

City of Oakland, Housing & Community Development Notice of Funding Availability New Construction 2023 - NOFA Pre-Application Meeting and Office Hours

Questions & Answers, Response #1 (2/17/23)

Q1: What is the City's definition of an "Emerging Developer"?

A1: An "Emerging Developer" is defined as a developer who, in the City's reasonable discretion, has less than five (5) years of experience as a developer and/or less than five (5) completed projects (of similar size, scale, and/or target population to the proposed project) in the last ten (10) years).

Q2: Is the City's emerging developer definition covering both categories of the State HCD's Emerging Developer and Community Based Developers definitions?

A2: No. The City's definition of Emerging Developer is a developer with less than five (5) years of experience and/or less than five (5) completed projects. This definition allows for more developers to qualify as an emerging developer under our NOFA program than the State.

Q3: If the property is currently not an affordable housing property and will be converted into one, similar to LIHTC, would this be considered as a New Construction project and is eligible for funding through the New Construction NOFA?

A3: Yes, the property is not currently operated as a residential property, it would qualify under the New Construction NOFA. Please provide more details if you have a specific use case in mind.

Q4: How is the developer fee split with joint venture partnerships with an emerging developer included in the partnership?

A4: For 4% tax credit projects with emerging developer applicants, or for joint venture applicants where the emerging developer partner receives at least 20% of the development fee (including 20% of any non-deferred development fee), the maximum non-deferred developer fee is the sum of 15% of the project's unadjusted eligible basis and 15% of the basis for non-residential costs included in the project allocated on a pro rata basis (per CTAC regulations Section 10327 (c)(2)(B)(I)).

For emerging developers/partnerships as described in the prior paragraph, developer fees in excess of two million five hundred thousand (\$2,500,000) dollars plus \$20,000 per unit for each Tax Credit unit in excess of 100 units shall be deferred or contributed as equity to the project.

For 4% tax credit applications **without** an emerging developer applicant or partnership wherein the where the emerging developer partner receives less than 20% of any development fee, developer fees are limited to three million five hundred thousand dollars (\$3,500,000), of which only two million dollars (\$2,000,000) may be taken as an upfront fee, and the remainder of which is required to be taken as a deferred developer fee as described in NOFA Addendum #2.

Example 1: JV with Emerging Developer with Extra Fee per unit

A non-emerging developer partners with an emerging developer on a 125-unit new construction project, and the emerging developer **receives at least 20% of the developer fee**. Since the applicant (a) contains an emerging developer entity and (b) meets the minimum 20% developer fee split threshold, the applicant has the ability, but is not required, to take \$2.5 million (as opposed to just \$2 million) of upfront developer fee. All other developer fees, including the additional fees, must be deferred.

Since the project exceeds 100 units, the project benefits from the additional \$20,000 of fee per unit for every Tax Credit unit over 100 units (in this case 25). Under Example #1, the maximum developer fee is capped at \$3.5 million plus \$500,000 (25 units x \$20,000 per unit = \$500,000).

Example 2: JV with Emerging Developer with no extra fee per unit

A non-emerging developer partners with an emerging developer on a 60-unit new construction project, and the emerging developer **receives at least 20% of the developer fee**. Since the applicant (a) contains an emerging developer entity and (b) meets the minimum 20% developer fee split threshold, the applicant has the ability, but is not required, to take \$2.5 million (as opposed to just \$2 million) of upfront developer fee. All other developer fees must be deferred.

However, since the project is only 60 units, the project does **NOT** benefit from the additional \$20,000 of fee per unit for every Tax Credit unit over 100 units. Under this scenario, the maximum developer fee is capped at \$3.5 million.

Q5: Does the City have any additional subsidy for this New Construction NOFA to assist with capacity building of the joint venture partnerships with emerging developers?

A5: The City is looking into additional assistance for training/capacity building for joint venture partnerships with emerging developers and is under consideration separately.

Q6: What do we do if the project involves temporary or permanent relocation of residential or commercial tenants?

A6: Developers considering a project which may result in temporary or permanent relocation should provide a narrative Relocation Plan, Timeline and a detailed Relocation Budget with their application, if available. This information must also be submitted at the time of loan closing for review. If the proposed project is financed with federal funds, the provisions of the Uniform Relocation Act will apply. Additional federal and/or state relocation requirements may also apply. If the project is financed with non-federal public funds, State relocation requirements contained in California Government Code 7260, et seq., and implementing regulations, may apply. Relocation costs, where applicable, should be included in project development budgets, and are subject to further review after awards are made. Depending on the nature of the relocation efforts, applicants receiving funding awards under this NOFA may be required to engage a professional relocation consultant to review their relocation plans for compliance with applicable laws. Applicants are encouraged to enlist the services of relocation consultants where possible due to the complex nature of relocation law.

Q7: If the Phase I is older than one year, but the Phase II is current, does the Phase I still need to be updated?

A7: If you have a current Phase II and the Phase I is representative and thorough, then an updated Phase I is not required.

Q8: If a Phase II has been completed, does the Phase II have to be dated within 1 year (and if so, is an assurance or reliance letter acceptable)?

A8: This varies depending on the environmental professional to determine if the data is still valid to use. If the site hasn't changed use during the year (e.g. a vacant site) and the contaminants are ones that aren't likely to have been significantly affected by the site use, then the Phase II may still be representative of the site conditions. Alternatively, if a lender requires a one-year time frame for their transactions or if a regulatory agency says the data is no longer valid then that would determine the timing.

Q9: Does a new Phase I need to be updated if it is older than one year?

A9: If the current Phase I at the time of application submittal is beyond two weeks after the one-year mark, please have the Environmental Consultant prepare a revised comprehensive update to the report.

Q10: What is the City's requirement on reasonable development costs.

A10: The City understands that construction costs have risen. Projects with abnormally high costs – generally defined as costs more than 15% above the median development cost per unit, per bedroom, or per square foot for similar projects must provide justification for the costs. Once applications are submitted, staff performs an analysis of development costs to determine which, if any, projects fall into this category. Applicants will be contacted at that time. However, if you are aware that your project has high development costs, please include an explanation as part of your application cover letter narrative. If staff does not approve the justification for higher costs or revised budget, the application may be deemed incomplete or the City may require a reduction in the development budget.

Q11: Does a project need NEPA clearance to receive a City funding award? What about California Environmental Quality Act (CEQA)?

A11: A federally-funded project may receive a conditional commitment of City loan funds before final NEPA clearance is received. However, as noted above, no loans may be closed/funding disbursed until NEPA clearance is received. In regards to CEQA, all projects must be shown to have obtained Planning entitlement and CEQA clearance (certified EIR, or negative declaration),

Q12: Do VASH vouchers require NEPA to be final before issuing a letter or is draft NEPA report an acceptable status?

A12: During the City of Oakland's Pre-Application Meeting, the Oakland Housing Authority confirmed that the letter of support from the VA does not require NEPA approval. NEPA is triggered and required for federal funding when conditionally awarded to a project.

Q13: Is a NEPA review required at the time of application submittal?

A13: The NEPA review is not required to be submitted with the application. The NEPA review process will only be triggered if there are federal funds awarded to the project, such as HUD HOME funds or Neighborhood Stabilization Program (NSP) funds. If the project receives a funding award and requires a NEPA review, the first step for the applicant will be to submit a NEPA application. The applicant will need to retain an environmental consultant to complete the NEPA approval process. **However, applicants should assume that they may be awarded federal funding in any NOFA awards, and refrain from taking any choice-limiting actions (as noted on page 7 of the NOFA Program Description) between the time of application submittal and NEPA clearance (or confirmation that an award does not include federal funding).**

Q14: Is a market study required at the time of the application submittal?

A14: The NOFA allows for submission of either a market study to be uploaded to CDS or the applicant can use the template in CDS to enter the survey of rental comparables. All projects must provide a market study or survey of rental comparables, as described below. Please reference the NOFA Application Instructions on Page 17, Section 5 for additional market study information

Rental Projects: A market study or rental survey must be submitted via CDS upload that is no more than nine months old. Rental surveys do not need to be completed by a third-party consultant and can be completed in lieu of a market study at the time of application. Include on the following worksheet, a summary of the closest three affordable and three market rate comparables, including their distance from the project, population served, number of units by bedroom size, rent by unit size, service and on-site amenities.

Mixed Use Projects: In addition to the above, also provide: **a.** Evidence of demand for commercial/retail space and marketability of space, or at least half the commercial/retail space pre-leased; **b.** Information from brokers on vacancy rates, turnover rates, and market rents in the neighborhood; and **c.** Evaluation of the neighborhood's retail environment and relative merits of the newly proposed commercial space.

Q15: What is the requirement if the market study is older than 9 months?

A15: If the market study is older than 9 months, please provide a summary of the updates to your existing market study. If the study was performed by a third-party consultant, the consultant must provide a letter stating the information is still accurate or the consultant must provide an updated market study.

Q16: If the project does not have PBVs should we include or exclude that information from our application workbook proposal?

A16: Financial workbooks must only include operating subsidies revenue if the project has received a commitment of operating subsidy by the time of application deadline. If your project does not have a commitment of an operating subsidy, the financial workbook must not include the assumption of an operating subsidy award. Applicants may provide a narrative on how you intend to apply for PBVs or other on-going operating assistance. You may also submit an additional workbook showing your cashflow with and without PBV's.

Q17: Can we submit our application with the assumption of receiving an operating subsidy or provide a narrative on how we intend to get vouchers?

A17: No. Unless you have an operating subsidy already committed then the financial model should not reflect it.

You may submit two separate workbooks— one assuming an operating subsidy and one without.

NOTE: For review purposes and scoring, staff will only review workbooks that reflect the current cashflow/operating subsidy committed at the time of application submittal.

Q18: Can we submit a workbook that shows a negative cashflow?

A18: Yes. At application submittal applicants are allowed to submit a workbook showing negative cashflow if operating subsidy has not yet been committed to the project. **Note that projects with excessive negative cashflow will be expected to present a plan to secure needed operating subsidies.**

Q19: Does a final joint venture agreement need to be submitted with the application?

A19: No. At the time of the application, you can submit a Memorandum of Understanding that outlines and clearly describes the roles and responsibilities of each partner, who is the lead partner, and if the division of responsibilities between the partners. The final executed Joint Venture Agreement will be required prior to loan closing.

Q20. Under the development team experience category and for projects with an emerging developer, will this count as full points towards the more experienced developer?

A20: Yes, if the development team is a joint venture with an emerging developer, developer experience points will be awarded based on the experience of the more experienced developer.

Q21: We have a project that will apply for the City's NOFA and intending to also to apply to Round 2 of CDLAC/TCAC which is due May 23rd. Will the awards letters get issued before the Round 2 CDLAC/TCAC deadline?

A21: Unfortunately, at this time the City cannot guarantee Council approval by May 23, 2023. Applications will be revised and scored in March and April 2023, and we intend to go to Community and Economic Development Committee and then City Council with recommendations at the end of May or early June.