

NYC Department of Homeless Services

REQUIREMENTS & TERMS FOR LONG-TERM CONTRACT WITH NONPROFIT OWNERSHIP

1. OVERVIEW

The proposed shelter projects must comply with the following terms and requirements below in order to be considered for a long term shelter contract. Such shelters must be designed with thoughtful consideration for the clients served within, as well as for the immediate surrounding neighborhood. Shelters may be stand-alone or combined with other uses in a building, as long as the shelter has its own means of entrance and exit.

The terms described herein are for nonprofit owned shelters, in order for DHS to commence negotiations of a "Principal & Interest Contract," ("P&I Contract") where a long-term DHS contract would pay the principal & interest payments on the financing necessary to cover the development cost of the redeveloped shelters.

The terms contained herein are not intended to be and does not constitute a legally binding obligation on the part of any party, nor is it intended to include all terms and conditions of the subsequent transaction.

2. DHS CONTRACT & NONPROFIT OWNERSHIP

The P&I Contract must be between DHS and a nonprofit shelter provider who will operate the shelter under a long-term lease with a nonprofit owner. The nonprofit owner must be a Housing Development Fund Corporation ("HDFC") formed under Article 11 of the Private Housing Finance Law, and the HDFC must be controlled by the nonprofit provider. The HDFC may develop the shelter alone or in a joint venture consisting of the nonprofit and one or more entities, including for profit entities, provided that the HDFC is the sole owner by permanent conversion, prior to the start of any principal & interest payments.

The P&I Contract will provide that, subject to the terms of the contract, DHS will make principal & interest payments on the permanent financing (the "Loan") necessary to cover the total cost of the shelter development. The term of the contract and the Loan term must be the same, and the Loan must be fully amortizing over the Loan term. DHS will make principal & interest payments directly to the permanent lender upon shelter opening even though the P&I Contract is with the provider, the lessee, and the borrower of the Loan is the HDFC. The contract will further provide that the City's obligation to pay principal & interest on the permanent loan during the loan term remains even if DHS were to terminate the shelter contract before the end of the contract term.

3. SHELTER CONTRACT AWARD THROUGH THE OPEN-ENDED RFP

Projects with evidence of site control, verified zoning analysis, a projected development budget, and a projected operations budget may initiate the process to secure a P&I Contract by applying to the DHS Open-Ended RFP. The application must include an annualized budget for shelter operations and a development budget calculating the annualized P&I payment based on the permanent financing (the "Loan") necessary to cover the development budget costs. DHS will issue a conditional "Notice of Intent to Award" upon favorable review of the application. Final contract approval will require DHS design review, DHS approval of the development budget and operations budget, OMB budget approval, Law Department approval of the contract as required by the City Charter, Mayor's Office of Contract Services (MOCS) approval, and NYC Comptroller's Office registration of the contract.

Within 60 days of contract registration, the project must secure construction and permanent financing necessary to cover the project's development cost from a financing institution acceptable to DHS, and start construction. Shelter operations, maintenance, and staffing costs will be covered separately from the P&I payments within the same contract. No payments under the contract, including principal & interest payments

and operating budget costs, will start without a registered contract and final approval by NYS Office of Temporary and Disability Assistance (“NYS OTDA”) to open and operate the shelter.

4. REQUIREMENT FOR USE RESTRICTION & RIGHT OF FIRST REFUSAL

The HDFC owner must record a restrictive declaration against the land that restricts use of the property for shelter, affordable housing, supportive housing, and any other use that benefits the public as approved by the City. The use restriction must be in effect from the permanent conversion date and must have a term of 60 years from the date of permanent conversion.

In addition, DHS will require that the HDFC owner of the shelter must agree to provide the City of New York, or a nonprofit designee of the City, a right of first refusal (“ROFR”) to acquire the land and the shelter for a price equal to the remaining balance of the Loan. The ROFR must remain in effect from shelter opening for the duration of the contract. Lastly, the HDFC owner must provide the City or a nonprofit designee of the City a purchase option for the remaining balance of any debt on the property. The City may exercise the purchase option if there is a replacement of the shelter provider during the contract term and the City deems it necessary to replace the owner, or if by the end of the contract term the HDFC owner has not entered into a new shelter contract, a regulatory agreement for affordable housing, or other programmatic use that complies with the use restriction described above.

5. REQUIREMENTS PRIOR TO CONTRACT REGISTRATION

Requirements prior to contract registration will include, but not be limited to, the following:

- Evidence of site control by an HDFC
- DHS approval of the service, operations, maintenance, and security budget
- DHS approval of the development budget and calculation of principal & interest amount to be included in the DHS contract (including acquisition cost, hard cost, soft cost, financing fee, and developer fee approved by DHS)
- Architectural plans approved by DHS and Architect’s Pre-Construction Certificate
- Completed and satisfactory environmental review including City Environmental Quality Review, if applicable
- Financing commitment letters from construction and permanent lenders
- DHS Notification of shelter development
- DHS City Environmental Quality Review (CEQR)
- Project evidence of ability to secure Enterprise Green Communities NYC Overlay Pre-Build approval
- Project evidence of ability to close on construction financing within 60 days of contract registration
- Proposed schedule for construction completion and shelter opening

6. PER DIEM ALLOWANCE FOR DEVELOPMENT COSTS

The Per Diem Allowance is the per unit daily cost of annual principal & interest payment as calculated from the development budget for non-developer fee costs. The DHS maximum Per Diem Allowance for development budget costs is based on the type of population served and the number of units provided per the table below. Development budget costs considered in the Per Diem Allowance below include hard cost, soft costs, financing fees, carrying costs, and capitalized reserves. It does not include developer fee. Allowance for developer fee are covered below.

Per Diem Allowance for Development Costs* (Hard Cost, Soft Costs, Financing Fees, Carrying Cost)	Per Diem Allowance	Annual Allowance (Annual P&I)
Single Adults (per Bed)	\$15.50	\$5,675.50

The Per Diem Allowance for a project’s development budget must be based on a general contractor’s hard cost contract amount, verified soft costs, verified financing fees, and projected carrying costs using the most current available information regarding interest rates and projected construction timeframe. Projects that utilize lower per diem amounts will be prioritized. Development budgets and Per Diem Allowance amounts must be approved by DHS and OMB prior to contract registration. Projects that propose Per Diem Allowance amounts that are higher than the Per Diem Allowance listed above must reduce the developer fee in an equivalent amount per diem to be within the Per Diem Allowance, secure other sources of financing to cover the gap, and/or agree to long-term use restrictions beyond the contract term.

7. DEVELOPER FEES

The table below provides the allowable developer fee the City will recognize in the development budget:

Developer Fee Per Unit	Up to 80 Units	81~140 Units	141~200 Units
Single Adults	\$18,000/bed	\$15,650/bed	\$13,600/bed

8. UNSPENT DEVELOPMENT FUNDS & INTEREST RATE SAVINGS

The shelter contract will have a development budget attached with a not to exceed amount for the total development cost. The construction lender must verify the final cost accounting for the project prior to permanent conversion. Project costs may be modified within major categories (acquisition, hard cost, soft costs, developer fee), but costs cannot be re-allocated between major categories without DHS approval, except where developer fee is used to cover cost overruns. Any unspent development funds, including any unspent contingency, hard cost, soft cost, financing fees, etc., must be used to reduce DHS principal & interest payments, or fund start-up budget costs, or fund building reserves.

Any interest rate savings that result from a reduction in the actual permanent loan interest rate from the projected interest rate in the development budget in the contract must be split between developer fee and reduced principal & interest payments. This does not include circumstances where the DHS contract includes a cushion in interest rate assumption to mitigate rate fluctuations between budget approval and actual permanent financing commitment and construction loan closing.

9. SHELTER DESIGN AND CONSTRUCTION REQUIREMENTS

Projects are encouraged to incorporate best-practices in shelter design, and must follow DHS’ Requirements for Accessibility. All projects must meet the program and physical requirements of NYS OTDA.

It is the nonprofit provider and the HDFC’s responsibility to ensure that the project comply with all laws, rules, regulations, and codes mandated by city, state, and federal authorities having jurisdiction. In circumstances where the DHS guidelines conflict, the laws, rules, regulations, and codes governing the activity take precedence. Such laws, rules, regulations, and codes, include, but are not limited to:

- New York City Zoning Resolution
- New York City Building Code
- New York City Construction Code
- New York State Multiple Dwelling Law
- Subtitle A of Title II of the Americans with Disabilities Act of 1990 and regulations promulgated pursuant, see 28 CFR Part 35 (e) (the 2010 ADA Standards for Accessible Design, subsection on “social services center establishment”)
- Fair Housing Act
- Section 504 of the Rehabilitation Act of 1973 and Accessibility Requirements
- Part 491 of 18 NYCRR Chapter II Regulations of the Department of Social Services

- The 1981 Callahan Consent Decree
- The 2017 Butler Settlement

The minimum number of accessible units will be consistent with ADA minimum percentage set-aside standard for mobility and communication units. Projects in locations near accessible mass transit or other infrastructure that would be beneficial to those with accessibility needs are encouraged to exceed the minimum percentage. On a case-by-case basis, DHS reserves the right to require shelter projects include additional ADA units and/or features applicable to the population served.

All new construction projects shall implement design features that utilize latest best practices in accessible design and universal design, particularly shelters that may serve a client population that may have higher accessibility needs. Designs for shared bathroom, dining, and other common areas shall incorporate adequate capacity of accessible accommodations to will meet the accessibility needs of the target client population. Shelters must provide for air conditioning in all units.

11. ENERGY EFFICIENCY, SUSTAINABILITY, & RESILIENCY

All new construction projects must meet the requirements of the Enterprise Green Communities program with the NYC Overlay. Pre-Build Approval from Enterprise is required prior to construction loan closing, and application for Post-Build Approval must have been submitted prior to permanent loan conversion.

Projects that seek to pursue on-site energy generation (through solar PV, co-generation, or other methods) must demonstrate a payback schedule that justifies investment over a 20 year period, or secure funds to help defray costs. Projects must comply with all current legislation regarding energy efficiency and sustainability (including Local Law 94 & 97 of 2019), and are strongly encouraged to pursue resiliency measures to ensure that projects are able to withstand future impacts from climate change and extreme weather.

All shelters must comply with applicable benchmarking requirements based on facility size.

12. SHELTER OPERATIONS, SERVICES, & REQUEST FOR BUDGET INCREASES

Project operation and service budgets must follow the DHS Model Budget guidelines and will be reviewed and approved through the DHS Open Ended RFP. Service costs should be clearly delineated from building operation and maintenance costs in the contract budget. Mixed use projects with shared facilities must identify allocation of costs between the shelter and the other uses.

During the contract term, where the provider’s industry has experienced an increase in costs that exceeds the contract budget, and OMB or another agency has determined that additional funds will be made to a City agency for the class of contracts pursuant to which the provider provides substantially similar services, then DHS shall reimburse the provider for such increases in costs to the extent that such increases have been authorized for contracts within such class of contracts and to the extent that funds are appropriated for such purposes. Any such cost increase to the budget will not be effective unless and until an amendment to contract is registered pursuant to Charter Section 328.

13. CAPITALIZED RESERVES & ALLOWANCE FOR REPAIRS

DHS will allow a capitalized reserve to be incorporated into the development budget for use by the shelter provider to address capital repair needs following shelter opening. The capitalized reserves must be held by the permanent lender and used for such purpose.

Population Type	Capitalized Reserves
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Single Adults	\$500/bed
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No other reserves are permitted for the shelter. DHS contracts include an annual allowance for repairs that is equal to 10% of the annual total contract amount (the total contract commitment including principal & interest, operations, and services). The allowance shall be retained by DHS until necessary repairs are approved pursuant to a new needs request by the shelter provider.

14. TAX EXEMPTION

Projects must secure 420-a real estate tax exemption with the NYC Department of Finance (DOF). The DHS shelter contract will not provide any provisions to pay real estate taxes.