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RE: HUD-811 Process

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## HUD-811

Each year HUD provides a highly competitive opportunity to secure capital funds to build and operate housing for the *Very Low Income* (VLI) **disabled persons** (DD – developmentally disabled, CMI – chronically mentally ill, PD – physically disabled.) The capital funds are called a Capital Advance. These funds are to be used to secure land, design and build a multi-family apartment complex for the **disabled persons**. A Section-8, project based, PRAC – *Project Rental Assistance Contract* is attached to the Capital Advance. The Capital Advance is a non-payable mortgage, so long as the housing is maintained for use of the VLI **persons** for a period of 40 years. Current associated PRAC contracts are for only 3 years, but the intent to renew for the term of the CA is clearly stated in Federal Register 1/30/96, p 3047.

There are 5 phases to the process:

**Proposal Preparation – 4 to 12 weeks,**

after award –

**Development of the Firm Application – 8 to 18 months**

**Initial Closing – 6 weeks**

**Construction – 6 to 12 months depending on number of units**

**Occupancy & Audit – 1 to 4 months**

**Final Closing – after approval of audit**

Abuse of the Technical rejection process has become a major factor in deciding whether to file a HUD-811 application. Please see our web page (<http://www.c-f-systems.com/TechnicalRejection.html>) explaining this serious problem and its current state.

## PROPOSAL PREPARATION

The NOFA, *Notice of Fund Availability*, for the fiscal years competition is published in the Federal Register each year. Congress must first set its budget for the year and a then distribution of HUD funds identified in the budget must be made among the different HUD offices. Rumor of the NOFA being imminent begins about February, but the actual timing for the last few years was as follows:

<u>Year</u>	<u>NOFA</u>	<u>Proposal Due</u>	<u>To be announced</u>	<u>Actually announced</u>
2007	March 13	<del>May 24</del> June 21	September 30	??
2006	March 8	May 26	September 30	November 2, 2006
2005	March 21	<del>May 24</del> June 10	September 30	January 5, 2006(!)
2004	May 14	July 7 (22)	September 30	October 22, 2004
2003	April 25	June 13	September 30	November 20,21
2002	March 26	June 5	September 30	October 14
2001	February 28	May 25	September 30	October 31
2000	February 24	May 18	September 30	9/28 - November 19
1999	February 26	May 27	September 30	some states starting 11/17
1998	March 30	July 7	September 30	some states starting 11/11
1997	May 27	July 28	September 30	October 24
1996	July 8	August 19	September 30	November 11
1995	late May	July 24	September 30	October 11

HUD requires the use of the PureEdge system to prepare applications, through [www.grants.gov](http://www.grants.gov). Visit this site to get the details of applying - it is advisable to do so well in advance (months) and it is never safe to assume it will be the same as the last time you applied. It is sometimes possible by special request to file paper applications but on-line Internet filing is strongly preferred by HUD. Applicants are required to have a DUNS number (Dun and Bradstreet) and a CCR number (Central Contractor Registration – Grants.gov) in order to apply. There are many stumbling blocks involved in on-line application. It is wise to test all user names and passwords well in advance and to file the application well ahead of deadline to avoid the chance of system failure - yours or theirs.

As can be seen in the above table, the time allowed for proposal preparation and for HUD review is about evenly split. When the NOFA is published, a table of number of apartment units available in each HUD office is provided Unlike the HUD-202, there is no division between metro and non-metropolitan counties.

During the proposal preparation period allowed, the non-profit sponsor must secure control of a site that will be acceptable to HUD and prepare all the documents required in the 8 Exhibits. Actual at risk costs are incurred in: land option, Phase I Environmental (~\$1,500), Title opinion re covenants and reverters (~\$1,000) and Proposal Preparation by an experienced Consultant. HUD expectations are quite specific and there is not time for an inexperienced grant

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writer to prepare what will be needed to produce a winning proposal in the time allotted. The award is extremely competitive and previous HUD experience of the sponsor and the other development team members is critical to the selection for the award.

In the proposal's 8 Exhibits the Sponsor must:

Show that Sponsor is a 501(c)3 corporation.

Identify Consultant who selects other team members: Architect, Attorney.

Certify that there is no Conflict of Interest between Sponsor/board and other team members.

Agree to start a new sole-Owner corporation within 30 days of award.

Agree to fund that new Owner for the development period until construction start.

Demonstrate its capacity to develop and manage the housing for the long term.

Provide a plan for services to the residents and how those services are to be funded. ***Services must be approved by the appropriate state official.***

***You will have to show how you will provide services including funding commitment,***

Prove a demand analysis for this type of housing in the community proposed and show that this new housing will not adversely affect other subsidized housing in the area.

Demonstrate site control & permissive zoning – ***site CAN be only identified.***

Provide Phase I Environmental Report on the site

Provide compliance letter from State Historic Preservation Office.

Show that there will be no displacement of housing/businesses, or how such displacement will be addressed and paid for.

Certify that the Sponsor does not Lobby.

Secure Certification of Consistency with the Consolidated Plan.

Certify compliance with: drug free workplace, design & cost standards, Davis-Bacon construction wage rates, flood disaster protection act, and the National Environmental policy.

Prepare Logic Model

Secure executed Questionnaire re HUD's Initiative on Removal of Regulatory Barriers

Tabbed Applications, including marked original and at least 3 copies, must be delivered to the HUD office no later than the specified date and time. Applications presented after the specified time will be refused.

HUD will review the proposal and request deficiencies within 14 days. Typically HUD will phone/FAX the Consultant as deficiencies are discovered. Required Sponsor signers, as well as the Consultant, must be available during the first few weeks after the proposal deadline in order to comply with these deficiencies. As these deficiency items are surfaced they must be rapidly satisfied and submitted. If

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a “Technical Rejection” is declared by HUD it must be challenged. If the challenge is not successful the proposal will be eliminated from the competition and not ranked. Typical causes for technical rejection are: Demand – ***adverse effects upon other subsidized projects***; Unsuitable Site – steep terrain, zoning, size, near RR / Interstate / Airport, too near other subsidized projects.

While HUD is determining the awards the Consultant and Sponsor should determine the identity of the other team members: Contractor, Surveyor, Appraiser, and Title Attorney. A Contractor experienced in HUD-202 projects is usually selected at the start of this process. That contractor must agree to build the project for the funds available. HUD establishes the percentages allowed for General Requirements, Overhead and Profit for the contractor. The contractor then works closely with the architect during the design process to assure that the project can be built with the funds known to be available. These HUD percentages are below what is typical for market rate projects.

## **DEVELOPMENT OF THE FIRM APPLICATION**

Immediately upon Award announcement, the Consultant will notify the Sponsor and other team members. It is the Consultants responsibility to serve as the key person directing the development process through the completion of construction. Actions taken by the consultant are to be done with the approval of the Sponsor/Owner representative. The Attorney should immediately begin to create the owner corporation and the CPA secure the 501(c)3. The Surveyor should do a topological / boundary survey of the site. The Appraiser should be notified to begin. The Architect should begin preliminary designs.

In about 6 weeks the new owner corporation should be called together for its organizational board meeting, to be led by the consultant. At that meeting the Article of Incorporation and Bylaws should be approved, Officers elected, Bank resolution executed, persons identified in Resolution to Sign Documents, owner documents signed and preliminary designs considered. A preliminary development budget, including anticipated start-up costs will be provided by the consultant. Immediately after this organizational meeting the **Sponsor Corporation** should make the initial deposit to the Owner account in an amount sufficient to cover anticipated development expenses to be incurred up to the time of the Initial Closing with HUD. At the initial closing, HUD will reimburse allowed development costs. As development commences, all work and costs should be approved by the consultant & Sponsor/Owner representative before work is authorized to assure that the expense will be approvable and paid by HUD.

There are 35 Exhibits that make up the Firm Application that is to be submitted to HUD. The specified time for preparation of the Firm Application is 90 days, but this time usually cannot be met. However, all efforts should be made to complete this process as rapidly as possible. A construction start by October, before bad weather sets in, is desirable.

When the Firm Application is reviewed by HUD they will again generate a set of deficiencies which must be satisfied. When these deficiencies are resolved HUD will issue the Firm Commitment and the preparations for Initial Closing can be begun.

## **INITIAL CLOSING**

Once these Firm deficiencies are satisfied, HUD will issue the Firm Commitment and the preparation of the Legal exhibits required for closing is begun by our Attorney with the assistance of the Consultant. Specimens of the 52 required documents for Initial Closing are to be presented as a group to the HUD attorney by our Attorney. When these documents are approved by the HUD attorney the Initial Draw check will be ordered by HUD from Ft. Worth and the Initial Closing date set. Our Attorney and representatives of the Owner, Architect, Contractor, Title Attorney, Bonding firm and Consultant are to attend this closing at the HUD office. Closing activities will take about four hours. This is the first time funds can be drawn from HUD; these funds will cover all allowable development costs thus-far expended.

## **CONSTRUCTION**

Within 10 days of the Initial Closing construction must be begun. The architect and HUD Inspector will each make a site inspection at least twice a month. Once a month there will be a Construction Draw Inspection.

Costs incurred for the month and percent complete are to be provided by the contractor to the consultant about 5 working days prior to the scheduled draw date. The consultant will:

- gather all pertinent invoices
- prepare the draw
- notify the architect of the monthly payment amount & request invoice
- notify the title attorney of the current draw amount, draw to date, and request invoice and down-date for the time and date of the draw inspection
- prepare Requisition for Disbursement & get to the draw
- convey signed Requisition for Disbursement, Contractors: Requisition / Materials on Site / Progress Schedule, invoices, and Title Down-date to the HUD office for payment.

When the project nears completion the supervisory architect will make an extended visit to the site with the contractor and prepare an initial punch list. When the contractor notifies the A&E that all items on the punch list are satisfactorily resolved, the supervisory architect will notify the Consultant and a Substantial Completion Draw will be scheduled with HUD.

When Substantial Completion is declared by HUD, the contractors insurance will be closed, the insurance responsibility shifted to the Owner, and the property may be occupied.

## **OCCUPANCY & AUDIT**

About 90 days prior to the anticipated Substantial Completion date advertising must be begun, a resident manager selected and hired. That manager, and other housing management staff, then arrange certification interviews with potential residents. Care must be taken to maintain applicant priority lists based upon application date/time so as to later verify compliance with equal opportunity regulations.

Residents should be selected, room assignments made, and a waiting list developed. Move-in arrangements need to be coordinated with the Substantial Completion date when it is known.

At the time of Substantial Completion since the Construction contract is a Lump Contract an audit is not required of the contractor. The Owner Audit should be completed as rapidly as possible. Copies of that Audit should be provided to HUD and the Consultant as soon as it can be completed.

## **FINAL CLOSING**

Included in this phase are:

- ❑ resolution of any problems with the audit,
- ❑ development of the rent schedule,
- ❑ development of the final operating budget,
- ❑ request for Final Closing and
- ❑ execution of the Final Closing with HUD.

At this time the contractor, consultant, general attorney, and title attorney will be paid their final fees. At Final Closing all efforts are made to spend out the remaining HUD Capital advance funds on allowable furniture and fixtures that are needed by the Owner for the facility.

## **CONCERNING THE NASHVILLE HUD OFFICE**

HUD-202 and HUD-811 proposals submissions may receive a "Technical Rejection" letter, summarily disallowing the proposal without evaluating it or allowing it to compete with other proposals. The applicant is allowed to respond to a technical rejection but in so doing may only refer to material already in the proposal or in the rejection letter itself. The likelihood that such a letter will result in the HUD office removing the technical rejection is never high, but if the counter-case has merit there normally is a chance that it will. It has never been clear to us that technical rejection serves a purpose that would not be better served by competitive scoring and like any process of summary judgement it is

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subject to abuse. It serves as an easy way to eliminate potentially higher-scoring proposals that someone at HUD does not want to win or does not want to compete with a more favored applicant.

Historically this has not been strong it normally does exist will on several in which At this time the contractor, consultant, general attorney, and title attorney will be paid their final fees. At Final Closing all efforts are made to spend out the remaining HUD Capital advance funds on allowable furniture and fixtures that are needed by the Owner for the facility.