

## Qualified Contract Request Procedure

After the last day of the fourteenth year of the compliance period of the last building placed in service or the last year of a multiple allocation, an eligible owner of a project utilizing federal low-income housing tax credits may request a QC pursuant to IRC §42(h)(6)(E) for the acquisition of the low-income portion of the development.

For example, if five buildings in the project began their credit periods in 1990 and one started in 1991, the 15<sup>th</sup> year for the purposes of a Request would be 2005.

If the project received its first allocation of \$500,000 in 1990 and a subsequent award of \$25,000 in 1992, the 15<sup>th</sup> year for the purposes of a Request would be 2006.

The following procedure sets forth the terms and conditions project owners must follow in order for the Virginia Housing Development Authority (the "Authority") to administer qualified contract ("QC") requests.

All principals in the ownership of a development requesting a Qualified Contract in Virginia will be prohibited from receiving an allocation of tax credits beginning January 1, 2019.

### **Notice of Intent to File Request (Preliminary Application)**

Between January 1 and January 31 of each year, the Authority will accept Preliminary Applications ("PAs") from owners ("Owners") of projects utilizing federal low-income housing tax credits to determine their eligibility to submit a request for a QC ("a Request.") The Owner must submit the following with the Preliminary Application:

- a) first year 8609s showing Part II completed;
- b) copies of all uncorrected 8823s (if any);
- c) documentation regarding right of first refusal for purchase and waivers thereof (if any);
- d) cash-flow statements for the previous 12 months;
- e) \$20,000 non-refundable administrative fee.

After receiving the PA, the Authority will schedule a mandatory meeting with the applicant. The Authority shall determine the eligibility of an Owner to submit a Request by confirming the following:

- (i) the owner did not waive its right to request a QC during the allocation of the tax credits;
- (ii) the tax credit property meets the basic physical compliance standards that are necessary to claim credits— an on-site physical inspection will be conducted during the preliminary review to confirm; and

- (iii) the owner has secured waivers of any purchase options and rights of first refusal connected to the property.

Therefore, each PA must address each of the preceding three items. If after the review of the PA, the Authority determines the Owner is not eligible to submit a Request, the Authority will notify the Owner in writing of the reason why, and the Owner may re-apply up to one additional time in subsequent rounds. Any owner that waived its right to request a QC during the allocation of the tax credits is ineligible to submit a Request. Waivers of purchase options and rights of first refusal connected to the property may not be conditioned upon the Authority presenting a QC to the owner.

In addition to addressing basic eligibility as explained above, each Owner shall provide cash-flow statements for the previous 12 months and certify in its PA that it has all the necessary documentation to submit a Request. The PA will not bind the Owner to submit a Request and does not start the one-year period (“1YP”) defined in §42(h)(6)(l). An Owner may only submit 2 preliminary applications for a property, regardless of whether they move forward with an official request or are disqualified as part of the preliminary review.

### **Filing a Request**

The Authority will accept Requests from July 1 through July 31 of each year from Owners who submitted a PA and have been determined by the Authority to be eligible to submit a Request.

The Owner files a Request by filing with the Authority such documents and additional information as may be requested in order to comply with the IRC and these procedures and to determine the QC price in accordance with §42(h)(6)(F) (collectively the “Application.”) The Executive Director may reject any Application from consideration for a QC if the Owner does not provide the proper documentation or information. The 1YP does not start until the Owner submits a complete Application with all required documents to the satisfaction of the Authority and a QC price has been agreed upon by both parties.

The Application shall include the Owner’s proposed QC price. Such proposed QC price shall include an opinion of an independent certified public accountant or other assurances satisfactory to the Executive Director, setting forth the calculation of the QC price requested in the Application and certifying, among other things, that the Owner is entitled to the QC price requested. In addition, the Owner must submit the following items with the Application:

- a) annual partnership federal tax returns for all 15 years of operation since the start of the credit period (“all years”);
- b) audited annual project financial statements for all years;
- c) loan documents for all secured debt during the compliance period;
- d) partnership agreement (original, current and all interim amendments);
- e) title report;
- f) final cost certification, including detailed sources;
- g) an additional \$20,000 non-refundable administrative fee; and

h) a \$30,000 deposit for anticipated third-party costs.

The deposit for anticipated third-party costs may be used by the Authority to pay for:

- a) an accountant to confirm the QC price requested in the application;
- b) a physical needs assessment for the entire project;
- c) an appraisal for the entire project;
- d) a market study for the entire project; and,
- e) a Phase I environmental (and a Phase II, if necessary).

If third-party costs exceed the Owner's deposit, the Authority shall make a request for an additional deposit or deposits. The Owner shall continue to make additional deposits to cover such costs in increments of \$10,000 until all such costs are covered. The processing of the Request will be suspended during any time an additional deposit has been requested from the Owner until such funds are received from the Owner. If requested funds are not received within 15 days of notice to the Owner the processing of the Request will be terminated.

When the Owner submits its Request, it is authorizing the Authority to start spending the funds on deposit to pay for the items listed as 'anticipated third-party costs' (a) to (e), above. The 1YP will start on the date a valid price has been determined and accepted by both parties. A valid Request is a complete Application from an eligible Owner. The 1YP shall be suspended during any period of time during which the Authority is waiting for additional documentation from the Owner (or agents of the Owner) determined by the Authority (or professionals or agents hired by the Authority) to be necessary to determine the QC price.

The Owner may choose to cancel the Request at any time and any remaining funds in the deposit shall be returned to the Owner. There is a maximum of 2 requests per property.

### **Marketing of Property**

Once the final request has been processed and the QC price has been established, the property will be posted for sale on VHDA's website. All documents the Authority deems relevant to the marketing and sale of the property will also be posted. All contacts on VHDA's interested parties list will be notified of the available property. VHDA reserves the right to hire a broker payable from the applicant's deposit.

VHDA will schedule tours of the property with potential buyers, as needed. A notice of the scheduled visit will be provided to on-site property management a minimum of 48 hours prior to the tour. In submitting the QC request, the Owner agrees to cooperate with marketing in all reasonable respects and if the property deteriorates below the level necessary to claim credits, the 1 YP will be suspended until the property is brought back in to compliance.

If VHDA determines that the Property is a high priority asset, and the loss of affordable housing units would have a severe adverse effect on the local market, VHDA may provide incentive to a third party purchaser or may elect to purchase the property.

## **Presentation of a Qualified Contract**

The Authority will create a standard form contract to use when presenting the QC that includes basic real estate transaction terms and that is as close to a contingency-free contract as possible. The Owner and the proposed buyer would be free to negotiate different transaction terms prior to closing; however, failure of such negotiations does not negate the following paragraph.

Under IRC §42(h)(6)(E)(i)(II), the Authority's only obligation is to "present" to the Owner a bona fide contract signed by a prospective buyer to acquire the Owner's project for the QC price ("the Contract.") When the Authority presents the Contract to the Owner, regardless of when or if the Contract is fulfilled, the possibility of terminating the extended use period is removed for the remainder of the affordability period and the project remains bound to the provisions in, and may not terminate, the extended use agreement. Whether or not the Owner actually executes the contract and closes the transaction is a separate, legally unrelated question.

## **General Rules**

In keeping with the clear purpose of IRC § 42, the Authority will resolve every case of doubt or interpretation in determining the QC price, both with regard to the overall process and particular projects, in favor of a lower QC price.

Disputes resulting from unreasonable, unprofessional, and/or bad faith conduct on behalf of the Owner, may result in VHDA issuing a written determination that no further Qualified Contract Agreements will be presented to the Property, and VHDA's obligation to present a Qualified Contract has been met.

The Authority may add to or amend these procedures at any time. Before submitting an Application, please visit the website to obtain the most current information.

Please direct questions to Stephanie Flanders, Associate Tax Credit Allocation Officer, 804-343-5939 or email: [stephanie.flanders@vhda.com](mailto:stephanie.flanders@vhda.com).