

760 CMR: DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

760 CMR 11.00: MODERNIZATION AND DEVELOPMENT OF STATE-AIDED PUBLIC HOUSING

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11.01: Purpose and Applicability; Definitions

(1) The purpose of 760 CMR 11.00 is to set forth the procedures governing the preservation, modernization and development of housing funded by the Department of Housing and Community Development (Department) through grants to a local housing authority (LHA), as well as the procedures governing the Capital Assistance Program.

(2) Unless otherwise noted, 760 CMR 11.00 applies to both the modernization and development of public housing funded by the Department.

(3) In addition to definitions in 760 CMR 4.00: *General Administration of Local Housing Authorities*, 5.00: *Eligibility and Selection Criteria* and 6.00: *Occupancy Standards and Tenant Participation for State-aided Housing*, and M.G.L. c. 7C, the following definitions shall apply to 760 CMR 11.00:

Approval. Unless otherwise specified, Approval by the Department shall mean approval in writing.

Capital Funds. Funds provided by the Department to an LHA for the modernization and preservation of state-aided public housing, including Formula Funds and Special Capital Funds.

CPS. The Department's web-based Capital Planning System that catalogues the condition of every building and site in the state-aided public housing portfolio.

Formula Funding. Capital awards distributed to LHAs annually based on a formula as described in 760 CMR 11.00.

Host Housing Authority (HHA). An LHA selected by the Department to employ and oversee an RCAT.

HHA Administrative Fee. The administrative fee paid to an HHA from the RCAT Program budget.

Large Projects. Unless otherwise specified in 760 CMR 11.07, a project shall be considered a Large Project if construction cost equals or exceeds the threshold established from time to time by the Department through written guidance. Initially, the Large Project threshold shall be \$100,000 beginning Fiscal Year 2017.

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Modernization. Repair, upgrade, improvement or replacement of existing public housing systems and facilities.

RCAT. One of three Regional Capital Assistance Teams employed at HHAs designated by the Department to carry out the RCAT Program.

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RCAT Advisory Board. The 11-member Regional Capital Assistance Team Advisory Board established for each HHA Region pursuant to 760 CMR 11.00 to discuss issues of RCAT Program performance and coordination.

RCAT Program. The Regional Capital Assistance Team Program established by the Department under M.G.L. c. 121B, § 26C.

RCAT Region. One of three geographic regions established by the Department for the purpose of the RCAT Program.

Special Capital Funds. Capital awards made by the Department to LHAs on a competitive or discretionary basis for emergencies and special initiatives, as described in 760 CMR 11.00.

11.02: Capital Improvement Plans and Project Funding Availability

(1) Capital Improvement Plans (CIP).

- (a) Each LHA must develop or have in place an initial CIP, describing how the LHA will utilize and prioritize its resources including funds, systems, practices and workforce to maintain the physical condition of its state-aided public housing units over a five-year period. In order to receive Capital Funds, an LHA must have a current Department-approved CIP.
- (b) Each LHA will submit an annual update to its CIP to the Department prior to the beginning of each fiscal year as part of its Annual Plan in accordance with 760 CMR 4.00: *General Administration of Local Housing Authorities* and Department guidelines.
- (c) Each LHA shall involve LTOs and residents in the process of creating the annual CIP in accordance with 760 CMR 6.09: *Tenant Participation*.
- (d) Each LHA participating in the RCAT Program shall involve its RCAT in decisions relating to the creation and update of its CIP in accordance with 760 CMR 11.00.

(2) Formula Funds Program. Subject to funding availability, the Department will issue Formula Funds awards to LHAs for the modernization and preservation of state-aided public housing.

- (a) An LHA's need for Formula Funds shall be based on the LHA's capital needs compared to state-wide capital needs of state-aided public housing, determined using a centralized database of site and building components, their useful life and their replacement cost. The formula used to calculate the distribution of Formula funds to each LHA shall be adjusted by the Department as necessary to best serve the program goal of preserving the state-aided public housing portfolio.
- (b) The expenditure of Formula Funds shall comply with Department guidelines as amended from time to time.

(3) Special Capital Funds. Subject to funding availability, the Department may periodically make funds available on a competitive or discretionary basis for emergencies and special initiatives. The availability of such funds and corresponding program guidelines will be announced *via* public housing notice.

11.03: Design

- (1) Designer Selection. Unless pursuant to the Department's guidelines a capital project is exempt pursuant to M.G.L. 7C, § 46, the LHA shall solicit applications from designers (as defined by M.G.L. c. 7C, § 44) and conform to the requirements of M.G.L. c. 7C, §§ 44 through 58, relating to procurement and quality of design services (provided that, if at any time the Department has been granted an exemption from the jurisdiction of the designer selection board

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described in M.G.L. c. 7C, § 45, the Department shall exercise the functions of the designer selection board in approving contracts for design services that would otherwise be subject to the jurisdiction of such board.) The LHA shall comply with the LTO and Resident Participation regulation at 760 CMR 6.09: *Tenant Participation*, and an LHA participating in the RCAT Program shall also comply with the requirements of M.G.L. c. 121B, § 26C and any related Department guidelines.

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- (2) Contracts for Designer Services. Whether or not subject to M.G.L. c. 7C, each LHA engaging a designer in connection with a capital project shall execute a contract for designer services in the form prescribed by the Department.
- (3) Consistency with Department Procedures, Budget and Design and Materials Criteria. Each project shall be developed in accordance with the Department's procedures and within the budget established by the Department for the project. The LHA shall not approve any design or materials that deviate from the Department's design and construction guidelines without the prior written approval of the Department.
- (4) Required Permits (Development). Upon request of the Department, the LHA shall apply for such permits as the Department may deem necessary for construction of the project. The LHA shall diligently pursue any such permit application.
- (5) Large Projects. Large Projects shall be subject to additional requirements as set forth in 760 CMR 11.07.

11.04: Bidding

- (1) Statutory and Regulatory Compliance in Bidding. Bidding and approval of bidders shall be in accordance with the Massachusetts General Laws, the regulations of the Division of Capital Asset Management and Maintenance (810 CMR), and the Department's directives.
- (2) Bid Award Protests. The LHA shall notify the Department immediately regarding any formal bid award protest filed with the Bid Unit in the Office of the Attorney General.
- (3) Rejection of Bids. The LHA shall reject any bidder whose bid price exceeds the budget established for the project unless the Department shall have given prior written authorization for acceptance of the bid. The LHA shall reject any or all bids when requested in writing by the Department to do so.
- (4) Owner-contractor Agreement. The LHA shall execute an owner-contractor agreement in the form prescribed by the Department. With respect to Large Projects, additional Department approval shall be required as set forth in 760 CMR 11.07.
- (5) Large Projects. Large Projects shall be subject to additional requirements as set forth in 760 CMR 11.07.

11.05: LHA Management of Capital Funds

Each LHA shall:

- (a) Keep accurate books and records, as prescribed by the Department in accordance with 760 CMR 4.00: *General Administration of Local Housing Authorities*, subject to review by the Department and auditors;
- (b) Maintain separate accounts so as to separate Capital Funds from other LHA funds, and;
- (c) Report, as directed by the Department, on the status of Capital Funds received by the LHA, including interest.

11.06: Construction

- (1) Project Representative. Where the Department has determined that the services of a project

representative are required, the LHA shall advertise for, and select a project representative to monitor daily construction activity. Both the project representative and the project representative's compensation shall require approval of the LHA and the Department.

(2) Contract Officer. The LHA shall designate a contract officer whose function shall be to review payment requisitions from the contractor and to approve periodic payments to the contractor.

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- (3) Contractor Payments. The LHA shall make payments on the payment requisitions following approval by the contract officer.
- (4) Change Orders. The LHA shall consider requests for change orders in accordance with applicable contract provisions, the Department's procedures, and applicable law.
  - (a) The designer shall review the contractor's request and, if the designer deems a change to be necessary or appropriate shall submit a written request for a change order including specification of the reason for the change order to the LHA and the Department.
  - (b) The LHA shall review each request for a change order and if it determines it to be necessary or appropriate may approve it subject to the approval of the Department.
  - (c) The LHA shall transmit a certified extract of the LHA's vote approving any change order together with all pertinent documents to the Department which may approve the change order if it deems it to be necessary or appropriate.
- (5) Construction Disputes. Construction disputes between the contractor and designer shall be resolved in the manner specified by the owner-contractor contract and any applicable administrative procedures of the Department.
- (6) RCAT Participation. Any LHA participating in the RCAT Program shall involve the RCAT in decisions relating to projects receiving Capital Funds in accordance with 760 CMR 11.00.
- (7) CPS Update. Upon completion of a project, the LHA (with the assistance of its RCAT, if applicable) shall update the CPS to reflect the work performed.

11.07: Special Requirements Applicable to Large Projects

For Large Projects, in addition to any other applicable requirements, the following shall apply:

- (1) Design Contracts. Contracts for designer services for Large Projects shall not be valid unless the designer selection and the contract are approved in writing by the Department. No such contract shall be modified or amended without the prior written approval of the Department.
- (2) Design Documents. The designer and LHA must seek approval of the Department and, in accordance with Department guidelines, the RCAT, at key milestones during the design process:
  - (a) Consultation on the Scope of Work. Prior to the preparation of any plans and specifications, the designer and LHA shall discuss the scope of the work on a preliminary basis with the Department and, if applicable, with the RCAT.
  - (b) Authorization to Prepare Project Documents. The designer shall not prepare any phase of project documents without the prior written authorization of the Department and, if applicable, the RCAT. Such authorization shall not take place until all local approvals shall have been secured unless otherwise authorized by the Department and, if applicable, the RCAT.
  - (c) Approval of Plans, Specifications, and Construction Documents. All plans and specifications, documentation of permitting, and construction documents shall be reviewed and approved by the Department and, if applicable, the RCAT prior to the LHA's advertising for bids.
- (3) Approval of Bid Documents. The LHA shall:
  - (a) Forward all bid documents, including subbids, the three low general bids and a bid summary to the Department and, if applicable, the RCAT for review and written approval

prior to issuing bid acceptances.

(b) Not execute an owner-contractor agreement or authorize the contractor to proceed with work until the contract has received written approval of the Department and, if applicable, the RCAT. The owner-contractor agreement shall not be valid without such approval, and shall not be modified or amended without prior written concurrence of the Department and, if applicable, the RCAT.



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- (4) Payments. The LHA shall make no payments from Capital Funding for a Large Project without the approval of the Department and, if applicable, the RCAT.
- (5) Change Orders. Any Change Order with respect to a Large Project shall require prior written approval by the Department and, if applicable, the RCAT.
- (6) Project Completion.
  - (a) Acceptance as Substantially Complete. In order for a Large Project to be accepted by the LHA as substantially complete, it must be certified by the designer as being substantially complete in accordance with procedures established by the Department.
  - (b) Retainage Release. Upon substantial completion of a Large Project in accordance with the owner-contractor agreement, applicable law, and the Department's procedures on Large Project contract close-out, the LHA shall release retainage to the Contractor, provided that the LHA, pursuant to advice of the architect, shall reserve sufficient funds for completion of all incomplete and unsatisfactory work, and payment of any direct payment demands and other claims against the contractor.
  - (c) One Year Inspection. The designer shall inspect the Large Project within one year of substantial completion and shall make a list of all deficiencies. The designer shall forward the list of all deficiencies to the LHA, to the Department, and to the Contractor for prompt remedial action.

11.08: Capital Assistance Program

- (1) The purpose of 760 CMR 11.08 is to establish an RCAT Program pursuant to M.G.L. c. 121B, § 26C based on best practices to allow LHAs to work collaboratively and to provide capital, maintenance and repair planning and technical assistance to LHAs to facilitate the capturing of economies of scale through increased collaboration relative to, but not limited to, bulk purchasing, capital planning and capital projects.
- (2) All LHAs may participate in the RCAT Program, and each LHA with 500 or fewer state-aided public housing units is required to participate in the RCAT Program unless granted a waiver by the Department. Such waivers shall be granted only when an LHA demonstrates that it does not need the technical assistance offered under the RCAT Program based on its past performance under the performance-based monitoring and assessment standards of M.G.L. c. 121B, § 26B and such other criteria as may be set out in RCAT Program waiver guidelines issued by the Department. Prior to seeking a waiver, an LHA shall notify tenants and provide opportunity for resident participation in accordance with 760 CMR 6.09: *Tenant Participation*.
- (3) The Department shall designate three RCAT Regions, each of which shall be served by a single HHA which will administer the RCAT Program for that RCAT Region. In designating the RCAT Regions, the Department shall take into consideration the geographic area, the number of LHAs, and the number of state-aided public housing units within each RCAT Region.
- (4) Upon establishing the three RCAT Regions in which the RCAT Program shall be administered, the Department shall develop and issue a request for proposals, inviting LHAs to submit proposals to serve as the HHA for the RCAT Region in which they are located. The Department's request for proposals shall establish criteria for selection of the HHA, including without limitation:
  - (a) the LHA's past experience in developing and implementing capital and maintenance plans and projects;

- (b) the LHA's past experience delivering technical assistance or other programs that require collaboration with other LHAs and DHCD;
- (c) the experience and qualifications of the LHA's executive director and other employees; and
- (d) the LHA's past overall performance, including findings under the performance-based monitoring and assessment standards of M.G.L. c. 121B, § 26B.

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(5) Each RCAT shall be employed by and work out of an HHA and consist of a director and project management and capital planning staff to work directly with LHAs to provide RCAT Program technical assistance. All RCAT directors and project managers must meet minimum qualifications as established by Department program guidelines and be hired in consultation with the Department.

(6) A portion of the aggregate Capital Funds available in any fiscal year for the RCAT Program shall be paid as an HHA Administrative Fee to each of the three HHAs selected by the Department pursuant to 760 CMR 11.08(4). The Department shall establish, through written guidelines, criteria for determining:

- (a) the HHA Administrative Fee; provided, that fee shall be no less than 5% nor more than 10% of the annual HHA Capital Assistance Program Budget; and
- (b) minimum and maximum percentages of the HHA Administrative Fee to be applied to a salary increase for the executive director, as well as criteria for performance bonuses.

(7) Each RCAT shall have an RCAT Advisory Board consisting of 11 members. The HHA for each Region shall appoint one of its own LHA Board (or substantially equivalent body) members to the RCAT Advisory Board for that RCAT Region. The Department shall also appoint one RCAT Advisory Board member, who shall have at least five years of experience as the manager of not less than 200 units of privately owned housing. The remaining nine members of the RCAT Advisory Board shall be elected in accordance with the following procedures:

- (a) The Department shall call for nominations not less than 90 days prior to the election, by written notice to each LHA in an RCAT Region and by posting on the Department's website written guidelines for the nomination and election process, including preferred qualifications for RCAT Advisory Board members.
- (b) Each LHA Board may nominate a maximum of two candidates. Each candidate must be a member of the LHA Board. If the LHA Board nominates two candidates, one of the candidates must be a Tenant.
- (c) The Department shall, not less than 45 days prior to the election, make available to all LHAs a voting system through which each LHA Board may cast a maximum of nine votes for the RCAT Advisory Board members representing its RCAT Region, in accordance with the Department's written guidelines. The Department shall tabulate the votes and the Tenant candidate receiving the most votes of any Tenant candidate shall be the first elected member on the RCAT Advisory Board. The next elected member shall be the candidate receiving the most votes other than the initial Tenant elected member, and the remaining seats shall be filled in a similar manner, by the candidates receiving the next highest number of votes, until nine members have been elected. In the event of a tie for the ninth seat, the Department shall select between the tied candidates based upon the qualifications of the tied candidates and the diversity of experience, expertise and perspectives represented on the board. In the event that no Tenant candidate receives any votes, the Department shall appoint a tenant from the participating LHAs in the region as the tenant member of the RCAT Advisory Board.
- (d) In the event that an elected RCAT Advisory Board member resigns or dies during his or her term, the Department shall fill the vacancy by appointing the candidate who received the next highest number of votes after the last candidate to be elected under the procedures described above. The Department will repeat this process, continuing with the candidate with the next highest number of votes, until are seats are filled. Provided, that if the resigning or deceased RCAT Advisory Board member was elected as a Tenant member, then the Department shall appoint a Tenant member to fill the vacancy. If the Department is unable to fill any vacancy through the process described above, the Department may appoint any person meeting the preferred qualifications set forth in its guidelines to serve as the replacement RCAT Advisory Board member. The person appointed to fill any vacancy shall

serve for the balance of the original term of the resigned or deceased member.

(e) Each RCAT Advisory Board member shall serve a term of three years from the first day of the month following the month in which the Department announces the result of the election conducted pursuant to 760 CMR 11.08(7)(c). There is no limit on the number of terms for which a member may be re-elected.

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(f) Each RCAT Advisory Board shall meet on a quarterly basis with the RCAT director, the HHA Director, and the Department's designee to review and discuss reports submitted by the RCAT and HHA Directors as well as issues of program performance and coordination. The first such meeting for each RCAT Advisory Board shall take place not later than 60 days following the announcement of the results of the election conducted pursuant to 760 CMR 11.08(7)(c). Quarterly RCAT Advisory Board meetings shall be held in a location that is accessible to the public, including people with disabilities. Each RCAT Director shall provide at least three weeks' notice to its participating LHAs of all meeting times and locations. Each participating LHA shall provide notice of quarterly RCAT Advisory Board meetings to their residents and LTOs in accordance with the requirements for additional resident participation in 760 CMR 6.09: *Tenant Participation*.

11.09: Tenant Coordinators

The Department may require that an LHA engage the services of one or more tenant coordinators to expedite construction activities affecting residents for construction projects that involve substantial resident relocation or otherwise have a significant impact on residents for an extended period of time. If a tenant coordinator is required, the LHA shall:

- (a) Select the tenant coordinator(s) from a list of adult residents compiled by the LTO on the basis of written applications that the LTO has reviewed, approved, and ranked based on the skills and competence of the applicants. The LHA shall select tenant coordinator(s) in the order of the LTO list, unless it has reason to object to an applicant, in which case the LHA shall provide written notice to the LTO. The Department will mediate any further dispute.
- (b) Pay the tenant coordinator(s) at the rate of one and a half times the highest minimum wage (State or Federal) then applicable in the Commonwealth. An officer of an LTO or a member of the officer's immediate family may be selected as a tenant coordinator by the LHA but shall be ineligible to receive compensation. LHA Tenant Board Members and members of a Tenant Board Member's immediate family are not eligible to be selected as tenant coordinators.

11.10: Waiver by the Department

The Department may waive in writing any provision of 760 CMR 11.00, not otherwise required by applicable law, for good cause shown by the LHA or the Department upon a determination that a waiver will advance the interests of the state-aided housing program and promote the public benefit.

REGULATORY AUTHORITY

760 CMR 11.00: M.G.L. c. 23B, § 6; c. 121B, §§ 26C and 29.