

PRE-BID QUESTIONS ON THE RFQ

DISTRICT OPPORTUNITY TO PURCHASE ACT

(D.C. OFFICIAL CODE 2001 ED., AS AMENDED, §§42-3404.31-37)

Brian Kenner
Deputy Mayor for Planning and Economic Development

Polly Donaldson, Director
Department of Housing and Community Development
1800 Martin Luther King Jr. Avenue SE | Washington, DC 20020

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Overview

The Department of Housing and Community Development (DHCD) has developed this document to provide answers to questions raised during the Pre-Bid meeting and via email in regard to the Request for Qualifications (RFQ). The last day to submit questions will be December 28, 2018. As a reminder, the RFQ is due Jan. 11, 2019 and can be submitted via the DHCD website [here](#).

DOPA and TOPA Timelines

If a TOPA process goes forward but does not close on the purchase of a property, does the DOPA process then start again?

If the District has expressed interest in the property during the 30-day offer period, the District can proceed with awarding the property to a prequalified developer who will enter the DOPA negotiation period with a seller immediately following the conclusion of the TOPA process.

DHCD Pre-Qualified Developers

Is there a limit on how many developers can participate in the DHCD pre-qualified developers pool?

There is no limit on how many developers can apply to participate in the DHCD pre-qualified developers pool. In fact, the District hopes many will apply as not every developer will be interested in bidding on each property.

Will the list of chosen developers be made public?

Yes, the list of pre-qualified developers will be published on the DOPA page of the DHCD website.

Will pre-qualified developers be allowed to partner on projects?

Yes.

Can two pre-qualified developers submit a joint proposal?

Yes.

Can a pre-qualified developer partner with a developer who is not a DHCD pre-qualified developer?

Prequalified developers need to be a controlling member of the partnership in order to partner with non-qualified developers.

DOPA Properties

If multiple, relatively small properties (for example, <10 units) are offered through DOPA, could DHCD bundle those properties to increase the efficiency of redeveloping those units?

The DOPA process is subordinate to the TOPA process. Since each building would undergo a TOPA process concurrently with its DOPA process, each building's tenants will have the autonomy to exercise their rights, making it highly unlikely for the District to bundle these properties. This scenario might be possible where a single property owner has put up multiple buildings for sale at the same time, and the tenants coordinate their TOPA responses.

What size buildings are eligible for DOPA? Will DHCD send expressions of interest for buildings with more than 20 units?

The District will review all DOPA notices submitted to DHCD for consideration. There is not a unit maximum on properties, as DHCD may express interest on any building with five or more units that serves as a housing accommodation.

How many properties will be available for bidding in the DOPA program each month?

The number of properties the District may bid on is dependent on how many DOPA eligible properties are offered for sale each month. In the past six months, approximately two to three buildings per month have qualified as DOPA eligible properties.

Are Certified Business Enterprise (CBE) program and First Source requirements required for renovations?

Yes, the developer will be required to comply with all applicable District laws.

Financing for DOPA Projects

When submitting a response to a Request for Proposals (RFP), can a response assume obtaining financing from Federal and District sources (for example, Housing Production Trust Fund, Housing Choice Voucher Program etc.)?

An acquisition budget will be necessary for the RFP but the funding application should not assume that District financing will be awarded. The project budget can list financing that will be applied for and/or financing under which the property qualifies for funding.

Since the acquisition price is set through TOPA, will DHCD provide any financing vehicles to help meet the price and still increase and preserve affordability?

DHCD does not provide financial incentives for developers to use in participating in DOPA. DHCD does offer funding for acquisition, predevelopment, and critical repairs through the [Housing Preservation Fund](#) and predevelopment dollars for nonprofits through the [Oramenta Newsome Fund](#) that can be used for the acquisition of DOPA properties.

Is the DOPA Affordability Plan subordinate to Senior Debt?

The DOPA Affordability Plan should take into account the different funding sources the developer is proposing to access to implement the development project. As such, the position of each funding source should not impact the DOPA Affordability Plan.

Is the DOPA Affordability Plan recorded in land records?

No, only the DOPA covenant is recorded.

Are other District housing programs (for example, rental assistance) included in the acquisition covenants?

This will vary according to each project and the subsidy sources already in place at DOPA properties.

Can DOPA properties obtain Section 8 subsidies?

Yes, DOPA properties can receive any subsidy to supplement rents at a property. Please see the DOPA regulations at 14 District of Columbia Municipal Regulations Section 2406.8 for further details on Section 8.

DOPA Affordability Principles

What is the difference between Area Median Income (AMI) and Median Family Income (MFI)?

The terms AMI and MFI are often used interchangeably in the housing industry because of their similarities. MFI stands for HUD Area Median Family Income and is used by the District's Inclusionary Zoning (IZ) Program to determine its Rent & Price Schedule. DOPA will be using the [IZ Rent & Price Schedule](#) to determine rent affordability levels.

Will DOPA properties be subject to rent control?

Yes, DOPA properties can be subject to rent control. The rule of thumb is that rent-controlled buildings are more than four units and built prior to 1975. There could also be DOPA buildings that are not rent-controlled (such as HCV buildings or some other affordability vehicle). If the building is already subject to another district or federal affordability program, or such a program is used to fund or operate the property after DOPA acquisition, then it may not be subject to rent control.

Does “Rent” mean “Net Rent” charged, or is it the Rental Assistance Demonstration (RAD) rents?

According to the DOPA regulations, the definition of Monthly Rent is the entire amount of money, money’s worth, benefit, bonus, or gratuity demanded, received, or charged by a housing provider as a condition of occupancy or use of a Rental units, its related services, and its related facilities.

How does a 70 percent voluntary agreement interface with DOPA?

A voluntary agreement is made between owners and tenants—sometimes raising rents high enough that the building becomes market-rate. As a result, such rent levels would not qualify for DOPA’s threshold requirements. If the building is affordable and subject to DOPA and a voluntary agreement, the rent levels will depend on the terms of the voluntary agreement.

How will the income guidelines under DOPA coordinate with Low-Income Housing Tax Credit (LIHTC) income averaging, Federal Housing Administration (FHA) and guidelines from other funding sources?

DHCD expects applicants to craft their proposed programs in such a way that complies with the DOPA requirements and the different funding sources the developer is proposing to implement and maintain the affordable housing accommodation.

What level of affordability must be maintained post-acquisition? Can a building be redeveloped with market rate units if the original affordable units are maintained?

This will be dependent on the affordability plan set forth for the property. At a minimum:

- Open unit turnover, if the Monthly Rent was equal to or less than 60 percent or 30 percent of MFI, then they shall remain at those levels upon turnover.
- Vacant units shall be filled and maintained as close **as practicable** to the following distribution at the time of initial income certification:
 - 1/3 shall be occupied by households at 30 percent MFI Level;
 - 1/3 shall be occupied by households at 60 percent MFI Level; and
 - 1/3 shall be occupied by households at 80 percent MFI Level.

The DOPA RFQ references maintaining affordability for properties purchased through DOPA. Page 17 says “Applicant hereby certifies that the Applicant obligates itself and its successors and assigns in earnest to maintain affordability of the housing accommodations in accordance with 433 of DOPA.” Where is 433 of DOPA or a link to where this is located on the Internet?

Section 433 is in the [District Opportunity to Purchase Act of 2008](#). The statute, regulations and related documents can be found on the DHCD website [here](#).

DOPA Purchases

How will purchase prices be set?

The purchase price will be determined by the offer of sale received by a seller from a potential buyer. During the DOPA negotiation period, the assigned DOPA developer will bargain in good faith to agree and finalize the amount set in the offer of sale price for the property.

Can a seller reject a DOPA offer?

DOPA requires the owner and the assignee to bargain in good faith. A seller may have contractual grounds to reject an offer provided that the seller has made a good faith effort to bargain.

Will DOPA be enacted if the seller is remaining as a managing member in a partnership with the purchaser?

No, DOPA and TOPA processes will only be triggered when a seller receives an offer of sale from an interested buyer. In this case, this would be a property transfer transaction.

Conversion and Sale of DOPA Properties

Can a DOPA property be foreclosed on?

A DOPA property can be foreclosed on similar to a TOPA property.

DOPA Properties Converted to Condos. Does the affordability covenant stay?

Yes, the affordability covenant remains on the property as long as the property stays a housing accommodation.

RFQ Questions

Question #2.b asks for a list of at least three projects with detail on the project financing and affordability. Do these project need to be completed? Or could they be under construction/approved but not started construction?

DHCD is looking to understand the experience of the applicant in financing affordable housing projects. If that can be demonstrated through projects under construction, then that will be taken into consideration.

Do the projects listed in the RFQ have to have been in the District, or could they be in the Capital Region, in Alexandria or Montgomery County?

Ideally, projects listed would be in the District as this would demonstrate an understanding of providing affordable housing according to District policies and regulations. That said, DHCD is looking for experienced developers who can acquire, maintain and even increase the affordable housing in their projects. Therefore, projects outside the District can be listed.

Question #2.c. states, "What are the Applicant's other significant accomplishments (include dates and current programs)?" What type of accomplishments/programs are you looking for in this section?

Accomplishments referenced in this question pertain to affordable housing properties acquired and/or managed by the applicant and any significant outcomes that have emerged in doing so.

Question #6, section b. states, "Describe Applicant's proposed plan for acquisition of properties under DOPA, including anticipated timeframe for closing, any anticipated due diligence and contingencies and availability/access to financing." Question: What standard should a developer use in regard to closing timeframe, due diligence, financing and acquisition? That is, what is an acceptable timeframe?

The timeframe would be based on the DOPA guidelines.

A partnership between a non-profit developer and a longtime owner's representative and development manager would like to apply jointly for the RFQ. The partnership would be interested primarily in 50+ unit projects, but the developer manager would be interested in applying separately for smaller projects. Is this type of applicant acceptable, or would separate proposals be required?

The partnership should submit one application and the development manager should also apply separately.

Financial Statements: Would you like us to provide you the financial statements of the organization as a whole, or just for each tax credit entities per property?

Please provide financial statements for the organization as a whole.

Affordability Covenants: What information would you like us to provide for the covenants if they are Section 42 LIHTC covenants?

Please include information on the years of affordability on the property and other related information that ensures long-term affordability. Also, provide a copy of the recorded covenant or the recording information.