REG-114084-04

City of New York
DEPARTMENT OF
HOUSING PRESERVATION AND DEVELOPMENT
100 GOLD STREET, NEW YORK, N.Y. 10038
nyc.gov/hpd

SHAUN DONOVAN
Commissioner

LEGAL PROCESSING DIVISION
PUBLICATION & REGULATIONS
BRANCH

SEP 1 8 2007

September 15, 2007

Ms. Linda E. Stiff
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue NW
Washington, DC 20044

Re: Comments in Response to Notice of Proposed Rulemaking on Section 42 Qualified Contract Provisions

Dear Commissioner Stiff:

The New York City Department of Housing Preservation and Development (HPD) appreciates the opportunity to comment in response to the Notice of Proposed Rulemaking on Section 42 Qualified Contract Provisions, as published in the Federal Register on June 19, 2007. HPD is the nation's largest municipal housing development agency. Our mission is to promote quality housing and viable neighborhoods for New Yorkers. As part of our responsibility, HPD directly allocates approximately $12.5 million in 9% tax credits each year.

We are concerned proposed section 1.42-18(b)(3), as it applies to projects built on land acquired for below market prices, will increase the cost of the qualified contract and thereby make it more difficult to maintain affordability in these properties. Such an increase would be inconsistent with the goal of the extended-long term commitment provided for by the Code to continue the use of the low income portion of the building as low-income housing.

For a building that has received an allocation of Low Income Housing Tax Credits (LIHTC), the proposed section requires the fair market value of the land underlying the building be included in the computation of a qualified contract price. However, land for LIHTC projects in the City of New York has often been provided to the development from the City at a below market price, and often at a nominal price, as a form of direct subsidy to create low-income housing.

An increase in the qualified contract price that does not reflect the actual amount contributed by the investor is inconsistent with the goal of the extended-long term commitment. The change would make it more difficult to find an entity committed to maintaining the affordability of the property (typically a non-profit) while still being able to pay the qualified contract price, acquire the property, and continue to operate it as low-income housing. In addition, if a non-profit were unable to pay the qualified contract price, the City could be required to provide additional subsidy to the non-profit to preserve the affordability of the housing. Not recognizing the City's initial subsidy would have the effect of forcing the City to provide a land subsidy twice.

As it is the intent of the Code to ensure a fair price is arrived at in the computation of a qualified contract price, and the intent of the extended-long term commitment is to maintain the low-income housing, we are of the opinion that the regulations should only include the actual value contributed by the investor in acquiring the land, not the fair market value, in the computation of a qualified contract price.

If you have any questions or would like to discuss our comments please contact Alexandra Sewell at (212) 863-8402.

Sincerely,

Shaun Donovan
Commissioner

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RE: Section 42 Qualified Contract Provisions, RIN 1545-BC20