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## Community Housing Development Organization (CHDO) Manual

- Policies
- Requirements for Certification
- Requirements for Recertification

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Kentucky Housing Corporation  
1231 Louisville Road  
Frankfort, KY 40601  
(502) 564-7630

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NOTE: This manual outlines the policies pertaining to the HOME Investment Partnerships Program Community Housing Development Organizations (CHDO) only. For additional information please refer to 24 CFR Part 92



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Author: Kentucky Housing Corporation  
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## Notice

This manual serves as a reference for Kentucky Housing Corporation's administration of the Community Housing Development Organization (CHDO) portion of the Home Investment and Partnerships Program (HOME).

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Please contact a KHC program representative if you have questions or need additional assistance with materials within this manual.

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## WHAT IS A COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO)?

A CHDO (pronounced cho'doe) is a private nonprofit, community-based service organization that has significant capacity, and whose **primary** purpose is to develop affordable housing for the community it serves. Agencies must be certified and recertified as a CHDO by meeting certain criteria. The HOME Program definition of a CHDO is found at 24 CFR Part 92.2.

## WHAT SPECIAL BENEFITS ARE AVAILABLE TO CHDOs?

HOME regulations require that KHC set aside 15 percent of its annual HOME allocation exclusively for qualified, eligible CHDO projects. If an organization becomes a certified CHDO, it is eligible to take advantage of the HOME funds set-aside for CHDOs, and *may* receive financial support for a portion of its operating expenses associated with CHDO projects.

## REGULATORY REQUIREMENTS FOR CHDO CERTIFICATION

The U.S. Department of Housing and Urban Development (HUD) has established standard criteria for organizations to be eligible to become a designated CHDO, such as:

1. **Organized Under State/Local Law.** A nonprofit organization must show evidence in its Articles of Incorporation that it is organized under state or local law.
2. **Nonprofit Status.** The organization must be conditionally designated or have a tax exemption ruling from the Internal Revenue Service (IRS) under Section 501(c) of the Internal Revenue Code of 1986. A 501(c) certificate from the IRS must evidence the ruling.
3. **Purpose of Organization.** Among its primary purposes, the organization must have the provision of decent housing that is affordable to low- and moderate-income people. This must be evidenced by a statement in the organization's Articles of Incorporation and/or Bylaws.
4. **Board Structure.** An organization that is created by a governmental entity may qualify as a CHDO; however, the governmental entity may not have the right to appoint more than one-third of the membership of the organization's governing body and no more than one-third of the board members may be public officials or employees of a governmental entity. Board members appointed by a governmental entity may not appoint the remaining two-thirds of the board members. The officers or employees of a governmental entity may not be officers or employees of a CHDO. The board of directors must be organized to contain a minimum of one-third representation from the low-income community.
5. **No For-Profit Control.** The organization may not be controlled by, nor receive directions from, individuals or entities seeking profit from or that will derive direct benefit from the organization.
6. **No Individual Benefit.** No part of a CHDO's net earnings (profits) may benefit any members, founders, contributors, or individuals. This requirement must also be evidenced in the organization's Articles of Incorporation.
7. **Clearly Defined Service Area.** The organization must have a clearly defined geographic service area outlined in its Articles of Incorporation and/or Bylaws. CHDOs may serve individual neighborhoods or large areas. However, while the organization may include an entire community in their service area (such as a city, town, village, county, or multi-county area), they may not include the entire state.

8. **Low-Income Advisory Process.** A formal process must be developed and implemented for low-income program beneficiaries and low-income residents of the organization's service area to advise the organization in all its decisions regarding the design, location, development, and management of affordable housing projects.
9. **Capacity/Experience.** The key staff and board of directors must have significant experience and capacity to carry out CHDO-eligible, HOME-assisted projects in the community where it intends to develop affordable housing.
10. **Community Service.** A minimum of one year of relative experience serving the community where it intends to develop affordable housing must be demonstrated.
11. **Financial Accountability Standards.** The organization must meet and adhere to the financial accountability standards as outlined in 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

## ADDITIONAL KHC REQUIREMENTS FOR CHDO CERTIFICATION

In addition to the regulatory requirements, KHC has established additional criteria for CHDO designation. To be eligible for CHDO designation, an organization must also:

1. Be in good standing with the Kentucky Secretary of State's office and [SAM.gov](https://www.sam.gov).
2. Maintain a staffed, physical office location in the proposed service area that is open for business and accessible by potential program applicants during generally-accepted, customary business hours (e.g. 9:00 to 5:00 Mon., Wed., Fri. or M-F 9:00 to Noon, or 9:00 to 5:00 M-F, etc.)
3. Have established a minimum three-year strategic business plan, which must include CHDO-related production and community involvement goals.
4. Maintain a history of no significant compliance findings in the past 3 years on its KHC-funded projects.

Please note that the criteria noted above is not intended to be all-inclusive and KHC may require additional information prior to making determination for CHDO designation. Meeting the above requirements does not guarantee that the organization will be granted CHDO designation. KHC reserves the right to deny or revoke CHDO designation based upon its evaluation of the nonprofit organization's performance.

## ORGANIZATIONAL STRUCTURE REQUIREMENTS FOR CHDO CERTIFICATION

The HOME Program establishes requirements for the organizational structure of a CHDO to ensure that the governing body of the organization is **controlled by the community it serves**. These requirements are designed to ensure that the CHDO is capable of decisions and actions that address the community's needs without undue influence from external agendas.

There are four specific requirements related to the organization's board, which must be evidenced in the organization's Articles of Incorporation and/or Bylaws. These are:

1. **Low Income Representation.** At least one-third of the organization's board must be representatives of the low-income community served by the CHDO. There are three ways a board member can meet the definition of a low-income representative:
  - The person lives in a low-income neighborhood where 51% or more of the residents are low-income. This person need not necessarily be low-income.
  - Or**
  - The person is a low-income (below 80% area median income) resident of the community.
  - Or**
  - The person was elected by a low-income neighborhood organization to serve on the CHDO board. The organization must be composed primarily of residents of the low-income neighborhood and its primary purpose must be to serve the interests of the neighborhood residents. Such organizations might include block groups, neighborhood associations, and neighborhood watch groups.

The CHDO is required to document the status of low-income representatives at the time a low-income representative should be appointed or at the time a low-income representative's term expires.
2. **Public Sector Limitations.** A CHDO that is created by a governmental entity may qualify as a CHDO; however, the governmental entity may not have the right to appoint more than one-third of the membership of the organization's governing body and no more than one-third of the board members may be public officials or employees of governmental entity. Board members appointed by a governmental entity may not appoint the remaining two-thirds of the board members. The officers or employees of a governmental entity may not be officers or employees of a CHDO. Public sector representatives include elected public officials, appointees of a public official, any employees of a local government or public school system, or employees of KHC or the Commonwealth of Kentucky. If a person qualifies as a low-income representative **and** a public sector representative, their role as a public sector representative supersedes their residency or income status. Therefore, this person counts toward the one-third public sector limitation.
3. **Low-Income Advisory Process.** Input from the low-income community is not met solely by having low-income representation on the board. The CHDO must provide a formal process for low-income program beneficiaries to advise the CHDO on design, location of sites, development, and management of affordable housing. The process must be described in writing in the Articles of Incorporation and/or Bylaws. One way to accomplish this requirement is to develop a project advisory committee for each project or community where a HOME assisted project will be developed. Proof of input from the low-income community will be required at the CHDO's recertification.
4. **For-Profit Limitations.** If a CHDO is sponsored by a for-profit entity, the for-profit may not appoint more than one-third of the board. The board members appointed by the for-profit may not appoint the remaining two-thirds of the board members.

## **EXPERIENCE AND CAPACITY**

To be certified as a CHDO, the HOME Program requires organizations to demonstrate sufficient experience, capacity, and financial accountability.

### **CHDO Set-Aside**

The HOME requirements at 24 CFR Part 92.300 require KHC to set aside at least 15 percent of its annual HOME allocation for projects owned, developed, or sponsored by CHDOs.

A certified CHDO must serve as the owner, developer, or sponsor of a HOME-eligible project when using funds from the 15 percent CHDO set-aside. A CHDO may serve in one of these roles or it may undertake projects in which it combines roles; such as being both an owner and developer.

### CHDO Experience & Capacity

CHDOs must have a demonstrated capacity for carrying out housing projects assisted with HOME funds. A designated organization undertaking development activities as a developer or sponsor must satisfy this requirement by having paid employees with housing development experience who will work on projects assisted with HOME funds. For its first year of funding as a CHDO, an organization may satisfy this requirement through a contract with a consultant who has housing development experience to train appropriate key staff of the organization. An organization that will own housing must demonstrate capacity to act as owner of a project and meet the requirements of §92.300(a)(2). A nonprofit organization does not meet the test of demonstrated capacity based on any person who is a volunteer or whose services are donated by another organization. An organization may demonstrate capacity by demonstrating that it has a history of serving the community within which housing to be assisted with HOME funds is to be located. In general, an organization must be able to show one year of serving the community before HOME funds are reserved for the organization. However, a newly created organization formed by local churches, service organizations, or neighborhood organizations may meet this requirement by demonstrating that its parent organization has at least a year of serving the community.

CHDOs must provide resumes and/or written statements of key staff members that describe their experience of successfully completing projects similar to those proposed.

## **CHDO ROLES**

### CHDO As Owner-Rental Housing

Rental housing is “owned” by the CHDO if the CHDO is the owner in fee simple absolute of multifamily or single-family housing (or has a long-term ground lease) for rental to low-income families in accordance with §92.252. If the housing is to be rehabilitated or constructed, the CHDO hires and oversees the developer that rehabilitates or constructs the housing. At minimum, the CHDO must hire or contract with an experienced project manager to oversee all aspects of the development; including obtaining zoning, securing non-HOME financing, selecting a developer or general contractor, overseeing the progress of the work, and determining the reasonableness of costs. The CHDO must own the rental housing during development and for a period at least equal to the period of affordability in §92.252. If the CHDO acquires housing that meets the property standards in §92.251, the CHDO must own the rental housing for a period at least equal to the period of affordability in §92.252.

### CHDO As Developer-Rental Housing

Rental housing is “developed” by the CHDO if the CHDO is the owner of multifamily or single-family housing in fee simple absolute (or has a long-term ground lease) and the developer of new housing that will be constructed or existing substandard housing that will be rehabilitated for rent to low-income families in accordance with §92.252. To be the “developer,” the CHDO must be in sole charge of all aspects of the development process; including obtaining zoning, securing non-HOME financing, selecting

architects, engineers and general contractors, overseeing the progress of the work, and determining the reasonableness of costs. At a minimum, the CHDO must own the housing during development and for a period at least equal to the period of affordability in §92.252.

### **CHDO As Sponsor-Rental Housing**

Rental housing is “sponsored” by the CHDO if it is rental housing “owned” or “developed” by a subsidiary of a CHDO, a limited partnership of which the CHDO or its subsidiary is the sole general partner, or a limited liability company of which the CHDO or its subsidiary is the sole managing member.

The subsidiary of the CHDO may be a for-profit or nonprofit organization and must be wholly owned by the CHDO. If the limited partnership or limited liability company agreement permits the CHDO to be removed as general partner or sole managing member, the agreement must provide that the removal must be for cause and that the CHDO must be replaced with another CHDO. The HOME funds must be provided to the entity that owns the project.

### **CHDOS As Developer Or Sponsor-Rental Housing**

HOME-assisted rental housing is also “sponsored” by a CHDO if the CHDO “developed” the rental housing project that it agrees to convey to an identified private nonprofit organization at a predetermined time after completion of the development of the project. Sponsored rental housing, as provided in 24 CFR part 92.300 paragraph (a) (5), is subject to the following requirements:

The private nonprofit organization may not be created by a governmental entity.

The HOME funds must be invested in the project that is owned by the CHDO.

Before commitment of HOME funds, the CHDO sponsor must select the nonprofit organization that will obtain ownership of the property.

The nonprofit organization assumes the CHDO's HOME obligations (including any repayment of loans) for the rental project at a specified time after completion of development.

If the housing is not transferred to the nonprofit organization, the CHDO sponsor remains responsible for the HOME assistance and the HOME project.

### **CHDO As Developer-Homeownership Housing**

Housing for homeownership is “developed” by the CHDO if the CHDO is the owner (in fee simple absolute) and developer of new housing that will be constructed or existing substandard housing that will be rehabilitated for sale to low-income families in accordance with §92.254.

To be the “developer” the CHDO must arrange financing of the project and be in sole charge of construction. The CHDO may provide direct homeownership assistance (e.g., down payment assistance) when it sells the housing to low-income families and the CHDO will not be considered a subrecipient. The

HOME funds for down payment assistance shall not be greater than 10 percent of the amount of HOME funds for development of the housing.

The participating jurisdiction must determine and set forth in its written agreement with the CHDO the actual sales prices for the housing, or the method by which the sales prices for the housing will be established; and whether the proceeds must be returned to the participating jurisdiction, or may be retained by the CHDO.

While proceeds that the participating jurisdiction permits CHDO to retain are not subject to the requirements of this part, the participating jurisdiction must specify in the written agreement with the CHDO whether the proceeds are to be used for HOME-eligible activities or other housing activities to benefit low-income families.

Funds that are recaptured because the housing no longer meets the affordability requirements under §92.254(a)(5)(ii) are subject to the requirements of this part in accordance with §92.503.

The participating jurisdiction determines the form of assistance (e.g., grant or loan) that it will provide that the CHDO receives or, for rental housing projects under 24 CFR part 92.300 paragraph (a)(4), to the entity that owns the project.

## **CHDO SERVICE AREA**

While KHC does not limit the number of counties in a CHDO's service area, the very definition of a CHDO is that it be community-based. Therefore, an organization proposing a multi-county service area must demonstrate that it is taking the appropriate steps to achieve the community-based component. Some of the ways this can be achieved is by having an active community (non-public) representative from each of the counties on the CHDO's board of directors; establishing local advisory councils to advise the CHDO board on topics relative to the organization's activities; hosting "town hall" meetings in the proposed project areas; etc. KHC will consider other methods suggested by the CHDO. CHDOs will be required to provide updates upon recertification every three years on how it is ensuring that it is active and visible in the communities included in its service area.

KHC reserves the right to limit CHDOs from conducting CHDO eligible projects in a service area where an existing CHDO is already providing service.

## **CHDO RECERTIFICATION**

To ensure compliance with the HOME regulations, each CHDO will be required to submit specific information to KHC every three years, including, but not limited to:

- A list of its board of directors, as well as which sector each member represents
- An updated three-year strategic business plan and a description of how the low-income advisory process was implemented. If no HOME funds were used within the reporting period, a detailed description of all other affordable housing initiatives undertaken will be requested

The KHC 'Regulatory Requirements Certification' form will be required EACH TIME KHC COMMITS HOME FUNDS (i.e., at time of project or activity set-up). The CHDO must recertify as to its continued

qualifications as a CHDO and its capacity to own, sponsor, or develop housing.

At its discretion, KHC may revoke the designation of inactive CHDOs based upon a review of other non-CHDO housing activities the organization has undertaken (if any), as well as other factors deemed appropriate by KHC.

If a CHDO fails to submit recertification documentation every 3 years, the agency may no longer qualify as a CHDO.

## **FINANCIAL ACCOUNTABILITY**

CHDOs must have financial accountability standards that conform to the requirements detailed in 2 CFR Part 200 -Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. This can be evidenced by the following:

- A notarized statement by the president or chief financial officer of the organization.
- Certification from a certified public accountant.
- Audit completed by CPA.

KHC reserves the right to request additional audited financial statements at any time.

## **ELIGIBLE AND INELIGIBLE USES OF HOME CHDO SET-ASIDE FUNDS**

### **Eligible Activities-Owners, Sponsors, Developers**

Using the CHDO set-aside funds, a CHDO acting as an owner, sponsor, or developer may undertake any of the following activities:

- Acquisition and/or rehabilitation of rental property;
- New construction of rental housing;
- Acquisition, rehabilitation, and resale of existing, vacant homebuyer property;
- New construction of homebuyer property;
- Direct financial assistance to purchasers of HOME-assisted housing developed by a CHDO with HOME CHDO set-aside funds.

Please note that to be considered a CHDO-eligible project, CHDO set-aside HOME funds must be used during the construction or rehabilitation of the project.

### **Ineligible CHDO Activities**

Using the CHDO set-aside funds, a CHDO may not undertake any of the following activities:

- Rehabilitation of existing homeowners' properties;
- Tenant-based rental assistance (TBRA); or
- Down payment and/or closing cost assistance to purchasers of housing not developed with HOME CHDO set-aside funds.

**Note: A CHDO may engage in the above activities using non-CHDO set-aside funds as a subrecipient.**

CHDOs may also act as subrecipients with non-CHDO set-aside funds by undertaking other HOME-eligible activities such as:

- Tenant-Based Rental Assistance (TBRA)
- Owner-occupied rehabilitation of single-family dwellings
- Down payment or closing cost assistance in the acquisition of single-family units

## **CHDO OPERATING EXPENSES**

From time to time, funds may be available to provide general operating assistance to CHDOs. When funds are available, certified CHDOs that are administering an eligible project funded from the CHDO set-aside may be eligible to receive funds to be used for operating expenses. The regulations allow that KHC allocate no more than 5 percent of its HOME allocation for CHDO operating expenses. However, KHC reserves the right to further restrict the amount of funds an entity may receive for CHDO operating funds. This allocation does not count toward the required 15 percent CHDO set-aside funds that are to be used by CHDOs for projects.

KHC will allocate CHDO operating funds as long as funds are available. The amount of operating funds awarded will be based on, but not limited to, factors such as:

1. Total number of units produced
2. The amount of money expended
3. Capacity Scorecard issues

Operating funds will be provided on a fiscal year basis (July 1 – June 30) provided funds are available and the CHDO has demonstrated acceptable performance.

**Although the disbursement of CHDO operating funds is not tied directly to the drawdown of CHDO project funds, KHC reserves the right to delay disbursement of operating funds if it is evident that a CHDO project is experiencing excessive delays.**

KHC reserves the right to reduce the amount of, or not award, CHDO operating funds based upon its evaluation of the CHDO's production and overall performance.

Eligible operating expenses for which CHDOs may use operating funds include:

- Salaries, wages, benefits, and other employee compensation
- Employee education, training, and travel
- Rent and utilities of CHDO's office space
- Communication costs
- Taxes and insurance of the CHDO
- Equipment, materials, and supplies

## PROCESS FOR DRAWING CHDO OPERATING FUNDS

CHDO operating funds are awarded on a fiscal year (July 1 – June 30) basis. Draw requests for eligible expenditures may be made on a calendar quarter reimbursement basis (CHDO must first expend the funds and then request reimbursement from KHC). For example, the CHDO may submit a draw request in October for eligible expenses incurred and paid in calendar quarter July – September. Final draws should be submitted within 30 days of the end of the contract year.

## CHDO PROCEEDS Per CPD Notices 97-9 and 97-11

In an effort to support the organizational strength and financial stability of CHDOs, KHC may, upon request, allow a CHDO to retain proceeds and/or program income generated from its CHDO set-aside projects. This option provides CHDOs with an equity stake in their projects. Examples of CHDO proceeds include funds resulting from: the permanent financing of a CHDO project which is used to pay off a CHDO financed construction loan, the sale of CHDO sponsored rental housing to a second non-profit, the sale of CHDO developed homeownership housing, the principal and interest payments from a loan to a buyer of CHDO developed homeownership housing. Rental income which is generated by a CHDO-owned project does not constitute CHDO proceeds.

CHDO proceeds which are retained by a CHDO are not subject to the requirements of the HOME regulations, except for the requirements of 92.300(a)(2). (This paragraph states that HOME funds recaptured because housing no longer meets affordability requirements under 92.254(a)(5)(ii) are subject to HOME requirements.) Thus, the Davis Bacon Act, National Environmental Policies Act, and Uniform Relocation Assistance and Real Property Acquisition Policies Act do not apply to the use of CHDO proceeds. However, because CHDO proceeds are derived from the expenditure of HOME funds, any activities which are funded with CHDO proceeds may not be contributed as match.

Once CHDO proceeds are used, no further HOME requirements must be met. Funds generated from the use of CHDO proceeds are not CHDO proceeds.

**However, per CPD Notice 97-11, the first-time proceeds are used, the funds must be used for housing activities to benefit low-income households. KHC defines low-income as households at or below 80 percent of area median income. Funds generated from the use of CHDO proceeds are not CHDO proceeds.**

### Requesting Approval to Retain CHDO Proceeds

To be eligible to request to retain CHDO proceeds, a CHDO must meet, at a minimum, **all** the following criteria. KHC reserves the right to require additional information to be submitted for review and analysis.

1. Demonstrate a minimum of three (3) years of experience administering a revolving loan fund in a size and amount similar to the anticipated revolving loan pool to be derived from the use of CHDO proceeds. In its request, the CHDO must describe or provide the following:
  - a. The type of existing revolving loan fund it administers (housing, economic development, etc.);

- b. The number of loans being serviced;
  - c. The year-to-date balance sheet for the revolving loan fund (must be current within 30 days of submission);
  - d. The length of time the revolving loan funds has been in place (minimum of three years);
  - e. The source (or seed money) that established the fund and any associated restrictions;
  - f. The loan servicing mechanism the CHDO utilizes (loan tracking software, manual ledger, etc.); and
  - g. A copy of the CHDO's policies and procedures for loss mitigation and loan delinquencies.
2. Employ an on-site loan servicing department and/or finance officer or contract with a 3<sup>rd</sup> party to provide this service.
  3. Complete a successful HOME monitoring visit with no outstanding concerns or findings for the past three years. Any other KHC-financed projects must also be successfully monitored.
  4. Complete an audit compliant with 2 CFR Part 200 and the Single Audit Act Amendments of 1996 for the past three years.
  5. Submit most recent financial statements, indicating no discrepancies.
  6. Ability to submit financially sound activities/projects as demonstrated by activity set-ups that contain costs that fall within the HOME guidelines for development subsidy and direct subsidy.
  7. Ability to meet project commitment and completion deadlines as outlined in the HOME funding agreement.
  8. Knowledge of *eligible* uses of CHDO proceeds and ability to document CHDO proceeds as demonstrated by appropriate accounting practices and ledgers.
  9. Follow financially sound procedures that properly segregate duties and funding streams.

CHDOs allowed to retain CHDO proceeds and/or program income must report annually to KHC how these proceeds were utilized. KHC reserves the right to disallow a CHDO to continue to retain CHDO proceeds, if deemed necessary.

## PROGRAM INCOME

Program income never loses its federal identity and is always subject to HOME regulations. HOME funds that are a result of **repayment** or **recapture** are always considered program income, even if originally funded from the CHDO set-aside. **Repayment** occurs when a HOME-funded project, including CHDO set-aside funds, is terminated before completion. **Recapture** occurs when a HOME-funded project, including CHDO set-aside funds, does not continue to be the principal residence of the HOME-assisted home buyer for the full affordability period. No administrative fees may be retained on repaid or recaptured funds.

If a CHDO is acting as a subrecipient, the funds generated from HOME-assisted activities are program income and are subject to HOME program income requirements.

A CHDO may retain 10 percent of realized program income as administrative fees, except in the event of repayment or recapture as noted above. All remaining program income must be reinvested into HOME-eligible projects. If the CHDO has an active HOME-funded project, the realized program income must be expended prior to requesting to draw down additional HOME funds from KHC. The generated program income, as well as any CHDO proceeds being utilized in the active HOME funded project, must be identified on a revised HOME project set-up report.

## **CHDO PROCUREMENT**

As noted in HUD CPD Notice 97-11, CHDO organizations are not subject to the requirements of 2 CFR Part 200 in regard to the procurement of goods and services. However, KHC strongly encourages organizations ensure that costs are reasonable and equitable. This exemption is only applicable to procurement associated with CHDO-eligible projects; CHDOs must still follow appropriate procurement procedures compliant with 2 CFR Part 200 for its non-CHDO projects. KHC may request a copy of the CHDO's procurement policy for any non-CHDO project funding proposals.