

REQUEST FOR PROPOSALS Affordable Rental Housing Guidelines

The City of Houston (City) invites Requests for Proposals to assist a City of Houston 2008 Tax Credit Project that has been awarded a Low-Income Housing Tax Credit commitment from the Texas Department of Housing and Community Affairs.

The City will offer subsidies through a performance-based loan per the Applicable Federal Rate with a 20-year term for new construction or a 15-year term for rehabilitation. City loans will be forgiven at the end of the applicable 20-year or 15-year term so long as the Borrower complies with the terms and conditions of the City loan agreement, and the property is in compliance with all HUD and City requirements. Each funding source is subject to specific regulatory restrictions, and Applicants should assume HOME restrictions will apply when planning their projects.

IMPORTANT NOTE: APPLICANT IS ADVISED TO CHECK PROPERTY ADDRESS AGAINST THE MOST RECENT FLOOD MAPS WHICH CAN BE SEARCHED BY ADDRESS AT THE FOLLOWING WEB SITE: WWW.TSARP.ORG. HCDD IS UNABLE TO FUND PROJECTS IN THE 100-YEAR FLOOD PLAIN.

Requirements for the properties selected for City investment include at a minimum:

1. Applicant must comply with all pertinent federal regulations.
2. No part of the improvements on the property may be located within the 100-year flood plain as identified on the most current Federal Emergency Management Agency Flood Maps.
3. The Applicant's guarantors will be personally liable for the City loan through completion of the project. Upon project completion, per HUD requirements, personal liability of the guarantors will be released except for losses due to fraud, theft, failure to pay taxes, failure to maintain insurance and similar acts or omissions ("bad acts exceptions"). The property will remain subject to the lien in favor of the City. The Applicant will remain liable for the loan.
4. Either payment and performance bonds, or a satisfactory letter of credit, will be required. See specific directions on pages 11-12 of this RFP.

5. The City will require the Applicant to place affordability covenants on units in each project that will guarantee affordability for up to 15 years after completion of Renovation and 20 years for New Construction. The covenants restrict the amount of rent that can be charged for certain units according to 24 CFR 92.252 (e). The number of restricted units is based upon the City's loan for the project relative to the overall capital position of the project. All City covenants must be in a position superior to all other debt.
6. *Pro forma* financial statements must make adequate provision for replacement reserves, HUD rents, and the anticipated number of rent-restricted units as estimated by Applicant.

Opening and Closing Dates for this RFP:

This RFP opens on January 11, 2008, and closes on March 31, 2008.

I. Threshold Requirements:

A. Eligible Borrowers:

1. For-profit and not-for-profit Applicants, acting individually or as participants in a limited partnership [LP] or limited liability corporation [LLC], are eligible applicants. Not-for-profit entities must provide evidence of IRS tax-exempt status.
2. Not-for-profit entities with extensive community service records may wish to apply for Community Housing Development Organization (CHDO) certification with their Affordable Rental Housing application. If certified as a CHDO, organizations winning HOME funds under this Application may be eligible for operating support in addition to the project-based investment made by HCDD.
3. Applicants and Applicant team members must be in good standing with HCDD on all previous loans or loan commitments. There may be no defaults or negative collection actions. No team members may be "debarred." There may be no management issues outstanding.

B. Geographic Targeting:

Projects must be located within the City of Houston.

C. Application Requirements:

1. A complete Application with all Checklist items, presented in notebook form as specified herein.

2. A letter of support from the district City Council Member, whose district the project located, will be required.
3. Applicant or members of the development team must demonstrate substantial prior experience with the type of project contemplated in the Application.
4. Phase I Environmental Site Assessment is required with the Application.
 - a. Should further environmental assessment be warranted, as identified in the Phase I ESA, the City will work with Applicant to determine project eligibility.

II. Selection Criteria

A. Development Capacity

The City believes that capacity is built incrementally. Accordingly, the City will look at the total number of successful projects an Applicant has completed as well as the size of these projects. The City reserves the discretion to refuse funding a project that goes above 20% more than an Applicant's largest previous project.

B. Management Capacity

The City believes that property management skill is critical to the long-term success of an affordable housing project. The proposed property manager, whether in-house or third party, will be analyzed to determine experience and skill with respect to multifamily property operation. This analysis will include the financial results of Applicant's previous rental projects.

C. Leverage

The City wishes to leverage its funds with other sources of affordable housing funds to maximize housing production in the City. Projects with financial support from other sources will receive higher consideration than projects that envision no further investment toward the project.

D. Quality of Life

The City encourages the development of housing that provides enhanced amenities such as play areas, clinics or other services useful to tenants.

III. Financing Terms and Loan Limits

A. Loan Amounts

Applicants are to make a specific loan request to the City. The request should be the *difference between (a) the Applicant's equity plus commercially available debt or other capital contributions; and (b) the project costs.*

1. As a policy, the City desires to provide enough funding to each approved transaction to increase the availability of affordable units at approved standards without over-subsidizing the project or increasing the risk associated with too much leverage in a project.
2. The final loan amount will be determined during underwriting, and will reflect the amount needed to achieve sustainable affordability for the project.

B. Terms:

1. Projects must be complete within 24 months of the starting date of the contract.

C. Repayment:

1. Upon satisfactory completion of construction per HUD requirements or other specified target date, personal liability of the guarantors will be released, subject to the bad acts exceptions. Loans will continue to be subject to repayment should affordability or other covenants be violated.
2. Loans are transferable at property sale, as described below.
3. Loans are payable in full in the event of noncompliance or default that are not remedied by the borrower.
4. At maturity, loans are forgiven if all contractual obligations have been met.

D. Interest Rate: **Zero percent interest will be charged to nonprofits and the minimum Applicable Federal Rate to for-profit s.**

E. Equity and Match Requirements

Every project must include 12.5% of HOME investment in Match.

For virtually every dollar of HOME funds drawn down for a project, HUD requires a \$0.25 or 12.5% match obligation by the City of Houston. This liability is subject to change, but currently is at 12.5%. A community's non-federal contribution of cash, assets, services,

labor and other resources of value to the HOME Program represent match credits and are more particularly described hereunder. To this end, the City encourages Applicants, to the greatest extent possible, to note any and all contributions to a specific project that the City may be able to use as a credit in order to meet its annual match obligation.

F. Affordability Covenants:

1. All projects are subject to affordability restrictions which limit resident incomes and rents paid based on levels of Adjusted Median Income (AMI) established annually by HUD. <http://www.hud.gov/>
2. HOME–designated units are restricted to households earning incomes not to exceed 60% of the Area Median Income. CDBG-units are designated as low to moderate rental units.

G. Security:

1. Documents as required by the City and its attorneys including without limitation, a deed of trust, promissory note, Uniform Commercial Code [UCC] financing statement, assignment of all contracts, leases and rents, and a recorded land use restriction agreement will be required for every loan.
2. Land use restrictions running with the land will be recorded in higher priority than any first lien made by a commercial financial institution, and will remain in force despite bankruptcy, sale or other adverse action taken by any party against the property.
3. Borrowers are advised to communicate with their commercial lenders about the higher priority of the land use restrictions for 15 years and 20 years.
4. Borrower will NOT be permitted to place subsequent liens against a property either in priority or subordinate to City's lien. No additional debt is allowed without prior written approval by the Director of HCDD.
5. Title Insurance and Flood Insurance will be required.

H. Subordination:

1. HCDD is willing, for acquisition or construction, to subordinate its loan to another lender's lien if required as a condition of that lender's loan commitment. Affordability covenants contained in the land use restrictions will NOT be subordinated.

I. Transferability:

1. Loan commitments are not transferable.

IV. Application Format

One original and four copies of the Affordable Rental Housing Application should be submitted in a 3-ring binder, tabbed into sections. Tabs for each document in each Section are required.

HCDD reserves the right to allow correction of minor administrative deficiencies [1-2 pages]. ALL SUBMISSIONS BECOME THE PROPERTY OF HCDD.

V. Application Forms

The following items are to be included in Section I of the Application Binder:

- A. The Affordable Multifamily Checklist [online] is designed to help Applicants submit a complete Application. It should be checked off as each required document is placed in the submission binder, and signed by the person filing the application on behalf of the Applicant. It is a part of the application. Attach the nonrefundable \$500 application fee to this form [for-profit only].
- B. The Application Forms [online]:
 1. General Purpose Application Form
 2. Agreement and Certifications form signed by an officer of the Applicant
 3. *Notarized* Indemnity Agreement
 4. *Notarized* Affidavit of Ownership or Control
 5. Form A: Fair Campaign Ordinance
- C. Narrative Description of Project
- D. Detailed Project Construction / Renovation Budget
 1. This budget should make provision for all handicapped accessibility requirements under the Rehabilitation Act of 1973 (24 CFR Part 8) and 24 CFR 100.205.
 2. For properties built before 1978, lead-based paint hazard reduction should be budgeted to comply with 24 CFR 92.355.
 3. Under the federal Davis-Bacon Wage Act. (40 USC 276a-276-a5, 24 CFR Part 70), prevailing wages must be paid on all construction and related work on projects

that include more than twelve (12) HOME-assisted units in a project.

- E. Sources and Uses of Funds Form
- F. 15-Year Income and Expense Projection [the pro-forma operating budget]
- G. Letter of Support from District City Council Member of the project location.
- H. Evidence of Site Control
- I. Project Staffing Plan/Information on Third Party Management
- J. Evidence of Financial Commitments to the project
- K. Architect's letter stating appropriateness of hard construction costs and a statement regarding extension of the life of the property as a result of the upgrades.

The following items are to be included in Section II of the Application Binder:

- A. Market Study
- B. Phase I Environmental Study
- C. Appraisals: As-is and As-Completed
- D. Survey
- E. Engineering Soils Report
- F. Last 2 years audited financial statements and tax returns of all principals and guarantors associated with the borrowing entity.
- G. Marketing Plan, including affirmative marketing components.
- H. Photographs or elevations of proposed project.
- I. Architectural plans used to prepare Scope of Work.

Application Due Date:

- A. Applications are due on or before 5:00 pm on March 31, 2008.
- B. A nonrefundable application fee of \$500 [for-profit entities only] must accompany the Application.
- C. *Late Applications will be returned unopened.***

D. Applications will be accepted ONLY at the following address:

**601 Sawyer, 4th Floor
Houston, Texas 77007
Attn: Mr. Donald Sampley**

VI. The Conditional Commitment

Following the receipt and analysis of applications and a required letter of support from the applicable District City Council Member, whose district the project is located. The Director of HCDD, in consultation with senior staff, will approve the issuance of Conditional Commitments for funding to various projects. A Conditional Commitment is a letter stating that the Department recommends funding a project, subject to the development of an appropriate contractual agreement between the City and the Applicant. The Conditional Commitment is a letter that says that the City will proceed with a project in good faith, while reviewing Applicant's *pro forma* and complete application.

Customarily, there will be some conditions attached to the proposed contract. Items, such as environmental hazard abatement, may have to be addressed. Underwriting may also reveal deficiencies in an application that will need to be addressed following the issuance of a Conditional Commitment.

IMPORTANT NOTE:

Once an application has been received by the Housing and Community Development Department, the total project must be in compliance with all federal environmental regulations as explained under 24 CFR Part 58. During this review period, neither an Applicant nor any participant in the development process, including public or private nonprofit or for-profit entities or any of their contractors, may commit or expend any funds, including non-HUD funds, or undertake any activities having either an adverse environmental impact or limitation on the choice of reasonable alternatives.

If the Applicant does not own the project prior to submitting an application for federal assistance, the Applicant may enter into an option agreement to secure its interest in acquiring the land. This option should be a nominal portion of the purchase price and subject to a determination by the City on the desirability of the property for the project, following the completion of the environmental review.

The environmental review process takes from 60 days to complete. If any funds [private or public] are spent or committed to a project prior to the completion of the environmental review process, the Housing and Community Development Department cannot provide federal funding for the project.

Projects do sometimes fail to materialize after a Conditional Commitment letter is issued. HCDD reserves the right to rescind the Conditional Commitment and proceed to the next highest-priority project identified through the most recent application round; or to add the released funds to the upcoming funding round pool, at its sole discretion.

Critical Factors include the following:

Performance Bonds:

- A. The contractor shall furnish a performance bond for the full amount of the construction contract conditioned upon the contractor's full performance of the construction contract. OR:
 1. Deposit certain United States bonds or notes in an amount equal to 10% of the amount of the construction contract. A duly executed power of attorney and agreement authorizing the collection or sale of such United States bonds or notes in the event of default, shall accompany the deposited bonds and notes.
 2. Provide an unconditional letter of credit in a form approved by the City in the amount of 10% of the construction contract.
 3. Furnish a certified or cashier's check, bank draft, Post Office money order or U.S. currency in an amount equal to 10% of the amount of the construction contract. The contractor shall make the checks, drafts or money orders payable to the City of Houston.
- B. The contractor shall also furnish a maintenance bond to secure the warranty required under the construction contract between the Applicant and the contractor.
- C. Payment and performance bonds shall be made payable to the City and the borrower, and be in a form approved by the Director of HCDD. The surety upon the bond must be on the current list of accepted sureties on federal bonds published by the United States Treasury Department and / or on the State Board of Insurance list of authorized insurance companies in the State of Texas.

Related Parties:

- A. Fees Paid to related parties must be fully disclosed at the time of application. Fees must be customary and commercially reasonable, as solely determined by the City.

VII. Underwriting and Contract Development

Underwriting encompasses three separate processes:

- A. Evaluation of the construction or renovation budget;
- B. Evaluation of the income and expense [*pro forma*] operating budget;
- C. Evaluation of the plan for funding the budget.

Following underwriting, a contract will be developed between the developer and the City. This contract will specify the terms under which the City will provide funding to the project; the number of units to be developed; the term that the units will be maintained as affordable; and other conditions of the agreement.

If the successful Applicant is currently certified as a CHDO, a second contract will be prepared regarding operating support.

Standards are summarized below, and are subject to change from time to time:

Construction Budget:

1. Borrower must use HCDD's Construction Budget Form at initial application or a budget meeting HUD Section 202 requirements.
2. Borrower is responsible for meeting budget within 5% of initial projections. Any excess cost is solely borrower's responsibility to fund through additional equity in project.
3. HCDD employees with experience in construction costs will evaluate project budgets. Projects with costs substantially different from standard may need to raise additional third party equity.
4. Construction interest must be a budgeted development expense.
5. A rent-up reserve for operating costs should be provided in the projections for a period not to exceed 18 months.

Operating Budget:

1. 15-year cash flow projection must show debt coverage ratio never falls below 1.15X.
2. Vacancy should be projected at 10%.
3. Projections should include a minimum of 40% of gross potential income planned for operating and maintenance expenses.
4. Management fees are limited to 5% of gross actual income.
5. Escalations for future rent and expense projections will be realistic and will maintain a 1% minimum differential between income and expenses. For example, if income is projected to increase 2% per year, expenses must increase 3%, and so forth. HUD's Community Planning and Development division sets maximum allowable HOME rents annually, which can be found at www.hud.gov under the subtitle of "HOME rent limits."
6. HCDD staff will monitor Applicant annually to ensure compliance with HUD rent limits, occupancy, and maintenance standards as set forth in the contract. An annual inspection, at the sole cost of the property, will be required.
7. Projects will escrow replacement reserves annually of at least \$200 per unit for every unit within a project. Escrows will be monitored annually by HCDD. Release of funds from these escrows will be subject to the approval of HCDD as detailed in the specific loan agreement.

Plan for Funding Budget:

1. HCDD's Sources and Uses of Funds Form must be completed.
2. Equity sources should be identified and marked "committed" or "requested" in the case of grants.
3. Debt sources should be identified.
4. Outside lender's signed and accepted loan commitment must accompany application.

VIII. Legal

Once a contract has been developed, HCDD will request its outside legal counsel to prepare the proper legal documents for the loan.

IX. City Council Approval

Once a contract has been developed, it will be placed on the agenda of the Houston City Council. All contracts must be approved by the City Council. For this reason, a letter of support from the district Council member has been established as a threshold requirement. HCDD strongly advises that applicants seek additional letters of support from local civic clubs, neighborhood groups, or the Super Neighborhood Council.

X. Closing and Construction

Following Council Approval of a contract, the closing will be scheduled.

- A. Construction may begin only with the written approval, between the owner and contractor [Notice to Proceed] sent to HCDD.
- B. A Release of Funds notification is also required.

XI. Project Completion Review

Upon Project Completion, the following must be reviewed:

- A. Project inspection by a qualified inspector.
- B. Certification that project meets all applicable standards.
- C. Lead-based paint requirements have been met.
- D. Only eligible costs have been paid for with HOME funds.
- E. Costs must be “reasonable and customary” and items paid for must be “suitable.”
For example, a bathtub is customary and suitable; a hot tub is not. (42 CFR 130, Subchapter II, Section 212 (e)(2).
- F. Any change orders must be audited.
- G. Contractors must submit:
 - 1. Final invoice.
 - 2. Non-kickback certificate.
 - 3. Waiver of liens.
 - 4. Executed inspection certificates.
 - 5. Warranties.

- H. Contractors cannot be paid 10% retainage until final completion of all forms and certifications.

XII. Initial Rent and Occupancy Monitoring Required by Houston HCDD

HUD requires that program funds benefit appropriate households. Accordingly, at initial occupancy, a review of rental activities and tenants is required.

- A. 100% of HOME-assisted units must be rented to families with incomes not to exceed 60% of Area Median Income. 100% of CDBG-assisted units must be rented to Low to Moderate income families.
- B. Tenant files must be established to show tenant eligibility, including:
 - 1. Tenant's application.
 - 2. Income verification documents [wage or income statements].
 - 3. Copy of the HOME limits.
 - 4. Any other document used to establish eligibility.
- C. Tenant leases must not contain any prohibited provisions. Prohibited lease terms may be found at 24 CFR 92.253(b) and 24 CFR 92.253(c).
- D. The Fair Housing logo must be on all marketing materials.
- E. Calculation of rents must be verified and comply with 24 CFR 92.252 [High-HOME and Low-HOME rents, fixed and floating units, and methods of compliance are detailed here].
- F. Managers must ensure that a sufficient number of units are leased or held available to meet the targeting requirements detailed in their contracts.

Full details of HUD regulations are available on the HUD website: www.hud.gov.

XIII. Ongoing Monitoring and Compliance

HCDD will conduct periodic monitoring reviews of the operations of assisted projects. Monitoring is the primary tool that HCDD uses to ensure that federally funded projects are being operated in accordance with program requirements. The following information is presented in outline form, to help applicants understand the ongoing requirements of accepting financial assistance from HCDD:

- A. During the affordability period specified in the contract, Applicant will comply with and assist with meeting HUD monitoring requirements.
- B. Properties will be inspected regularly to ensure that they meet or exceed minimum property standards as well as federal standards. HCDD will schedule on-site inspections in accordance with 24 CFR 92.504[d](1). This regulation requires inspections a minimum of once every two years. There will be a reasonable inspection fee to be paid by the property owner.
- C. Monitoring will follow a rotating schedule with emphasis on at-risk projects. When a concern is identified, follow-up inspections will be scheduled to help find a resolution to the problem.
- D. Rent and utility allowances will be reviewed annually.
- E. Tenant recertification will be required periodically.