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SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

March 17, 1981

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

Honorable Members in Session:

SUBJECT: Rehabilitation Contractor Bond Requirement

SUMMARY

The attached resolution exempts rehabilitation loan and grant contracts for $2,500 or less from bonding requirements.

BACKGROUND

On February 3, 1981, the Redevelopment Agency adopted Resolution No. RA 81-007 requiring bonding of contractors for rehabilitation loan and grant construction contracts. The staff report that was presented recommended that contractor bonds only be required for those rehabilitation contracts that exceeded $2,500. This $2,500 exemption clause was not, however, contained within the original resolution which necessitates this amendment.

A copy of the original staff report is attached as Exhibit I for your review.

RECOMMENDATION

The staff recommends adoption of the attached resolution which exempts rehabilitation loan and grant contracts for $2,500 or less from bonding requirements.

Respectfully submitted,

William H Edgar

WILLIAM H. EDGAR
Interim Executive Director

RECOMMENDATION APPROVED:

Walter J. Slipe

WALTER J. SLIPE, City Manager

Contact Person: Michael Hanamura

APPROVED
SACRAMENTO REDEVELOPMENT AGENCY
Date 3/24/81

P. O. BOX 1834, SACRAMENTO, CA 95809 — (916) 444-9210 — 630 I STREET, SACRAMENTO, CA 95814

RESOLUTION NO. 81-019

Adopted by the Redevelopment Agency of the City of Sacramento

March 24, 1981

REQUIRING BONDING ON REHABILITATION
LOAN AND GRANT CONSTRUCTION CONTRACTS

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

Section 1. The Agency shall not execute in its own name nor approve for execution by the owner of a property which is the subject of a rehabilitation loan or grant any construction contract in excess of $2,500. which does not require as a condition of performance the provision by the contractor at no cost to the Agency or property owner of a bond insuring faithful performance of that contract. Said bond shall be issued by a company and/or surety satisfactory to the Agency and shall be in an amount equal to the full amount of the contract.

Section 2. Resolution No. RA 81-007 adopted February 3, 1981 is hereby rescinded.

CHAIRPERSON

ATTEST:

SECRETARY

APPROVED
SACRAMENTO REDEVELOPMENT AGENCY
Date 3/24/81

BONDING OF CONTRACTORS

"Bonding of Contractors Not Be Required"

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

1. Cash Deposit

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

   Advantages:

   a. If the contractor failed to complete the work, the contractor could be judged to be in default of the contract and these funds could be utilized to assist with the completion of the work.

   b. If the contractor failed to pay any subcontractor these funds could be used to pay these costs, eliminating the filing of a lien by a subcontractor for payment.

   Disadvantages:

   a. Requiring a cash deposit could eliminate small contractors from participating in rehabilitation programs.

   b. The amount of the cash deposit may not be sufficient to satisfactorily complete the work.

2. Liquidated Damages and Payment Retention (existing Procedure)

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

Advantages:

a. Helps to insure that contractors' material and labor suppliers will receive payment, thus eliminating the filing of a subcontractor's lien on the property.

b. Liquidated damages, if assessed, are deducted from money retained, insuring satisfaction of this assessment.

Disadvantages:

a. This amount of liquidated damages may not be sufficient to cover actual damages suffered by the owner as a result of the contractor's unexecusable delays in the completion of the work.

b. The amount of funds retained may not be sufficient to satisfactorily complete the work should the contractor quit the job or go out of business.

B. Performance and Payment Bonds

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

Advantages:

a. If the contractor failed to complete the work, the homeowner could look to the insurance company for compensation.

b. If the contractor failed to pay a subcontractor, the bond company may pay that obligation, thus, eliminating the filing of a lien by a subcontractor for payment.

Disadvantages:

a. The cost of any bond would be passed on to the homeowner as part of the bid.

b. The inability to obtain bonding may discourage small contractors from bidding on some projects.

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

3. Recommendation

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

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

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

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

1. Contracts less than $2,500

   a. Do not require bonds.

   b. Withhold 20% of the total contract price for a 35-day lien period to afford the property owner with protection against subcontractors' liens.

2. Contracts for $2,500 or more

   a. Require that contractors provide Performance and Payment bonds. Staff has investigated several possible sources of bonding and counseling assistance for contractors. Should a contractor experience difficulties in obtaining the necessary bonds, the Agency will refer the contractor to several agencies and/or companies that specialize in providing bond assistance to small contractors who do not qualify with standard sureties.

   b. Reduce the total amount of money to be retained from 20% to 10%. This change would be consistent with revised Section 312 Loan Program regulations which become effective February 15, 1981.