenditures during fiscal year 2014-15. This adjustment is comprised of a (\$19,874) reduction of unused Emergency Solutions Grant (ESG) funds from the County of Riverside; and a reduction of (\$84,513) ESG funds from the City of Moreno Valley, which changed the notice to proceed to the next fiscal year. The budget adjustment is included in the attached Annual Report as Exhibit B.

No Auditor Controller Office budget adjustments are necessary because RCHC has its own internal software that handles all budgets and payments.

**Impact on Citizens and Businesses**

Approving this item will have a positive impact on residents of Riverside County by supporting the ongoing activities of a non-profit public benefit corporation designed to create and preserve affordable housing opportunities within Riverside County.

**ATTACHMENTS:**

Fiscal Year 2014-15 Annual Report



## **Annual Report Fiscal Year 2014-15**

Pursuant to the Bylaws of the Riverside Community Housing Corp. (RCHC), which were adopted by the RCHC Board of Directors on September 9, 2014, the RCHC Board shall cause an Annual Report to be sent to each Director within 120 days after the end of the corporation's fiscal year. The purpose of such report is to summarize the corporation's activities during the previous fiscal year.

Included in the Annual Report is a financial summary of the corporation's activities for fiscal year 2014-15; a budget adjustment for fiscal year 2014-15; an Annual Statement of Transaction or indemnification, if applicable; an annual review of RCHC's Risk Management Plan; a review of RCHC's Procurement Policy (*odd report presentation years*<sup>†</sup>); a review of RCHC's Conflict of Interest Code (*even report presentation years*<sup>†</sup>); and a review of RCHC's records retention schedule (*even report presentation years*<sup>†</sup>).

<sup>†</sup>The report presentation year is the year in which the Annual Report is presented to the RCHC Board of Directors. For example, the FY 2014-15 Annual Report is presented to the Board in 2015, so the report presentation year is odd (2015).

### **Financial Summary**



Attached hereto as **Exhibit A** is the Independent Auditor's Report for Fiscal Year Ended June 30, 2015, which includes the following information:

1. The assets and liabilities at of the end of fiscal year 2014-15;
2. Principal changes in assets and liabilities during the fiscal year;
3. Revenue or receipts during fiscal year 2014-15;
4. Expenses or disbursements during fiscal year 2014-15; and
5. A report made by independent accountants related to the above referenced financial statement.

### **Budget Adjustment**

A budget adjustment summarizing the differences between actual and budgeted revenues and expenditures for fiscal year 2014-15 is attached hereto as **Exhibit B**.

(Continued)

 A 501(c)(3) Non-Profit Public Benefit Corporation 

5555 Arlington Avenue, Riverside, CA 92504 ■ T. 951.343.5485 ■ F. 951.688.6873 ■ [RCHC@rivcoeda.org](mailto:RCHC@rivcoeda.org)

Page 1 of 2



### **Annual Statement of Transaction or Indemnification**

Pursuant to California Corporations Code §§6321 and 6322, unless otherwise indicated in the Bylaws, an Annual Statement of Transaction or Indemnification shall be furnished to the RCHC Board of Directors disclosing any covered transaction during the previous fiscal year involving more than fifty thousand dollars (\$50,000), or which was one of a number of covered transactions in which the same interested person had a direct or indirect material financial interest, and which transactions in the aggregate involved more than fifty thousand dollars (\$50,000).

RCHC staff and Officers are not aware of any covered transactions during fiscal year 2014-15. Therefore, no Statement of Transaction or Indemnification is required for fiscal year 2014-15.

### **Risk Management**



As part of RCHC's Risk Management Plan, the corporation's insurance policies are assessed annually to ensure that they still meet the needs of the corporation. Currently, RCHC's insurance policy was procured through the Riverside County Office of Risk Management. Specifically, the insurer is the California State Association of Counties (CSAC). The insurance declaration page for coverage period July 1, 2014 to July 1, 2015 is attached hereto as **Exhibit C**.

The office of Risk Management has reviewed the policy and advised that it is satisfactory to meet the needs of the corporation and satisfies the requirements of California Corporation's Code §§5047.5, 5238 and 5239. No changes to RCHC's insurance coverage are recommended at this time.

### **Procurement Policy**

Each odd numbered report presentation year, the Annual Report includes a review of RCHC's Procurement Policy to ensure it continues to meet the needs of the corporation and reflects current requirements. The Policy is attached hereto as **Exhibit D**.

RCHC staff and Officers have reviewed RCHC's Procurement Policy. No changes are being recommended at this time.

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**Exhibit A**  
**FINANCIAL SUMMARY**  
**Fiscal Year 2014-15**



Riverside Community  
Housing Corp.

*Established 1992*

**FINANCIAL STATEMENTS**  
**Proprietary (Enterprise) Fund Type**  
**AND**  
**INDEPENDENT AUDITORS' REPORT**  
**FOR THE YEAR ENDED JUNE 30, 2015**

**SM&Co**  
**Smith Marion**  
**& Company, LLP**  
Certified Public Accountants

**RIVERSIDE COMMUNITY HOUSING CORPORATION**  
**FINANCIAL STATEMENTS AND INDEPENDENT AUDITORS' REPORT**  
**FOR THE YEAR ENDED JUNE 30, 2015**

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Statement of Revenues, Expenses and Changes in Fund Net Position	10
Statement of Cash Flows	11
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**Smith Marion & Company, LLP · Certified Public Accountants**  
**Grand Terrace Office · 22365 Barton Road, Suite 108 · Grand Terrace, CA 92313 · (909) 825-6600**

**Board of Director**  
**Riverside Community Housing Corporation**  
Riverside, CA

## **INDEPENDENT AUDITORS' REPORT**

### **Report on the Financial Statements**

We have audited the accompanying financial statements of business-type activities of the Riverside Community Housing Corporation as of and for the year ended June 30, 2015, and the related notes to the financial statements, which collectively comprise the Entity's basic financial statements as listed in the table of contents.

### **Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatements, whether due to fraud or error.

### **Auditor's Responsibility**

Our responsibility is to express opinions on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statement. The procedures selected depend on the auditor's judgment, including the assessment of the risk of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

### **Opinions**

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the business-type activities of the Riverside Community Housing Corporation, as of June 30, 2015, and the respective change in financial position and cash flows thereof for the year then ended in accordance with the accounting principles generally accepted in the United States of America.



**Other Matters**

*Required Supplementary Information*

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis on pages 3-8 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

  
September 15, 2015

## **RIVERSIDE COMMUNITY HOUSING CORPORATION**

### **MANAGEMENT'S DISCUSSION AND ANALYSIS**

**FOR THE YEAR ENDED JUNE 30, 2015**

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The purpose of this Management's Discussion and Analysis (MD&A) is to provide a narrative overview, financial highlights and analyses of the audited annual financial statements of the Riverside Community Housing Corporation (RCHC). This MD&A section is required by the provisions of the Governmental Accounting Standards Board (GASB) Statement 34, and is presented in conjunction with the accompanying Basic Financial Statements.

The financial statements are reported based on a twelve-month fiscal year, which starts on July 1 of one calendar year and ends on June 30 of the next calendar year; the fiscal year is named by the calendar year in which the fiscal year ends. Therefore, the basic annual financial statements presented in this report are for Fiscal Year 2015, which started July 1, 2014 and ended June 30, 2015.

#### **THE PURPOSE OF THE RIVERSIDE COMMUNITY HOUSING CORPORATION**

On January 7, 1992, the Housing Authority of the County of Riverside's (HACR) Board of Commissioners adopted Resolution Number 92-002 that authorized the creation of the RCHC. The RCHC was established as an affiliate of the HACR for the purpose of financing, acquiring, developing, rehabilitating, owning, managing and selling affordable housing in Riverside County for persons of extremely low, low and moderate income, and to access certain state and federal programs available to non-profit corporations. RCHC was inactive subsequent to its incorporation in 1992. On July 1, 2014 the HACR's Board of Commissioners adopted Resolution Number 2014-007, which authorized the activation of RCHC and commencement of its corporate operations. Hence, HACR's Board of Commissioners acts as RCHC's Board of Directors, HACR employees function as corporate staff and officers, and RCHC conducts its business from the HACR's main office.

#### **FINANCIAL HIGHLIGHTS**

RCHC ended the fiscal year of operations with assets of \$125,423; liabilities of \$85,789; and total net position of \$39,634.

The ending net position of \$39,634 represents an increase of \$58,760 from the prior fiscal year, which resulted from operating revenues of \$233,298, operating expenses of \$124,538, and transfer of \$50,000 cash to the HACR.

These financial highlights are detailed further in the **Presentation of Condensed Financial Information With Analysis of Overall Financial Position**, as shown on page 4.

#### **OVERVIEW OF THE BASIC FINANCIAL STATEMENTS**

RCHC is a blended component unit of the HACR, conducts its financial operations in a business-type approach, and is defined as a governmental enterprise fund by GASB. Therefore, RCHC is required to present its financial statements in the format of enterprise fund financial statements.

The *enterprise fund financial statements* consist of three documents:

- 1) Statement of Net Position
- 2) Statement of Revenues, Expenses and Changes in Fund Net Position
- 3) Statement of Cash Flows

## MANAGEMENT'S DISCUSSION AND ANALYSIS (CONTINUED)

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The *Statement of Net Position* presents information on all of RCHC's assets and liabilities with the difference being reported as net position.

The *Statement of Revenues, Expenses and Changes in Fund Net Position* presents information showing how the RCHC's net position changed during the fiscal year. All changes in net position are reported in the proprietary (enterprise) fund financial statements based on full accrual of revenues and expenses, regardless of the timing of cash flows. As a result, the accrual of revenues and expenses as reported in this statement would affect cash flow in future fiscal periods. Revenues, whether received or not, are properly recorded in the fiscal period in which they are earned; expenses, whether paid out or not, are properly recorded in the fiscal period in which the related debt obligation is incurred.

The *Statement of Cash Flows* presents information on cash flows from operating activities, capital and related financing and investing activities. The accrual of revenues and expenses from prior fiscal year would affect the cash flow in the current fiscal period.

The proprietary (enterprise) fund financial statements are on pages 9-11 of this report.

The *notes to the financial statements* provide additional information that is essential to a full understanding of the data provided by this agency in the proprietary (enterprise) fund financial statements. The notes to the financial statements are on pages 12-14 of this report.

### **PRESENTATION OF CONDENSED FINANCIAL INFORMATION WITH ANALYSIS OF OVERALL FINANCIAL POSITION**

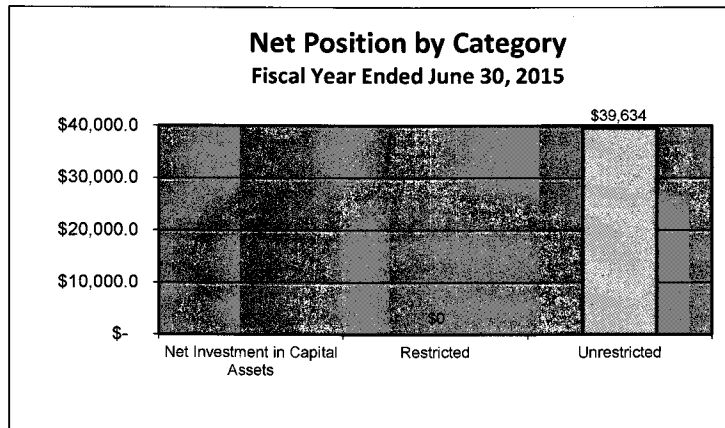
#### *Statement of Net Position*

Financial statements, presented as follows, are shown in a condensed format to compare amounts from the current fiscal year (2015) to amounts from the prior fiscal year (2014). These condensed financial statements are accompanied by charts to illustrate selected aspects of financial information, along with brief narrative analyses.

**MANAGEMENT'S DISCUSSION AND ANALYSIS (CONTINUED)**

**Riverside Community Housing Corporation  
Statement of Net Position**

	<u>2015</u>	<u>2014</u>
<b>ASSETS</b>		
<b>Current Assets:</b>		
Cash	\$ 65,424	\$ 136,650
Total Current Assets	<u>65,424</u>	<u>136,650</u>
<b>Noncurrent Assets:</b>		
Notes Receivable	59,999	-
<b>Capital Assets:</b>		
Land, Structures, and Equipment	-	59,999
Less Accumulated Depreciation	-	(400)
<b>Capital Assets, net</b>	<u>-</u>	<u>59,599</u>
<b>Total Assets</b>	<u><b>125,423</b></u>	<u><b>196,249</b></u>
<b>Total Deferred Outflows of Resources</b>	-	-
<b>LIABILITIES</b>		
Due to Other Governments	21,706	79,525
Other Liabilities	1,459	-
Unearned Revenues	<u>62,624</u>	<u>-</u>
<b>Total Liabilities</b>	<u><b>85,789</b></u>	<u><b>79,525</b></u>
<b>Total Deferred Inflows of Resources</b>	-	<b>135,850</b>
<b>NET POSITION</b>		
Net Investment In Capital Assets	-	59,599
Restricted	-	-
Unrestricted	39,634	(78,725)
<b>Total Net Position</b>	<u><b>\$ 39,634</b></u>	<u><b>\$ (19,126)</b></u>



As previously illustrated by the Statement of Net Position, RCHC ended the fiscal year of operations with assets of \$125,423 and liabilities of \$85,789 resulting in a net position of \$39,634. This net position represents 100% of unrestricted assets that are earmarked to meet RCHC's mission of providing affordable housing projects and supportive services to low-income families residing in Riverside County.

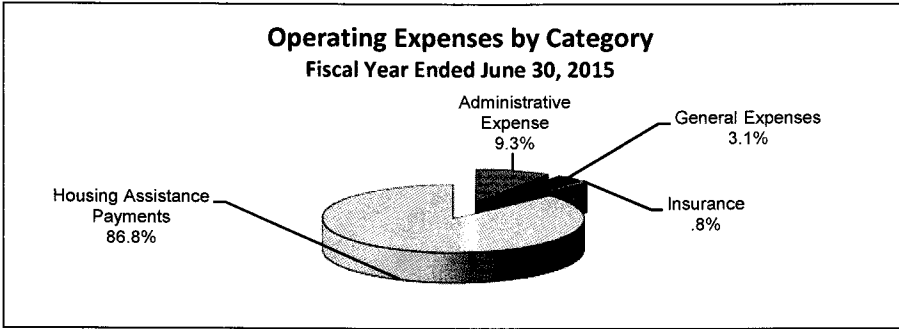
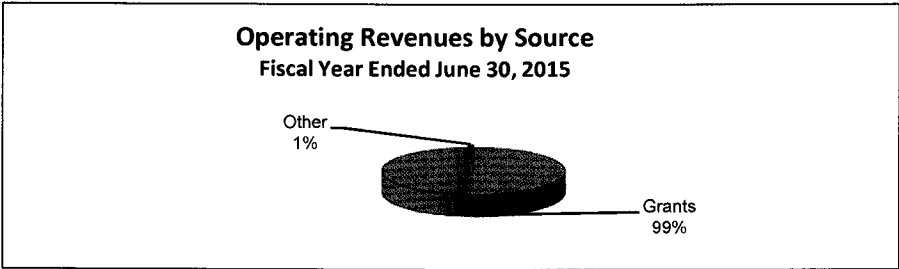
**MANAGEMENT'S DISCUSSION AND ANALYSIS (CONTINUED)**

*Statement of Revenues, Expenses and Changes in Fund Net Position*

Financial statements, presented as follows, are shown in a condensed format to compare amounts from the current fiscal year (2015) to amounts from the prior fiscal year (2014). These condensed financial statements are accompanied by charts to illustrate selected aspects of financial information, along with brief narrative analyses.

**Riverside Community Housing Corporation  
Statement of Revenues, Expenses, and Changes in Fund Net Position**

<b>Operating Revenues:</b>	<b>2015</b>	<b>2014</b>
Grants	\$ 231,298	\$ -
Other	2,000	800
<b>Total Operating Revenues</b>	<b>233,298</b>	<b>800</b>
<b>Operating Expenses:</b>		
Administrative Expense	11,582	6,229
General Expenses	3,884	70
Insurance	1,000	-
Housing Assistance Payments	108,072	13,227
Depreciation	-	400
<b>Total Operating Expenses</b>	<b>124,538</b>	<b>19,926</b>
<b>Operating Income (Loss)</b>	<b>108,760</b>	<b>(19,126)</b>
<b>Other Financing Sources (Uses)</b>	<b>(50,000)</b>	<b>0</b>
Change In Net Position	58,760	(19,126)
Net Position-Beginning	(19,126)	-
Adjustment To Net Position		
Restated Net Position - Beginning	(19,126)	-
<b>Net Position - Ending</b>	<b>\$ 39,634</b>	<b>\$ (19,126)</b>



**MANAGEMENT'S DISCUSSION AND ANALYSIS (CONTINUED)**

As shown by the Statement of Revenues, Expenses and Changes in Fund Net Position, the RCHC's net position increased by \$58,760 from the prior fiscal year, which is attributed to the following:

- Received \$135,850 from the California Endowment Trust Fund to provide transitional rental subsidies to residents of the eastern Coachella Valley who are living in substandard housing conditions. The balance of the grant at the end of the fiscal year was \$62,624.
- Received total transitional rental subsidies of \$108,072 through the Emergency Solutions Grant (ESG), which was disbursed for housing relocation, stabilization services, landlord mediation, security deposits, rental assistance, and housing case management.
- Received \$50,000 as a grant from the Coachella Valley Air Quality Enhancement Trust Fund to defray the cost for road grading and paving at the Hernandez Mobile Home Park, which provides affordable housing opportunities for low-income families of Riverside County.

**ANALYSIS OF SIGNIFICANT BUDGET VARIANCES**

The HACR's fiscal department works closely with RCHC staff to monitor the annual operating budget throughout the fiscal year in order to avoid over expenditure of available funds. Monthly and quarterly financial documents are prepared to assist in this process.

*Comparison of Original Budget and Final Budget*

Overall, the original operating budget of \$439,206 increased by \$244,459 from the Original Budget to the Final Budget, as illustrated below.

**Riverside Community Housing Corporation  
Budget Comparison  
For the Year Ended June 30, 2015**

	Final Budget		Original Budget
<b>Operating Revenues:</b>			
Grants	\$ 186,559	\$	290,946
Other	148,260		148,260
Total Operating Revenues	<u>334,819</u>		<u>439,206</u>
<b>Operating Expenses:</b>			
Administrative Expense	246,572		246,572
General Expenses	-		-
Insurance	1,500		1,500
Housing Assistance Payments	21,747		126,134
Depreciation	-		-
Asset Purchase	65,000		65,000
Total Operating Expenses	<u>\$ 334,819</u>	\$	<u>439,206</u>

*Explanation for Variance:*

- Total Grants decreased by a total of \$104,387. This was comprised of \$19,874 unexpended Emergency Shelter Program budget funds encumbered by the County of Riverside; and \$84,513 Emergency Shelter Program budget funds that the City of Riverside re-directed to the Economic Development Agency.

**MANAGEMENT'S DISCUSSION AND ANALYSIS (CONTINUED)**

*Comparison of Actual Operating Results and Final Budget*

Overall, the actual operating expenses of \$124,538 were lower than the final budgeted expenses of \$683,665.

**Riverside Community Housing Corporation  
Actuals vs. Budget  
For the Year Ended June 30, 2015**

	Actuals	Final Budget
<b>Operating Revenues:</b>		
Grants	\$ 231,298	\$ 290,946
Other	2,000	148,260
<b>Total Operating Revenues</b>	<b>233,298</b>	<b>439,206</b>
<b>Operating Expenses:</b>		
Administrative Expense	11,582	246,572
General Expenses	3,884	-
Insurance	1,000	1,500
Housing Assistance Payments	108,072	126,134
Depreciation	-	-
Asset Purchase	-	65,000
<b>Total Operating Expenses</b>	<b>124,538</b>	<b>439,206</b>
<b>Operating Income (Loss)</b>	<b>108,760</b>	<b>-</b>
<b>Other Financing Sources</b>	<b>(50,000)</b>	<b>-</b>
<b>Net Position - Beginning</b>	<b>(19,126)</b>	<b>-</b>
<b>Change In Net Position</b>	<b>\$ 39,634</b>	<b>\$ -</b>

The significant differences between the actual operating results and final budgeted amounts are explained as follows:

- The decrease in Grants was primarily the result of unspent funds encumbered by the City of Moreno Valley for the ESG grant. Although the contract was executed in March 2015, notice to proceed was extended to July 1, 2015.
- The Other Revenues and Administrative Expense categories in the budget include RCHC's working capital received as in-kind contributions from the HACR. Therefore, the income and expenses for staff and other administrative activities were covered in the HACR's books.
- Reduction in Housing Assistance Payments also reflects the unexpended ESG grant funds.
- The asset purchase of a mobile home to serve low-income families will take place in the next fiscal year.

**REQUESTS FOR ADDITIONAL INFORMATION**

This financial report is designed to provide a general overview of the Riverside Community Housing Corporation. Questions concerning any of the information provided in this report or requests for additional information should be addressed to the Chief Financial Officer's office at 5555 Arlington Avenue, Riverside, CA 92504.

**RIVERSIDE COMMUNITY HOUSING CORPORATION**

STATEMENT OF NET POSITION

JUNE 30, 2015

**ASSETS**

**Current Assets**

Cash & cash equivalents	\$	65,424
Accounts receivable (net)		-
<b>Total Current Assets</b>		<u>65,424</u>

**Noncurrent Assets**

Capital assets (net)		-
Notes receivable		59,999
<b>Total Noncurrent Assets</b>		<u>59,999</u>

**TOTAL ASSETS** 125,423

**TOTAL DEFERRED OUTFLOWS OF RESOURCES** -

**LIABILITIES**

**Current Liabilities**

Accounts payable		-
Due to other governments		21,706
Other liabilities		1,459
Unearned revenues		62,624
<b>Total Current Liabilities</b>		<u>85,789</u>

**Noncurrent Liabilities**

Notes payable		-
<b>Total Noncurrent Liabilities</b>		<u>-</u>

**TOTAL LIABILITIES** 85,789

**TOTAL DEFERRED INFLOWS OF RESOURCES** -

**NET POSITION**

Net investment in capital assets		-
Restricted		-
Unrestricted		39,634
<b>TOTAL NET POSITION</b>	<b>\$</b>	<u><u>39,634</u></u>



**RIVERSIDE COMMUNITY HOUSING CORPORATION**  
**STATEMENT OF REVENUES, EXPENSES AND CHANGES IN FUND NET POSITION**  
**FOR THE YEAR ENDED JUNE 30, 2015**

**REVENUES**

**Operating Revenues**

Dwelling rental (net)	\$	-
Grants		231,298
Other revenue		2,000
<b>Total Operating Revenues</b>		<b>233,298</b>

**EXPENSES**

**Operating Expenses**

Administrative		11,582
Utilities		-
Maintenance & operation		-
General expenses		3,884
Insurance		1,000
Housing assistance payments		108,072
Depreciation		-
<b>Total Operating Expenses</b>		<b>124,538</b>
<b>Operating Income (Loss)</b>		<b>108,760</b>

**Nonoperating Revenues (Expenses)**

Investment income		-
<b>Total Nonoperating Revenues (Expenses)</b>		-

**Other Financing Sources (Uses)**

Transfers out		(50,000)
<b>Total Other Financing Sources (Uses)</b>		<b>(50,000)</b>

**Change in Net Position** **58,760**

Net Position - beginning		(19,126)
<b>Net Position - ending</b>	<b>\$</b>	<b>39,634</b>

**RIVERSIDE COMMUNITY HOUSING CORPORATION**  
**STATEMENT OF CASH FLOWS**  
**FOR THE YEAR ENDED JUNE 30, 2015**

<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>	
Receipts from grants	\$ 160,072
Payments to suppliers	(72,826)
Payments for housing assistance	<u>(108,072)</u>
<b>Net Cash Provided (Used) By Operating Activities</b>	<u>(20,826)</u>
<b>CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES</b>	
Transfers out for purchases of capital asset	<u>(50,000)</u>
<b>Net Cash Provided (Used) By Financing Activities</b>	<u>(50,000)</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>	
Proceeds from sale of restricted investments	<u>-</u>
<b>Net Cash Provided (Used) By Investing Activities</b>	<u>-</u>
<b>Net Increase (Decrease) In Cash</b>	(70,826)
<b>CASH AND CASH EQUIVALENTS - Beginning of Year</b>	<u>136,650</u>
<b>CASH AND CASH EQUIVALENTS - Ending of Year</b>	<u><u>\$ 65,824</u></u>
<b>Reconciliation of Operating Income (Loss) to Net Cash Provided</b>	
<b>(Used) by Operating Activities</b>	
<b>Operating Income (Loss)</b>	\$ 108,760
Adjustment to reconcile operating income (loss) to net cash provided (used) by operating activities:	
Depreciation	-
Changes in assets, liabilities, and deferred inflows of resources:	
Increase (decrease) due to other governments	(57,819)
Increase (decrease) other liabilities	1,459
Increase (decrease) unearned revenue	<u>(73,226)</u>
Total Adjustments	<u>(129,586)</u>
Net cash used by operating activities	<u><u>\$ (20,826)</u></u>
<b>Non-Cash Activities</b>	
The transfer of capital assets to a qualified individual in exchange for a note receivable	<u><u>\$ 59,599</u></u>

# RIVERSIDE COMMUNITY HOUSING CORPORATION

## NOTES TO FINANCIAL STATEMENTS

FOR THE YEAR ENDED JUNE 30, 2015

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### 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

#### (a) Reporting Entity

The Riverside Community Housing Corporation (RCHC), an affiliate and blended component unit of the Housing Authority of the County of Riverside, operates as a California non-profit public benefit corporation whose purpose is to engage in financing, acquiring, developing, rehabilitating, owning, managing, and selling affordable housing for extremely low, low and moderate income persons within the County of Riverside. Further RCHC augments low and moderate income resident services and housing programs sponsored by the Housing Authority of the County of Riverside and/or the County of Riverside Economic Development Agency.

#### (b) Basis of Accounting

The books of accounts are maintained on the accrual basis of accounting. Revenues are recognized in the period in which they are earned and become measurable; expenses are recognized in the period incurred.

#### (c) Proprietary Fund Type

Proprietary funds use the economic resources measurement focus. The accounting objectives are determination of change in net position, financial position, and cash flows. All assets, deferred inflows and outflows of resources, and liabilities associated with a proprietary fund's activities are included on its statement of net position. As a governmental nonprofit; the activities of the RCHC are reported as a proprietary fund type.

#### (d) Revenues and Expense

Revenues are recognized in the accounting period in which they are earned and become measurable. Expenses are recognized in the accounting period in which the related liability is incurred.

#### (e) Income Taxes

The RCHC is exempt from federal income tax under Internal Revenue Code Section 501 (c) (3), but is required to report the results of its operations annually to the Internal Revenue Service. The Internal Revenue Service has determined that the RCHC is not a private foundation.

Management believes that all positions taken by the RCHC in regards to its federal tax returns are more likely than not to be sustained upon examination. The RCHC does not file income tax returns as an affiliate of a governmental unit. The IRS has determined the RCHC to be a disregard entity for filing purposes.

#### (f) Cash Equivalents

For purposes of the statement of cash flows, cash equivalents are defined as short-term, highly liquid investments that are both readily convertible to known amounts of cash or so near their maturity that they present insignificant risk of changes in value because of changes in interest rates, and have a maturity date at time of purchase of three months or less.

#### (g) Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

#### (h) Subsequent Events

Events that occur after the financial statements date but before the financial statements were available to be issued must be evaluated for recognition or disclosure. The effects of subsequent events that provide evidence about conditions that existed at the statement of financial position date are recognized in the accompanying financial statements. Subsequent events which provide evidence about conditions that existed after the date require disclosure in the accompanying notes. Management evaluated the activity of the company through (the date the financial statements were available to be issued) and concluded that no subsequent events have occurred that would require recognition in the financial statements or disclosure in the notes to the financial statements.

**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**

**2. CASH AND INVESTMENTS**

Cash and investments as of June 30, 2015 are classified in the accompanying financial statements as follows:

Cash	<u>65,424</u>
<b>Total cash and investments</b>	<b><u>\$ 65,424</u></b>

**Cash and investments consisted of the following:**

Deposits with financial institutions	<u>\$ 65,424</u>
<b>Total cash and investments</b>	<b><u>\$ 65,424</u></b>

**Required Note Disclosures**

Acknowledging that deposits and investments of state and local governments are subject to various risks, the Governmental Accounting Standards Board Statement 40 (GASB 40) requires note disclosures about investment policies and five deposit and investment risks identified as custodial credit risk, credit risk, concentration of credit risk, interest rate risk and foreign currency risk.

**Investment Policy**

In November 18, 2014, the Board of Commissioners of the Housing Authority ratified, approved, and adopted the Investment Policy, effective July 1, 2014. This Investment Policy identifies the specific types of deposits and investments which are authorized by that Investment Policy, by the Department of Housing and Urban Development (HUD) and by the California Government Code (CGC). As a blended component unit of the Housing Authority the RCHC follows the same investment policy.

The Investment Policy of the RCHC does not name the five specific deposit and investment risks identified by GASB 40, but this Investment Policy does address these risks in principal by stating that it shall be the policy of the RCHC to invest funds in a manner which will provide the maximum safety, liquidity and reasonable investment return while meeting the daily cash flow demands of the RCHC and conforming to all statutes governing the investment of RCHC funds.

**Authorized Types of Deposits and Investments**

All types of deposits with financial institutions and all types of investments made by the RCHC during Fiscal Year 2015 were authorized by its own Investment Policy, by HUD and by the CGC. The type and value of these deposits with financial institutions and investments as of June 30, 2015 are identified below.

**Deposits with Financial Institutions**

**Insured Demand Deposit Accounts**

Bank of America	<u>\$ 65,424</u>	<u>100.00%</u>
<b>Total Insured Deposits</b>	<b><u>\$ 65,424</u></b>	<b><u>100.00%</u></b>

**Disclosure Required for Risks Related to Deposits with Financial Institutions**

**Custodial Credit Risk**

For **deposits**, **custodial credit risk** is the risk that, in the event of the failure of a depository financial institution, a government will not be able to recover its deposits or will not be able to recover its deposits or will not be able to recover collateral securities that are in the possession of an outside party.

**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**

The Investment Policy of the RCHC, HUD and the California Government Code do not address legal or policy requirements that would limit the exposure to custodial credit risk for deposits or investments, other than the following provision for deposits: The California Government Code requires that a financial institution secure deposits made by state or local government units by pledging securities in an undivided collateral pool held by a depository regulated under state law. The market value of the pledged securities in the collateral pool must equal at least 110% of the total amount deposited by the public agencies. California law also allows financial institutions to secure such deposits by pledging first trust deed mortgage notes having a value of 150% of the secured public deposits.

**3. NOTES RECEIVABLE**

The RCHC sold a mobile home to a qualified individual. Instead of cash payment or outside financing the RCHC place a lean against the property with a 0% non-interest bearing note with a 45 year maturity date in April 2059. The note requires no payments and no interest is to be charged, after the maturity date the loan will be forgiven. The activity for the year is as follows:

	Balance at	Principal		Balance at
	June 30, 2014	Additions	Deletions	June 30, 2015
Mobile home loans	\$ -	\$ 59,999	\$ -	\$ 59,999
Less current portion	-	-	-	-
<b>Totals</b>	<b>\$ -</b>	<b>\$ 59,999</b>	<b>\$ -</b>	<b>\$ 59,999</b>

**4. CAPITAL ASSETS**

Capital assets activity is as following:

	Beginning Balance	Additions	Deletions	Ending Balance
<b>Depreciable Capital Assets:</b>				
Buildings and improvements	\$ 59,999	\$ -	\$ (59,999)	\$ -
Equipment	-	-	-	-
Subtotal	59,999	-	(59,999)	-
<b>Total Capital Assets</b>	<b>59,999</b>	<b>-</b>	<b>(59,999)</b>	<b>-</b>
<b>Accumulated depreciation</b>				
Buildings	(400)	-	400	-
Subtotal	(400)	-	400	-
<b>Total</b>	<b>\$ 59,599</b>	<b>\$ -</b>	<b>\$ (59,599)</b>	<b>\$ -</b>

**5. UNEARNED REVEUNE**

The RCHC received a grant to assist low-income individuals with Housing Assistance Payments or purchase of housing in prior years. The amount has been recorded as unearned revenue until the allowable costs are incurred by the RCHC. Below is the activity as of June 30, 2015:

Grant award amount	\$ 135,850
Mobile home purchase	(59,999)
Housing Assistance Payments (HAP)	(13,227)
<b>Unearned amount</b>	<b>\$ 62,624</b>



**Exhibit B**  
**BUDGET ADJUSTMENT:**  
**ACTUAL VERSUS BUDGETED REVENUES AND EXPENDITURES**  
**Fiscal Year 2014-15**



# RIVERSIDE COMMUNITY HOUSING CORPORATION

Adjustments to Fiscal Year 2014-15 Budget

	Emergency Solutions Grant (ESG) Funds		Difference Between Budget & Actual Total	
	Budget COUNTY	Actual COUNTY	Budget CITY	Actual CITY
<b>REVENUE</b>				
3110 Rental Income	-	-	-	-
3401 Subsidy Revenue	-	-	-	-
3404 Grants/Bonds Revenue	127,946	108,072	84,513	-
3450 Sec 8 Fraud Recovery Revenue	-	-	-	-
3610 Interest Revenue	-	-	-	-
3690 Miscellaneous	-	-	-	-
3690 Administrative Fees (Admin. Bonds)	-	-	-	-
3410 HUD Section 8 Earned HAP Subsidy	-	-	-	-
3410 HUD Section 8 Earned Administrative Fees	-	-	-	-
3410 HUD Section 8 Earned Other Subsidy	-	-	-	-
<b>TOTAL REVENUE</b>	<b>127,946</b>	<b>108,072</b>	<b>84,513</b>	<b>(64,513)</b>
<b>EXPENSE</b>				
1260 Inventory Materials	-	-	-	-
1408 Development- Operations	-	-	-	-
1408 Development- Management Improvements	-	-	-	-
1410 Development- Administration	-	-	-	-
1411 Development- Audit	-	-	-	-
1430 Architecture Fees	-	-	-	-
1450/1460 Asset Development/Improvement	-	-	-	-
1495 Development- Relocation Costs	-	-	-	-
4110 Payroll, Benefits & Taxes	33,844	-	33,844	(67,688)
4110 Temporary/Contract Employees	16,062	-	16,062	(32,124)
4110 EDA Interfund Salaries	-	-	-	-
4130 Legal	-	-	-	-
4140 Training	-	-	-	-
4150 Travel	-	-	-	-
4171 Auditing	-	-	-	-
4180 Office Rent/Storage	-	-	-	-
4190 Administrative Sundry	-	-	-	-
4190 EDA Interfund Operating	-	-	-	-
4230 Tenant Services	-	-	-	-
4300 Utilities	-	-	-	-
4420 Operations and Maintenance - Materials	-	-	-	-
4430 Operations and Maintenance - Services	-	-	-	-
4431 Trash	-	-	-	-
4480 Protection Services	-	-	-	-
4510 Insurance	-	-	-	-
4590 Other General Expense	-	-	-	-
4610 Extraordinary Maintenance	-	-	-	-
4715 Housing Assistance Payments	-	-	-	-
1173 Debt Service Principal Payments	78,040	108,072	34,607	(4,578)
4900 Debt Service Interest Payments	-	-	-	-
7540 Asset Purchase	-	-	-	-
<b>TOTAL EXPENSE</b>	<b>127,946</b>	<b>108,072</b>	<b>84,513</b>	<b>(64,513)</b>
<b>NET GAIN (LOSS)</b>	<b>-</b>	<b>0</b>	<b>-</b>	<b>0</b>



**Exhibit C**  
**INSURANCE POLICY DECLARATION**





**CSAC EXCESS INSURANCE AUTHORITY  
GENERAL LIABILITY I PROGRAM  
MEMORANDUM OF COVERAGE  
DECLARATIONS**

- ITEM 1: MEMBER:** Housing Authority of the County of Riverside
- ITEM 2: MEMORANDUM PERIOD:** From July 1, 2014 to July 1, 2015, 12:01 a.m. local time of the Member as stated herein.
- ITEM 3: MEMORANDUM NUMBER:** EIA-PE 14 EL-47
- ITEM 4: SELF-INSURED RETENTION:** \$ 100,000
- Ultimate net loss** as the result of: any one **occurrence**, offense, **wrongful act** or any combination thereof.
- ITEM 5: AUTHORITY'S LIMIT OF LIABILITY:** \$25,000,000 inclusive of self-insured retention stated in Item 4
- A. Pool Layer:** \$ 4,900,000
- Ultimate net loss** excess of the self-insured retention as the result of: any one **occurrence**, offense, **wrongful act** or any combination thereof, and annual aggregate as respects the **completed operations hazard**.
- B. Primary Layer: Reinsured by Ironshore Indemnity, Inc:** \$10,000,000
- Ultimate net loss** excess of \$5,000,000 as the result of: any one **occurrence**, offense, **wrongful act** or any combination thereof, and annual aggregate as respects the **completed operations hazard**.
- C. Excess Layer: Reinsured by Starr Indemnity & Liability Co:** \$10,000,000
- Ultimate net loss** excess of \$15,000,000 as the result of: any one **occurrence** offense, **wrongful act** or any combination thereof, and annual aggregate as respects the **completed operations hazard**.
- ITEM 6: RISK PREMIUM:** \$103,562 (inclusive of all layers & fees)
- ITEM 7: FORMS AND ENDORSEMENTS ATTACHED AT INCEPTION:** EIA GLI MOC 07/01/2012, Endorsement No. U-1, U-2, U-3, U-4, U-5, U-6, U-7, U-8, U-9, U-10

Countersigned by:   
Authorized Representative  
CSAC Excess Insurance Authority

**Issue Date:** June 24, 2014

## CSAC EXCESS INSURANCE AUTHORITY GENERAL LIABILITY I PROGRAM MEMORANDUM OF COVERAGE

In consideration of the payment of the premium, if paid, in reliance upon the statements in the Declarations made a part hereof and subject to all of the terms of this General Liability I Program Memorandum of Coverage (Memorandum), the CSAC Excess Insurance Authority (Authority) agrees with the Member as follows:

### COVERAGE AGREEMENT

The Authority will reimburse the **covered party** for **ultimate net loss** in excess of the self-insured retention hereinafter stated which the **covered party** shall become legally obligated to pay as **damages** by reason of liability imposed by law or liability assumed by contract because of:

Coverage A. **Bodily injury and property damage**

to which this Memorandum applies, caused by an **occurrence**;

Coverage B. **Personal injury**

to which this Memorandum applies, caused by an offense;

Coverage C. **Public officials errors and omissions liability** or

Coverage D. **Employment practices liability**

to which this Memorandum applies, caused by a **wrongful act**.

### DEFENSE AND SETTLEMENT COSTS

After the amount of the **covered party's** self-insured retention has been exhausted by payment of judgments, settlements and/or **defense costs**, the Authority will reimburse the **covered party** for **excess defense costs** the **covered party** incurs on covered losses. A final coverage determination will be made at the conclusion of a claim, and if deemed not covered, then the associated defense costs will not be covered. The Authority's liability for **excess defense costs** is subject to, and not in addition to, the Authority's limit of liability.

The Authority has no duty to defend under the Memorandum. The Authority; however, shall have the right, but not the duty, to associate itself, at its own cost, with the **covered party**, in the control, investigation, defense or appeal of any claim or **suit** which, in the opinion of the Authority, is or may be covered by the Memorandum. The **covered party** shall fully cooperate in all matters pertaining to such claim or **suit**.

No claim or **suit** shall be settled for an amount in excess of the **covered party's** self-insured retention without the prior written consent of the Authority.

## **SELF-INSURED RETENTION - THE AUTHORITY'S LIMIT OF LIABILITY**

Regardless of the number of (1) **covered parties** under this Memorandum, (2) persons or organizations who sustain injury or **damage**, (3) claims made, or (4) **suits** brought on account of **bodily injury, property damage, personal injury, public officials errors and omissions liability, or employment practices liability**, the Authority's liability is limited as follows:

- A. With respect to **bodily injury, property damage, personal injury, public officials errors and omissions liability, and employment practices liability**, or any combination thereof, the Authority's liability shall be only for the **ultimate net loss** in excess of the self-insured retention as specified in the Declarations as the result of any one **occurrence, offense, or wrongful act**, and then for an amount not exceeding the Authority's limit of liability specified in the Declarations as the result of any one **occurrence, offense, or wrongful act**.
- B. For the purpose of determining the limit of the Authority's liability, as respects Coverages A and B, all **damages** arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one **occurrence** under Coverage A or one offense under Coverage B. For the purpose of determining the limit of the Authority's liability, as respects Coverages C and D, all **damages** arising out of a single act, error or omission or a series of related acts, errors or omissions shall be treated as arising from a single **wrongful act**. There is no limit of the number of **occurrences** during the Memorandum Period for which claims may be made, except that the liability of the Authority arising out of the **Completed Operation Hazard** because of all **occurrences** shall not exceed the amount specified in the Declarations for each twelve months, commencing with the first day of the Memorandum Period.
- C. **Bodily injury, property damage, personal injury, public officials errors and omissions liability or employment practices liability** taking place over more than one Memorandum Period shall be deemed to have taken place during the last Memorandum Period and only that limit shall apply.

Notwithstanding the foregoing, if a claim or **suit** names more than one Member, a separate self-insured retention and a separate limit shall apply to each Member.

## **MEMORANDUM PERIOD, TERRITORY**

This Memorandum applies to **bodily injury, property damage, personal injury, public officials errors and omissions liability, or employment practices liability** which occur anywhere in the world during the Memorandum Period.

## COVERED PARTY, COVERED PERSONS OR ENTITIES

- A. The Member;
- B. Those individuals, including volunteers, who were or are now elected or appointed officials of the Member, whether or not compensated, including members of the Member's governing body or any other committees, boards, commissions or special districts of the Member, while acting for or on behalf of the Member;
- C. All special districts **governed directly** by the Member's governing board and other districts or agencies which are named on the Memorandum;
- D. Past or present employees of the Member, including volunteers, or other covered entities, whether or not compensated, while acting for or on behalf of the Member or other covered entity;
- E. Notwithstanding sub-paragraphs (A) through (D) above, the determination and findings made in good faith by the Member pursuant to California Government Code Section 995.2 or any other similar provision of law shall be conclusive and binding on the Authority and all other persons for the purposes of coverage under the Memorandum; and
- F. 1937 Act Retirement Association of the Member County and the San Luis Obispo County Pension Trust.

As respects the above **covered parties**, this Memorandum does not cover the breach of fiduciary duty which means:

- 1. Violation of any of the responsibilities, obligations or duties imposed upon fiduciaries by:
  - a.) The Employee Retirement Income Security Act of 1974 (ERISA) or amendments thereto; or
  - b.) The common or statutory law of the United States of America, or of any state or other jurisdiction therein; and
- 2. Negligent acts, errors or omissions in administration.

Administration as used herein shall mean:

- a.) Giving counsel to participants and beneficiaries with respect to a **plan**;
- b.) Interpreting a **plan**;
- c.) Providing or failing to provide benefits under a **plan**;
- d.) Handling the records connected with a **plan**; and

- e.) Effecting enrollment, termination or cancellation of participants under a **plan**.

## EXCLUSIONS

As respects **ultimate net loss**, this Memorandum does not apply:

- A. To any obligation for which any **covered party** or any carrier as its insurer may be held liable under any workers' compensation, unemployment compensation or disability benefits law, or under any similar law;
- B. To **bodily injury** to any employee of any **covered party** arising out of and in the course of his/her employment by such **covered party**; but this exclusion does not apply to **employment practices liability** or liability assumed by the **covered party** under any written contract;
- C. To injury to or destruction of (1) property owned by a **covered party**, or (2) property rented or leased to the **covered party** where the **covered party** has assumed liability for damage to or destruction of such property unless the **covered party** would have been liable in the absence of such assumption of liability, or (3) **aircraft** or **watercraft** in the care, custody or control of any **covered party**;
- D. As respects liability assumed by the **covered party** under any contract:
1. To any claim, judgment or agreement from any arbitration proceeding wherein the Authority is not entitled to exercise with the **covered party**, the **covered party's** rights in the choice of arbitrators, and in the conduct of such proceedings; or
  2. To any obligation for the rendering or failure to render professional services for the **covered party**, if the indemnitee of the **covered party** is an architect, engineer or surveyor, arising out of:
    - a.) The preparation or approval of contracts, maps, plans, drawings, opinions, reports, tests, surveys, change orders, designs or specifications; or
    - b.) The giving or the failure to give directions or instructions by the indemnitee, the indemnitee's agents or employees, provided such giving or failure to give directions or instructions is the primary cause of **bodily injury** or **property damage**;
- E. To **bodily injury** and **property damage** arising out of any **covered party's** ownership, maintenance, loading or unloading, use or operation of any:
1. **Aircraft**;
  2. **Airfields**;

3. Runways;
4. Hangars; or
5. Buildings or other properties in connection with aviation activities.

This exclusion shall not apply, however, (1) to liability arising out of the ownership, operation, rental, or loan of vehicles licensed for highway use while being operated away from the premises of any airfield owned or operated by the **covered party**; or (2) to **non-owned aircraft** operated by or on behalf of the **covered party**;

- F. To liability arising out of or in connection with the operation of any hospitals, clinics, or established health care facilities owned or operated by the Member due to:

The rendering of or failure to render the following medical professional services:

- (a) Medical, surgical, dental, x-ray or nursing, service or treatment, to any person, including the furnishing of food or beverages in connection therewith;
- (b) Service or treatment related to physical or mental health or of a professional nature;
- (c) Furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances if the injury occurs after the **covered party** has relinquished possession thereof to others;
- (d) Handling of or performing post-mortem examination on human bodies;
- (e) Service by any person as a member of a formal accreditation or similar professional board or committee of the **Member** or as a person charged with the duty of executing directives of any such board or committee; or
- (f) Any cosmetic or tonsorial service or treatment.

This exclusion shall not apply, however, to any professional activities arising out of the performance of occupational physical examinations, paramedics, emergency first aid, or preventative health services related to: alcoholism, drug abuse, well child healthcare, California children services, immunizations, sexually transmitted diseases, tuberculosis, and family planning.

Notwithstanding such exceptions to this exclusion as are set forth immediately above, however, if any collectible insurance or other coverage, including but not limited to coverage afforded by any other Authority program, is available to the **covered party**, for liability for loss, **damage** or injury arising from the operation of any clinic or other established health care facility (whether on a primary, excess or contingent basis), any coverage afforded hereunder shall apply in excess of, and shall not contribute with, such insurance or other coverage; provided that this clause does not apply with respect to excess

insurance purchased specifically to be in excess of this Memorandum, or to insurance or reinsurance which is intended to provide the remainder of the limit of liability stated in the Declarations of this Memorandum when the coverage afforded under this Memorandum provides less than 100 percent of the limit set forth in the Declarations;

- G. To liability, directly or indirectly, arising out of or in connection with the principles of eminent domain, condemnation proceedings or inverse condemnation, by whatever name called, whether grounded in federal or state law, regardless of whether such claims are made directly against the **covered party** or by virtue of any agreement entered into by or on behalf of the **covered party**.

This exclusion does not apply to any aspect of inverse condemnation liability directly arising out of physical injury to, or destruction of, tangible property neither expected nor intended from the standpoint of the **covered party**; provided, however, this exception does not apply to any nonphysical consequential **damages** or to expert or attorney fees claimed by or awarded to a claimant or a plaintiff in a **suit**.

- H. To liability arising out of the failure to provide an adequate supply of fuel, water or electricity; however, this exclusion applies only if such failure to provide results from any decision by the Member's governing body with respect to (1) obtaining such fuel, water or electricity, or (2) allocating such fuel, water or electricity among the users thereof;
- I. To **property damage** arising out of **subsidence**;
- J. To liability for **bodily injury** or **property damage** arising out of any transit authority, transit system or public transportation system owned or operated by any **covered party**. This exclusion shall not apply to transit or public transportation systems operating over non-fixed routes such as dial-a-ride, senior citizen transportation, or handicapped persons transportation;
- K. To liability arising out of the hazardous properties of **nuclear material**;
- L. To liability imposed upon a **covered party** (or which is imputed to a **covered party**) under the "Employment Retirement Income Security Act of 1974" and any law amendatory thereof;
- M. To liability arising out of the rupture, bursting, overtopping, accidental discharge, or partial or complete failure of any **dam(s)**;
- N. To any liability for past, present, or future claims or **suits** arising in whole or in part, either directly or indirectly, out of the mining, manufacture, distribution, sale, resale, rebranding, installation, repair, removal, encapsulation, abatement, replacement or handling of, or exposure to, asbestos or products containing asbestos, whether the asbestos is or was at any time airborne as a fiber or particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion, or found in any form whatsoever;

- O. To liability arising out of the **contamination** of the **environment** by **pollutants** introduced at anytime into or upon the **environment**. This exclusion applies whether the **contamination** is introduced into the **environment** intentionally, accidentally, gradually or suddenly, and whether the **covered party** or any other person or organization is responsible for the **contamination**.

Unless caused by any of the **covered party's** property that has been discarded, dumped, abandoned, or thrown away, this exclusion shall not apply with respect to:

1. Violent breaking open or explosion of any plant, equipment or building for which the **covered party** has legal responsibility, either as owner or operator;
2. Fire, lightning or windstorm damage to any plant, equipment or building for which the **covered party** has legal responsibility, either as owner or operator;
3. Collision, overturning or upset of any vehicle, railroad vehicle or mobile equipment; or
4. Unintended fire, lightning or explosion not otherwise specified under 1, 2, or 3 above.

It is further agreed that this exclusion does not apply to the actual, alleged or threatened discharge, dispersal, release or escape of **pollutants** if:

- a.) It was accidental and was neither expected nor intended by the **covered party**; and
- b.) It was instantaneous and was demonstrable as having commenced at a specific time and date during the term of this Memorandum; and
- c.) Its commencement became known to the Member within ten days; and
- d.) Its commencement was reported in writing to the Authority within thirty-one days of becoming known to the Member; and
- e.) Reasonable effort was expended by the Member to terminate the situation as soon as conditions permitted.

Notwithstanding the foregoing this Memorandum shall not apply to any claim or **suit** relating to: any liability to test for, monitor, clean-up, remove, contain, treat, detoxify, or neutralize **pollutants**, whether or not any of the foregoing are, or should be, performed by the **covered party** or by others;

- P. To injunctions, equitable relief, writs of mandate or any other form of relief other than the payment of **damages**;
- Q. Under Coverage C, **public officials errors and omissions liability**, to:



1. **Bodily injury, property damage, personal injury, or employment practices liability** as defined in the Memorandum;
2. Injury to, destruction or disappearance of any tangible property (including money) or the loss of use thereof; or
3. Failure to perform, or breach of, a contractual obligation.

Nothing contained in this exclusion shall limit the **covered party's** rights of recovery, if applicable, under Coverages A, B, and D of this Memorandum;

- R. To the refund of taxes, fees or assessments;
- S. To liability of a **covered party** arising in whole or in part, out of any **covered party** obtaining remuneration or financial gain to which the **covered party** was not legally entitled except that any act for which a **covered party** is responsible shall not be imputed to any other **covered party** for purposes of this exclusion;
- T. To liability arising out of the willful violation of a penal statute, code, or ordinance committed by or with the knowledge or consent of any **covered party** except that any act for which a **covered party** is responsible shall not be imputed to any other **covered party** for purposes of this exclusion;
- U. To liability of any **covered party** arising out of estimates of probable costs or cost estimates being exceeded or for faulty preparation of bid specifications or plans or failure to award contracts in accordance with statute or ordinance which under law must be submitted for bids;
- V. To benefits payable under an employee benefit **plan** (whether the **plan** is voluntarily established by the **covered party** or mandated by statute) because of unlawful discrimination;
- W. To any liability arising out of or in connection with any claim for punitive, exemplary or multiples of **damages/penalties**;
- X. Under Coverage D, **employment practices liability**, to:
1. Strikes and lockouts. This Memorandum does not apply to any claim or **suit** for loss arising out of a lockout, strike, picket line, replacement or similar actions in connection with labor disputes or labor negotiations;
  2. W.A.R.N. Act. This Memorandum does not apply to any claim or **suit** for loss arising out of the Workers Adjustment and Retraining Notification Act, Public Law 100-379 (1988), or any amendment thereto, or any similar federal, state or local law;
  3. Any cost incurred by the **covered party** to modify or purchase any building or property in order to make said building or property more accessible or accommodating to any disabled person; or

4. **Property damage, personal injury, and public officials errors and omissions liability;**

- Y. To liability arising out of (1) the ownership, maintenance, operation, use, loading or unloading of any mobile equipment or vehicle, including any motorized **watercraft**, while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice in preparation for any such contest or activity, if such contest or activity is sanctioned or permitted by a **covered party**, or (2) the operation or use of any snowmobile or trailer designed for use therewith when used for recreational, stunting or racing activities;

However, this exclusion shall not apply to liability arising out of the ownership, maintenance, operation, use, loading or unloading of any non-motorized **watercraft**.

For the purpose of this exclusion, "non-motorized **watercraft**" shall mean **watercraft** without power motors and **watercraft** with power motors which are not in use during an event otherwise excluded hereunder;

- Z. Under Coverage A, **bodily injury** and **property damage**, to **personal injury** as defined in the Memorandum.

Nothing contained in this exclusion shall limit the **covered party's** rights of recovery, if applicable, under Coverage B.

## DEFINITIONS

The following definitions shall govern the meaning of the defined terms for the purposes of this Memorandum. The defined terms are set forth in **bold face** type where used herein.

"**Aircraft**" means a vehicle designed for the transport of persons or property principally in the air.

"**Bodily injury**" means bodily harm, sickness, disability or disease sustained by a person, including death resulting from any of these at any time. **Bodily injury** includes mental injury, mental anguish, humiliation, shock or death if resulting directly from **bodily injury**. **Bodily injury** shall include care, loss of services, loss of consortium, or death resulting at any time from the **bodily injury**.

"**Completed operations hazard**" includes **bodily injury** and **property damage** arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the **bodily injury** or **property damage** occurs after such operations have been completed or abandoned and occur away from premises owned by or rented to the **covered party**. "Operations" include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:

- A. When all operations to be performed by or on behalf of the **covered party** under the contract have been completed;
- B. When all operations to be performed by or on behalf of the **covered party** at the site of the operations have been completed; or
- C. When the portion of the work out of which the injury or **damage** arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as part of the same project.

Operations which may require further service or maintenance work or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete shall be deemed completed.

The **completed operations hazard** does not include liability arising out of:

- A. Operations in connection with the transportation of property unless the liability arises out of a condition in or on a vehicle created by the loading or unloading thereof;
- B. The existence of tools, uninstalled equipment or abandoned or unused materials.

**"Contamination"** includes any unclean, unsafe or unhealthful condition either actual or potential, which arises out of the presence in the **environment** of any **pollutant**, whether permanent or transient.

**"Covered party"** means any person or organization qualifying as a **covered party** under the "COVERED PARTY, COVERED PERSONS OR ENTITIES" section of this Memorandum. The coverage afforded applies separately to each **covered party** against whom claim is made or **suit** is brought, except with respect to the limits of the Authority's liability.

**"Dam"** means any artificial barrier together with appurtenant works which:

- A. Is twenty-five feet or more in height from the foot of a natural bed of stream or watercourse; or
- B. Has water impounding capacity of fifty acre feet or more.

Except that no structure specifically exempted from jurisdiction by the State of California Department of Water Resources, Division of Safety of Dams shall be considered a **dam**, unless such structure is under the jurisdiction of any agency of the federal government.

**"Damages"** means monetary compensation resulting from: (a) **bodily injury or property damage**, (b) **personal injury**, (c) **public officials errors and omissions liability**, or (d) **employment practices liability**.

**“Defense costs”** means reasonable fees charged by an attorney, including expenses of a claims servicing organization the **covered party** has engaged, and all other reasonable fees, costs, including third-party attorney’s fees and costs as authorized by law or under contract, and expenses attributable to the investigation, defense, administration or appeal of a claim or **suit** within the scope of coverage afforded by this Memorandum. **Defense costs** shall not include any allocated claims expenses, salaries, or overhead incurred by employees of the **covered party**.

**“Employment practices liability”** means liability, except as related to **property damage**, **personal injury**, or **public officials errors and omissions liability**, arising out of an actual or alleged **wrongful act** in connection with any person’s prospective employment, actual employment or termination of employment by a **covered party**, including but not limited to wrongful termination, discrimination or sexual harassment.

**“Environment”** includes land, bodies of water, underground water or water table or aquifer, the atmosphere and any other natural feature of the earth, whether or not altered, developed or cultivated.

**“Excess defense costs”** means **defense costs** incurred by the **covered party** with the written consent of the Authority after the self-insured retention has been exhausted by payment of judgments, settlements and **defense costs**.

**“Governed directly”** means the special district is governed by the Member’s governing board.

**“Non-owned aircraft”** means any **aircraft** other than:

- A. **Aircraft** owned in whole or in part by or registered in the name of the **covered party**;
- B. **Aircraft** having a seating capacity in excess of forty-five passenger seats; or
- C. **Aircraft** which are the subject of a lease or service agreement with the **covered party** for a period in excess of thirty days.

**“Nuclear material”** means source material, special nuclear material, or byproduct material. “Source material”, “special nuclear material”, and “byproduct material” have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

**“Occurrence”** means an accident, including injurious exposure to conditions, which results, during the Memorandum Period, in **bodily injury** or **property damage**, neither expected nor intended from the standpoint of the **covered party**. All **damages** arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one **occurrence**.

**“Personal injury”** means injury, including consequential **bodily injury** or **property damage**, arising out of one or more of the following offenses: (a) false arrest, detention or imprisonment or malicious prosecution; (b) the publication or utterance of libel or slander, including disparaging statements concerning the condition, value, quality or use of real or

personal property, or publication or utterance in violation of rights of privacy; (c) wrongful entry or eviction, or other invasion of the right of private occupancy; (d) assault and battery, not committed by, at the direction of or with the consent of the **covered party**, unless committed or directed for the purpose of protecting persons or property from injury or death; (e) discrimination based upon race, religion, nationality, national origin, color, creed, sex, sexual orientation, age, nature of employment, or disability, but excluding unlawful discrimination intentionally committed by, at the direction of, or with consent of the **covered party**.

“**Plan**” means the written instrument which sets forth specific benefits and eligibility under a named trust.

“**Pollutants**” include smoke, vapors, soot, fumes, acids, alkalis, chemicals, liquids or gases, thermal **pollutants** and all other irritants or contaminants.

“**Property damage**” means (1) physical injury to, or destruction of, tangible property which occurs during the Memorandum Period, including the loss of use thereof at any time resulting therefrom; or (2) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an **occurrence** during the Memorandum Period.

“**Public officials errors and omissions liability**” means any actual or alleged error or misstatement or act of omission or neglect or breach of duty including misfeasance, malfeasance or nonfeasance by the **covered parties** in the discharge of their duties with the public entity individually or collectively, or any matter claimed against them solely by reason of their being or having been **covered parties**.

“**Subsidence**” means any **property damage** directly or indirectly arising out of, caused by, resulting from, contributed to or aggravated by the settling, sinking, slipping, falling away, caving in, shifting, eroding, mud flow, rising, tilting, or any other movement of land or earth.

“**Suit**” means a civil or administrative proceeding, including arbitration and other alternative dispute resolution procedures, in which **damages**, because of **bodily injury, property damage, personal injury, public officials errors and omissions liability, or employment practices liability** to which this coverage applies, are alleged.

“**Ultimate net loss**” means the total sum which the **covered party** becomes legally liable to pay as **damages** by reason of judgments or by reason of settlements made with the written consent of the **covered party** and the Authority. **Excess defense costs** which are paid as a consequence of any **occurrence, offense, or wrongful act** covered hereunder are reimbursed by the Authority as part of the **ultimate net loss** as defined herein.

“**Watercraft**” means a vehicle designed for the transport of persons or property principally on water.

“**Wrongful act**” means any actual or alleged negligent act, error or omission arising out of conduct or performance of the **covered party** in the performance of his or her or their

duties or any actual or alleged act in connection with any person's prospective employment, actual employment or termination of employment by a **covered party**. All **damages** arising out of a single act, error or omission or a series of related acts, errors or omissions shall be treated as arising from a single **wrongful act**.

## CONDITIONS

### 1. PREMIUM

The premium designated in the Declarations as "risk premium" is a deposit premium only, and shall be adjusted annually in accordance with the provisions for "risk premium adjustments" as adopted by the Board of Directors of the Authority.

### 2. INSPECTION

The Authority shall be permitted, but not obligated to, inspect the **covered party's** property and operations at any time. Neither the Authority's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the **covered party** or others, to determine or warrant that such property or operations are safe. The Authority may examine the **covered party's** books and records at any time during the Memorandum Period and extensions thereof and within three years after the final termination of this Memorandum, as far as they relate to the subject matter of this coverage.

### 3. CLAIM REPORTING REQUIREMENTS

It is agreed that with respect to claim reporting, the **covered party**, in addition to the terms set forth in this Memorandum, must report an **occurrence**, offense, or **wrongful act** in which the amount incurred has reached 50 percent or more of their individual self-insured retention or \$500,000, whichever is lower. The **covered party** must also give the Authority immediate written notice for any claims or **suits** which the **covered party** becomes aware of that include injury of the following types:

- A. Death;
- B. Paralysis, paraplegia, or quadriplegia;
- C. Loss of eye(s) or limbs;
- D. Spinal cord or brain injury;
- E. Dismemberment or amputation;
- F. Sensory organ or nerve injury or neurological deficit;
- G. Serious burns;
- H. Severe scarring;
- I. Sexual assault or battery, including, but not limited to, rape, molestation, or sexual abuse;
- J. Substantial disability or disfigurement;
- K. Any class action; or
- L. Any claim or **suit** in which the Authority is named as a defendant.

4. **COVERED PARTY'S DUTIES IN THE EVENT OF OCCURRENCE, OFFENSE, WRONGFUL ACT, CLAIM OR SUIT**

- A. In the event of an **occurrence**, offense, or a **wrongful act** reasonably likely to involve the Authority, written notice containing particulars sufficient to identify the **covered party** and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the **covered party** to the Authority or any of its authorized agents as soon as practicable, after the individual responsible for the coverage at the Member, or his/her designee, has knowledge of the **occurrence**, offense, or **wrongful act**.
- B. If claim is made or **suit** is brought against the **covered party** which appears likely to involve the Authority, the **covered party** shall forward to the Authority every demand, notice, summons or other process received by him/her or his/her representative, immediately or within a reasonable amount of time after the individual responsible for coverage at the Member or his/her designee has knowledge of the claim or **suit**. The Member shall be responsible for the investigation, settlement, defense and appeal of any claims made, **suits** brought or proceeding instituted against the **covered party**. The Member shall also be responsible for timely periodic reporting developments in the claim, **suit**, or proceeding to the Authority sufficient to allow the Authority to fairly assess coverage under the Memorandum for the claim, **suit**, or proceeding at its conclusion.
- C. The **covered party** shall cooperate with the Authority and upon its request, assist in making settlements, in the conduct of **suits** and in enforcing any right to contribution, subrogation, or indemnity against any person or organization who may be liable to the **covered party** because of liability with respect to which coverage is afforded under this Memorandum, and the **covered party** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The **covered party** shall not, except at its own costs, voluntarily make any payment, assume any obligation or incur any expense; however, in the event that the amount of **ultimate net loss** becomes certain either through trial court judgment, arbitration award, or agreement among the **covered party**, the claimant and the Authority, then the **covered party** may pay the amount of **ultimate net loss** to the claimant to effect settlement and, upon submission of due proof thereof, the Authority shall indemnify the **covered party** for that part of such payment which is in excess of the self-insured retention.
- D. The Authority, at its option, shall have the right at its own expense to investigate any claim or **suit** and/or negotiate the settlement thereof, as it deems expedient, but the Authority shall not commit the **covered party** to any settlement without the **covered party's** consent. Should the claimant or plaintiff, as the case might be, tender a bona-fide, good faith settlement demand which when added to the incurred **defense costs** is in excess of the **covered party's** retention, the payment of which would result in the full and final disposition of said claim or **suit**, then if such settlement demand is acceptable to either (1) the **covered**

**party**, or (2) the Authority (but not both), then with regard to that settlement demand:

1. If such settlement demand is not acceptable to the Authority and the **covered party** tenders to the Authority an amount equal to the **covered party's** retention less incurred **defense costs**, if any, the Authority shall then reimburse the **covered party** all sums which the **covered party** shall be legally obligated to pay as **damages**, including without limitation, the **covered party's** retention, plus future investigation, adjustment, appraisal, appeal, post judgment interest and **defense costs**. However, in no event shall the Authority's agreement to reimburse the **covered party** exceed the limit of liability as stated in the Declarations in addition to such investigation, adjustment, appraisal, appeal, post-judgment interest and **defense costs**. Should the full and final disposition of the claim, including judgments, settlements, investigation, adjustment, appraisal, appeal, post-judgment interest and **defense costs** be less than the amount tendered by the **covered party**, the unused portion of the tendered amount shall be returned to the **covered party** by the Authority.
2. If such settlement demand is not acceptable to the **covered party** and the Authority tenders to the **covered party** an amount equal to the difference between the **covered party's** retention, less incurred **defense costs**, and said settlement demand, or the applicable amount specified in the limits of liability section of the Declarations, whichever is less, then the Authority's agreement to reimburse the **covered party** for the **ultimate net loss** hereunder shall be discharged and terminated and the Authority shall have no further obligations with respect thereto.

## 5. APPEALS

When a **suit** has proceeded to trial court judgment and neither the **covered party** nor the Authority have invoked the provisions of Condition 4. D. 1. or 2. above and the **covered party** elects not to appeal a judgment in excess of the self-insured retention, the Authority may elect to do so at its own expense, but in no event shall the liability of the Authority for **ultimate net loss** exceed the applicable amount specified in the limits of liability section of the Declarations inclusive of all **defense costs** necessary and incident to such appeal.

## 6. ACTION AGAINST THE AUTHORITY

No action shall lie against the Authority with respect to any one **occurrence**, offense, or **wrongful act** unless, as a condition precedent thereto, the **covered party** shall have fully complied with all the terms of this Memorandum, nor until the amount of the **covered party's** obligation to pay an amount of **ultimate net loss** in excess of the self-insured retention shall have been finally determined either by judgment against the **covered party** after actual trial, arbitration award, or by written agreement of the **covered party**, the claimant and the Authority. Any person or organization or the legal representative thereof who has secured such judgment or written agreement, shall thereafter be entitled to recover under this Memorandum



the extent of the coverage afforded by this Memorandum. Nothing contained in this Memorandum shall give any person or organization any right to join the Authority as a co-defendant in any action against the **covered party** to determine the **covered party's** liability.

Bankruptcy or insolvency of the **covered party** shall not relieve the Authority of any of its obligations hereunder.

## 7. OTHER COVERAGE

If collectible insurance with an insurer is available to the **covered party** covering a loss also covered hereunder (whether on a primary, excess or contingent basis), the coverage hereunder shall be in excess of, and shall not contribute with, such insurance; provided that this clause does not apply with respect to excess insurance purchased specifically to be in excess of this Memorandum, or to insurance or reinsurance which is intended to provide the remainder of the limit of liability stated in the Declarations of this Memorandum when the coverage afforded under this Memorandum provides less than 100 percent of the limit set forth in the Declarations.

Notwithstanding the foregoing paragraph, if, because of liability arising out of or in connection with the operation of any clinic or established health care facility, coverage for **damages** is available under this Memorandum and under the Authority's Medical Malpractice Program, it shall be conclusively presumed that the coverage afforded under the Medical Malpractice Program shall be primary and any coverage available under this Memorandum shall be excess only. For claims to which this provision applies, the exhaustion of the Authority's limit of liability under the Medical Malpractice Program will satisfy the **covered party's** self-insured retention under this Memorandum.

## 8. SUBROGATION

The Authority shall be subrogated to the extent of any payment hereunder to all the **covered party's** rights of recovery therefore; and the **covered party** shall do nothing after loss to prejudice such rights and shall do everything necessary to secure such rights. Any amount so recovered shall be apportioned as follows:

Any interest (including the **covered party's**) having paid an amount in excess of the self-insured retention, plus the limit of liability, hereunder shall be reimbursed first to the extent of actual payment. The Authority shall be reimbursed next to the extent of its actual payment hereunder. If any balance then remains unpaid, it shall be applied to reimburse the **covered party**. The expenses of all such recovery proceedings shall be apportioned in the ratio of respective recoveries. If there is no recovery in proceedings conducted solely by the Authority, it shall bear the expenses thereof.

## 9. CHANGES

Notice to the Authority or any agent of the Authority or knowledge possessed by the Authority or any agent of the Authority or by any other person shall not effect a waiver or change in any part of this Memorandum or stop the Authority from asserting any right under the terms of this Memorandum, nor shall the terms of this Memorandum be waived or changed, except by endorsement issued to form a part of this Memorandum.

## 10. ASSIGNMENT

Assignment of interest under this Memorandum shall not bind the Authority until its consent is endorsed hereon; if, however, the **covered party** shall die, such coverage as is afforded by this Memorandum shall apply (a) to the **covered party's** legal representative, as the **covered party**, but only while acting within the scope of his/her duties as such, and (b) with respect to the property of the **covered party**, to the person having proper temporary custody thereof, as **covered party**, but only until the appointment and qualification of the legal representative.

## 11. FUNDING OF MEMBER'S SELF-INSURED RETENTION

The Member agrees to maintain a loss fund in an amount to be determined by mutual agreement among the Member, the servicing organization designated in the Memorandum Declarations (if any), and the Authority for the payment of all claims and expenses falling within the Member's self-insured retention.

This fund shall be reimbursed as necessary to maintain a balance in accordance with the terms of the servicing agreement between the Member and the servicing organization (if any).

In the event of cancellation, expiration or revision of the contract between the Member and the servicing organization, the Member shall notify the Authority thereof within thirty days of the effective date of such cancellation, expiration or revision; but failure to notify the Authority shall not invalidate the coverage.

## 12. CANCELLATION AND NONRENEWAL

This Memorandum may be canceled by the **covered party** only at the end of the Memorandum Period and pursuant to the provisions of Article 20(b) of the Joint Powers Agreement. The Authority may cancel this agreement pursuant to the provisions of Article 21(a)(1) and (a)(2) of the Joint Powers Agreement or the Authority's Invoicing and Payment Policy established by the Board of Directors. This Memorandum does not apply to any **occurrence**, offense, or **wrongful act** taking place at or after the effective date of any such cancellation.

### 13. MEMBER

The Member named in the Declarations is authorized to act on behalf of all **covered parties** with respect to the giving and receiving of notice of cancellation and receiving any return premium that may become payable under this Memorandum. The Member named in the Declarations is responsible for the payment of all premiums but the other **covered parties** jointly and severally agree to make such premium payments in full if the Member fails to pay the amount due within thirty days after the Authority gives a written demand for payment to the Member.

### 14. SEVERABILITY OF INTERESTS

The term **covered party** is used severally and not collectively, but the inclusion herein of more than one **covered party** shall not operate to increase the limits of the Authority's liability.

**ENDORSEMENT NO. U-1**

**CSAC EXCESS INSURANCE AUTHORITY  
GENERAL LIABILITY I**

**ADDITIONAL COVERED PARTY AMENDATORY ENDORSEMENT**

It is agreed that the "COVERED PARTY, COVERED PERSONS OR ENTITIES" section of the Memorandum is amended to include the person or organization named on the Certificate of Coverage, but only with respect to liability arising out of premises owned by or rented to the Member, or operations performed by or on behalf of the Member or such person or organization so designated.

Coverage provided under this endorsement is limited to the lesser of the limits stated on the Certificate of Coverage or the minimum limits required by contract.

**Additional Covered Party:**

**NAME OF PERSON OR ORGANIZATION SCHEDULED PER ATTACHED CERTIFICATE OF  
COVERAGE**

**As Respects:**

**PER ATTACHED CERTIFICATE OF COVERAGE**

It is further agreed that nothing herein shall act to increase the Authority's limit of liability.


This endorsement is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

**Effective Date:**

**Memorandum No.:** EIA 14 EL-00

**Issued to:** ALL MEMBERS

**Issue Date:** June 24, 2014

  
Authorized Representative  
CSAC Excess Insurance Authority

**ENDORSEMENT NO. U-2**

**CSAC EXCESS INSURANCE AUTHORITY  
GENERAL LIABILITY I**

**VIOLATION OF COMMUNICATIONS OR INFORMATION LAW EXCLUSION**

As respects **ultimate net loss**, this Memorandum does not apply:

To any liability arising out of any act that violates any statute, ordinance or regulation of any federal, state, or local government, including any amendment or addition to such laws, which prohibits or limits the sending, transmitting or communicating of material or information by unsolicited sending of faxes, emails or other means of electronic transmission.

It is understood that to the extent any coverage may otherwise be available under this Memorandum or any of its endorsements, the provisions of this exclusion will supersede.

It is further agreed that nothing herein shall act to increase the Authority's limit of liability.


This endorsement is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

**Effective Date:**

**Memorandum No.:** EIA 14 EL-00

**Issued to:** ALL MEMBERS

**Issue Date:** June 24, 2014

  
Authorized Representative  
CSAC Excess Insurance Authority

**ENDORSEMENT NO. U-3**

**CSAC EXCESS INSURANCE AUTHORITY  
GENERAL LIABILITY I**

**STRIP SEARCH EXCLUSION**

As respects **ultimate net loss**, this Memorandum does not apply:

To liability arising out of or in connection with a strip search or body cavity search of a detained person or persons. As used in this exclusion, strip search means a search which includes a physical or visual inspection of the underclothing, breasts, buttocks, or genitalia of the searched person. As used in this exclusion, body cavity search means a visual or physical inspection of the stomach, rectal cavity and/or vagina.

This exclusion shall apply only to strip search or body cavity search activity that is alleged in a class action. As used in this exclusion, "class action" means a certified class action or a **suit** that includes class action allegations; provided however, "class action" does not include any **suit** in which class certification has been denied or withdrawn.

It is further agreed that nothing herein shall act to increase the Authority's limit of liability.


This endorsement is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

**Effective Date:**

**Memorandum No.:** EIA 14 EL-00

**Issued to:** ALL MEMBERS

**Issue Date:** June 24, 2014

  
Authorized Representative  
CSAC Excess Insurance Authority

**ENDORSEMENT NO. U-4**

**CSAC EXCESS INSURANCE AUTHORITY  
GENERAL LIABILITY I**

**ECONOMIC OR TRADE SANCTIONS**

If coverage for a claim or **suit** under this Memorandum is in violation of any United States of America economic or trade sanctions, including but not limited to, sanctions administered and enforced by the United States Treasury Department's Office of Foreign Assets Control ("OFAC"), then coverage for that claim or **suit** will be null and void.

It is further agreed that nothing herein shall act to increase the Authority's limit of liability.

This endorsement is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

**Effective Date:**

**Memorandum No.:** EIA 14 EL-00

**Issued to:** ALL MEMBERS

**Issue Date:** June 24, 2014

  
Authorized Representative  
CSAC Excess Insurance Authority

**ENDORSEMENT NO. U-5**

**CSAC EXCESS INSURANCE AUTHORITY  
GENERAL LIABILITY I**

**FAIR LABOR STANDARDS ACT EXCLUSION**

As respects **ultimate net loss**, this Memorandum does not apply:

To any liability arising from the failure to pay wages earned by an employee of a **covered party**, including but not limited to any claim or **suit** brought under the overtime compensation or minimum wage provisions of the Fair Labor Standards Act, 29 U.S.C. 201 et seq., or any state or local law governing the payment of overtime compensation or minimum wage. However, this exclusion does not apply to any claim or **suit** brought pursuant to the Equal Pay Act, 29 U.S.C.s. 206 (d).

It is further agreed that nothing herein shall act to increase the Authority's limit of liability.

This endorsement is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

**Effective Date:**

**Memorandum No.:** EIA 14 EL-00

**Issued to:** ALL MEMBERS

**Issue Date:** June 24, 2014

  
Authorized Representative  
CSAC Excess Insurance Authority



## ENDORSEMENT NO. U-6

### CSAC EXCESS INSURANCE AUTHORITY GENERAL LIABILITY I

#### INVESTMENT RISK AMENDATORY ENDORSEMENT

As respects **ultimate net loss**, this Memorandum does not apply:

To liability arising, in any way, from any act, error, omission or breach of duty, whether in a **covered party's** capacity as a trustee or fiduciary or otherwise, in connection with any investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing any public funds.

However, subject to the special limits of liability set forth in subparagraphs A and B below, this exclusion shall not apply:

1. To liability for the loss of funds belonging to or held for the benefit of individuals or entities who are not **covered parties** hereunder, provided that the Authority's liability shall be limited as set forth in the special limits of liability, sub-paragraph (A) below.
2. To excess **defense costs** incurred on account of the actual or alleged loss of public funds belonging to, or held for the benefit of, any **covered party**, provided that such claim or **suit** is not brought by or on behalf of a **covered party** hereunder, and further provided that the Authority's liability for such **excess defense costs** shall be limited as set forth in the special limits of liability, sub-paragraph (B) below.

#### Special Limits of Liability

Regardless of the number of (A) **covered parties** under this Memorandum, (B) persons or organizations who sustain injury or damage, or (C) claims made or **suits** brought within the meaning of subparagraphs (1) and (2) above, the Authority's liability under this endorsement shall be limited as follows:

- A. As respects liability arising under subparagraph (1) above, the Authority's liability, as a result of any one **wrongful act**, and in the aggregate, shall be only for **ultimate net loss** not exceeding \$1,000,000, less the self-insured retention, as specified on the Declarations.
- B. As respects liability arising under subparagraph (2) above, the Authority's liability, as a result of any one **wrongful act**, and in the aggregate, shall be limited to **excess defense costs**, not exceeding \$1,000,000, less the self-insured retention as specified on the Declarations.
- C. There is no limit to the number of **wrongful acts** during the Memorandum Period for which claims hereunder may be made, except that the liability of the Authority because of all **wrongful acts** during each Memorandum Period shall not exceed the difference between \$1,000,000 and the self-insured retention, as specified on the Declarations.

- D. For the purpose of determining the limit of the Authority's liability, all **damages** arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one **wrongful act**.
- E. **Wrongful acts** taking place over more than one Memorandum Period shall be deemed to have taken place during the last Memorandum Period, and only that limit shall apply.

It is further agreed that nothing herein shall act to increase the Authority's limit of liability.


This endorsement is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

**Effective Date:**

**Memorandum No.:** EIA 14 EL-00

**Issued to:** ALL MEMBERS

**Issue Date:** June 24, 2014

  
Authorized Representative  
CSAC Excess Insurance Authority

**ENDORSEMENT NO. U-7**

**CSAC EXCESS INSURANCE AUTHORITY  
GENERAL LIABILITY I**

**CLAIM REPORTING AMENDATORY ENDORSEMENT**

It is understood and agreed that Item 3 of the Conditions is replaced in its entirety by the following:

**6. CLAIM REPORTING REQUIREMENTS**

It is agreed that with respect to claim reporting, the **covered party**, in addition to the terms set forth in this Memorandum, must report an **occurrence**, offense, or **wrongful act** in which the amount incurred has reached 50 percent or more of their individual self-insured retention or \$500,000, whichever is lower. The **covered party** must also give the Authority immediate written notice for any claims or **suits** which the **covered party** becomes aware of that include injury of the following types:

- A. Death;
- B. Paralysis, paraplegia, or quadriplegia;
- C. Loss of eye(s) or limbs;
- D. Spinal cord or brain injury;
- E. Dismemberment or amputation;
- F. Sensory organ or nerve injury or neurological deficit;
- G. Serious burns;
- H. Severe scarring;
- I. Sexual assault or battery, including, but not limited to, rape, molestation, or sexual abuse;
- J. Substantial disability or disfigurement;
- K. Any class action;
- L. Any claim or **suit** in which the Authority is named as a defendant; or
- M. Any injury caused by Lead.

It is further agreed that nothing herein shall act to increase the Authority's limit of liability.


This endorsement is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

**Effective Date:**

**Memorandum No.:** EIA 14 EL-00

**Issued to:** ALL MEMBERS

**Issue Date:** June 24, 2014

  
Authorized Representative  
CSAC Excess Insurance Authority

**ENDORSEMENT NO. U-8**

**CSAC EXCESS INSURANCE AUTHORITY  
GENERAL LIABILITY I**

**LEAD EXCLUSION-FIRST PARTY EXPENSES ENDORSEMENT**

Any costs associated with the removal, remediation, encapsulation, abatement, monitoring, assessment or testing for the presence of lead or any materials containing lead, including but not limited to lead based paint, on, at, under or within any property owned, leased, rented or occupied by any **covered party**.

It is further agreed that nothing herein shall act to increase the Authority's limit of liability.

This endorsement is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

**Effective Date:**

**Memorandum No.:** EIA 14 EL-00

**Issued to:** ALL MEMBERS

**Issue Date:** June 24, 2014

  
Authorized Representative  
CSAC Excess Insurance Authority

**ENDORSEMENT NO. U-9**

**CSAC EXCESS INSURANCE AUTHORITY  
GENERAL LIABILITY I**

**AMENDATORY ENDORSEMENT - WAIVER OF SUBROGATION**

It is understood and agreed that Condition 8. SUBROGATION, of the Memorandum to which it is attached, is deleted in its entirety and replaced by the following:

**8. SUBROGATION**

The Authority shall be subrogated to the extent of any payment hereunder to all the **covered party's** rights of recovery therefore; and the **covered party** shall do nothing after loss to prejudice such rights and shall do everything necessary to secure such rights. Any amount so recovered shall be apportioned as follows:

Any interest (including the **covered party's**) having paid an amount in excess of the self-insured retention, plus the limit of liability, hereunder shall be reimbursed first to the extent of actual payment. The Authority shall be reimbursed next to the extent of its actual payment hereunder. If any balance then remains unpaid, it shall be applied to reimburse the **covered party**. The expenses of all such recovery proceedings shall be apportioned in the ratio of respective recoveries. If there is no recovery in proceedings conducted solely by the Authority, it shall bear the expenses thereof.

Notwithstanding the above, the Authority waives its rights of subrogation against any person or organization with whom the **covered party** has entered into a written agreement that includes a waiver of subrogation, but only if the agreement is in effect before the injury, damage or liability occurs.

It is further agreed that nothing herein shall act to increase the Authority's limit of liability.


This endorsement is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

**Effective Date:**

**Memorandum No.:** EIA 14 EL-00

**Issued to:** ALL MEMBERS

**Issue Date:** June 24, 2014

  
Authorized Representative  
CSAC Excess Insurance Authority

## ENDORSEMENT NO. U-10

### CSAC EXCESS INSURANCE AUTHORITY GENERAL LIABILITY I

#### AMENDATORY ENDORSEMENT-PRIMARY/NON-CONTRIBUTORY

It is understood and agreed that Condition 7. OTHER COVERAGE, of the Memorandum to which it is attached, is deleted in its entirety and replaced by the following:

#### 7. OTHER COVERAGE

If collectible insurance with an insurer is available to the **covered party** covering a loss also covered hereunder (whether on a primary, excess or contingent basis), the coverage hereunder shall be in excess of, and shall not contribute with, such insurance; provided that this clause does not apply with respect to excess insurance purchased specifically to be in excess of this Memorandum, or to insurance or reinsurance which is intended to provide the remainder of the limit of liability stated in the Declarations of this Memorandum when the coverage afforded under this Memorandum provides less than 100 percent of the limit set forth in the Declarations. However, if the **covered party** has entered into a written agreement, prior to any loss event, in which it is agreed that this coverage shall be primary and/or non-contributory with respect to an additional **covered party** as specified in Endorsement U-1 of this Memorandum, then this coverage shall respond as primary and/or non-contributory, but shall be limited to the lesser of the limits stated on the Certificate of Coverage or the minimum limits required by the written agreement.

Notwithstanding the foregoing paragraph, if, because of liability arising out of or in connection with the operation of any clinic or established health care facility, coverage for **damages** is available under this Memorandum and under the Authority's Medical Malpractice Program, it shall be conclusively presumed that the coverage afforded under the Medical Malpractice Program shall be primary and any coverage available under this Memorandum shall be excess only. For claims to which this provision applies, the exhaustion of the Authority's limit of liability under the Medical Malpractice Program will satisfy the **covered party's** self-insured retention under this Memorandum.

Coverage for the additional **covered party** under this endorsement is limited to the written contract or agreement as specified on the Certificate of Coverage and Endorsement U-1 of this Memorandum.

It is further agreed that nothing herein shall act to increase the Authority's limit of liability.


This endorsement is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

**Effective Date:**

**Memorandum No.:** EIA 14 EL-00

**Issued to:** ALL MEMBERS

**Issue Date:** June 24, 2014



Authorized Representative  
CSAC Excess Insurance Authority

**ENDORSEMENT NO. 1**

**CSAC EXCESS INSURANCE AUTHORITY  
GENERAL LIABILITY I**

**COVERED PARTY AMENDATORY ENDORSEMENT**

It is understood and agreed that the section **COVERED PARTY, COVERED PERSONS OR ENTITIES** is amended to include:

Riverside Community Housing Corporation

It is further agreed that nothing herein shall act to increase the Authority's limit of liability.

This endorsement is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

**Effective Date:** July 9, 2014

**Memorandum No.:** EIA-PE 14 EL-47

**Issued to:** Housing Authority of the County of Riverside

**Issue Date:** August 25, 2014

  
Authorized Representative  
CSAC Excess Insurance Authority





## **Exhibit D PROCUREMENT POLICY**

Following is an excerpt from RCHC's Policies and Procedures Manual addressing RCHC's procurement policies, specifically. These procedures are annotated with citations to applicable laws, alternatives and recommended practices (parenthetical citations are found at the end of the applicable sentence or paragraph).

Procurement is the acquiring by contract of supplies and services (including construction) through purchase, lease, or other means. Procurement begins at the point when RCHC's needs are established and includes the description of requirements to satisfy those needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling corporate needs by contract (HUD Handbook 7460.8, Rev. 2).

RCHC shall maintain and adhere to a written code of standards governing the awarding and administration of contracts (24 CFR §85.36). RCHC shall: provide for a procurement system of quality and integrity; provide for the fair and equitable treatment of all persons or firms involved in purchasing by RCHC; ensure that supplies and services (including construction) are procured efficiently, effectively, and at the most favorable prices available to RCHC; and assure that RCHC purchasing actions are in full compliance with applicable laws and the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with the law (HACR Procurement Policy). Furthermore, RCHC's procurement-related contracting activities shall be reasonable and necessary and measures shall be taken to protect against fraud, waste and abuse (OIG Audit Report No. 2011-AO-0001).

In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with these policies, automatically supersede these policies (HACR Procurement Policy).

Where multiple funding sources are involved (such as in mixed-finance projects) and the procurement standards among those funding sources differ, RCHC shall adhere to the stricter standard.

### **Public Housing Projects: Special Procurement Considerations**

As an instrumentality of HACR, RCHC is subject to the Public Housing Authority (PHA) procurement requirements of 24 CFR §85.36 and 24 CFR §941 Subpart F for projects which involve public housing or public housing funds. On those projects, RCHC must procure third party members, partners and sub-contractors of its operational or development team (e.g. architects, consultants, contractors, attorneys, etc.) in compliance with the standards set forth at 24 CFR §85.36 and the Procurement Handbook for Public Agencies, HUD Handbook 7460.8, Rev. 2 (HUD Notice PIH 2007-15 extended as PIH 2011-47).



Because these distinct set of standards apply to RCHC activities on projects which involve public housing or public housing funds, policies and procedures for these particular project requirements are prefaced with the subcategory title "Public Housing Project". For the purposes of this section, "Public Housing Project" applies to any project which involves public housing or public housing funds. Pursuant to HUD Handbook 7460.8 Rev. 2, funds provided by HACR's Central Office Cost Center (COCC) to RCHC are not considered federal funds.

### **Responsibility for Procurement Actions**

Other than approval of this Procurement Policy and subject to RCHC's Delegated Authority Policy, approval by the RCHC Board of Directors is not required for any procurement action, as permitted under state and local law. Rather, it is the responsibility of the Chief Operating Officer (COO), or designee, to make sure that all procurement actions are conducted in accordance with the policies contained herein (HACR Procurement Policy).

While the COO is responsible for ensuring that the RCHC's procurements comply with this policy, the COO may delegate all procurement authority as is necessary and appropriate to conduct the business of the corporation as authorized in the RCHC's Bylaws and/or delegated authority limits. Further, and in accordance with this delegation of authority, the COO shall, where necessary, establish operational procedures (such as a procurement manual or standard operating procedures) to implement this policy (HACR Procurement Policy).

### **Contracting Officer Signature/Obligation of Funds**

Each contract or purchase action (e.g., new contract, modification, interagency agreement, purchase order, etc.) that obligates RCHC to pay a contractor or vendor must be signed or otherwise authorized by an individual to whom RCHC has expressly delegated the authority to make such an obligation (HUD Handbook 7460.8, Rev. 2).

The signature of the Contracting Officer on RCHC contracts is a legal commitment and requires continuing performance by RCHC under the terms and conditions of the contract. Performance includes such duties as monitoring contractor performance and acceptance or rejection of contractors' requests for changes in performance, specifications, or price (HUD Handbook 7460.8, Rev. 2).

Caution: if an individual is not an authorized Contracting Officer, that individual must not bind RCHC by making an implied contract such as by making a promise or stating an intent to purchase, either orally or in writing. Under the laws of agency and apparent authority, RCHC may be liable for, or bound by, the acts of an RCHC employee or volunteer, if such person (who is not a Contracting Officer) appears to an offeror to have been given authority by RCHC. Therefore, all actions that could be misinterpreted as committing RCHC to purchase should be clarified with a statement such as, "this request for price quotation is not an offer to buy and should not be assumed as such" (HUD Handbook 7460.8, Rev. 2).



### **Unauthorized Agreements**

No employee shall enter into any agreement, written or unwritten, without prior approval from the Board of Directors, or designee, that involves any direct payment or other form of compensation as a result of any program administered by RCHC, either directly or indirectly, through agreements with other parties (HACR 2014 Administrative Plan).

### **Public Housing Projects: Conflicts of Interest in Procurement**

For projects involving public housing or public housing funds, RCHC's procurements shall observe the conflict of interest standards set forth in RCHC's approved Conflict of Interest Code including the requirements in subsection of this Manual titled "Projects Involving Public Housing and/or Public Housing Funds".

### **Public Housing Projects: Gratuities, Kickbacks, and Use of Confidential Information**

No RCHC Officer, Board member, current employee, former employee within one year of employment, or agents shall ask for or accept gratuities, favors, or items of more than \$25 in value from any contractor, potential contractor, or party to any subcontract, and shall not knowingly use confidential information for actual or anticipated personal gain (HACR Procurement Policy).

It is a breach of ethical conduct and prohibited for any payment, gratuity, or offer of employment to be made by, or on behalf of, a contractor or subcontractor under contract to the prime contractor, higher tier subcontractor, or any person associated therewith as an inducement for the award of a subcontractor order (HUD Handbook 7460.8, Rev. 2).

Disclosure of confidential information to any person not authorized by the Contracting Officer to receive such information is a breach of ethical standards. Confidential information includes but is not necessarily limited to: the contents of a bid (prior to bid opening) or proposal (prior to contract award using competitive proposals), names of individuals or firms that submitted bids (prior to bid opening) or proposals (prior to contract award); RCHC-generated information related to a procurement (including RCHC cost estimates, contractor selection and evaluation plans, specifications [before solicitation is issued]); and any other information the disclosure of which would have a direct bearing upon the contract award or the competitive process. It is a breach of ethical conduct for any current or former employee, Officer, or agent to knowingly use confidential information for actual or anticipated personal gain or for actual or anticipated personal gain of any other person (HUD Handbook 7460.8, Rev. 2).

### **Public Housing Projects: Prohibition against Contingent Fees**

Contractors wanting to do business with RCHC on projects involving public housing or public housing funds must not hire a person to solicit or secure a contract for a commission, percentage, brokerage, or contingent fee, except for bona fide established commercial selling agencies (HACR Procurement Policy). This prohibition includes the employment of former RCHC



officials and employees on a contingency basis to obtain contracts with RCHC by a business seeking RCHC contracts (HUD Handbook 7460.8, Rev. 2).

### **Actions to Promote Efficiency**

RCHC shall review proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach (24 CFR §85.36).

Before initiating any contract, RCHC shall ensure that there are sufficient funds available to cover the anticipated cost of the contract or modification (HUD Handbook 7460.8, Rev. 2).

### **Interactions between RCHC and HACR**

HUD considers RCHC to be HACR in conjunction with public housing development activities. For projects involving public housing or public housing funds, RCHC is required to follow HACR's Annual Contributions Contract (ACC) and conflict-of interest provisions of 24 CFR § 85, as though it were a PHA (HUD Notice PIH 2007-15 extended as PIH 2011-47).

Pursuant to HUD Handbook 7460.8 Rev. 2, funds provided by HACR's COCC to RCHC are not considered public housing funds and are therefore not subject to the procurement standards set forth at 24 CFR §85.36 and the Procurement Handbook for Public Agencies, HUD Handbook 7460.8, Rev. 2

Intergovernmental/Interagency Noncompetitive Procurement. RCHC may enter into agreements with HACR or other state or local government agencies to obtain needed supplies or services if such agreements will foster economy and efficiency. For the purposes of this section, an agreement between RCHC and HACR or another state or local agency would be considered "intergovernmental" or "interagency" because of RCHC's status as an instrumentality of HACR. The use of these types of agreements can significantly reduce the amount of time required to contract for supplies or services, while allowing RCHC to take advantage of prices obtained through volume purchasing by HACR or another local or state agency (HUD Handbook 7460.8, Rev. 2).

For projects involving public housing or public housing funds, RCHC may enter into such intergovernmental or interagency purchasing agreements (including with HACR) without competitive procurement provided the following conditions are met:

1. The agreement provides for greater economy and efficiency and results in cost savings to RCHC. Before utilizing an interagency agreement for procurement, RCHC should compare the cost and availability of the identified supplies or services on the open market with the cost of purchasing them through HACR or another unit of government to determine if it is the most economical and efficient method;



2. The agreement is used for common supplies and services that are of a routine nature only. In deciding whether it is appropriate for RCHC to obtain supplies or services through an intergovernmental agreement rather than through a competitive procurement, the nature of the required supplies or services will be a determining factor. If services, required by RCHC, are provided by HACR or the state and are part of that government's normal duties and responsibilities, it is permissible for RCHC to share the services and cost of staff under an agreement. For example, RCHC could enter into an intergovernmental agreement, without competitive procurement, to use the services of HACR's accounting office to conduct an annual audit of its books. RCHC could not, however, without competitive procurement, enter into an intergovernmental agreement with a local police department to purchase cabinets manufactured by the police department (the manufacturing of cabinets is not a normal function of a law enforcement agency);
3. RCHC must take steps to ensure that any supplies or services obtained using another agency's contract are purchased in compliance with 24 CFR 85.36;
4. RCHC's procurement files should contain a copy of the Intergovernmental Agreement and documentation showing that cost and availability were evaluated before the agreement was executed, and these factors are reviewed and compared at least annually with those contained in the agreement; and
5. The agreement must be between RCHC and HACR or other state or local governmental agency (HUD Handbook 7460.8, Rev. 2).

Terms of Intergovernmental/Interagency Agreements. RCHC should consider inclusion of the following provisions in its intergovernmental agreements:

1. Identification of the parties;
2. Effective date;
3. Basic purpose of the agreement;
4. Procedures for providing lists of needed items;
5. Description of items to be purchased;
6. Identification of lead party in the procurement;
7. Rules or codes that should be followed in the procurement (RCHC procurement policy, state procurement code, federal regulations, etc.);
8. Delivery terms;
9. Type of contract;
10. Warranty terms;
11. Any fees to be paid to the lead agency;
12. Procedures for resolving disputes with contractors;
13. Procedures for resolving disputes between the parties;
14. Procedures for bilateral modification or early termination of the agreement.
15. Any provisions for meetings on specification issues;
16. Non-exclusivity clause (the right to conduct separate procurements, notwithstanding the existence of a cooperative purchasing agreement); and
17. Authorized signatures and titles (HUD Handbook 7460.8, Rev. 2).



### **Public Housing Projects: Ownership Entity Considerations**

If RCHC is a general partner or managing member of the owner entity on a project involving public housing or public housing funds or occupies a position that allows RCHC (or HACR) to exercise significant functions as to the management of the development, then procurements by the owner entity are subject to the provisions of 24 CFR §85.36 (24 CFR §941(d) and HUD Notice PIH 2007-15 extended as PIH 2011-47).

Actions that are considered to be exercising significant functions are:

1. When RCHC (or HACR) is acting as the sole or managing general partner in the owner entity.
2. When RCHC (or HACR) is acting as developer (HUD Handbook 7460.8, Rev. 2).

The following are examples of actions that are not considered significant functions:

1. Monitoring units receiving operating subsidy to ensure compliance with various regulations.
2. Coordinating communications with agencies regarding project financing and operations.
3. Providing Community and Supportive Services (CSS) services.
4. Attending construction meetings, reviewing and approving draws.
5. Maintaining the waiting list.
6. Reviewing and approving operating and capital budgets (HUD Handbook 7460.8, Rev. 2).
7. Having limited rights as a limited partner or minority member, including a purchase option or right of first refusal (HUD Notice PIH 2007-15 extended as PIH 2011-47).

When both public housing and non-public housing funds are used for a project, the work to be accomplished with the funds should be separately identified prior to procurement so that appropriate requirements can be applied, if necessary. If it is not possible to separate the funds, public housing procurement regulations shall be applied to the total project (HUD Handbook 7460.8, Rev. 2).

### **Public Housing Projects: Contracting with Sub-Grantees**

For projects involving public housing or public housing funds, RCHC may decide to use sub-grantees to complete elements of the project including development and CSS programs. RCHC is responsible for ensuring that sub-grantees are aware of the requirements imposed on them by federal statutes and regulations as well as any requirements of grant agreements. RCHC must ensure that sub-grants include any clauses required by federal statutes and executive orders and their implementing regulations. RCHC shall monitor compliance by sub-grantees (HUD Handbook 7460.8, Rev. 2).



Sub-grantees are considered to be acting as RCHC. Sub-grantees who procure supplies or services will be subject to 24 CFR §85 if the sub-grantee is a governmental agency, or 24 CFR §84 if it is a non-profit sub-grantee (HUD Handbook 7460.8, Rev. 2).

### **Public Housing Projects: Competition**

For projects involving public housing or public housing funds, all procurement transactions will be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition include but are not limited to:

1. Placing unreasonable requirements on firms in order for them to qualify to do business,
2. Requiring unnecessary experience and excessive bonding,
3. Noncompetitive pricing practices between firms or between affiliated companies,
4. Noncompetitive awards to consultants that are on retainer contracts,
5. Organizational conflicts of interest,
6. Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement, and
7. Any arbitrary action in the procurement process. (24 CFR §85.36)

### **HUD Review Requirements**

HUD review of RCHC's procurement activity is limited to those actions involving public housing or public housing funds (HUD Handbook 7460.8, Rev. 2).

The following contracting actions shall have prior HUD approval when public housing or public housing funds are involved:

1. Noncompetitive procurements expected to exceed the federal small purchase threshold;
2. Brand name-only procurements expected to exceed the federal small purchase threshold;
3. Awards over the federal small purchase threshold to other than the apparent low bidder under a sealed bid;
4. Proposed contract modifications that change the scope of the contract (as per the "Changes" clause in forms HUD-5370, HUD-5370-C or HUD-5370-EZ) or increasing the contract amount by more than the federal small purchase threshold;
5. Use of the RFQ method of procurement for other than architecture and engineering (A/E) services, joint venture partners or developers, or energy service contracts;
6. If HACR (and therefore RCHC) is operating under the "old" ACC 53010 and 53011, any agreement or contract for professional, management, fee accountants, legal, or other professional services with any person or firm if the total period or term of the contract, including renewal option provisions, exceeds two years;
7. Procurements for legal or other non-personal services in connection with litigation, per HUD's Litigation Handbook, that exceed \$100,000;
8. Procurements that exceed the amount included in:
  - a) the HUD-approved development cost budget; or
  - b) Where HUD has required prior approval on a Notice of Deficiency or corrective action order under the Capital Fund Program;



9. Contracts that exceed five years, including options. To approve terms in excess of five years, the HUD field office must determine there is no practical alternative;
10. If HACR (and therefore RCHC) is operating under the “old” ACC and RCHC enters into a transaction with any joint venture, subsidiary, affiliate, or other identity-of-interest entity. Section 515 of the old ACC specifies that such transactions must comply with the conflict of interest provisions that apply to RCHC. If HACR (and therefore RCHC) is operating under the “new” ACC, RCHC must comply with the conflict of interest provisions under section 19 of the new ACC; and
11. Solicitations, and any resulting contracts, related to energy performance contracting and utility add-ons (HUD Handbook 7460.8, Rev. 2).

For development projects, RCHC shall submit to the HUD field office for prior approval A/E contracts, fee appraiser contracts, development manager contracts, construction solicitations, construction contracts, and contract modifications (HUD Handbook 7460.8, Rev. 2).

RCHC shall be exempt from HUD’s pre-award review required if:

1. RCHC requests, and HUD subsequently certifies, that its procurement system be reviewed by the field office to determine if its systems meet the standards under 24 CFR 85.36 and the essential requirements of HUD Handbooks 7485.1 and 7460.8, Rev. 2; or
2. RCHC self-certifies that its procurement system meets the standards under 24 CFR 85.36 and the essential requirements of this Handbook and HUD Handbook 7485.1.

#### **Public Housing Projects: Self-Certification**

RCHC self-certifies that this Procurement Policy and RCHC’s procurement system comply with all applicable federal regulations. As such, RCHC is exempt from prior HUD review and approval of individual procurement actions (HUD Handbook 7460.8, Rev. 2).

#### **Public Housing Projects: Procurement Methods**



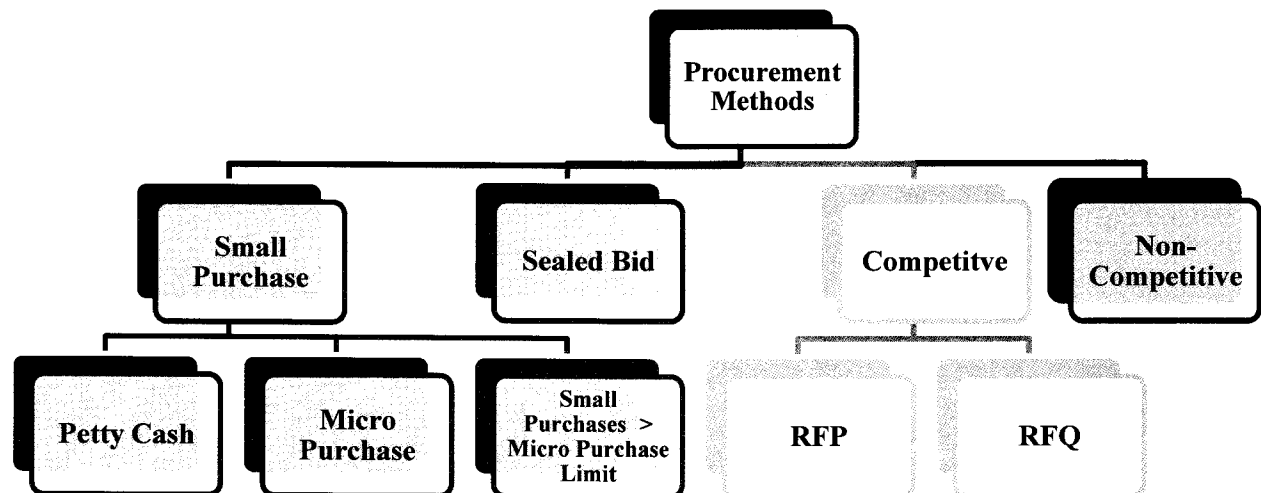


Figure 2. Procurement methods for projects involving public housing or public housing funds

For projects involving public housing or public housing funds, RCHC shall encourage full and open competition in procurement matters. The following methods of procurement are acceptable.

1. *Small Purchase*. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at the lesser of HACR's small purchase threshold (currently set at \$50,000) or the limit set forth in 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources. There are three (3) small purchase procurement methods:
  - a) *Petty Cash*. Purchases under \$50 may be handled through the use of a petty cash account. Petty cash accounts may be established in an amount sufficient to cover small purchases made during a reasonable period (e.g., one month). RCHC shall ensure that security is maintained and only authorized individuals have access to the account. These accounts should be reconciled and replenished periodically.
  - b) *Micro Purchases*. Purchases of less than \$3,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act) are micro purchases.
  - c) *Small Purchases*. Purchases of \$3,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act) to \$50,000 are small purchases.
2. *Sealed Bids*. Sealed bidding shall be used for all contracts that exceed the small purchase threshold and that are not competitive proposals or non-competitive proposals, as these terms are defined in this section. Under sealed bids, RCHC publicly solicits bids and awards a firm fixed-price contract (lump sum or unit price) to the responsible bidder whose bid is responsive (conforming exactly with all the material terms and conditions of the invitation to bid) and is the lowest in price. Sealed bidding is the preferred method for procuring construction, supply, and non-complex service contracts that are expected to exceed \$50,000. Further information on the sealed bid method may be found below in the sub-section titled "Public Housing Projects: Sealed Bid Procedures".



3. *Competitive Proposals.* Competitive proposals are normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. This procurement method is generally used when conditions are not appropriate for the use of sealed bids. Further information on the competitive proposal method may be found below in the sub-section titled "Public Housing Projects: Competitive Proposal Procedures".
4. *Noncompetitive Proposals.* Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate (24 CFR §85.36 and HACR Procurement Policy). Further information on the competitive proposal method may be found below in the sub-section titled "Public Housing Projects: Noncompetitive Proposal Procedures".

### **Independent Cost Estimate (ICE)**

The Independent Cost Estimate (ICE) is RCHC's estimate of the costs of the goods or services to be acquired under a contract or a modification. It serves as a yardstick for evaluating the reasonableness of the contractor's proposed costs or prices. The ICE also helps the procurement staff determine the contracting method to be used. For example, if the costs can be estimated with a high degree of confidence in their accuracy, sealed bidding may be possible (HUD Handbook 7460.8, Rev. 2).

While the Contracting Officer is responsible for the preparation of the ICE, other personnel are usually involved and may actually do most of the preparation. RCHC may develop the ICE using its own personnel, outside parties (e.g., consultants), or a combination of the two. If any outside party (whether compensated or not) assists in developing the ICE, RCHC must take appropriate steps to ensure that organizational conflicts of interest are avoided and that the outside party does not obtain any competitive advantage from its advance knowledge of RCHC's cost estimate (HUD Handbook 7460.8, Rev. 2).

For all purchases above the Micro Purchase threshold, RCHC shall prepare an ICE prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item to be purchased (HACR Procurement Policy).

### **Public Housing Projects: Cost Principles**

For projects involving public housing or public housing funds, RCHC shall use the applicable set of cost principles which have been issued by the federal government when performing a cost analysis. In all cases, proposed costs must be allowable pursuant to applicable cost principles, allocable (related to or required in the performance of the contract) and reasonable (what a prudent business would pay in a competitive marketplace) (HUD Handbook 7460.8, Rev. 2).



Each set of cost principles applies to contracts with a specific group or type of organizations, so one set will not work for all contracts. The cost principles and the type of contractor entity to which they apply are as follows:

1. OMB Circular A-122 for contracts with most nonprofit organizations.
2. OMB Circular A-21 for educational institutions.
3. Federal Acquisition Regulation (FAR), found at 48 CFR Chapter 1, Subpart 31.2 for profitmaking entities (e.g., commercial business concerns) and certain nonprofit organizations listed in Attachment C of OMB Circular A-122 (HUD Handbook 7460.8, Rev. 2).

### **Public Housing Projects: Specifications and Statements of Work**

A specification is a description of the technical requirements of a contract including a detailed description of materials, supplies, equipment, pre-cuts, or construction work that is used in the procurement process to tell prospective contractors precisely what RCHC desires to purchase. A statement or scope of work (SOW) is a written description of work to be performed that establishes the standards sought for the supplies or services furnished under the contract and is typically used for service contracts (HUD Handbook 7460.8, Rev. 2).

Properly prepared or described specifications and SOWs (1) enhance competition, and (2) clarify the relationship between the contractor and RCHC, resulting in improved contract administration. The SOW also becomes the standard for measuring contractor performance. When a question arises over an apparent increase in the scope of the work to be performed, the SOW is the baseline document for resolving the question. For projects involving public housing or public housing funds, the specifications or SOW must be designed so as not to restrict competition to one supplier (HUD Handbook 7460.8, Rev. 2).

Most specifications contain a combination of design and performance requirements and may include brand name or equivalent (2 CFR §§200.317–200.326) descriptions of components.

1. Functional or performance specifications contain performance characteristics that are desired for the item or that identify how the item functions. A functional or performance specification is inherently risky. Performance specifications state the overall requirements so that each contractor may furnish its own item to meet the required performance.
2. Design specifications contain a description of the item desired as opposed to performance standards and may be as detailed as needed. Depending on the nature of the item, the design specifications may contain precise measurements, tolerances, materials, product tests, quality control, and other detailed information, provided competition is not being limited to one product. The information furnished in the specification should be sufficiently detailed to ensure that all items manufactured to the specifications will be virtually the same.
3. Brand name or equivalent (2 CFR §§200.317–200.326) specifications provide clear and accurate product descriptions. References to brand names shall be followed by the words “or equivalent” (2 CFR §§200.317–200.326) and a description of the item’s essential



characteristics so that competition is not restricted. When brand names or catalog numbers are used, inform the offerors that such references establish only design or quality standard; in fact, any other products that clearly and demonstrably meet the standard are also acceptable.

4. RCHC shall avoid geographic restrictions not mandated or encouraged by applicable federal law (except for architecture/engineering contracts, which may include geographic location as selection factor if adequate competition is available) (HUD Handbook 7460.8, Rev. 2).

The particular issues to be addressed in a SOW will vary with the nature, purpose, size, and complexity of the work. At a minimum, every SOW should include:

1. Detailed work and task requirements;
2. End results and deliverables, including the criteria which a deliverable must meet to be considered acceptable;
3. Delivery schedules/period of performance;
4. Any reporting and compliance requirements;
5. A precise statement of the objectives;
6. RCHC contact person/contract administrator; and
7. Other special considerations (warranties, personnel and required classifications, testing procedures, procedural safeguards, etc.) (HUD Handbook 7460.8, Rev. 2).

Contractors funded to develop or draft specifications, requirements, statements of work, invitations for bid, or requests for proposals shall be excluded from competing in the procurement (HUD Handbook 7460.8, Rev. 2).

### **Public Housing Projects: Small Purchase Procedures**

**Cost Analysis.** RCHC shall require assurance that, before entering into a contract, the price is reasonable, in accordance with the following instructions.

1. *Petty Cash and Micro Purchases.* No formal cost or price analysis is required for petty cash and micro purchases. Rather, the execution of a contract by the Contracting Officer (through a Purchase Order or other means) shall serve as the Contracting Officer's determination that the price obtained is reasonable, which may be based on the Contracting Officer's prior experience or other factors.
2. *Small Purchases of \$3,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act) to \$50,000.* A comparison with other offers shall generally be sufficient determination of the reasonableness of price and no further analysis is required. If a reasonable number of quotes is not obtained to establish reasonableness through price competition, RCHC shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the procurement staff's personal knowledge at the time of purchase, comparison to the ICE, or any other reasonable basis (HUD Handbook 7460.8, Rev. 2).



RCHC shall negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work (24 CFR §85.36).

In all cases, proposed costs must be allowable pursuant to applicable cost principles, allocable (related to or required in the performance of the contract) and reasonable (what a prudent business would pay in a competitive marketplace) (HUD Handbook 7460.8, Rev. 2).

Solicitation. For *petty cash* and *micro purchases*, RCHC may contact only one source if the price is considered reasonable (HUD Handbook 7460.8, Rev. 2). To the greatest extent feasible, and to promote competition, small purchases should be distributed among qualified sources. Quotes may be obtained orally (either in person or by phone), by fax, in writing, or through e-procurement. Award shall be made to the qualified vendor that provides the best value to RCHC. If award is to be made for reasons other than lowest price, documentation shall be provided in the contract file. RCHC shall not break down a purchase into into several purchases that are less than the applicable threshold merely to avoid any requirements that apply to micro purchases.

For *small purchases between \$3,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act) and \$50,000*, RCHC shall obtain a reasonable number of quotes (preferably three). A no-bid from a vendor does not constitute one of the three bids. If no bids are received, at least five vendors must be contacted to complete the procurement process. To the greatest extent feasible, and to promote competition, small purchases should be distributed among qualified sources. Award shall be made to the qualified vendor that provides the best value to RCHC. If an award is to be made for reasons other than lowest price, documentation shall be provided in the contract file.

Written solicitations shall be used when it is necessary to provide vendors with detailed information that cannot be effectively conveyed orally.

1. For small purchases of \$3,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act) to \$20,000, solicitations may be obtained orally, by telephone or in writing.
2. For small purchases of \$20,000 to \$50,000, solicitations must be obtained in writing.
3. Award shall be made to the lowest responsive and responsible bidder, unless justified in writing based on other specified factors, such as non-competitive, qualification-based, or sole source. If non-price factors are used, they shall be disclosed to all those solicited. The names, addresses and phone numbers of the offerors and persons contacted, the date and the amount of each quotation shall be recorded (HACR Procurement Procedures).



RCHC shall not break down a purchase into several purchases that are less than the applicable threshold merely to avoid any requirements that apply to purchases that exceed the micro purchase threshold.

Purchase Order. Most purchases under the small purchase method will be done via a Purchase Order (PO) sent or given to the contractor to initiate delivery of the item(s) or performance of the service(s). The issuance of a PO by RCHC and its acceptance by the contractor (either through performance or signature on the purchase order) constitute a contract. It is crucial, therefore, that the PO clearly specifies the item(s) or service(s) being purchased and the terms and conditions of the purchase (HUD Handbook 7460.8, Rev. 2).

RCHC hereby adopts HACR's PO format and procedures as set forth in HACR's Procurement Policy and Procurement Procedures manuals, as it may be amended from time to time.

Credit (or Purchasing) Cards. Credit card usage should follow the rules for all other small purchases (HUD Handbook 7460.8, Rev. 2).

Documentation. RCHC shall document its small purchase procurements as follows:

1. *Petty Cash.* Receipts and invoices shall be maintained.
2. *Micro Purchases.* Identification of the solicited vendors and a brief explanation for the award decision shall be maintained.
3. *Small Purchases of \$3,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act) to \$50,000.*
  - a) Records of oral price quotations sufficient to reflect clearly the propriety of placing the orders at the price paid with the particular vendor shall be established and maintained.
  - b) Written records of solicitations or offers shall show prices, delivery, references to printed price lists used, the vendors contacted, and any other pertinent information.
  - c) In special situations, include additional statements explaining the absence of competition if only one source is solicited; or supporting the award decision if other than price-related factors were considered in selecting the vendor.

### **Public Housing Projects: Sealed Bid Procedures**

For projects involving public housing or public housing funds, sealed bidding shall be used for contracts that exceed the small purchase threshold and that are not competitive proposals or non-competitive proposals (HUD Handbook 7460.8, Rev. 2).

Conditions for Use. Sealed bidding is the preferred method for procuring construction, supply, and non-complex service contracts that are expected to exceed \$50,000 (HUD Handbook 7460.8, Rev. 2). The sealed bid method shall be used if the conditions in 24 CFR §85.36(d) (2) (i) apply as follows:

1. A complete, adequate, and realistic specification or purchase description is available;



2. Two or more responsible bidders are willing and able to compete effectively; and
3. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price (HUD Handbook 7460.8, Rev. 2).

Invitation for Bid (IFB). The IFB packages for supplies, services, or construction are quite similar. The major difference is the length and complexity of the specifications or scope of work and the variety of attachments. All IFBs must be in writing. The basic documents to be included in an IFB package are:

1. Cover Page with Table of Contents, which states the name, address and phone number of the corporation, a person to contact for information regarding the solicitation, the project name and solicitation number, and a table of contents for the complete solicitation package (HUD Handbook 7460.8, Rev. 2).
2. A statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the solicitation.
3. A statement indicating the time and place for both receiving the bids and the public bid opening (HACR Procurement Policy).
4. A Bid Form on which bidders enter their bid or price(s). The form must be clear, accurate, and unambiguous.
5. Specification and Statement of Work with a description of the work or items required.
6. Form HUD-5369, Instructions to Bidders for Contracts, Public and Indian Housing Programs (construction) or form HUD-5369-B, Instructions to Offerors Non-Construction.
7. Form HUD-5369-A, Representations, Certifications, and Other Statements of Bidders, Public and Indian Housing Programs (construction) or form HUD-5369-C, Certifications and Representations of Offerors Non- Construction Contract.
8. Form HUD-5370, General Conditions of the Contract for Construction or form HUD-5370-C, General Conditions for Non-Construction Contracts, along with any appropriate Davis-Bacon or HUD wage decision for construction and maintenance work. (HUD Handbook 7460.8, Rev. 2).

Solicitation. Solicitations must be done publicly. While any of the following methods of solicitation can be employed, RCHC should choose the method, which, considering matters of economy provides for full and open competition.

1. Advertising in newspapers or other print mediums of local or general circulations.
2. Advertising in various trade journals or publications (for construction).
3. Through the internet using e-procurement systems. However, all e-procurements must otherwise be in compliance with 24 CFR 85.36, state and local requirements, and RCHC's own procurement policy. Steps must be taken to meet the requirements for full and open competition to avoid potential protests (HUD Handbook 7460.8, Rev. 2).



Notices/advertisements should state, at a minimum, the place, date, and time that the bids are due, the solicitation number, a contact who can provide a copy of, and information about, the solicitation, and a brief description of the needed items(s). A minimum of 30 days shall generally be provided for preparation and submission of sealed bids (HUD Handbook 7460.8, Rev. 2).

The solicitation must be run for a period sufficient to achieve effective competition, which, in the case of paid advertisements, should generally be run not less than once each week for two consecutive weeks. State or local law may impose additional advertising requirements (HUD Handbook 7460.8, Rev. 2).

Amendments. If a change to the IFB (e.g., specifications, plans, date or time for bid opening, etc.) becomes necessary after it has been issued, the change must be accomplished by issuing a written amendment, sometimes called an addendum. The amendment must indicate the IFB number, project title, issue date of the original IFB, and formally detail each change. Each amendment must be noted on RCHC's solicitation log. A copy of the amendment should be mailed to each prospective bidder who was provided the initial IFB package with acknowledgement required. If an amendment needs to be issued just before the scheduled bid opening date, the bid opening should be postponed for an adequate period of time to permit the potential bidders to fully analyze the change and to submit timely bids (HUD Handbook 7460.8, Rev. 2).

Cancelation. RCHC may cancel IFBs when necessary or when otherwise considered to be in the best interest of the corporation (HUD Handbook 7460.8, Rev. 2).

An IFB may be cancelled before bids/offers are due if any of the following apply:

1. The supplies, services or construction is no longer required.
2. The funds are no longer available.
3. Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best.
4. Other similar reasons (HUD Handbook 7460.8, Rev. 2).

A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if any of the following apply:

1. The supplies or services (including construction) are no longer required.
2. Ambiguous or otherwise inadequate specifications were part of the solicitation;
3. All factors of significance to RCHC were not considered.
4. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds.
5. There is reason to believe that bids or proposals may not have been independently determined in open competition, may have been collusive, or may have been submitted in bad faith.





6. For good cause of a similar nature when it is in the best interest of RCHC (HUD Handbook 7460.8, Rev. 2).

Cancellations must be done in accordance with RCHC's written procurement policy and procedures. A procurement official shall document the procurement file with the reasons and supporting facts for canceling the IFB (HUD Handbook 7460.8, Rev. 2).

A notice of cancellation shall be sent to all bidders/offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any re-solicitation or future procurement of similar items (HUD Handbook 7460.8, Rev. 2).

If all otherwise acceptable bids received in response to an IFB are at unreasonable prices, an analysis should be conducted to see if there is a problem in either the specifications or RCHC's cost estimate. If both are determined adequate and if only one bid is received and the price is unreasonable, RCHC may cancel the solicitation and either

1. Re-solicit using an RFP; or
2. Complete the procurement by using the competitive proposal method. RCHC must determine, in writing, that such action is appropriate, must inform all bidders of RCHC's intent to negotiate, and must give each bidder a reasonable opportunity to negotiate (HUD Handbook 7460.8, Rev. 2).

If problems are found with the specifications, RCHC should cancel the solicitation, revise the specifications and re-solicit using an IFB (HUD Handbook 7460.8, Rev. 2).

**Pre-Bid Conference.** After the IFB is issued and before bids are due, a pre-bid conference may be held with prospective contractors to discuss the project requirements and details of the IFB. The conference should be attended by procurement staff. A pre-bid conference is normally conducted for large or complex procurements. Notice of any scheduled conference should be included in the IFB. The timing of the conference should allow bidders enough time to review the IFB before the conference and adequate time to prepare or revise their bids before the bid opening. At the conference, procurement staff should state that nothing said at the conference will change any of the terms of the IFB unless a subsequent written amendment to the solicitation is issued. A written summary of the conference should be made available to anyone requesting it. The summary should also be provided to all those who submitted IFBs or solicitations, not just those who attended the pre-bid conference. Attendance by offerors at the pre-bid conference, while desirable, should not be mandatory, and non-attendees should not be deemed non-responsive. RCHC should consider the need for all potential bidders to attend. Attendance may not be necessary for firms familiar with the work and others may be unable to schedule a representative to attend, although they may be well qualified to do the work at a reasonable price. To impose a requirement to attend a pre-bid conference could unnecessarily limit competition (HUD Handbook 7460.8, Rev. 2).



Cost Analysis. The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, when the bid received is substantially more than the ICE or where RCHC cannot reasonably determine price reasonableness, RCHC must conduct a cost analysis, consistent with federal guidelines, to ensure that the price paid is reasonable. If only one responsive bid is received from a responsible bidder, award shall not be made unless the price can be determined to be reasonable, based on a cost or price analysis (HUD Handbook 7460.8, Rev. 2).

RCHC shall negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work (24 CFR §85.36).

In all cases, proposed costs must be allowable pursuant to applicable cost principles, allocable (related to or required in the performance of the contract) and reasonable (what a prudent business would pay in a competitive marketplace) (HUD Handbook 7460.8, Rev. 2).

Bid Opening. Each bid must be dated and time-stamped immediately upon receipt by RCHC. Sealed bids should be stored in a locked bid box, cabinet, or safe to ensure that they are not opened or mishandled prior to the bid opening. Sealed bids received after the time specified in the IFB should be recorded as a late bid and kept unopened in the contract file. A late bid received before the award is made may only be considered in accordance with the procedures listed in the form HUD-5369, Item 5, or form HUD-5369-B, Item 6 (HUD Handbook 7460.8, Rev. 2).

To ensure fairness in the award process, bids shall be publicly opened on the scheduled date and time shown in the solicitation. A tabulation of all bids is prepared showing the name of each bidder and their bid prices including alternates, if any, and the document becomes part of the official contract file. The tabulation is public information and a copy may be sent to interested parties when requested. No commitment or statement regarding contract award should be made to any bidder at the bid opening (HUD Handbook 7460.8, Rev. 2).

Mistakes in Bids. While bidders must be bound by their bids (the "firm bid rule"), circumstances may arise where correction or withdrawal of bids is proper and may be permitted. Unless otherwise prohibited by state or local law, bidders shall be permitted to withdraw or modify their bids by written or facsimile notice prior to bid opening (HUD Handbook 7460.8, Rev. 2).

After the bid opening, the procurement staff should carefully review all bids to ensure that the bidders have not made any obvious mistakes in their bids (e.g., the sum of individual bid line items does not equal the total bid price). An item-by-item recalculation of the bid costs will often



reveal the miscalculation or error. If a bidder appears to have made a mistake, procurement staff should immediately notify a bidder of any apparent mistake in his/her bid and request verification of the bid as submitted. An RCHC procurement official should notify the bidder by phone, issue a follow-up letter containing the information conveyed in the call and add a copy of that letter to the contract file (HUD Handbook 7460.8, Rev. 2).

In general, bidders should not be permitted to change a bid after bid opening. In rare cases, the revision of a bid may be permitted if the bidder is able to present clear and convincing evidence of a mistake and the intended bid price. Examples of evidence may include: original work papers, bids from suppliers and subcontractors used to develop the bid, bonding or insurance evidence supporting a different bid price, etc. Failure or refusal by a bidder to provide adequate evidence shall result in the original bid remaining unchanged. RCHC personnel should consult with legal counsel before allowing a change in bid. If justified, a low bidder can be replaced with the next lowest bidder (HUD Handbook 7460.8, Rev. 2).

After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of RCHC or fair competition shall not be permitted (HACR Procurement Policy).

Withdrawal of Bids. Withdrawal of a bid is permissible if there is an obvious error in the bid such as a math error, but the mistake must be readily apparent from the bid itself. A bidder may be permitted to withdraw a low bid if a mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident. A bidder may also be permitted to withdraw a low bid if the bidder submits written evidence that clearly and convincingly demonstrates that a mistake was made. If RCHC allows withdrawal, the bid bond (if any) should be returned to the bidder upon verification of the error. In cases of alleged mistakes or requests for withdrawal, the decision to allow a correction or withdrawal should only be made after consultation with RCHC's legal counsel (HUD Handbook 7460.8, Rev. 2).

Bonds/Guarantees. The purpose of these bonds is to ensure bidders will honor their bids, complete work as contracted, and pay their subcontractors and suppliers. In sealed bid construction contracts, bonds or guarantees are required as follows:

1. Bid Bonds/Guarantees. A bid bond or guarantee ensures that if awarded the contract, the bidder will accept and perform the work under the contract. It also ensures that the bidder will not attempt to withdraw or otherwise not fulfill the contract. Finally, the bid bond ensures that the bidder will execute the contractual documents that are required within the time specified in the solicitation, or forfeit all or part of the guarantee (HUD Handbook 7460.8, Rev. 2).
  - a) For construction contracts exceeding \$25,000, each bidder shall be required to submit a bid guarantee equivalent to 10% of the bid price (HACR Procurement Policy).



- b) A certified check, bank draft, U.S. Government Bonds at par value, bid bond secured by an acceptable surety company, or other negotiable instrument may be accepted as a bid guarantee.
  - c) If the successful bidder refuses to sign the contract after award, the bid bond is forfeited and award will go to the next lowest responsive, responsible bidder. If there is not a responsive and responsible next lowest bidder, the procurement should be re-bid. If a bid bond or guarantee is not submitted with the bid, RCHC should reject the bid as non-responsive. RCHC should not return any bid bonds until the contract has been awarded and the required performance and payments bonds have been furnished, until all bids have been rejected, or the time specified for acceptance of bids has expired.
2. Performance Bonds. The performance bond guarantees that if the contractor is unable to complete the contract, the surety company will step in to finish the work (HUD Handbook 7460.8, Rev. 2). For construction contracts exceeding \$25,000, the successful bidder shall furnish any one of the following:
- a) A performance and payment bond in a penal sum of 100% of the contract price; or
  - b) Separate performance and payment bonds, each for 50 % or more of the contract price; or
  - c) A 20 % cash escrow; or
  - d) A 25 % irrevocable letter of credit (HACR Procurement Policy).
3. Payment Bonds. The payment bond is a method of ensuring that the contractor pays the subcontractors and suppliers. Failure to pay subcontractors for work performed in commercial contracts may often lead to the subcontractor filing a mechanic's lien against property owners to obtain payment for services rendered (HUD Handbook 7460.8, Rev. 2). For construction contracts exceeding \$25,000, the successful bidder shall furnish any one of the following:
- a) A performance and payment bond in a penal sum of 100% of the contract price; or
  - b) Separate performance and payment bonds, each for 50 % or more of the contract price; or
  - c) A 20 % cash escrow; or
  - d) A 25 % irrevocable letter of credit (HACR Procurement Policy).

An acceptable surety (bonding) company is one that is authorized to do business in California. The surety must be listed on the most recently published U.S. Treasury Circular 570 (often referred to as the T-List). Individual sureties are not permitted (HUD Handbook 7460.8, Rev. 2).

If the low bidder fails to provide acceptable payment and performance bonds after award of the contract, RCHC should consider the bid guarantee forfeited and notify the surety company. The contract is then terminated for default. The amount to be recovered from the bid bond or guarantee should equal at least the difference between the defaulted bid and the next higher



acceptable bid or the amount by which the bid accepted by resoliciting exceeds the defaulted contract (HUD Handbook 7460.8, Rev. 2).

Contract Award. The following steps should be used in awarding a contract based on the sealed bids method of procurement:

1. Evaluate bids and any alternates. If the apparent low bid exceeds the project budget, any deductive alternates should be deducted, one at a time, to identify the bidder whose resulting price falls within the budget. If alternate bid items are employed, and the apparent low bid falls below the available budget, a similar process of applying the alternates one at a time may be employed to identify the low bidder who includes the greatest number of alternates within the available funding. RCHC should not use alternate prices as a way to select a preferred bidder.
2. Review the low bid for responsiveness. To be considered responsive, a bid must conform to the material requirements of the IFB. RCHC must examine the low bid to be sure that the bidder did not alter the specifications or other terms and conditions (e.g., delivery schedules, payment terms, etc.) or attempt to impose different terms and conditions. If the bid does not conform to the solicitation, it must be rejected and the next lowest bid examined for responsiveness. Procurement staff shall document their findings regarding the low bidder's responsiveness in the procurement file. Minor informalities are not grounds for determining a bid to be nonresponsive.
3. Determine if the bidder is responsible. Details are provided in the sub-section "Public Housing Project: Contractor Responsibility" (HUD Handbook 7460.8, Rev. 2).

In the rare case when two or more low bids are equal in all respects, the award should be decided by drawing lots or other random means of selection. Authority to use this method should be stated in the IFB (HUD Handbook 7460.8, Rev. 2).

The Contracting Officer may waive minor informalities or allow the bidder to correct them. Minor informalities are matters of form rather than substance. They are insignificant mistakes that can be waived or corrected without prejudice to the other bidders and have little or no effect on price, quantity, quality, delivery, or contractual conditions. Examples include failure to: return the number of signed bids required by the bid package; sign the bid, provided that the unsigned bid is accompanied by other documents indicating the bidder's intent to be bound (e.g., a signed cover letter or a bid guarantee); complete one or more certifications; or acknowledge receipt of an amendment or addendum, provided that it is clear from the bid that the bidder received the amendment/addendum and intended to be bound by its terms, or the amendment/addendum had a negligible effect on price, quantity, quality, or delivery (HUD Handbook 7460.8, Rev. 2).

After evaluation of each bid, the responsive and responsible bidder that submits the bid whose dollar value is lowest overall and meets all specified requirements shall be awarded the contract. Unsuccessful bidders also should be notified in writing of the contract award (HUD Handbook 7460.8, Rev. 2).



**Bid Rejection.** Rejection of any bid during the evaluation process shall be fully documented, including all reasons for the rejection. Any bid may be rejected if the Contracting Officer determines that the price is unreasonable. Determining a bid price to be unreasonable includes not only the total price of the bid, but the prices for individual items as well. Any bid may be rejected if the prices for any of the items are materially unbalanced (such as bidding a high price for the first items to be provided and then low prices for subsequent items). A bid is materially unbalanced if and when there is a reasonable doubt that the bid would result in the lowest overall cost to RCHC even if it is the lowest bid, or if the bid is so grossly unbalanced that accepting it would amount to an advance payment (HUD Handbook 7460.8, Rev. 2).

**Multi-Step Bids.** RCHC may use two-step or multi-step sealed bidding procedures where appropriate. This process is described in more detail in HUD Handbook 7460.8, Rev. 2)

### **Public Housing Projects: Competitive Proposal Procedures**

For projects involving public housing or public housing funds, the competitive proposal method is the primary alternative to sealed bidding for contract requirements that exceed the small purchase threshold (HUD Handbook 7460.8, Rev. 2).

The competitive proposal method permits: consideration of technical factors other than price; discussion with offerors concerning offers submitted; negotiation of contract price or estimated cost and other contract terms and conditions; revision of proposals before the final contractor selection; and the withdrawal of an offer at any time up until the point of award. Award is normally made on the basis of the proposal that represents the best overall value to RCHC considering price and other factors (e.g., technical expertise, past experience, quality of proposed staffing, etc.) set forth in the solicitation and not solely the lowest price (HUD Handbook 7460.8, Rev. 2).

**Conditions for Use.** This technique is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. Generally, the competitive proposals method should be used whenever any of the following conditions exist:

1. The project requirements cannot be described specifically enough to permit the use of sealed bidding. In other words, the work is not definite enough to accurately estimate the total cost of the contract.
2. The nature of the requirements are such that RCHC needs to evaluate more than just price to be sure that the prospective contractor understands the corporation's needs and can successfully complete the contract, especially when contracting for professional services (e.g., legal, architect-engineer, accounting, etc.) where RCHC needs specific expertise and experience.
3. The requested work lends itself to different approaches, e.g., proposals (HUD Handbook 7460.8, Rev. 2).



If not self-evident, the rationale for choosing competitive proposals rather than sealed bidding procedures should be documented in the procurement file (HUD Handbook 7460.8, Rev. 2).

Types of Competitive Proposals. There are two types of competitive proposals:

1. Request for Proposals (RFP)
2. Requests for Qualifications (RFQ) (HUD Handbook 7460.8, Rev. 2).

Request for Proposals (RFP) Format. The RFP should contain the following information:

1. Cover Page
2. Table of Contents
3. Statement of Work (SOW)
4. Submission requirements, along with pricing instructions
5. Evaluation factors
6. Attachments (including mandatory forms)
7. Mandatory forms/contract provisions
  - a) Form HUD-5369-B, Instructions to Offerors – Non-Construction.
  - b) Form HUD-5369-C, Certifications and Representations of Offerors – Non-Construction Contract (HUD Handbook 7460.8, Rev. 2).

RCHC should make sure that the submission requirements are consistent with the factors used for evaluation. For example, if the RFP indicates that proposals will be evaluated based on similar experience in the particular activity, RCHC should make sure that it requests respondents to include information on relevant past experience (HUD Handbook 7460.8, Rev. 2).

RFP Evaluation Factors. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued (HACR Procurement Policy). The RFP must contain a clear statement of the evaluation factors to guide the offerors in structuring their proposal.

1. Non-price factors; also called “technical factors.” The written statement of evaluation factors and their relative values clarifies each important factor to the offerors and ensures a fair selection process. The evaluation criteria should be tailored to fit each procurement (HUD Handbook 7460.8, Rev. 2).

Typical evaluation criteria include the following:

- a) Demonstrated understanding of the requirement
- b) Appropriateness of the technical approach in the proposal (including labor categories, estimated hours, and skill mix)
- c) Quality of the work plan
- d) Technical capabilities (in terms of personnel, equipment, and materials) and management plan (including staffing of key positions, method of assigning work, and procedures for maintaining level of service, etc.)
- e) Demonstrated experience in performing similar work



- f) Demonstrated successful past performance (including meeting costs, schedules, and performance requirements) of contract work substantially similar to that required by the solicitation as verified by reference checks or other means
2. Price must be a factor in making awards. In terms of evaluating price, RCHC has two options, which must be indicated in the RFP:
  - a) Where price is assigned an explicit point(s), RCHC may award price a specific number of points. For example, RCHC may rank proposals on a 100-point scale. Of the total points, RCHC may award, for example, 80 points for technical merit and 20 points for price. The amount of weight will be given to price versus technical factors must be determined as well as how to convert price into a point scale.
  - b) Where price and other technical factors are considered- technical factors are first determined and offerors are ranked. Then, prices are evaluated. RCHC can award to the offeror whose price and technical factors are the most advantageous to the corporation (HUD Handbook 7460.8, Rev. 2).

**RFP Solicitation.** Solicitations must be done publicly. While any of the following methods of solicitation can be employed, RCHC should choose the method, which, considering matters of economy provides for full and open competition.

1. Advertising in newspapers or other print mediums of local or general circulations.
2. Advertising in various trade journals or publications (for construction).
3. Through the internet using e-procurement systems. However, all e-procurements must otherwise be in compliance with 24 CFR 85.36, State and local requirements, and RCHC's own procurement policy. Steps must be taken to meet the requirements for full and open competition to avoid potential protests (HUD Handbook 7460.8, Rev. 2).

Notices/advertisements should state, at a minimum, the place, date, and time that the bids are due, the solicitation number, a contact who can provide a copy of, and information about, the solicitation, and a brief description of the needed items(s). A minimum of 15 days shall generally be provided for preparation and submission of competitive proposals (HUD Handbook 7460.8, Rev. 2).

The solicitation must be run for a period sufficient to achieve effective competition, which, in the case of paid advertisements, should generally be run not less than once each week for two consecutive weeks. State or local law may impose additional advertising requirements (HUD Handbook 7460.8, Rev. 2).

**RFP Bonds/Guarantees.** Non-construction projects should generally not require bid bonds. RCHC may require bonding/guarantees in circumstances when deemed appropriate (HACR Procurement Policy).

**RFP Amendment.** RCHC may amend RFPs when necessary or when otherwise considered to be in the best interest of the corporation.





1. If changes to the RFP are needed after it has been issued but before proposals are due, RCHC should issue a written amendment to all potential offerors who were furnished a copy of the original solicitation. The amendment should then be provided with the original RFP to those who request the RFP after the amendment is made.
2. If changes to the RFP are needed after the due date for receipt of proposals, RCHC should provide a written amendment to all offerors who submitted a proposal. If, however, the changes are significant enough that potential offerors who did not submit offers might have if the changes had been made before the proposal due date, RCHC should consider extending the proposal due date.
3. If the need for changes is discovered after RCHC has determined the competitive range (discussed below), RCHC should provide the amendment to all offerors determined to be within the competitive range. If the changes may have had an impact on the acceptability of any offeror who was not included in the competitive range, RCHC should consider re-determining the range to include such offerors and provide them with the amendment.
4. If at any time in the process any needed changes are substantial enough to constitute an essentially new requirement, RCHC should cancel the RFP, make the needed changes, and issue a new RFP with a new proposal due date. This will be a judgment call on the part of the Contracting Officer (HUD Handbook 7460.8, Rev. 2).

RFP Cancellation. RCHC may cancel RFPs when necessary or when otherwise considered to be in the best interest of the corporation (HUD Handbook 7460.8, Rev. 2).

An RFP may be cancelled before offers are due if:

1. The supplies, services or construction is no longer required;
2. The funds are no longer available;
3. Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best; or
4. Other similar reasons (HUD Handbook 7460.8, Rev. 2).

A solicitation may be cancelled and all proposals that have already been received may be rejected if:

1. The supplies or services (including construction) are no longer required;
2. Ambiguous or otherwise inadequate specifications were part of the solicitation;
3. All factors of significance to RCHC were not considered;
4. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
5. There is reason to believe that proposals may not have been independently determined in open competition, may have been collusive, or may have been submitted in bad faith; or
6. For good cause of a similar nature when it is in the best interest of RCHC (HUD Handbook 7460.8, Rev. 2).



Cancellations must be done in accordance with RCHC's written procurement policy and procedures. Procurement staff shall document the procurement file with the reasons and supporting facts for canceling the IFB (HUD Handbook 7460.8, Rev. 2).

A notice of cancellation shall be sent to all bidders/offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any re-solicitation or future procurement of similar items (HUD Handbook 7460.8, Rev. 2).

RFP Submissions. Proposals are to be date and time stamped when they are received and held unopened in a secure place until the established date for receipt of proposals has passed. Since proposals are submitted in confidence and may contain proprietary information (such as trade secrets or other confidential business information regarding the offeror's approach to the work), they are not opened publicly. After the closing date, all proposals received are opened and evaluated. Proposals and any changes to those proposals are shown only to RCHC personnel who have been authorized by the Contracting Officer as having a legitimate interest in them on the condition that information in the proposals will not be released to anyone who has not been so authorized (HUD Handbook 7460.8, Rev. 2).

Any offer received at the designated place after the specified time should not be considered unless it is the only proposal received (HUD Handbook 7460.8, Rev. 2).

No information regarding any of the proposals, including the names of the offerors or the number of proposals received, should be provided to anyone without the Contracting Officer's permission. Each member of the evaluation committee and any advisors to the evaluation committee should be required to sign a certification of nondisclosure. A sample certification of nondisclosure is provided in Appendix 9 of the HUD Handbook 7460.8, Rev. 2 (HUD Handbook 7460.8, Rev. 2).

RFP Evaluation Process. Evaluation of RFP submissions shall be based on the evaluation factors set forth in the RFP. Factors not specified in the RFP shall not be considered (HUD Handbook 7460.8, Rev. 2). RFPs shall generally be evaluated by an appropriately appointed Evaluation Committee (HACR Procurement Policy).

Initially, proposals should be evaluated on an individual basis against the requirements stated in the RFP; at this point proposals are not analyzed in comparison with each other. Also during the initial evaluation, the committee evaluates only the content of the proposals. No personal knowledge of the offeror not based on the contractor's written submission is or should be part of the written proposals' initial evaluation; however, the contractor's prior performance with RCHC should be included as part of the standard review of offeror responsibility (HUD Handbook 7460.8, Rev. 2).



The results of proposal evaluation may or may not be disclosed; either before or after the contract is awarded. Disclosure will depend on state or local law (HUD Handbook 7460.8, Rev. 2). Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals until after award (HACR Procurement Policy). However, evaluators should be especially careful to make the evaluations as thorough, objective, and well documented (e.g., citing the specific areas of the proposal that led to the particular portion of the evaluation) as possible. Procurement staff is responsible for ensuring that the evaluation results are sufficiently documented and included in the contract file. To be safe, procurement staff should always assume that an award will be protested (HUD Handbook 7460.8, Rev. 2).

Procurement staff must be alert to attempts by offerors to change the requirements of an RFP by inserting conditions in their offers or otherwise altering the contract's requirements. While proposals are not required to be "responsive," as that term is used in sealed bidding, offerors may not impose conditions or change requirements to suit their own needs or desires (HUD Handbook 7460.8, Rev. 2).

When possible, procurement staff should be willing to negotiate changes unless the changes violate federal, state or local law or regulation, are required by HUD policy, or prejudice the other offerors (e.g., making a change that benefits a single offeror) (HUD Handbook 7460.8, Rev. 2).

RCHC shall prepare an evaluation report to document the ranking of the proposals by technical merit, using point scores, or similar methodology. If price is included in the point scoring, the evaluation report will also include the price or cost analysis, as appropriate. In addition, a narrative should accompany the scores to explain how the scores were derived, detailing the significant strengths, weaknesses, and deficiencies in the proposal. The level of detail for the evaluation report will be influenced by the complexity of the procurement, with more complex procurements likely requiring more detailed reports (HUD Handbook 7460.8, Rev. 2).

RFP Competitive Range. After the evaluation committee has evaluated all proposals, RCHC should determine a competitive range. The competitive range includes the proposals that have a reasonable chance of being selected for award considering their technical evaluation results and their proposed costs or prices (HUD Handbook 7460.8, Rev. 2).

RCHC examines the evaluation results contained in the evaluation report to decide if each offer is technically acceptable (i.e., appears to be able to perform the technical requirements of the contract). RCHC analyzes the proposed cost or pricing information to decide if the offers propose a reasonable total cost or price. RCHC then considers the combination of technical and cost presented by each proposal to decide if it should be kept in the running for negotiations and possible award (HUD Handbook 7460.8, Rev. 2).



Technical proposals included in the competitive range should be classified as one of the following:

1. "Acceptable." This means that based upon the proposal as submitted, RCHC could contract with the offeror and expect that the work would be completed. The proposal is not perfect, but it contains no significant weaknesses.
2. "Potentially acceptable." This means that the technical part of the proposal contains weaknesses that keep it from being acceptable, but with relatively minor changes or additional information from the offeror, it might be made acceptable. Once additional information is obtained via initial negotiations, this type of proposal must become either acceptable or unacceptable.
3. "Unacceptable." This means that the proposal is seriously flawed to the point that no amount of negotiation would lead to improve it, or the offer would have to be substantially rewritten to be found acceptable. Either the offeror simply did not understand RCHC's requirement or did not elect to prepare a sufficient proposal. Technically unacceptable proposals should never be included in a competitive range (HUD Handbook 7460.8, Rev. 2).

The competitive range, including the rationale for it, must be documented in the contract file (HUD Handbook 7460.8, Rev. 2).

The Contracting Officer may re-determine the competitive range after the initial round of negotiations. For example, a potentially acceptable offer becomes unacceptable. In that case, procurement staff should not ask the offeror for a best and final offer. Instead, the Contracting Officer should re-determine the range and remove that proposal. This may be done after successive rounds of negotiation, if more than one is used (HUD Handbook 7460.8, Rev. 2).

RFP Negotiations. If, after the initial evaluation of proposals, there is a clear winner, and there is no need to negotiate or obtain further clarification or information from that offeror (e.g., the price is reasonable), RCHC may proceed directly to award, provided that the RFP clearly stated that award could be made without negotiations (HUD Handbook 7460.8, Rev. 2).

In some instances a "potentially acceptable" offer may have been included in the competitive range. Answers or clarification relative to the areas of the proposal that made it potentially acceptable must be obtained. Negotiations are exchanges between RCHC and offerors that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining (HUD Handbook 7460.8, Rev. 2). Offerors shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their proposals (HACR Procurement Policy).

Negotiations take place after establishment of the competitive range and are called discussions. Discussions are tailored to each offeror's proposal, and shall be conducted with each offeror within the competitive range (HUD Handbook 7460.8, Rev. 2).



The primary objective of discussions is to maximize RCHC's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. RCHC shall indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as cost, price, technical approach, past performance, and terms and conditions) that could, in RCHC's opinion, be altered or explained to enhance materially the proposer's potential for award (HUD Handbook 7460.8, Rev. 2).

The scope and extent of discussions are a matter of RCHC's judgment. The Contracting Officer may inform an offeror that its price is considered by RCHC to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible to indicate to all offerors the cost or price that RCHC's price analysis, market research, and other reviews have identified as reasonable (HUD Handbook 7460.8, Rev. 2).

No offeror shall be given any information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal (HACR Procurement Policy). "Auctioning" (revealing one offeror's price in an attempt to get another offeror to lower their price) is prohibited (HUD Handbook 7460.8, Rev. 2).

RFP Best and Final Offers. After initial negotiations are complete, RCHC shall invite the offerors in the competitive range to submit their best and final offers, making any changes they wish in their technical proposal and the price. All offerors in the competitive range should be provided an opportunity to present best and final offers (HUD Handbook 7460.8, Rev. 2).

The best and final offers shall be evaluated in essentially the same manner as the initial offers. At his/her discretion, the Contracting Officer may have the entire evaluation committee or only a subset of the committee evaluate the best and final offers. In either case, RCHC shall ensure that a full evaluation is conducted sufficient to support the award decision (HUD Handbook 7460.8, Rev. 2).

Best and final offers are usually requested only once in a competition. However, in exceptional circumstances, the Contracting Officer may determine that it is in RCHC's best interest to conduct another round of negotiations and request a second best and final offer. The Contracting Officer may also re-determine the competitive range based upon the best and final offers. In that case, only those offerors still in the competitive range are asked to submit another revised best and final offer. RCHC should document in the contract file the rationale for re-opening negotiations and requesting any additional best and final offers (HUD Handbook 7460.8, Rev. 2).

RCHC shall establish a common date and time for submission of offers. Late responses should be treated the same as late initial offers. When requesting best and final offers, procurement staff shall clearly inform offerors that should they fail to submit a best and final offer, or fail to submit



one by the due date, their initial offer will be deemed to be their best and final offer (HUD Handbook 7460.8, Rev. 2).

RFP Contract Award. The contract shall be awarded to the responsible firm whose technical approach to the project, qualifications, price and/or any other factors considered, are most advantageous to RCHC provided that the price is within the maximum total project budget (HACR Procurement Policy). Contracts shall be awarded only in accordance with the terms of the solicitation. Awards shall be made only to offerors who have been determined to be responsible contractors as defined below (HUD Handbook 7460.8, Rev. 2).

RCHC should notify each unsuccessful offeror and the awardee in writing. In accordance with any applicable state or local law, the notice should identify the successful offeror, the contract price and the basis for the offeror not being selected for contract award. The basis should clearly describe the offer's salient weaknesses and deficiencies that resulted in it not being considered for award (HUD Handbook 7460.8, Rev. 2).

The notice to unsuccessful offerors should also provide them with the opportunity to request a debriefing by procurement staff. The notice should state any time frame during which the request must be made (e.g., within 10 business days after receipt of notice). The debriefing should explain how the offer was unsuccessful (e.g., by comparing it to the requirements of the RFP). The debriefing should not include a detailed point-by-point comparison with the successful offer or any other offer, and may not reveal any information about another offer that is protected from disclosure (e.g., personal information, proprietary business information, etc.) (HUD Handbook 7460.8, Rev. 2).

Request for Qualifications (RFQ). The qualifications-based selection method is conducted using an RFQ. With the RFQ, RCHC first selects the highest-ranked respondent on technical factors and then negotiates price. Price is not used as an evaluation factor. The most common use of RFQs is for architect/engineer (A/E) contracts. RFQs can also be used to select development partners for mixed financed projects (HUD Handbook 7460.8, Rev. 2).

RCHC requests technical qualifications statements from prospective firms and then ranks the statements according to their qualifications as related to the project. RCHC then opens negotiations with the top-ranked firm with intentions to reach agreement on a fair and reasonable price. If agreement cannot be reached, RCHC terminates negotiations with this firm and proceeds to the next-highest rated firm until a price determined to be fair and reasonable to both parties is obtained. Once negotiations have been terminated with a firm, RCHC may not go back to that firm for additional negotiations – even if the next lower ranked respondent is higher in price (HUD Handbook 7460.8, Rev. 2).

RFQ Eligible Uses. The RFQ method can only be used for A/E services, or developer related contracts, or when specifically authorized by HUD. Further, the RFQ method cannot be used to



contract for other types of services provided by A/E firms, even though A/E firms are a potential source for performing the proposed effort. (Details regarding alternatives for contracting for the full range of services offered by A/E firms are provided in HUD Handbook 7460.8, Rev. 2) (HUD Handbook 7460.8, Rev. 2).

**RFQ Solicitation.** Solicitations must be done publicly. While any of the following methods of solicitation can be employed, RCHC should choose the method, which, considering matters of economy provides for full and open competition.

1. Advertising in newspapers or other print mediums of local or general circulations.
2. Advertising in various trade journals or publications (for construction).
3. Through the internet using e-procurement systems. However, all e-procurements must otherwise be in compliance with 24 CFR 85.36, state and local requirements, and RCHC's own procurement policy. Steps must be taken to meet the requirements for full and open competition to avoid potential protests (HUD Handbook 7460.8, Rev. 2).

Notices/advertisements should state, at a minimum, the place, date, and time that the bids are due, the solicitation number, a contact who can provide a copy of, and information about, the solicitation, and a brief description of the needed items(s). A minimum of 15 days shall generally be provided for preparation and submission of competitive proposals (HUD Handbook 7460.8, Rev. 2).

The solicitation must be run for a period sufficient to achieve effective competition, which, in the case of paid advertisements, should generally be run not less than once each week for two consecutive weeks. State or local law may impose additional advertising requirements (HUD Handbook 7460.8, Rev. 2).

**RFQ Bonds/Guarantees.** Non-construction projects should generally not require bid bonds. RCHC may require bonding/guarantees in circumstances when deemed appropriate (HACR Procurement Policy).

**RFQ Amendment.** RCHC may amend RFQs when necessary or when otherwise considered to be in the best interest of the corporation.

1. If changes to the RFQ are needed after it has been issued but before proposals are due, RCHC should issue a written amendment to all potential offerors who were furnished a copy of the original solicitation. The amendment should then be provided with the original RFQ to those who request the RFQ after the amendment is made.
2. If changes to the RFQ are needed after the due date for receipt of proposals, RCHC should provide a written amendment to all offerors who submitted a proposal. If, however, the changes are significant enough that potential offerors who did not submit offers might have if the changes had been made before the proposal due date, RCHC should consider extending the proposal due date.



3. If at any time in the process any needed changes are substantial enough to constitute an essentially new requirement, RCHC should cancel the RFP, make the needed changes, and issue a new RFQ with a new proposal due date. This is a judgment call on the part of the Contracting Officer (HUD Handbook 7460.8, Rev. 2).

RFQ Cancellation. RCHC may cancel RFQs when necessary or when otherwise considered to be in the best interest of the corporation (HUD Handbook 7460.8, Rev. 2).

An RFQ may be cancelled before offers are due if:

1. The supplies, services or construction is no longer required;
2. The funds are no longer available;
3. Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best; or
4. Other similar reasons (HUD Handbook 7460.8, Rev. 2).

A solicitation may be cancelled and all proposals that have already been received may be rejected if:

1. The supplies or services (including construction) are no longer required;
2. Ambiguous or otherwise inadequate specifications were part of the solicitation;
3. All factors of significance to RCHC were not considered;
4. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
5. There is reason to believe that proposals may not have been independently determined in open competition, may have been collusive, or may have been submitted in bad faith; or
6. For good cause of a similar nature when it is in the best interest of RCHC (HUD Handbook 7460.8, Rev. 2).

Cancellations must be done in accordance with RCHC's written procurement policy and procedures. Procurement staff shall document the procurement file with the reasons and supporting facts for canceling the IFB (HUD Handbook 7460.8, Rev. 2).

A notice of cancellation shall be sent to all bidders/offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any re-solicitation or future procurement of similar items (HUD Handbook 7460.8, Rev. 2).

RFQ Evaluation Factors. The following evaluation factors may be used for modernization and development A/E contracts:

1. Evidence of the A/E's or firm's ability to perform the work as indicated by profiles of the principals' and staffs' professional and technical competence/experience, and their facilities.
2. Capability to provide professional services in a timely manner.





3. If design work is involved, evidence that the A/E is currently registered in California and carries Errors and Omissions insurance. (Note that this is a yes or no criterion: if the answer is no, the firm is disqualified, not point-scored).
4. Past performance in terms of cost control, quality of work, and compliance with performance schedules.
5. Demonstrated knowledge of local building codes and federal building alterations requirements.
6. Other factors determined to be appropriate by RCHC (HUD Handbook 7460.8, Rev. 2).

RFQ Forms for A/E Contracts. The form HUD-51915, Model Form of Agreement Between Owner and Design Professional, is required for use by RCHC for A/E contracts that exceed the small purchase threshold (HUD Handbook 7460.8, Rev. 2).

RFQ Inadequate Response to Solicitation. If fewer than three proposals are received, RCHC should analyze and document the reasons for the inadequate response. Depending on the results of the analysis, RCHC may either reject the proposals and issue a revised solicitation, or evaluate the proposals as deemed appropriate. If only one responsive proposal was received, documentation is required by RCHC to demonstrate price reasonableness, including any cost analyses (HUD Handbook 7460.8, Rev. 2).

Cost Analysis. The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient proposals are not received, RCHC must compare the price with the ICE. For competitive proposals where prices cannot be easily compared among offerors, where there is not adequate competition, or where the price is substantially greater than the ICE, RCHC must conduct a cost analysis, consistent with federal guidelines, to ensure that the price paid is reasonable (HUD Handbook 7460.8, Rev. 2).

RCHC shall negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work (24 CFR §85.36).

In all cases, proposed costs must be allowable pursuant to applicable cost principles, allocable (related to or required in the performance of the contract) and reasonable (what a prudent business would pay in a competitive marketplace) (HUD Handbook 7460.8, Rev. 2).

### **Public Housing Projects: Noncompetitive Proposal Procedures**

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. For projects involving public housing or public housing funds, procurement by



noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

1. The item is available only from a single source;
2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
3. The awarding agency authorizes noncompetitive proposals; or
4. After solicitation of a number of sources, competition is determined inadequate (24 CFR §85.36 and HACR Procurement Policy).

For the purposes of this section, an emergency is defined as a situation that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the corporation, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, construction, or contractual services that the need cannot be met through any other procurement method. The emergency procurement shall be limited to those supplies, services, construction, or contractual services necessary to meet the emergency. Goods and services must be provided immediately by the vendors in order to constitute an emergency situation (HACR Procurement Procedures).

Process. Award of contracts from noncompetitive proposals follows a process similar to that used for competitive proposals. The proposal must be evaluated. Technical and cost aspects of the proposal may be negotiated. The offeror must be determined to be responsible at the time of award (HUD Handbook 7460.8, Rev. 2).

HUD Approval. Proposed noncompetitive contracts must be submitted to HUD for pre-award review and approval unless RCHC is exempted from doing so under 24 CFR §85.36 (g)(3) (HUD Handbook 7460.8, Rev. 2).

Cost Analysis. Cost analysis, e.g., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required. Costs or price must be determined to be reasonable (24 CFR §85.36 and HACR Procurement Policy).

RCHC shall negotiate profit as a separate element of the price in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work (24 CFR §85.36).

In all cases, proposed costs must be allowable pursuant to applicable cost principles, allocable (related to or required in the performance of the contract) and reasonable (what a prudent business would pay in a competitive marketplace) (HUD Handbook 7460.8, Rev. 2).



Justification/Documentation. Procurement by noncompetitive proposals shall be conducted only if a written justification is made as to the necessity of using this method in accordance with the procedures described in RCHC's procurement policy. Approval to award a contract resulting from a noncompetitive proposal does not eliminate or alter any other requirements of 24 CFR 85.36 governing the contract. The justification should include the following information:

1. Description of the requirement;
2. History of prior purchases and their nature (competitive vs. noncompetitive);
3. The specific exception in 24 CFR 85.36(d)(4)(i)(A) through (D) which applies;
4. Statement as to the unique circumstances that require award by noncompetitive proposals;
5. Description of the efforts made to find competitive sources, e.g., advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.;
6. Statement as to efforts that will be taken in the future to promote competition for the requirement; and,
7. Signature of the Contracting Officer (HUD Handbook 7460.8, Rev. 2).
8. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing an analysis, as described in this policy (HACR Procurement Policy).

The written justification and approval shall be maintained in the contract file (HUD Handbook 7460.8, Rev. 2).

### **Public Housing Projects: Solicitation Requirements**

For projects involving public housing or public housing funds, RCHC shall ensure that all solicitations:

1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible (24 CFR §85.36). When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equivalent description (2 CFR §§200.317–200.326) may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and
2. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals (24 CFR §85.36).



3. Comply with the standards set forth in forms HUD-5369, 5369-A and 5369-B, as applicable (HACR Procurement Policy).
4. Include the thirteen (13) clauses contained in 24 CFR 85.36(i). As some of these clauses may directly affect negotiations with partners, these clauses must be included in the solicitation documents (HUD Handbook 7460.8, Rev. 2).

### **Public Housing Projects: Procurement of Legal Services**

RCHC may employ an attorney directly (house counsel), or it may enter into a procurement contract with an attorney or firm. For projects involving public housing or public housing funds, RCHC shall obtain outside legal services through procurement contracts subject to the requirements set forth in 24 CFR §85. The costs of legal services incurred under federal grants (including those obtained under contract) must be reasonable and necessary. Contracts for litigation services are also to meet the requirements of the HUD Litigation Handbook 1530.1 REV-5 dated May 2004 (the "Litigation Handbook") (HUD Handbook 7460.8, Rev. 2).

RCHC may choose the method of procurement that is reasonable based on the facts surrounding the particular situation. The competitive proposal method is generally preferred as it allows for the consideration of technical quality or other factors. Noncompetitive proposals may only be used when the other methods of procurement are infeasible and the circumstances described in 24 CFR 85.36(d)(4) are applicable (e.g., legal services are available from only a single source; public exigency or emergency for the requirements will not permit a delay resulting from competitive solicitation; after solicitation of a number of sources, competition is determined inadequate; or HUD authorizes the use of noncompetitive proposals.) The sealed bid method is normally not appropriate. Legal services can be procured on an hourly basis using time-and-materials (or "labor-hour") contracts. RCHC may use this type of contract only after it determines that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk (HUD Handbook 7460.8, Rev. 2).

### **Public Housing Projects: Procurement of Development Partners**

For projects involving public housing or public housing funds, RCHC shall procure development partners in accordance with the regulations at 24 CFR §85.36 (HUD Handbook 7460.8, Rev. 2).

HUD Handbook 7460.8, Rev. 2 states that this requirement does not apply between a PHA and its instrumentality. RCHC meets the indicia of control in Section II B of HUD Notice PIH 2007-15 necessary to be considered an instrumentality of HACR. Therefore, RCHC's selection of HACR as a development partner is exempted from the procurement requirements of 24 CFR §85.36.

A development partner is a for-profit or nonprofit partner of RCHC or a development affiliate of RCHC, carrying out the physical revitalization of a mixed-finance project site, bearing financial risk. A development partner is an entity with whom RCHC enters into a partnership or other contractual arrangement in order to provide for mixed-finance development projects. The



development partner has primary responsibility with RCHC for the development of the housing units and/or non-residential structures under the terms of the approved mixed-finance proposal (HUD Handbook 7460.8, Rev. 2).

RCHC is permitted to use the RFQ method of procurement to select a development partner, under an exception that parallels the selection of an A/E and where price is negotiated with the highest-ranked offeror based on responses to the RFQ. The RFQ method is not permitted for the procurement of mixed-finance program managers. Requirements and guidance governing the selection of a development partner (or master developer) can be found in 24 CFR 941.602(d)(1) of the Mixed-Finance Interim Rule (HUD Handbook 7460.8, Rev. 2).

Procurement of development partners must be conducted in a manner that provides full and open competition. A cost or price analysis must be completed prior to the submission of proposals to determine an estimated value for the requested services (HUD Handbook 7460.8, Rev. 2).

Once the developer has been selected in accordance with 24 CFR §85.36, the selected development partner is not subject to 24 CFR 85.36 except where RCHC (or HACR) exercises significant functions within the owner entity with respect to managing the development of the proposed units. Actions that are considered to be exercising significant functions are:

1. Acting as the sole or managing general partner in the owner entity.
2. Acting as developer (HUD Handbook 7460.8, Rev. 2).

The following are examples of actions that are not considered significant functions:

1. Monitoring units receiving operating subsidy to ensure compliance with various regulations.
2. Coordinating communications with agencies regarding project financing and operations.
3. Providing Community and Supportive Services (CSS) services.
4. Attending construction meetings, reviewing and approving draws.
5. Maintaining the waiting list.
6. Reviewing and approving operating and capital budgets (HUD Handbook 7460.8, Rev. 2).

24 CFR 85.36 applies to the developer when a city agency is acting as a developer through a sub-grantee agreement with RCHC (HUD Handbook 7460.8, Rev. 2).

As private entities, developers, procured by RCHC in accordance with 24 CFR 85.36 and 941.602(d), are not required to comply with 24 CFR 85.36 in selecting their subcontractors (see also paragraph 16.7.B.2 and 24 CFR 941.606(n)(1)(ii)) (HUD Handbook 7460.8, Rev. 2).

### **Public Housing Projects: Procurement of Joint Venture Partners**



In connection with the provision of administrative or management functions of public housing, or the provision of supportive and social services for public housing projects, RCHC may use one of the following options for the selection of joint venture partners:

1. Using a RFQ, subject to the negotiation of a fair and reasonable price; or
2. The solicitation of a sole source proposal, under the following conditions:
  - a) The proposed joint venture partner has under its control and will make available to the partnership substantial, unique, and tangible resources or other benefits that would not otherwise be available to RCHC on the open market (such as planning expertise, program experience, or financial or other resources). In this case, RCHC must carefully and thoroughly document both the cost reasonableness and the unique qualifications offered by its proposed partner; or
  - b) A resident group or RCHC subsidiary is willing and able to act as the partner in performing the administrative or management function or to provide supportive or social services. A resident group or RCHC subsidiary must comply with the requirements of 24 CFR Part 84 (if the entity is a nonprofit) or 24 CFR Part 85 (if it is a state or local government) in selecting members of the team. Team members must be paid on a cost reimbursement basis only. RCHC must document the cost reasonableness of its selection of a resident group or subsidiary and the group's ability to act as a RCHC partner (HUD Handbook 7460.8, Rev. 2).

Joint venture transactions involving public housing or public housing funds must comply with RCHC's conflict of interest provisions as well as those of 24 CFR 85.36 and any other grant funding sources.

Additionally, all joint venture partners and the joint venture as a whole must comply with conflict of interest provisions in HACR's ACC, state and local procurement and conflict of interest requirements in conducting activities to acquire supplies and services (HUD Handbook 7460.8, Rev. 2).

### **Public Housing Projects: Employment Contracts**

There is a distinction between employing an individual via employment contract and contracting for independent services via independent service contract. The former is part of the personnel process and is subject to those rules and regulations. Employment contracts are not subject to 24 CFR 85.36 and need not be competitively procured. The latter is considered to be a procurement action, subject to the standards in 24 CFR 85.36(d)(3). In an independent services contract there is no employer-employee relationship (HUD Handbook 7460.8, Rev. 2).

An Executive Director may be hired as an RCHC employee or may be retained under an independent services contract. If the latter is chosen, HUD recommends that RCHC issue the contract for two base years with three one-year option periods. Fees or salaries paid by RCHC shall be in compliance with the ACC's provisions for economy and efficiency (HUD Handbook 7460.8, Rev. 2).



### **Public Housing Projects: Contractor Responsibility**

For projects involving public housing or public housing funds, RCHC shall not award any contract until the prospective contractor, e.g., low responsive bidder or successful offeror, has been determined to be responsible. A responsible bidder/offeror must be determined to be responsible at the time of the award and must:

1. Have adequate financial resources to perform the contract, or the ability to obtain them;
2. Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
3. Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them;
4. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all the bidder's/offeror's existing business commitments;
5. Have a satisfactory performance record;
6. Have a satisfactory record of integrity and business ethics; and
7. Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not being suspended, debarred or under a HUD-imposed Limited Denial of Participation (LDP) (HUD Handbook 7460.8, Rev. 2).

Evidence of Responsibility. It is incumbent upon bidders/offerors to provide acceptable evidence of their ability to meet these requirements. Acceptable evidence normally consists of a commitment or explicit arrangement that will be in existence at the time of contract award to rent, purchase, or otherwise acquire the needed facilities, equipment, financing, personnel or other resources (HUD Handbook 7460.8, Rev. 2).

Procurement staff shall conduct research to determine that a prospective contractor is responsible. The size and complexity of the contract, the degree of prior experience of RCHC with the offeror, and the extent to which RCHC can cancel the contract and install a replacement vendor will all influence the extent of research required (HUD Handbook 7460.8, Rev. 2). Examples of these methods are provided in HUD Handbook 7460.8, Rev. 2.

Before a contract is awarded, RCHC shall check to determine if HUD has issued an LDP or if a contractor has been debarred or suspended. A list of persons and contractors for which LDPs have been issued may be found at [www.hud.gov/enforce](http://www.hud.gov/enforce). Persons or contractors that have been suspended or debarred from federal programs are listed at <http://epls.gov> (HUD Handbook 7460.8, Rev. 2).

Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined to be ineligible by HUD in accordance with HUD regulations (24 CFR Part 24) or by other federal agencies, e.g., Dept of Labor for violation of labor regulations (HACR Procurement Policy).



Prime contractors are responsible for determining that potential subcontractors are not on any of the above lists. RCHC shall advise potential contractors of their responsibility to confirm in their proposals the acceptability of their subcontractors. RCHC shall also advise potential contractors of their responsibility to provide evidence that a check has occurred on each proposed subcontractor before the award is made or before new subcontractors will be allowed to participate in the contract (HUD Handbook 7460.8, Rev. 2).

Determination of Non-Responsibility. With the exception of a finding that a bidder/offeree is suspended, debarred or under a HUD LDP, a determination of non-responsibility will be a matter of judgment on the part of RCHC, given a preponderance of evidence. If the facts indicate that the bidder/offeree fails to meet the requirements for responsibility, RCHC shall document the findings of fact that led to the determination. A written determination of non-responsibility shall be included in the official contract file. RCHC shall notify the prospective contractor, advising him/her of the reasons for the determination (HACR Procurement Policy).

#### **Public Housing Projects: Contract Types and Pricing**

For projects involving public housing or public housing funds, any type of contract which is appropriate to the procurement and which will promote the best interests of RCHC may be used, provided the cost -plus-a-percentage-of-cost and percentage-of-construction-cost methods are not used. All solicitations and contracts shall include the clauses and provisions necessary to define the rights and responsibilities of both the contractor and RCHC (HACR Procurement Policy). Details about each contract type are provided in HUD Handbook 7460.8 Rev. 2.

For all cost reimbursement contracts, RCHC must include a written determination as to why no other contract type is suitable. Further, the contract must include a ceiling price that the contractor exceeds at its own risk (HACR Procurement Policy).

RCHC shall negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work (24 CFR §85.36).

Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with federal cost principles (see 24 CFR §85.22). RCHC may reference its own cost principles that comply with the applicable federal cost principles (24 CFR §85.36). In all cases, proposed costs must be allowable pursuant to applicable cost principles, allocable (related to or required in the performance of the contract) and reasonable (what a prudent business would pay in a competitive marketplace) (HUD Handbook 7460.8, Rev. 2).





Options for additional quantities or performance periods may be included in contracts subject to the limitations referenced at 24 CFR §85.36 and 24 CFR §990, and provided that:

1. The option is contained in the solicitation;
2. The option is a unilateral right of RCHC;
3. The contract states a limit on the additional quantities and the overall term of the contract;
4. The options are evaluated as part of the initial competition;
5. The contract states the period within which the options may be exercised;
6. The options may be exercised only at the price specified in or reasonably determinable from the contract; and
7. The options may be exercised only if determined to be more advantageous to RCHC than conducting a new procurement (HACR Procurement Policy).

### **Contract Provisions**

All contracts should identify the contract pricing arrangement as well as other pertinent terms and conditions, as determined by RCHC. Contracts must contain the following provisions:

1. For contracts more than the simple purchase threshold- administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
2. For contracts in excess of \$10,000- termination for cause and for convenience by RCHC including the manner by which it will be effected and the basis for settlement.
3. For construction contracts in excess of \$10,000- compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60).
4. For all contracts for construction or repair - compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR §3).
5. For construction contracts in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers- compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-330) as supplemented by Department of Labor regulations (29 CFR §5).
6. For contracts, subcontracts and sub-grants of amounts in excess of \$50,000- compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. §1857(h)), section 508 of the Clean Water Act (33 U.S.C. §1368), Executive Order 11738, and Environmental Protection Agency regulations
7. Notice of awarding agency requirements and regulations pertaining to:
  - a) Reporting.
  - b) Patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
  - c) Copyrights and rights in data.



8. Access by RCHC, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
9. Requirement for contractor to retain all contract-related records for not less than three years after RCHC makes final payments and all other pending matters are closed (40 CFR §15).

### **Public Housing Projects: Additional Contract Provisions**

Contracts related to projects involving public housing or public housing funds must contain the following provisions in addition to the other contract provision requirements of this manual:

1. All thirteen (13) clauses contained in 24 CFR §85.36(i). As some of these clauses may directly affect negotiations with partners, these clauses must be included in the solicitation documents (HUD Handbook 7460.8, Rev. 2).
2. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (24 CFR §85.36).
3. Compliance with the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5).
4. Small purchases exceeding \$3,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act) (excluding contracts for construction or maintenance) must incorporate the mandatory clauses required by 24 CFR §85.36(i) and Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.
5. Small purchase construction contracts that are between \$3,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act) and \$50,000 must incorporate the clauses contained in form HUD-5370-EZ, General Conditions for Small Construction/Development Contracts, and the applicable Davis-Bacon wage decision. Form HUD-5370-EZ has been designed for small construction jobs. RCHC may use form HUD-5370 in lieu of the HUD-5370-EZ if the former is more appropriate given the nature of the work.
6. Small purchase maintenance contracts between \$2,000 and \$50,000 must incorporate the clauses required by 24 CFR §85.36(i) and Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act; Section II of form HUD-5370-C, General Conditions for Non-Construction Contracts; and the applicable HUD wage decision (HUD Handbook 7460.8, Rev. 2).
7. Contracts greater than \$50,000 must include the clauses and certifications set forth in form HUD-51915-A.
8. Construction/development contracts greater than \$50,000 must incorporate the clauses contained in form HUD-5370, General Conditions of the Contract for Construction, and the applicable Davis-Bacon wage decision.



9. Non-construction contracts (without maintenance work) greater than \$50,000 must incorporate the clauses contained in Section I of form HUD-5370-C, General Conditions for Non-Construction Contracts.
10. Maintenance Contracts (including non-routine maintenance work) greater than \$50,000 must incorporate the clauses contained in Sections I and II of form HUD-5370-C, General Conditions for Non-Construction Contracts (HUD Handbook 7460.8, Rev. 2 and HACR Procurement Policy).
11. Section 3 covered contracts must include mandatory contract clauses at 24 CFR §135.38. Covered contracts described at 24 CFR §135.3(a) include developments, operating and modernization assistance. This clause is included in forms HUD-5370, HUD- 5370-C, and HUD-5370-EZ (HUD Handbook 7460.8, Rev. 2).
12. RCHC shall assure in all solicitations or advertisements for employees placed by or on behalf of RCHC that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, handicap or national origin. RCHC must incorporate the foregoing requirements of this paragraph in all of its contracts for project work, except contracts for standard commercial supplies or raw materials, and must require all of its contractors for such work to incorporate such requirements in all subcontracts for project work (HUD Guide to ACC Contract Administration).
13. RCHC shall require contractors to provide evidence of insurance carried with companies which are financially responsible and admitted to do business in the state of California. All certificates of insurance, as evidence of coverage, shall provide that no coverage may be canceled or non-renewed by the insurance company until at least 30 days prior written notice has been given to RCHC . Insurance coverage shall include:
  - a) Automobile Liability on owned and non -owned motor vehicles used on the site(s) or in connection therewith for a combined single limit for bodily injury and property damage of not less than \$1,000,000;
  - b) Commercial General Liability with a combined single limit for bodily injury and property damage of not less than \$1,000,000.00;
  - c) Public Liability and Automobile, Property in the amount of \$1,000,000;
  - d) Worker's Compensation Insurance; and
  - e) When required, Builder's Risk Insurance (HACR Procurement Policy).

Contracts must *not*

1. Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations on the same or other related federally funded construction project; or
2. Otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories, or otherwise adhere to agreements with one or more labor organizations, on the same or other related federally funded construction project (HUD Handbook 7460.8, Rev. 2).



RCHC may utilize any one or any combination of the following methods to incorporate mandatory clauses and applicable wage decisions into bid specifications and contracts. RCHC may:

1. Attach the language required by 24 CFR §85.36(i) and Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act; and/or wage decisions, as printed;
2. Incorporate the clauses/text of the applicable HUD form and wage decision into other documents (e.g., into RCHC's own forms) that are bound/attached to the contract (and bid specifications, if applicable) or incorporated by reference.
3. Incorporate the clauses or HUD forms and/or any applicable Davis-Bacon or HUD wage decision by reference. The reference must be specific as to the exact clauses or form(s) that are incorporated, and where the clauses or forms(s) may be accessed or obtained (e.g., HUD Clips). A Davis-Bacon wage decision may be incorporated by reference to [www.wdol.gov](http://www.wdol.gov) and to the specific number, modification number, and date of the wage decision. HUD maintenance wage decisions are not available at HUD's web site; however, RCHC may post any applicable HUD wage decision to its own web site and reference that site. RCHC must provide hard-copies of any referenced clauses, forms, and/or wage decisions on request (HUD Handbook 7460.8, Rev. 2).

### **Public Housing Projects: Awarding of a Contract**

For projects involving public housing or public housing funds, RCHC shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement (24 CFR §85.36). Details about contracting responsibility are provided in sub-section "Public Housing Projects: Contractor Responsibility".

### **Contract Register**

In order to avoid the purchase of unnecessary or duplicative items, RCHC shall maintain a Contract Register or Log. Such a Register will allow RCHC to review its record of prior purchases, as well as future needs, to identify patterns of procurement actions that could be performed more efficiently or economically. Register details should include relevant information such as contract effective dates, termination dates and ceiling amount (OIG Audit Report No. 2011-AO-0001).

### **Labor Standards and Wage Rates**

Certain projects may be subject to specific requirements for labor standards and payment of prevailing wage rates. The applicability of such requirements depends on the project's funding source(s). RCHC is responsible for the administration and enforcement of any applicable labor standard requirements on covered projects.

Federal Funds and/or Public Housing Projects. Projects involving the use of federal funds and/or public housing or public housing funds are subject to federal labor standards promulgated by the Department of Labor pursuant to the Davis-Bacon Act. Federal prevailing wages must generally



be paid to all laborers and mechanics involved in construction contracts in excess of \$2,000. Details regarding the Davis-Bacon Act, including exclusions, are provided at 40 U.S.C. §§276a—276a-7; 3141; 29 CFR §§1, 3 and 5; and HUD Handbook 1344.1. Davis-Bacon Wage Decisions can be obtained at [www.wdol.gov](http://www.wdol.gov) (HUD Handbook 7460.8, Rev. 2).

Thresholds triggering Davis-Bacon requirements may vary for specific federal funding sources such as:

1. HOME- if the contract is in excess of \$2,000 and involves 12 or more units (24 CFR §92.354);
2. CDBG- if the contract is in excess of \$2,000 and involves 8 or more units (24 CFR §570.603).

State Funds Projects. Projects involving the use of state funds are subject to labor and wage standards prescribed by the California Department of Industrial Relations. California state prevailing wages must be paid to all workers employed on a public works project when the public works project is over \$1,000. State prevailing wage determinations can be obtained at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>.

In some instances, state prevailing wages are preempted by federal prevailing wages. Details describing such circumstances may be found at 24 CFR §965. Appropriate Federal preemption language is included in the labor standards clauses found in forms HUD-5370, 5370-EZ, and 5370-C (HUD Handbook 7460.8, Rev. 2).

Other and/or Multiple Funding Sources. Specific grants and other funding sources may contain their own labor standard and wage provisions. Where there is more than one funding source and more than one set of labor standards and/or wage provisions, the most restrictive of the requirements shall apply.

Volunteers on Prevailing Wage Projects. On projects in which RCHC receives the services of volunteers, RCHC must maintain records relating to any work that is performed on projects or contracts otherwise covered by federal prevailing wage requirements.

1. For projects that utilize all-volunteer labor, these records must include the name and address of the agency sponsoring the project, a description of the project, the number of volunteers, the hours of work they performed, and where a waiver of prevailing rates is involved, the type of work performed by the volunteers (See 24 CFR, Part 70, §70.5(c)) .
2. For projects that utilize a mix of volunteer and paid workers, these records must include the items above, and the names of the volunteers (HUD Handbook 1344.1 Ch. 2).

Disclosures and Record-Keeping. Solicitations (e.g., Invitations for Bids) and contracts subject to the above labor standards and wage requirements must contain the applicable wage decision and labor standards provisions (HUD Handbook 7460.8, Rev. 2).



RCHC shall retain all compliance monitoring records, including employee interview records, for a period of not less than ten (10) years from the date of contract completion and acceptance by RCHC, or from the date of resolution of any labor standards issues outstanding at contract completion (HUD Handbook 7460.8, Rev. 2 and RCHC Records Retention Policy).

### **Funding and Payment**

RCHC shall ensure that funds are available for any purchases made and that there is an orderly process to pay contractors promptly. Work performed shall be inspected in a timely manner and contractor invoices for work accepted by RCHC shall be paid in a timely manner RCHC shall utilize appropriate internal controls such as budgets and purchasing thresholds to assure the proper expenditure of funds (HUD Handbook 7460.8, Rev. 2).

Upon receipt of goods, fiscal staff processing accounts payable will match a copy of the PO and the packing slip, receiver or receipt to the invoice before processing for payment. If any discrepancies exist with the amount of the PO, project number, account number, etc., fiscal staff will contact the requesting procurement staff before payment is made (HACR Procurement Procedures).

Procurement staff is responsible for approving the invoice and assuring that the total amount of the purchases does not exceed the balance of the PO. Fiscal Services will ensure that the total amount of the invoice does not exceed the balance remaining on a Blanket Purchase Order (BPO), if applicable (HACR Procurement Procedures).

### **Public Housing Projects: Small, Minority, Woman-Owned and Labor Surplus Area Firms**

For projects involving public housing or public housing funds, RCHC will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible (24 CFR §85.36).

Affirmative steps shall include:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
5. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in items (1) - (5) of this paragraph (24 CFR §85.36).



Following are related definitions:

1. A small business is defined as a business that is: independently owned; not dominant in its field of operation; and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in 13 CFR §121 should be used to determine business size.
2. A minority-owned business is defined as a business which is at least 51% owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.
3. A women's business enterprise is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.
4. A labor surplus area business is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the DOL in 20 CFR §654, Subpart A, and in the list of labor surplus areas published by the Employment and Training Administration (HUD Handbook 7460.8, Rev. 2).

For projects involving public housing or public housing funds, RCHC shall additionally adhere to Section 3 requirements set forth at 24 CFR §135. Covered contracts described at 24 CFR §135.3(a) include developments, operating and modernization assistance. Section 3 covers contracts for work and does not apply to contracts for the purchase of supplies and materials (HUD Handbook 7460.8, Rev. 2).

#### **Public Housing Projects: Equal Opportunity**

For projects involving public housing or public housing funds, RCHC shall comply with all statutory, regulatory and executive order requirements pertaining to civil rights, equal opportunity and nondiscrimination, as those requirements now exist or as they may be enacted, promulgated or amended from time to time. These requirements include, but are not limited to:

1. The Fair Housing Act, 42 U.S.C. §§3601-3619 (implementing regulations are at 24 CFR §§100 et seq.)
2. Title VI of the Civil rights Act of 1964, 42 U.S.C. §2000 (d) (implementing regulations are at 24 CFR §1).
3. The Age Discrimination Act of 1975, 42 U.S.C. §§6101-6107 (implementing regulations are at 24 CFR §146).
4. Executive Order 11063, Equal Opportunity in Housing (1962), as amended; Executive Order 12259, 46 FR §1253 (1980), as amended; and Executive Order 12892, 59 FR §2939 (1994) (implementing regulations are at 24 CFR §107).



5. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 (implementing regulations are at 24 CFR §8).
6. Title II of the Americans with Disabilities Act, 42 U.S.C. §§12101 et seq. (ACC Form HUD-53012A).

RCHC shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, handicap or national origin. RCHC shall take affirmative action to ensure that applicants and employees are treated without regard to race, color, creed, religion, sex, handicap, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship (HUD Guide to ACC Contract Administration).

RCHC shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by HUD setting forth the provisions of this nondiscrimination clause. RCHC shall assure in all solicitations or advertisements for employees placed by or on behalf of RCHC that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, handicap or national origin. RCHC must incorporate the foregoing requirements of this paragraph in all of its contracts for project work, except contracts for standard commercial supplies or raw materials, and must require all of its contractors for such work to incorporate such requirements in all subcontracts for project work (HUD Guide to ACC Contract Administration).

#### **Public Housing Projects: Protests**

In accordance with sound business judgment, RCHC is responsible for the settlement of protests arising from the procurement process. RCHC shall have written procedures for handling and resolving protests against their contract awards (HUD Handbook 7460.8, Rev. 2).

Protestors shall be required to submit protests in writing, clearly stating the basis for their protest (HUD Handbook 7460.8, Rev. 2). Any protest against a solicitation must be received before the due date for the receipt of bids or proposals, and any protest against the award of a contract must be received within ten (10) calendar days after the contract receives notice of the contract award, or the protest will not be considered (HACR Procurement Policy).

The Contracting Officer, or designee, shall be responsible for receipt of protests and may, at his/her discretion, request a conference on the claim and/or suspend the procurement pending resolution of the protest if the facts presented so warrant. The Contracting Officer shall render a decision which shall include notice to the contractor of its appeal rights to the next higher level of authority at RCHC (HACR Procurement Policy). The COO, or designee, shall hear any appeals of the initial protest decision.





RCHC shall fully document the protest and the protest decision in the contract file (HUD Handbook 7460.8, Rev. 2).

For projects involving public housing or public housing funds, contractor claims shall be governed by the Changes clause in form HUD-5370 (HACR Procurement Policy).

**Public Housing Projects: Contract Administration**

Administration refers to all the actions taken regarding a contract after award to ensure that it is successfully performed and that RCHC receives the required supplies or services (HUD Handbook 7460.8, Rev. 2).

For projects involving public housing or public housing funds, RCHC shall have a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders (24 CFR §85.36). These systems shall provide for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on major projects including construction contracts, and similar matters (HACR Procurement Policy).

Pre-construction Conference and the Notice to Proceed. Following the award of a construction contract, a pre-construction conference should be held to thoroughly discuss key construction and contract administration-related issues. RCHC should issue a Notice to Proceed to the contractor stating the starting and completion dates and typical contract-related information. The notice should be prepared in an original with at least two copies signed by the Contracting Officer. The contractor should retain the original and sign, date, and return the copies. This Notice may be hand-delivered to the contractor at the conference and signed immediately. RCHC should retain one copy for the official contract file and, if requested, send the other copy to HUD (HUD Handbook 7460.8, Rev. 2).

For relatively complex non-construction projects, it is advisable to meet with the contractor soon after contract award to ensure that all parties understand the contract's performance requirements. Terms of the contract should be thoroughly discussed. Formal minutes of the meeting should be recorded and subsequently issued to all meeting attendees (HUD Handbook 7460.8, Rev. 2).

Progress Meetings. RCHC should meet with its architect and the contractor on a regular basis (usually weekly for large or complex projects) to discuss work progress, payments, any problems or deficiencies noted during inspection visits, overdue reports, and the construction schedule. RCHC should prepare a written record of the items discussed at each meeting and place a copy in the construction contract file (HUD Handbook 7460.8, Rev. 2).

Inspection Reports. All progress inspections should be documented using an appropriate RCHC inspection report form. The inspection report should include a description of the work completed



and a determination as to whether or not the work is acceptable. If payment is made on a unit price basis, quantities must be verified. If payment is made on a time and materials basis, the report should show that the time charged was spent on RCHC work and that materials were charged at cost. A copy of the inspection report should be included in the contract file (HUD Handbook 7460.8, Rev. 2).

Deficiencies. Upon being notified of construction deficiencies, RCHC shall promptly notify the contractor in writing of the deficiencies observed. This notification should also advise the contractor that failure to make timely corrections will be an infraction of the contract and that the contractor will be held liable for any resulting losses or delays (HUD Handbook 7460.8, Rev. 2).

Labor Standards. RCHC is responsible for the administration and enforcement of labor standards requirements as provided in HUD Handbook 1344.1, REV 1, Chg1 as required by DOL regulations applicable to Davis-Bacon covered work (29CFR §5) (HUD Handbook 7460.8, Rev. 2).

Progress Payments. If progress payments are necessary, RCHC shall require the contractor to prepare a construction progress schedule for each project immediately after issuing the Notice to Proceed. RCHC should review the contractor's construction progress schedule to ensure that the scheduled dates and amount of work to be completed are reasonable and consistent with the contract. After RCHC approves the construction progress schedule, a copy shall be kept in the official contract file (HUD Handbook 7460.8, Rev. 2).

The contractor shall prepare a schedule of amounts of payments immediately after execution of the contract using form HUD-51000, Schedule of Amounts for Contract Payments. RCHC shall review the schedule to determine that both the scheduled work to be completed by the specified dates and the amount of payment for such work are reasonable (HUD Handbook 7460.8, Rev. 2).

RCHC is responsible for making progress payments to the contractor based on the RCHC approved schedule of amounts for contract payments. Generally, progress payments for acceptable work and materials delivered and stored on the site are made at 30-day intervals. HUD authorization of progress payments based on the approved payment schedule is not required (HUD Handbook 7460.8, Rev. 2).

The contractor should submit a request for payment for each project on form HUD-51001, Periodic Estimate for Partial Payment. The request shall be accompanied by the contractor's written designation of a certifying Officer. In addition, the contractor should submit the following HUD forms or other appropriate forms, if applicable, with each periodical estimate for partial payment: form HUD-51002, Schedule of Change Orders; form HUD-51003, Schedule of Materials Stored; and form HUD-51004, Summary of Materials Stored (HUD Handbook 7460.8, Rev. 2).



Delays and Time Extensions. The contractor is responsible for completing the work within the timeframe established in the contract. RCHC is responsible for monitoring the contractor to ensure that work will be completed as scheduled. RCHC may authorize justifiable time extensions without prior HUD review and approval, unless RCHC is subject to prior HUD approval under a HUD established threshold that is less than the requested amount. The “Default” clause on the forms HUD-5370, 5370-C and 5370-EZ prescribes the conditions under which a time extension may be granted. The basic principle is that delays arising from unforeseeable causes beyond the control and without the fault or negligence of the contractor may be grounds for allowing a time extension. Such time extensions should be formalized in a written modification to the contract (HUD Handbook 7460.8, Rev. 2).

RCHC should maintain a construction log to record potential causes for delays that may be used as the basis for granting time extensions or for denying a request for a time extension.

In order to be considered for approval by RCHC, requests for time extensions should meet the following criteria:

1. The contractor should submit a written notice to RCHC within 10 calendar days of the start of any delay;
2. The severity and extent of adverse weather could not have been reasonably foreseen by the contractor (normal seasonal levels of rain, snow, cold or heat should have been considered by the contractor); and
3. The cause of the delay was beyond the contractor’s control (HUD Handbook 7460.8, Rev. 2).

Immediately upon receipt of the contractor’s notification of delay or request for time extension, RCHC should send a letter of acknowledgment to the contractor. The letter should indicate that either: (1) immediate consideration will be given to the contractor’s request or (2) the actual delay in work is difficult to determine and consideration will be given to the contractor’s request upon completion of work (HUD Handbook 7460.8, Rev. 2).

Completion of Work. The completion of a construction contract requires some formal procedures, including the following:

1. The contractor should provide prompt written notification to RCHC when all work is completed. A final inspection of completed work shall then be conducted. Until the final inspection has been carried out and corrections made, RCHC should not advance any of the retainage or make the final payment to the contractor.
2. Upon receipt of the contractor’s notification of the date when the work has been completed, RCHC should conduct a final inspection within 10 calendar days.
3. Following final inspection, RCHC should notify the contractor to submit the following documentation to RCHC:
  - a) A certificate of occupancy issued by the responsible local agency for each building (where appropriate);



- b) One notarized original and two copies of the contractor's release, including certification that indicates:
  - i. The work was completed in accordance with the construction documents, including contract modifications, except any minor items identified on the RCHC's proposed certificate of completion;
  - ii. The total amount due the contractor and a separately stated amount for each unsettled claim against RCHC;
  - iii. Documentation noting that RCHC is released of all claims, other than those stated in the contractor's release; and
  - iv. Wages paid to laborers or mechanics were consistent with the wage rate requirements of the contract and there are no outstanding claims for unpaid wages.
- c) Assignment of all guarantees and warranties to RCHC; and
- d) Final partial payment excluding any amounts to be retained for disputed items and incomplete work (HUD Handbook 7460.8, Rev. 2).

Construction Warranties. The warranty period for all construction work should be at least 365 calendar days from the date of final acceptance of the work in question or such longer period as otherwise specified in the contract. For complex equipment or systems (such as boilers, air conditioning units, thermal paned windows or storefronts, or membrane roofs), RCHC should consider using a full two-year warranty. The extra year will help to ensure that RCHC can discover and report any hidden or latent deficiencies while the warranty is still in force. The contractor is fully responsible to correct any and all legitimate deficiencies reported within the warranty period (HUD Handbook 7460.8, Rev. 2).

Monitoring Receipt of Supplies, Equipment, and Services. RCHC shall ensure that the items required by contract are delivered to an appropriate location where RCHC personnel can make certain that receipt of supplies, materials, or equipment is properly handled and documented (HUD Handbook 7460.8, Rev. 2).

Once received, RCHC should monitor or inspect the supplies or services obtained in accordance with the contract. If poor contractor performance occurs, RCHC should document the file and remember that performance when awarding future contracts. RCHC is not obligated to pay for or accept supplies or services until it has had an opportunity to fully inspect them (HUD Handbook 7460.8, Rev. 2).

### **Public Housing Projects: Contract Modification and Change Order Procedures**

Occasionally, it is necessary to modify a contract or purchase order to reflect changes in the required effort, period of performance, or price. For projects involving public housing or public housing funds, contract and purchase order modifications shall be issued in writing (HUD Handbook 7460.8, Rev. 2).



Procedures. A change order is issued by RCHC after the award of a contract in any of the contract terms, including specifications, completion time, description of the work, etc., within the scope of the contract. The “Changes” clause is included in form HUD-5370 (for construction); form HUD-5370-C (for non-construction contracts); and form HUD-5370-EZ (for small construction/development contracts) (HUD Handbook 7460.8, Rev. 2).

Change orders/modifications should include at least the following: a detailed description of the proposed change in work, a reference to the applicable working drawings and specifications, when applicable, a price (credit, debit, or no change) for the change in contract work, estimate of additional time, if any, required to complete the work, the contractor’s itemized breakdown of the cost of materials and labor and an itemized breakdown for any applicable subcontractors, and the change indicate on the architectural or engineering drawings, if applicable (HUD Handbook 7460.8, Rev. 2).

RCHC shall maintain accurate records and documentation regarding contract modifications by including a modification register or other record in each contract file. This register is required to provide a permanent record of all actions taken in connection with each contract. The modifications register should generally include information on the following: the number of modifications, a brief description of the change, the cost of the proposed modification, the date submitted to HUD for approval, if applicable, any critical deadline dates, the date of HUD approval or disapproval, if applicable, and the action taken, and the amount of any additional time required by the contractor (HUD Handbook 7460.8, Rev. 2).

Cost Analysis. RCHC shall require assurance that, before entering into a contract, the price is reasonable. A cost analysis, consistent with federal guidelines, shall first be conducted for all contract modifications or change orders for projects that were procured through Sealed Bids, Competitive Proposals, or Non-Competitive Proposals, or for projects originally procured through Small Purchase procedures and the amount of the contract modification will result in a total contract price in excess of \$50,000 (HUD Handbook 7460.8, Rev. 2).

RCHC shall negotiate profit as a separate element of the price in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work (24 CFR §85.36).

In all cases, proposed costs must be allowable pursuant to applicable cost principles, allocable (related to or required in the performance of the contract) and reasonable (what a prudent business would pay in a competitive marketplace) (HUD Handbook 7460.8, Rev. 2).

### **Public Housing Projects: Contract Terminations**



Contracts may be terminated either for default or termination, as prescribed in the termination clauses on forms HUD-5370, 5370-C, and 5370-EZ (HUD Handbook 7460.8, Rev. 2).

For projects involving public housing or public housing funds, RCHC shall terminate contracts for convenience or default only by a written notice to the contractor. The notice shall be sent by certified mail with a return receipt requested. The notice shall state, at a minimum, the following:

1. The contract is being terminated for default or for the convenience of RCHC under the cited contract clause authorizing the termination;
2. Whether the contract is terminated in whole or in part (for partial terminations, identify the specific items being terminated);
3. If terminated for default, the acts or omissions constituting the default, RCHC's determination that failure to perform is not excusable, RCHC's rights to charge excess costs of re-procurement to the contractor, and the contractor's appeal rights;
4. The effective date of termination;
5. The contractor's right to proceed under the non-terminated portion of the contract;
6. Any special instructions; and
7. Copies of the notice should be sent to the contractor's surety, if any, and any assignee (HUD Handbook 7460.8, Rev. 2).

A contract may be terminated for default because of the contractor's actual or anticipated failure to perform its contractual obligations. Under a termination for default, RCHC is not liable for the contractor's costs on undelivered work and may be entitled to the repayment of progress payments. If the contractor fails to make progress so as to endanger performance of the contract, RCHC should issue a written notice to the contractor (generally called a "Cure Notice") specifying the failure and providing a period of 10 days (or longer period if needed) in which to "cure" the failure. After the 10 days, RCHC may issue a notice of termination for default, unless the failure to perform has been cured (HUD Handbook 7460.8, Rev. 2).

If the contractor has failed to perform work within the required time and a termination for default appears appropriate, RCHC should, if practicable, notify the contractor in writing of the possibility of the termination. This notice shall call the contractor's attention to the contractual liabilities if the contract is terminated for default, and request the contractor to "show cause" why the contract should not be terminated. If the response to this "show cause" notice is inadequate or insufficient, action is taken in response to it; the contract should then be terminated for default (HUD Handbook 7460.8, Rev. 2).

### **Public Housing Projects: Procurement Records**

RCHC shall maintain records sufficient to detail the significant history of each procurement. These records will include, but are not necessarily limited to the following:

1. Rationale for the method of procurement (if not self-evident);
2. A copy of the solicitation;
3. Rationale of contract pricing arrangement (if not self-evident);



4. Reason for accepting or rejecting the bids or offers;
5. Basis for the contract price;
6. A copy of the contract documents awarded or issued and signed by the Contracting Officer;
7. Basis for contract modifications;
8. Related contract administration actions (24 CFR §85.36 and HUD Handbook 7460.8, Rev. 2); and
9. Related receipts, receivers or packing slips (HACR Procurement Procedures).

The level of documentation should be commensurate with the value of the procurement. Records are to be retained for a period of ten (10) years after final payment and all matters pertaining to the contact are closed (RCHC Records Retention Policy).

Certain information about RCHC procurements is normally considered public (e.g., name of the winning contractor and total contract price) and should be released to the public in accordance with RCHC's procurement policy and applicable state laws and regulations governing freedom of information. Other information related to procurement is often protected from disclosure (e.g., proprietary business information such as technical methods or processes, detailed pricing information, personal information, or RCHC's pre-decided information such as internal proposal evaluations). RCHC must exercise caution to ensure that protected information is not made public. Contracting/procurement personnel should consult RCHC's legal counsel whenever there is any question regarding the release of information (HUD Handbook 7460.8, Rev. 2).

### **Review of Procurement Policy**

RCHC shall review its Procurement Policy biennially. Any changes in the procurement environment (e.g., new laws, regulations, market conditions, or buying needs and practices of the corporation) should be considered when determining whether the procurement policies and procedures continue to adhere to all applicable laws and regulations and also to meet the corporation's current and future needs (HUD Handbook 7460.8, Rev. 2).

RCHC should periodically review its record of prior purchases, as well as future needs, to find patterns of procurement actions that could be performed more efficiently or economically. Items purchased repetitively might be obtained more economically through various master contracts. However, consideration should be given to storage, security, and handling requirements when planning these types of purchasing actions (HUD Handbook 7460.8, Rev. 2).