

**SOUTH PORTLAND HOUSING AUTHORITY
REQUEST FOR PROPOSALS
(RFP# PBV2023-01)**

**Project-Based Vouchers
For the Creation of Permanent Affordable Housing**

1. Overview and Purpose

South Portland Housing Authority (SPHA) administers federal housing choice vouchers designed to enhance the affordability of rental housing for low-income persons and/or families within the PHA's area of operation. Under Federal law and regulation, local Public Housing Authorities may project-base up to 20% of their vouchers for projects meeting program guidelines. Under HOTMA a PHA may project-base an additional 10% of its ACC authorized units above the 20% program limit, provided the additional units fall into one of the eligible exception categories prescribed by HUD. South Portland Housing Authority has set aside a portion of its vouchers for use as project-based assistance and with this RFP plan to continue this practice. At the direction of the Board of Commissioners, the SPHA will solicit proposals for the creation of new affordable housing available to households at or below 50% of Area Median Income (AMI). Any successful proposals will be awarded Project-Based Vouchers under the 10% PBV Program Limitation exception category as eligible units within a census tract with a poverty rate of 20% or less.

This RFP outlines the submission requirements and selection criteria for these proposals.

All proposals must be received by the South Portland Housing Authority no later than 4:00 pm, Thursday, July 6, 2023. Proposals must be placed unfolded in a sealed package addressed to:

South Portland Housing Authority
Attn: Leanna Bruce, Director of Housing Programs
100 Waterman Drive, Suite 101
South Portland, ME 04106

The package exterior must clearly denote the above noted RFP number and must include the proposer's name and return address. Proposals may be mailed or hand-delivered to SPHA and placed in drop-box within the main entrance of the administrative office. Proposals received after the published deadline will not be accepted.

Questions regarding this program or proposal should be addressed to Leanna Bruce, Director of Housing Programs, South Portland Housing Authority.
(e-mail lbruce@spha.net) Phone number: (207) 773-4140 ext. 231.

2. General Description

- Under this RFP, SPHA plans to award project-based vouchers to one new construction project developed pursuant to an agreement for use in the PBV program. Selection will be based on a point system.
- SPHA reserves the right to award multiple projects, if in SPHA's opinion, additional awards would offer greater value for the service area. SPHA reserves the right to make such decision at any time during the RFP process, meaning SPHA could initially make award to one project only, then, at any time during the RFP process, decide to make an additional award(s) if SPHA decides such is in its best interests to do so.
- SPHA intends to enter into housing assistance payment contracts (HAP) with owners of selected projects to provide project-based voucher assistance in compliance with South Portland Housing Authority's Administrative Plan and consistent with the goals of deconcentrating poverty and expanding housing and economic opportunities for designated rental units for a term of up to twenty years subject to funding availability. Housing assistance subsidies will be provided while eligible families occupy the rental housing units and the units meet program standards. SPHA will refer families from its program waiting list to the project owner in order to fill vacant units. SPHA will establish and manage separate waiting lists for individual projects or buildings that are receiving PBV assistance. SPHA may combine PBV waitlists for projects that have the same selection criteria and are owned/managed by the same entity. SPHA's published subsidy standards will determine the appropriate unit size for the family size and composition.
- SPHA anticipates awarding successful projects for a twenty (20) year period, with options to renew for up-to an additional twenty (20) years, at SPHA's sole discretion.
- No more than 25% of the units in a project may receive project-based rental assistance, except as provided by regulation. Notwithstanding this provision, exceptions to the 25% cap include units in a building that are specifically made available for families that are elderly/disabled, or where supportive services are available to all families receiving PBV assistance in the project, or if the project is located in a census tract with a poverty rate of 20% or less. Single-family buildings with four or less units are also exempt from this cap.
- Under the PBV regulations, Project-Based Vouchers can be attached to Agency-owned units, however, all proposals submitted for Agency-owned units must be approved by HUD, or an independent entity approved by HUD.

3. Project Qualifications

For the reasons described above, SPHA is accepting proposals from qualified property owners and developers to participate in the Project-Based Voucher (PBV) Program. Interested parties may submit proposals for projects that meet the following:

- Project Type/Location: New Construction projects that create new affordable housing within the City of South Portland, Maine may submit a proposal.
- Census Tract: In order to deconcentrate low-income housing in the City of South Portland, SPHA is seeking proposals for projects with units located in Census Tract 35.00. This census tract has a poverty rate of 20 percent or less, as determined in the most recent American Community Survey 5-Year Estimates.
- Number of PBV's Requested: Proposals cannot be for less than 9 PBVs and not more than 19 PBVs.
- Target Population: Units must be specifically made available to one of the following populations: very-low income near-elderly (55 and older) OR very-low income elderly (62 and older).

4. Submission Requirements and Selection Criteria.

Applications must be submitted in accordance with the requirements below, on 8 ½" x 11" paper. Each section is restricted to a maximum number of pages, as indicated below, and should be labelled accordingly.

SPHA will rank applications using the following scoring system. The points identified reflect the maximum that can be awarded to each criterion. Before being scored, the applications will be reviewed for completeness and accuracy. South Portland Housing Authority reserves the right to reject any proposal that is incomplete or that does not meet the requirements of this RFP, including but not necessarily limited to those that fail to meet Project Qualifications identified above, incomplete proposals and/or proposers offering alternate or non-requested services. The project(s) that SPHA, in its sole discretion, deems feasible will be scored. Each part of the application will be scored separately. The number of points available for each part is indicated below.

Proposals must be in accordance with HUD 24 CFR 983 program requirements and consist of the following parts:

A. Project Summary (2 page maximum, 50 points). Provide up to a two-page overview of the applicant and the project.

Summary must include the following:

- The location of the property by address;
- Name and address of owner;
- Whether the project is PHA-owned (*If PHA-owned, has the PHA established a separate legal entity to serve as the owner?*);
- Total number of buildings in the project;
- Number of units by bedroom size and square footage;
- Indication as to whether this is a new construction project and the date in which construction is anticipated to commence;

- Identify the Census Tract of the property and whether the location of units fall within a census tract with a poverty rate of 20% or less;
- Number of PBV units requested for the project;
- Target population for project and PBV units;
- Other relevant information including timeline for completion.

B. Priority and Relative Need. (1 page maximum, 10 points). Priority populations for assistance under this RFP include very-low income near-elderly (55+) or elderly (62+) households. Describe in detail the nature of the targeted group's unmet needs, and how this proposal will help meet that need.

C. Organizational and Management Capacity (3 pages maximum, excluding financials, 30 points). Provide the financial, staffing and managerial capacity of the applicant to facilitate and coordinate all facets of this project. Describe your experience and management of housing for the population you wish to serve including experience with the tenant based and project-based voucher program and providing supportive services to the project's target population. Proposals from organizations that demonstrate previous experience with Project Based Vouchers (PBVs) will receive a higher score in this category.

D. Supportive Services (3 pages maximum, 10 points). Please describe the plan for any supportive services that will be provided for households in this project. Projects with a Resident Services Coordinator will receive a higher score in this category.

E. Building and Site Characteristics of the Project (3 pages maximum, excluding site plan/elevations/floor plan, 30 points). Please provide the site plan, elevations and floor plans along with a maximum 3 page narrative that describes the buildings and site characteristics, and specifies how the site meets the following requirements of 24 CFR § 983.57:

- The selected project-site must be consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.
- The site of the project must not: (i) Exclude qualified individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under, any program or activity that receives Federal financial assistance from the Department, or (ii) Defeat or substantially impair the accomplishment of the objectives of the program or activity with respect to qualified individuals with handicaps.
- The site and neighborhood may not be subject to serious adverse environmental conditions, natural or manmade, such as dangerous walks or steps; instability; flooding, poor drainage, septic tank back-ups or sewage hazards; mudslides; abnormal air pollution, smoke or dust; excessive noise, vibration or vehicular traffic; excessive accumulations of trash; vermin or rodent infestation; or fire hazards.

- The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the site.
- The site must not be located in an area of minority concentration, except as permitted under 24 CFR § 983.57 paragraph (e)(3), and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.
- The site must promote greater choice of housing opportunities and avoids undue concentration of assisted persons in areas containing a high proportion of low-income persons.
- The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.
- The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents. *Please include a list of services/amenities available within close proximity to the project. Be sure to provide distance to services/amenities. (i.e. a bus stop with the distance measured as the shortest available path along an ADA-accessible sidewalk route; shopping/grocery; pharmacy; employment opportunities; public recreation or civic facilities; hospitals/medical clinic or doctor's office; public schools or childcare facilities. etc.)*
- Except for new construction, housing designed for elderly persons, travel time, and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive.
- Other characteristics of the site.

F. Form HUD-5369-C & Conflict of Interest Statement (5 points).

Submit attached Form HUD-5369-C, Certifications and Representations of Offerors.

Include a Conflict of Interest statement. This statement must:

- Disclose any possible conflict of interest by any of these parties with respect to South Portland Housing Authority or U. S. Department of Housing and Urban Development (HUD) programs.
- Describe the identity of the owner of the proposed project and other project principals and the names of officers and principal members, shareholders, investors, and other parties having a substantial interest; and
- Certify that the above-mentioned parties are not on the U. S. General Services Administration list of parties excluded from Federal procurement and non-procurement programs.

G. Subsidy Layering Review (5 points). The owner must disclose all HUD and/or other Federal, State, or local governmental assistance committed to the project, as well as other governmental assistance, such as tax concessions or tax credits that will be used

for the proposed project-based units for acquisition, development or operation. The owner must further certify that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layer review in accordance with HUD requirements. The SPHA will use this information to complete the subsidy layering review, which must be approved by HUD prior to entering into an agreement with the owner. This review is conducted to prevent excessive public assistance for the housing.

- I. **PBV Project Eligibility Disclosure and Certifications (5 points).** The owner must complete the PBV Project Eligibility Disclosure and Certifications attachment, which will be used by South Portland Housing Authority to determine whether the project is meets basic eligibility requirements to receive project-based vouchers in accordance with HUD regulations.

5. General Information and Instructions:

- **Program Rules and Regulations:** All applications must meet the rules and regulations of the Section 8 Program as noted in 24 CFR Part 982 Section 8 Tenant-Based Voucher Program, 24 CFR 983 Project-Based Voucher (PBV) Program, PIH Notice 2017-21 and the South Portland Housing Authority Administrative Plan.
- **Reservation of Rights:** South Portland Housing Authority reserves the right, at its sole discretion, to award all, a portion, or none of the available vouchers under this application, as well as reject any and all applications based on the quality and merits of the applications received, or when it is determined to be in the public interest to do so. South Portland Housing Authority reserves the right to substantiate any proposers' qualifications, capability to perform, availability and past performance records under Section 8 Housing Programs. Also, South Portland Housing Authority may extend deadlines and timeframes, as needed.
- **Confidentiality:** Applications received by South Portland Housing Authority shall become a matter of public record subject to public inspection, except to the extent, which an applicant designates in writing, proprietary data to be confidential and submits that data under separate cover, such information may be held from public inspection, as provided in Maine law: 5 MRSA Sections 13119-A and 13119-B.
- **Compliance with Federal Law:** The selected applicant will be required to certify that the development and management of the proposed housing will be in compliance with all applicable laws, executive orders, OMB Circulars and federal regulations, including but not limited to: Fair Housing Act, Equal Opportunity and Non-discrimination, National Environmental Policy Act (NEPA), the Uniform Relocation Assistance and Real Property Acquisition Policies Act, the Davis-Bacon Act, the Lead-Based Paint Poisoning Prevention Act, Flood Disaster Protection Act, Conflict of Interest, Contractor Debarment and Cost Principles.

- **Equal Employment Opportunities:** Vendors must comply fully with the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998, as amended (WIA, 29 CFR part 37); the Nontraditional Employment for Women Act of 1991; title VI of the Civil Rights Act of 1964, as amended; section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; title IX of the Education Amendments of 1972, as amended; and with all applicable requirements imposed by or pursuant to regulations implementing those laws, including but not limited to 29 CFR part 37.

Questions regarding this program or proposal should be addressed to Leanna Bruce, Director of Housing Programs, South Portland Housing Authority (e-mail lbruce@spha.net) Phone number: (207) 773-4140 ext. 231.

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PBV Project Eligibility Disclosure and Certifications

- Are the units proposed to be project-based one of the ineligible types listed at 24 CFR § 982.53(a)? **YES** **NO**
- Are the units proposed to be project-based owner-occupied (except cooperative housing) or occupied by ineligible families [24 CFR § 983.53(b)-(c)]? **YES** **NO**
- Are the units proposed to be project-based one of the subsidized housing types listed at 24CFR § 983.54? **YES** **NO**
- Percentage of units in project that are proposed to be project-based [24 CFR § 983.56]? _____
Total Number of Housing Units in Project: _____
Number of proposed Project-Based Voucher Units in Project: _____
- Is the proposed PBV site consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities [24 CFR § 983.57(b)]? **YES** **NO**
- Does the site meet site and neighborhood standards [24 CFR § 983.57(d)-(e)]? **YES** **NO**
- Will the project have broadband infrastructure available to all units [24 CFR §983.157]?
 YES **NO**
- The project owner/developer certifies that the project will comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8. **YES** **NO**
- The project owner/developer certifies that the design and construction will comply with the requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 CFR 100.205, as applicable. **YES** **NO**
- The project owner/developer certifies that the project will comply with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135. **YES** **NO**
- The project owner/developer certifies that the project will comply with federal equal employment opportunity requirements of Executive Orders 11246 as amended, 11625, 12432 and 12138. **YES** **NO**
- The project owner/developer certifies that in the case of an Agreement of nine or more contract units (whether or not completed in stages), the owner and the owner’s contractors and subcontractors will comply with Davis-Bacon wage requirements. **YES** **NO**

Printed Name

Signature

Company

Date

Certifications and Representations of Offerors

Non-Construction Contract

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This form includes clauses required by OMB's common rule on bidding/offering procedures, implemented by HUD in 24 CFR 85.36, and those requirements set forth in Executive Order 11625 for small, minority, women-owned businesses, and certifications for independent price determination, and conflict of interest. The form is required for nonconstruction contracts awarded by Housing Agencies (HAs). The form is used by bidders/offers to certify to the HA's Contracting Officer for contract compliance. If the form were not used, HAs would be unable to enforce their contracts. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

1. Contingent Fee Representation and Agreement

(a) The bidder/offeror represents and certifies as part of its bid/offer that, except for full-time bona fide employees working solely for the bidder/offeror, the bidder/offeror:

- (1) has, has not employed or retained any person or company to solicit or obtain this contract; and
- (2) has, has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) If the answer to either (a)(1) or (a) (2) above is affirmative, the bidder/offeror shall make an immediate and full written disclosure to the PHA Contracting Officer.

(c) Any misrepresentation by the bidder/offeror shall give the PHA the right to (1) terminate the resultant contract; (2) at its discretion, to deduct from contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or (3) take other remedy pursuant to the contract.

2. Small, Minority, Women-Owned Business Concern Representation

The bidder/offeror represents and certifies as part of its bid/offer that it:

- (a) is, is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.
- (b) is, is not a women-owned small business concern. "Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.
- (c) is, is not a minority enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals.

For the purpose of this definition, minority group members are:

(Check the block applicable to you)

- | | |
|---|---|
| <input type="checkbox"/> Black Americans | <input type="checkbox"/> Asian Pacific Americans |
| <input type="checkbox"/> Hispanic Americans | <input type="checkbox"/> Asian Indian Americans |
| <input type="checkbox"/> Native Americans | <input type="checkbox"/> Hasidic Jewish Americans |

3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

- (1) The prices in this bid/offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder/offeror or competitor relating to (i) those prices, (ii) the intention to submit a bid/offer, or (iii) the methods or factors used to calculate the prices offered;
- (2) The prices in this bid/offer have not been and will not be knowingly disclosed by the bidder/offeror, directly or indirectly, to any other bidder/offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
- (3) No attempt has been made or will be made by the bidder/offeror to induce any other concern to submit or not to submit a bid/offer for the purpose of restricting competition.

(b) Each signature on the bid/offer is considered to be a certification by the signatory that the signatory:

- (1) Is the person in the bidder/offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
- (2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above (insert full name of person(s) in the bidder/offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offeror's organization);
(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the bidder/offeror deletes or modifies subparagraph (a)2 above, the bidder/offeror must furnish with its bid/offer a signed statement setting forth in detail the circumstances of the disclosure.

4. Organizational Conflicts of Interest Certification

(a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed contract and a prospective contractor’s organizational, financial, contractual or other interest are such that:

- (i) Award of the contract may result in an unfair competitive advantage;
- (ii) The Contractor’s objectivity in performing the contract work may be impaired; or
- (iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.

(b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract for the convenience of HA if it would be in the best interest of HA.

(c) In the event the Contractor was aware of an organizational conflict of interest before the award of this Contract and intentionally did not disclose the conflict to the HA, the HA may terminate the Contract for default.

(d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

5. Authorized Negotiators (RFPs only)

The offeror represents that the following persons are authorized to negotiate on its behalf with the PHA in connection with this request for proposals: (list names, titles, and telephone numbers of the authorized negotiators):

6. Conflict of Interest

In the absence of any actual or apparent conflict, the offeror, by submission of a proposal, hereby warrants that to the best of its knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement, as described in the clause in this solicitation titled “Organizational Conflict of Interest.”

7. Offeror's Signature

The offeror hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.

Signature & Date:

Typed or Printed Name:

Title:

§ 983.53 Prohibition of assistance for ineligible units.

(a) Ineligible unit. The PHA may not attach or pay PBV assistance for units in the following types of housing:

(1) Shared housing;

(2) Units on the grounds of a penal, reformatory, medical, mental, or similar public or private institution;

(3) Nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care. However, the PHA may attach PBV assistance for a dwelling unit in an [assisted living facility](#) that provides home health care services such as nursing and therapy for residents of the housing;

(4) Units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students of the institution;

(5) Manufactured homes; and

(6) Transitional Housing.

(b) Prohibition against assistance for owner-occupied unit. The PHA may not attach or pay PBV assistance for a unit occupied by an [owner](#) of the housing. A member of a cooperative who owns shares in the [project](#) assisted under the PBV [program](#) shall not be considered an [owner](#) for purposes of participation in the PBV [program](#).

(c) Prohibition against selecting unit occupied by an ineligible family. Before a PHA selects a specific unit to which assistance is to be attached, the PHA must determine whether the unit is occupied and, if occupied, whether the unit's occupants are eligible for assistance. The PHA must not select or enter into an Agreement or HAP contract for a unit occupied by a family ineligible for participation in the PBV [program](#).

(d) Prohibition against assistance for units for which commencement of construction or rehabilitation occurred prior to AHAP. The PHA may not attach or pay PBV assistance for units for which construction or rehabilitation has commenced as defined in [§ 983.152](#) after proposal submission and prior to execution of an AHAP.

§ 983.54 Prohibition of assistance for units in subsidized housing.

A PHA may not attach or pay PBV assistance to units in any of the following types of subsidized housing:

- (a) A public housing dwelling unit;
- (b) A unit subsidized with any other form of Section 8 assistance (tenant-based or [project-based](#));
- (c) A unit subsidized with any governmental rent subsidy (a subsidy that pays all or any part of the rent);
- (d) A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
- (e) A unit subsidized with Section 236 rental assistance payments ([12 U.S.C. 1715z-1](#)). However, the PHA may attach assistance to a unit subsidized with Section 236 interest reduction payments;
- (f) A unit subsidized with rental assistance payments under Section 521 of the [Housing Act of 1949, 42 U.S.C. 1490a](#) (a Rural Housing Service Program). However, the PHA may attach assistance for a unit subsidized with Section 515 interest reduction payments ([42 U.S.C. 1485](#));
- (g) A Section 202 [project](#) for non-elderly persons with disabilities (assistance under Section 162 of the [Housing and Community Development Act of 1987, 12 U.S.C. 1701q](#) note);
- (h) Section 811 [project-based](#) supportive housing for persons with disabilities ([42 U.S.C. 8013](#));
- (i) Section 202 supportive housing for the elderly ([12 U.S.C. 1701q](#));
- (j) A Section 101 rent supplement [project](#) ([12 U.S.C. 1701s](#));
- (k) A unit subsidized with any form of [tenant-based](#) rental assistance (as defined at [24 CFR 982.1\(b\)\(2\)](#)) (e.g., a unit subsidized with [tenant-based](#) rental assistance under the HOME program, [42 U.S.C. 12701](#) et seq.);
- (l) A unit with any other duplicative federal, [state](#), or local housing subsidy, as determined by HUD or by the PHA in accordance with HUD requirements. For this purpose, “housing subsidy” does not include the housing component of a welfare payment; a social security payment; or a federal, [state](#), or local tax concession (such as relief from local real property taxes).

§ 983.56 Cap on number of PBV units in each project.

(a) 25 percent per project cap. Except as provided in paragraph (b) of this section, the PHA may not select a proposal to provide PBV assistance for units in a project or enter into an Agreement or HAP contract to provide PBV assistance for units in a project, if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP is more than 25 percent of the number of dwelling units (assisted or unassisted) in the project.

(b) Exception to 25 percent per building cap -

(1) When PBV units are not counted against cap. In the following cases, PBV units are not counted against the 25 percent per project cap:

- (i) Units in a single-family building;
- (ii) Excepted units in a multifamily project.

(2) Terms (i) "Excepted units" means units in a multifamily project that are specifically made available for qualifying families.

(ii) "Qualifying families" means:

(A) Elderly and/or disabled families; and/or

(B) Families receiving supportive services. PHAs must include in the PHA administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. It is not necessary that the services be provided at or by the project, if they are approved services. To qualify, a family must have at least one member receiving at least one qualifying supportive service. A PHA may not require participation in medical or disability-related services other than drug and alcohol treatment in the case of current abusers as a condition of living in an excepted unit, although such services may be offered. If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received, FSS supportive services or any other supportive services as defined in the PHA administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit. If a family in an excepted unit fails without good cause to complete its FSS contract of participation or if the family fails to complete the supportive services requirement as outlined in the PHA administrative plan, the PHA will take the actions provided under § 983.262(d), and the owner may terminate the lease in accordance with § 983.257(c). Also, at the time of initial lease execution between the family and the owner, the family and the PHA must sign a statement of family responsibility. The statement of family responsibility must contain all family obligations including the family's participation in a service program under this section. Failure by the family without good cause to fulfill its service obligation will require the PHA to terminate assistance. If the unit at the time of such termination is an excepted unit, the exception continues to apply to the unit as long as the unit is made available to another qualifying family.

(C) The PHA must monitor the excepted family's continued receipt of supportive services and take appropriate action regarding those families that fail without good cause to complete their supportive services requirement. The PHA administrative plan must **state** the form and frequency of such monitoring.

(3) Combining exception categories. Exception categories in a multifamily housing **project** may be combined.

(4) Set-aside for qualifying families.

(i) In leasing units in a multifamily **project** pursuant to the PBV HAP, the **owner** must set aside the number of **excepted units** made available for occupancy by **qualifying families**.

(ii) The PHA may refer only **qualifying families** for occupancy of **excepted units**.

(c) Additional, local requirements promoting partially assisted projects. A PHA may establish local requirements designed to promote PBV assistance in partially assisted projects. For example, a PHA may:

(1) Establish a per-project cap on the number of units that will receive PBV assistance or other **project-based** assistance in a multifamily **project** containing **excepted units** or in a **single-family building**,

(2) Determine not to provide PBV assistance for **excepted units**, or

(3) Establish a per-project cap of less than 25 percent.

§ 983.57 Site selection standards.

(a) Applicability. The site selection requirements in paragraph (d) of this section apply only to site selection for existing housing and rehabilitated PBV housing. The site selection requirements in paragraph (e) of this section apply only to site selection for newly constructed PBV housing. Other provisions of this section apply to selection of a site for any form of PBV housing, including existing housing, newly constructed housing, and rehabilitated housing.

(b) Compliance with PBV goals, civil rights requirements, and HQS. The PHA may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an Agreement or HAP contract for units on the site, unless the PHA has determined that:

(1) Project-based assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. The standard for deconcentrating poverty and expanding housing and economic opportunities must be consistent with the PHA Plan under 24 CFR part 903 and the PHA Administrative Plan. In developing the standards to apply in determining whether a proposed PBV development will be selected, a PHA must consider the following:

- (i) Whether the census tract in which the proposed PBV development will be located is in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community;
- (ii) Whether a PBV development will be located in a census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition;
- (iii) Whether the census tract in which the proposed PBV development will be located is undergoing significant revitalization;
- (iv) Whether state, local, or federal dollars have been invested in the area that has assisted in the achievement of the statutory requirement;
- (v) Whether new market rate units are being developed in the same census tract where the proposed PBV development will be located and the likelihood that such market rate units will positively impact the poverty rate in the area;
- (vi) If the poverty rate in the area where the proposed PBV development will be located is greater than 20 percent, the PHA should consider whether in the past five years there has been an overall decline in the poverty rate;
- (vii) Whether there are meaningful opportunities for educational and economic advancement in the census tract where the proposed PBV development will be located.

(2) The site is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d(4)) and HUD's implementing regulations at 24 CFR part 1; Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601-3629); and HUD's implementing regulations at 24 CFR parts 100 through 199; Executive Order 11063 (27 FR 11527; 3 CFR, 1959-1963

Comp., p. 652) and HUD's implementing regulations at [24 CFR part 107](#). The [site](#) must meet the section 504 [site](#) selection requirements described in [24 CFR 8.4\(b\)\(5\)](#).

(3) The [site](#) meets the [HQS site](#) standards at [24 CFR 982.401\(l\)](#).

(c) PHA PBV site selection policy.

(1) The PHA administrative plan must establish the PHA's policy for selection of PBV [sites](#) in accordance with this section.

(2) The [site](#) selection policy must explain how the PHA's [site](#) selection procedures promote the PBV goals.

(3) The PHA must select PBV [sites](#) in accordance with the PHA's [site](#) selection policy in the PHA administrative plan.

(d) Existing and rehabilitated housing site and neighborhood standards. A [site](#) for existing or [rehabilitated housing](#) must meet the following [site](#) and neighborhood standards. The [site](#) must:

(1) Be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities and streets must be available to service the [site](#). (The existence of a private disposal system and private sanitary water supply for the [site](#), approved in accordance with law, may be considered adequate utilities.)

(2) Promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(3) Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

(4) Be so located that travel time and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers is not excessive. While it is important that housing for the elderly not be totally isolated from employment opportunities, this requirement need not be adhered to rigidly for such projects.

(e) New construction site and neighborhood standards. A [site](#) for [newly constructed housing](#) must meet the following [site](#) and neighborhood standards:

(1) The [site](#) must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the [site](#).

(2) The [site](#) must not be located in an area of minority concentration, except as permitted under [paragraph \(e\)\(3\)](#) of this section, and must not be located in a racially mixed area if the [project](#) will cause a significant increase in the proportion of minority to non-minority residents in the area.

(3) A [project](#) may be located in an area of minority concentration only if:

- (i) Sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed [project](#) outside areas of minority concentration (see paragraph (e)(3)(iii), (iv), and (v) of this section for further guidance on this criterion); or
- (ii) The [project](#) is necessary to meet overriding housing needs that cannot be met in that housing market area (see paragraph (e) (3)(vi)) of this section for further guidance on this criterion).
- (iii) As used in [paragraph \(e\)\(3\)\(i\)](#) of this section, “sufficient” does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year, that, over a period of several years, will approach an appropriate balance of housing choices within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for low-income minority families and in relation to the racial mix of the locality's population.
- (iv) Units may be considered “comparable opportunities,” as used in [paragraph \(e\)\(3\)\(i\)](#) of this section, if they have the same [household](#) type (elderly, disabled, family, large family) and tenure type (owner/renter); require approximately the same [tenant](#) contribution towards rent; serve the same income group; are located in the same housing market; and are in standard condition.
- (v) Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for low-income minority families in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with other factors relevant to housing choice:
- (A) A significant number of assisted housing units are available outside areas of minority concentration.
 - (B) There is significant integration of assisted housing [projects](#) constructed or rehabilitated in the past 10 years, relative to the racial mix of the eligible population.
 - (C) There are racially integrated neighborhoods in the locality.
 - (D) [Programs](#) are operated by the locality to assist minority families that wish to find housing outside areas of minority concentration.
 - (E) Minority families have benefited from local activities (e.g., acquisition and write-down of sites, tax relief [programs](#) for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority families outside of areas of minority concentration.
 - (F) A significant proportion of minority [households](#) has been successful in finding units in non-minority areas under the [tenant](#)-based assistance programs.
 - (G) Comparable housing opportunities have been made available outside areas of minority concentration through other programs.

- (vi)** Application of the “overriding housing needs” criterion, for example, permits approval of [sites](#) that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of [sites](#) in a neighborhood experiencing significant private investment that is demonstrably improving the economic character of the area (a “revitalizing area”). An “overriding housing need,” however, may not serve as the basis for determining that a [site](#) is acceptable, if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, religion, sex, national origin, age, familial status, or disability renders [sites](#) outside areas of minority concentration unavailable or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.
- (4)** The [site](#) must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.
- (5)** The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted [program](#) to remedy the undesirable conditions.
- (6)** The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.
- (7)** Except for new construction, housing designed for elderly persons, travel time, and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive.

§ 983.157 Broadband infrastructure.

Any new construction or substantial rehabilitation, as substantial rehabilitation is defined by [24 CFR 5.100](#), of a [building](#) with more than 4 rental units and where the date of the notice of owner proposal selection or the start of the rehabilitation while under a HAP contract is after January 19, 2017 must include installation of broadband infrastructure, as this term is also defined in [24 CFR 5.100](#), except where the owner determines and documents the determination that:

- (a) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible;
- (b) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its [program](#) or activity or in an undue financial burden; or
- (c) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

PHA-Owned Units:

In accordance with HOTMA, a unit is “owned by a PHA” if the unit is in a project that is:

- (a) Owned by the PHA (which includes a PHA having a “controlling interest” in the entity that owns the unit);
- (b) Owned by an entity wholly controlled by the PHA; or
- (c) Owned by a limited liability company (LLC) or limited partnership in which the PHA (or an entity wholly controlled by the PHA) holds a controlling interest in the managing member or general partner.

“Controlling interest” means:

- (a) Holding more than 50 percent of the stock of any corporation; or
- (b) Having the power to appoint more than 50 percent of the members of the board of directors of a non-stock corporation (such as a non-profit corporation); or
- (c) Where more than 50 percent of the members of the board of directors of any corporation also serve as directors, officers, or employees of the PHA; or
- (d) Holding more than 50 percent of all managing member interests in an LLC; or
- (e) Holding more than 50 percent of all general partner interests in a partnership; or
- (f) Having equivalent levels of control in other ownership structures. Most ownership structures are already covered in the categories listed above. This last category is meant to cover any ownership structure not already listed in the categories above. Also, under this category (f), a PHA must have more than 50 percent control in that ownership structure (an equivalent level of control) for the project to be considered PHA-owned.