

DHCD Notes Issued with Addendum #2

1. Q: Does DHCD have any opinion about or required language for ground leases?

A: For general information about ground leases, see Massachusetts Housing Partnership's guidance on *Developing Affordable Housing on Public Land*, available at http://www.mhp.net/writable/resources/documents/mhp_public_land_guide2.pdf DHCD will provide further guidance, including a model form of ground lease that we recommend you use as your starting point together with some recommendations for additional language addressing the particular circumstances of mixed-income public housing redevelopment projects. We will not require that you use any model form verbatim, but starting with this version as modified per DHCD guidance will help ensure that you address the key elements, and will also expedite our review process. We expect to release the additional guidance regarding ground leases through a NOFA addendum the week of February 1, 2016.

2. Q: Does DHCD have any guidance or requirements for use of LHA non-profit entities as a member of a general partnership?

A: The guidance we received from Attorney General's Office (AGO) and Inspector General's Office (IGO) was that if an LHA wishes to transfer its interest in state public housing real property to a controlled affiliate of the LHA, including one that serves as a general partner in a limited partnership that owns or leases the real property, it must still comply with the disposition requirements of MGL c. 30B in transferring that interest to the controlled affiliate, including but not limited to Section 16 thereof.

3. Q: If an LHA has an RFQ that meets the requirements for selection of a development partner under Chapter 16 of the HUD Procurement Handbook is that method of procurement and procurement tool (the RFQ) acceptable?

A: Not necessarily. Since this program involves state public housing, any procurement of a development partner will have to comply with MGL c. 30B and, if applicable, MGL c. 121B, for both developer procurement and disposition. The HUD Procurement Handbook governs compliance with Federal requirements only.

4. Q: Besides having a development partner, what other pre-redevelopment/development activities need to be completed prior to the deadline?

A: Enough to be able to put together a proposal that is responsive to the requirements of the RFP. At a minimum, it would require at least some market research, and design work to come up with a concept plan. The more work done pre-proposal, the stronger the proposal will be.

5. Q: Are there any current sources of affordable housing finance that are prohibited for use with this initiative?

A: The initiative emphasizes the importance of bringing non-state resources to the table, reflecting this era of resource scarcity. Projects need to be able to support substantial private debt and generate private, non-tax credit equity investment. While no particular funding source is prohibited, please note that 35 points in the NOFA's 100-point scoring rubric focuses on this issue, and ranks proposals higher if "the proposal's feasibility requires relatively little or no need for state capital

resources including Low Income Housing Tax Credits, and little or no need for additional state operating resources beyond those currently provided to the development.”

- 6. Q: Will project-based Housing Choice Vouchers (HCV) from the state program be made available under the state’s Moving To Work (MTW) Plan and the requirements of 24 CFR 983? Will existing state subsidy be available, and if so, how will that work in terms of annual adjustments, waiting lists, etc.?**

A: Assume that existing state-aided public housing units will continue to receive state public housing operating subsidy and will remain state-aided public housing units. As noted above, proposals that assume the use of additional state capital or operating resources, including DHCD-administered HCVs, will score lower than proposals that avoid these resources. Also note that HUD has discouraged the use of HCVs to subsidize state public housing.

- 7. Q: Is it possible to get a list of anyone who registered to attend the session?**

A: Yes, a list of both session attendees and other parties who have formally expressed interest to DHCD in receiving information on this program through January 19, 2016 is attached to this addendum.

- 8. Q: Is mixed use an acceptable component of a project proposed for the initiative (e.g. housing over retail)?**

A: Potentially, though there would need to be a strong showing of market potential for retail – both in terms of investment/financing and ultimate performance; retail historically has been riskier than housing development.

- 9. Q: Can you make certain that I get any information on the demonstration program on a direct basis? My Massachusetts clients are pretty good at forwarding me information but it would be easier if I could be added to the emailing list for e-blasts on this or any program wide e-blasts.**

A: As stated in Addendum #1 to the NOFA, all future addenda to this NOFA will be posted on DHCD’s website as addenda to the original Public Housing Notice #2015=29, which, along with relevant attachments, can be found here: <http://www.mass.gov/hed/housing/ph-manage/public-housing-administration-notices.html> Email notification of the posting on DHCD’s website of any new addenda to this NOFA will only be sent to parties who request to be placed on a NOFA contact list and who provide their name, address, email and phone contact information to Paul McPartland at paul.mcpartland@state.ma.us

- 10. Q: Can we procure a developer and THEN dispose of land?**

A: Please see DHCD’s memorandum on “Procurement, Leasing and Contracting Issues in Connection with Mixed-Income Public Housing NOFA and RFP” (issued with Addendum #2) for recommendations on this topic.

- 11. Q: Does this concern of the AGO and IGO regarding the process for property disposition pertain to disposition of federal public housing as well?**

A: Yes, presumably any disposition of state or federal public housing would have the same c. 30B issues, as federal public housing is still real property owned by a governmental body. There are additional restrictions in MGL c. 121B relating to disposition of property that require the sales proceeds of a state public housing site to be paid to the town and the state’s bond sinking funds. However, DHCD’s intent is to use a particular funding source for these Mixed Income program grants

that will allow DHCD to waive the statutory requirement and allow the LHA/development to retain all sales proceeds. [DHCD has a \$50M authorization under the 2013 Housing Bond Bill that permits it to waive certain requirements of c. 121B for projects funded from this source.]

12. Q: Does the completed development need to retain the same number of state public housing units as currently exists?

A: Yes.

13. Susan Connelly of the Massachusetts Housing Partnership noted that LHA deliberations about scoring and selecting developers are subject to public meeting laws.

14. Roberta Rubin, DHCD Chief Counsel, stated that developer proposals (including financials) are subject to public record requests. She observed that because of this, developers applying to public projects tend to provide creditworthiness certificates from banks rather than detailed financials.

15. Q: Are there any particular rules on the location of the public housing units? Can the replacement units be relocated on other sites?

A: The public housing units could remain in place, relocated to new buildings on site, or even conceivably be relocated, subject to fair housing and relocation requirements. However, units can't be demolished in one phase unless an equal number of units are fully funded to be replaced within the same phase/construction contract.

16. Q: Do the number of bedrooms per state-aided public housing unit need to remain the same?

A: Increases in numbers of bedrooms per unit would not be a problem, but decreases would be scrutinized for compliance with fair housing issues.

17. Q: We'd like to increase the number of public housing units.

A: We're not allowing an increase in public housing units, due to limited resources and restrictive language in the state budget line item for state public housing operating subsidy, which prohibits adding additional units to the state portfolio that would require operating subsidy.

18. Q: If we build an addition on to a public housing building and don't give up any public housing units, is that an allowable concept for this program if the additional units are all market rate?

A. Building an addition may be allowable in lieu of new buildings, as long as the aggregate increase in units generates additional resources that address the capital needs of the existing building. However if the public housing units and the market units are segregated, this could raise a conflict with fair housing laws.

19. Q: If there is a local inclusionary zoning requirement that a portion of the new units be affordable, can those new affordable units replace some of the public housing units?

A: You must end up with the same number of state-assisted public housing units as currently exists, regardless of any inclusionary zoning requirements. However, you should consult your attorney to determine whether those units would "count" towards any local inclusionary zoning requirements.

20. Q: Will any funding be made available to support this program?

A: We are asking for and anticipating the availability of additional capital funding beyond what is already allocated for public housing for this process. However we do not yet have a dollar amount or a firm commitment.

21. Q: Must the units remain permanently deed-restricted as state-aided public housing?

A: Yes.

22. Q: Re: the combination of the developer selection RFQ with the disposition of the public housing property - is merely an LHA board vote to enter into some future sale sufficient to do the binding or do you want to have a formal option of some kind?

A: The developer will likely drive that process and insist on having a formal contract. You should consult your attorney as to compliance with the disposition requirements of M.G.L. c. 30B.

23. Q: The timeline seems too short to procure a developer and then respond to the NOFA. Will the deadlines be extended?

A: We expect that the deadline will be pushed back. [See Addendum #2 for the new NOFA deadline.]

24. Q: When will the sample RFP for selection of the developer, mentioned in the NOFA, be released?

A: [See the sample RFP issued as part of Addendum #2.]

25. Q: When you issue the RFP, will you make it clear which parts are required vs. where there is room for discretion or flexibility?

A: We ask that you use the provided RFP form, or a substantially similar document.

26. Q: Any issues about ground leases vs. disposing outright?

A: DHCD expects, in general, that any disposition of property for multifamily rental use will be by long-term ground lease, and that is a requirement for any property that will include state-aided public housing units. DHCD also recommends use of a ground lease during the development period for homeownership units, even if units will ultimately be sold to homeowners in fee simple.

27. Q: How do you combine state public housing in a tax credit deal?

A: The public housing tax credit units would have to conform with c. 121B and our public housing regulations. We've done a number of mixed finance deals with tax credits where the two have been combined. The owner of property can be an LLC that would permit access to the tax credits, but there would be restrictions that would obligate the owner to operate the state public housing units in accordance with c. 121B.

28. Q: If you do create new public housing units and they're in a building with market rate units, is there any requirement for who has to maintain those public housing units going forward? Is that the new developers responsibility, or would the housing authority maintain the units? Public housing employee unions are concerned about their work and responsibilities.

A: You will probably want a single property manager. If you put the units in private hands, then it is likely that the property will be administered and maintained by a private management company, and that will reduce the work available for the LHA's union members.

29. Q: If the LHA transfers the property by ground lease or deed, is the new owner of the property then subject to c. 30B? That is, if some units are public housing and others are private market units, are all of the units, none of the units, or just the public housing units subject to c. 30B?

A: DHCD's "off-the-cuff" answer is that you need to look at who is doing the purchasing, not how they get their money. If the person doing the purchasing is an instrumentality of the housing authority, then c. 30B would apply; if not, then it would not apply. It seems likely that if the housing authority maintains management, c. 30B applies across the board. That said, the IGO is the agency responsible for interpreting c. 30B, and you are advised to consult your attorney regarding c. 30B.

30. Q: Would these mixed income developments be excluded from the LHA's capital improvement plan that is annually submitted to DHCD?

A: The answer would be dependent on the structure of the deal and the capital and operating monies available to it, both from the market units and from any other sources. However, the intent of this program is to generate private resources to support state-aided public housing, and DHCD generally anticipates that project replacement reserves will address future capital needs of the public housing units as well as other units at the property.

31. Q: If a proposal can demonstrate that the market rate housing can support all of the public housing unit's capital needs, then would that development shoot to the top of those considered?

A: Such a proposal would presumably score extremely high under the NOFA's scoring rubric.

32. Q: What's your time frame for the pro forma to show that no state subsidy is required? A 20 year span? A 10 year span?

A: The program goal is no additional state capital or subsidy over 20 years. Projects that come closest to that goal will score highest on that portion of the NOFA scoring rubric.

General comments from DHCD presentation:

- We have sought procurement guidance from IGO and AGO; after much consultation, there are no easy answers, although both agencies have been helpful in identifying the key issues. Based on these discussions, the IGO/AGO interpretation of the c.30B exemption for disposition of property to an instrumentality is that this exemption only applies to dispositions of property among a municipality and the municipality's instrumentalities, but not dispositions between an LHA and its own instrumentalities. Because dispositions between LHAs and their instrumentalities are considered by the IGO and AGO to be covered by the c. 30B process, we recommend that you issue a joint procurement and disposition announcement that will satisfy M.G.L. c. 30B requirements as to both developer procurement and disposition of real property, to avoid the possibility that a two-step process would result in the selected developer being ineligible to compete in a later disposition of the real estate. [Please see DHCD's memorandum on "Procurement, Leasing and Contracting Issues in

Connection with Mixed-Income Public Housing NOFA and RFP” (issued with Addendum #2) for recommendations on this topic.]

- **Requirements for 30B:** Briefly, c. 30B section 16 requires the following disposition process: **Step 1:** The LHA Board should vote to announce the property as available for disposition. **Step 2:** Specify any restrictions (the same number of state-aided public housing units must remain as part of the development.) **Step 3:** Determine the value of the property. **Step 4:** Comply with the advertising requirements in the Central Register and in a local newspaper. **Step 5:** RFPs must be opened publicly at the declared deadline, but you don’t need to make decision right then and there, so schedule a public opening and then deliberate as you see fit. **Step 6:** Publish the selection of the developer in the Central Register.
- **C. 30B Valuation Concerns and Examples:** MGL c. 30B, Section 16 requires a determination of value considered fair and appropriate by the real estate profession. As described in the memo noted above, following discussions with the IGO and AGO, DHCD is recommending that LHAs (a) conduct a joint developer procurement and disposition through an RFP process, (b) recite in the developer RFP that the LHA has made an initial determination that the value exceeds \$35,000, the threshold triggering the more comprehensive RFP requirements for land disposition under MGL c. 30B, Section 16, and (c) provide for disposition in accordance with an appraisal conducted within 180 days of the actual disposition date, subject to the requirements under MGL c. 30B regarding any disposition for less than market value.
- DHCD wishes to avoid being prescriptive regarding the nature of the development that will occur on any site – you have room for creativity. New or rehab, it doesn’t matter. The housing proposal just needs to be feasible and address the needs of current public housing units. Only prescriptions: applicability of c. 30; maintain the existing number of units; include a market rate component that significantly cross-subsidizes the public housing units.
- Next steps: DHCD will provide further guidance relating to ground leases.”