



# **Qualified Contract Procedures Guide**

**December 2009**

**Michigan State Housing Development Authority**  
Low Income Housing Tax Credit Program

**QUALIFIED CONTRACT PROCEDURES GUIDE**

**TABLE OF CONTENTS**

- I. Introduction and Foreword
- II Glossary of Terms
- III. Overview of the Qualified Contract Process
- IV. Prerequisites for Eligibility to Submit a QCR
- V. Preliminary Application
- VI. Qualified Contract Request
- VII. Calculating the Qualified Contract Price
- VIII. MSHDA Acceptance of the QCR and QCP
- IX. Marketing the Property
- X. Offers to Purchase
- XI. Fees and Charges
- XII. Miscellaneous
- XIII. Appendices
  - A-1 Preliminary Application (Form QCR-PA)
  - A-2 Qualified Contract Request (Form QCR)
  - A-3 Qualified Contract Price Worksheets A - F
  - A-4 Independent Accountant's Report on Applying Agreed Upon Procedures
  - A-5 Conflicts of Interest Disclosure

## SECTION I – INTRODUCTION AND FOREWORD

The Michigan State Housing Development Authority (MSHDA or the Authority) is designated as the Low Income Housing Tax Credit (Housing Tax Credit or LIHTC) Allocating Agency for the state of Michigan. As the designated housing tax credit agency, MSHDA is required by Section 42(h)(6)(E)(i)(II) of the Code to respond to the request for presentation of a Qualified Contract (QC) from the owners of LIHTC projects with expiring Compliance Periods. The purpose of this Qualified Contract Procedures Guide (Guide) is to outline the procedures an owner of a LIHTC project with an expiring compliance period must follow in order to request MSHDA to present a Qualified Contract for the purchase of the LIHTC project.

The initial Compliance Period for a project receiving an allocation of LIHTC is fifteen years. For LIHTC allocations made in 1990 and later, an extended use agreement, as required by Section 42(h)(6) of the Internal Revenue Code of 1986, as amended (the Code), extends the Compliance Period for a minimum of fifteen additional years, also referred to as the Extended Use Period. Section 42(h)(6)(E)(i)(II) of the Code provides that the Extended Use Period shall terminate, however, if a housing credit agency is unable to present a "qualified contract" (QC) to a taxpayer who has requested such a contract within one year following the request.

The request for presentation of a QC may not occur until after year 14 of the Compliance Period. The request for presentation of a QC is a request that the housing credit agency find a qualified purchaser, or a buyer who makes an offer to purchase the property for a qualified contract price (QCP) (calculated pursuant to IRS regulations) and who will continue to operate the property as a qualified low-income property. Once an offer is made by a qualified purchaser (QP) at the qualified price, the housing credit agency has satisfied its obligation, whether or not the offer is accepted by the owner. If the housing credit agency is unable to find a QP within one year, the Extended Use Period as set forth in the LURA is terminated after the 3-year period required by the Code (3YP).

The Code contains some of the basic provisions for handling QC requests. A number of important questions, however, have not been answered through federal regulation or other guidance. The purpose of this guide is to set forth the procedures to be followed by MSHDA and the owners of Michigan tax credit projects who are considering making a request for a QC.

Owners are cautioned that the Qualified Contract Request (QCR) is a complex process, involving substantial time, resources and energy on the part of the owner, management company and MSHDA. As such, it may not be the best alternative in each situation and owners are encouraged to consider all options. It is hoped that many owners will choose to remain in the LIHTC Program throughout the Extended Use Period.

**DISCLAIMER:** MSHDA shall be under no obligation to undertake an investigation of the accuracy of the information submitted with the request for the presentation of a QC. MSHDA's review shall not constitute a warranty of the accuracy of the information, nor of the quality or marketability of the housing to be purchased, constructed, or rehabilitated pursuant to the Program. Developers, potential investors, and other interested parties should undertake their own independent evaluation of the feasibility, suitability and risk of the project. If any information submitted by a building owner to MSHDA is later found to be incorrect in any material respect, it is the responsibility of the building owner to

inform MSHDA and to request a reexamination of the information. MSHDA is not, nor is MSHDA acting in the capacity of, a real estate agent or real estate broker. Its role is limited to implementing the Code requirements and facilitating the presentation of a QC, as defined herein and in the Code. Interested parties should obtain advice from independent sources, including consultation with knowledgeable tax professionals and legal counsel.

This guide has not been reviewed or approved by the IRS and should not be relied upon for interpretation of federal income tax legislation or regulations. The provisions provided in the Code are subject to modification and clarification by the IRS. MSHDA reserves the right to revise this Qualified Contract Procedures Guide from time to time. Compliance with the requirements of Section 42 is the responsibility of the owner of the tax credit project.

## SECTION II – GLOSSARY OF TERMS

**1YP** – The one year period commencing on the date on which the Authority and the owner agree to the Qualified Contract Price (QCP) in writing, as defined in Section 42(h)(6)(I) of the Code

**3YP** - The three year period following early termination of the Extended Use Period if the housing credit agency fails to present a Qualified Contract prior to expiration of the 1YP, during which the project shall be restricted pursuant to Section 42(h)(6)(E)(ii) of the Code

**Authority** – The Michigan State Housing Development Authority, or MSHDA

**Code** - The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the U.S. Department of Treasury or the Internal Revenue Service

**Compliance Period** – With respect to a project, the period of 15 taxable years beginning with the first taxable year of the credit period for the last building that was placed in service, pursuant to Section 42(i)(1) of the Code

**Extended Use Period** – The period beginning with the first day of the Compliance Period and ending on the date that is not less than 15 years after the end of the Compliance Period or such later date agreed to by the owner and set forth in the Land Use Restriction Agreement, unless terminated pursuant to Section 42(h)(6)(E)(i) of the Code

**Guide** - This Qualified Contract Request Procedures Guide

**IRS** - The Internal Revenue Service, United States Department of Treasury

**LIHTC** - Low income housing tax credit

**LURA** - Land Use Restriction Agreement, also referred to as the tax credit regulatory agreement

**Land Use Restriction Agreement** – The extended low income housing commitment (or tax credit regulatory agreement) between the Authority and the owner that maintains the affordability of a project through the Extended Use Period and satisfies the requirements of Section 42(h)(6)(B) of the Code

**MSHDA** - The Michigan State Housing Development Authority

**Negotiation Period** - The sixty (60) day period following receipt of an offer of a QC during which the owner may negotiate the other terms of the QC with the prospective purchaser

**PA** - Preliminary Application

**Program** - The LIHTC Program, as administered by MSHDA pursuant to Section 42 of the Code

**QAP** - Qualified Allocation Plan

**QC** - Qualified Contract

**QCP** - Qualified Contract Price

**QCR** - Qualified Contract Request

**QP** - Qualified Purchaser

**Qualified Contract** - A bona fide contract to acquire the non-low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the applicable fraction (specified in the LURA) of the Qualified Contract Price

**Qualified Contract Price** – The purchase price of the project for purposes of the Qualified Contract, calculated as prescribed in Section 42(h)(6)(F) of the Code and discussed in Section VII of this Guide

**Qualified Contract Request** – An owner's request for a Qualified Contract as discussed in Section VI of this Guide

### SECTION III – OVERVIEW OF THE QUALIFIED CONTRACT PROCESS

- Step 1* The owner submits a PA for a QCR [Form QCR-PA, see Appendix A-1] and required fee.
- Step 2* MSHDA reviews the PA to determine if the owner/project has met the prerequisites and is eligible to request a QC.
- Step 3* MSHDA sends the owner a letter indicating whether or not the project is eligible for a QCR.
- Step 4* The owner engages contractors, consultants and other professionals necessary to submit the QCR and develops a certified Qualified Contract Price (QCP).
- Step 5* The owner submits a full application known as a Qualified Contract Request (Form QCR, see Appendix A-2) and the required processing fee to MSHDA, along with the CPA's calculation of the QCP, and the other documents and information detailed in Section VI.
- Step 6* MSHDA notifies the owner whether or not the QCR is complete.
- Step 7* Once the QCR is complete, MSHDA either reviews the proposed QCP in-house or forwards it to a Certified Public Accountant (CPA) contracted by MSHDA.
- Step 8* MSHDA notifies the owner that the proposed QCP is acceptable or not acceptable (see Sections VII and VIII).
- Step 9* If acceptable, the 1YP begins and MSHDA selects a real estate broker to market the project and the owner submits a power of attorney authorizing MSHDA to engage the broker and market the property for sale at the QCP. If not acceptable, the owner may appeal MSHDA's determination (see Section VIII). The 1YP does not begin until the owner and MSHDA agree on the QCP. Once agreement is reached, MSHDA selects a broker to market the property.
- Step 10* The real estate broker proceeds to market the project to potential QPs (see Section IX).
- Step 11* If a QP is located, a QC is presented to the owner.
- Step 12* The owner accepts or declines the QC offered by the QP (see Section X).
- Step 13* Upon the closing of an accepted QC, the QP assumes the owner's obligations under the LURA.
- Step 14* If no QP is located within the 1YP, the Extended Use Period terminates and MSHDA discharges the LURA following the 3YP.

## SECTION IV – PREREQUISITES FOR ELIGIBILITY TO SUBMIT A QCR

1. **Date of Eligibility to Submit QCR.** An owner may submit a QCR at any time after the end of the 14<sup>th</sup> year of the Compliance Period.

In determining when a project is eligible, MSHDA will only consider the latest date for projects with multiple credit periods or allocations. For example, if five buildings in the project began their credit periods in 1991 and one started in 1992, the 15<sup>th</sup> year for the purposes of a QCR would be 2006.

2. **Development Financing.** If the project has mortgage financing or other funding from MSHDA, such as HOME or CDBG funds, the owner must obtain a letter from the division at MSHDA having oversight of the project, authorizing participation in the QC process. If the project has other financing, the loan(s) must be eligible for prepayment within ninety (90) days.
3. **Waiver of Right to Submit a QCR.** In the initial application for tax credits, many owners chose to waive the right to request a QC and have committed to thirty years or more of operation as low-income rental housing. Owners should review the respective QAP, the project's tax credit application, carryover agreement, and the LURA to determine whether the owner has waived the right to request a QC prior to contacting MSHDA.

**IMPORTANT NOTICE:** Owners who received an allocation of credits on or after January 1, 2005, were required to waive this right and are therefore NOT eligible to submit a QCR.

4. **One-Time Request.** A request for QC may be submitted only once for each project. If an owner rejects an offer for a QC or withdraws its request at any time after the QCR has been received by MSHDA, no other opportunity to request a QC will be available for the project.
5. **Waiver of All Purchase Options.** MSHDA will not consider a QCR until the owner secures a complete, unconditional waiver of all purchase options, including a nonprofit general partner's right of first refusal.
6. **Consent.** The owner must have obtained the necessary authorization from its partners or members to negotiate on behalf of the owner for a QC.
7. **Compliance Status.** Projects that do not meet the basic compliance standards required under Section 42 of the Code and by the LIHTC Program are ineligible for consideration. The owner must have corrected all 8823 violations and other outstanding issues of non-compliance prior to submitting a QCR.

## SECTION V - PRELIMINARY APPLICATION

A PA from an owner of a project utilizing LIHTC must be submitted to MSHDA to determine the project's eligibility for a QCR. The PA form (QCR-PA) and its submission requirements are contained in Appendix A-1 of this Guide. No PA will be accepted prior to the 6-month period ending on the date on which the owner is eligible to submit a QCR. The PA will not bind the owner to submit a QCR and does not start the 1YP. The prerequisites for eligibility to submit a request for a QC are discussed in Section IV of this Guide. The PA must include the following:

- Copies of the 1st Year 8609s for each building in the project with Part II completed;
- Current proof that any purchase options or rights of first refusal have been waived;
- Applicable fraction information for each building in mixed income projects;
- Statement explaining the nature and dates of any uncorrected 8823 violations, with copies of the uncorrected 8823 forms;
- Statement listing additional affordability restrictions on the project, if any;
- If the project is MSHDA-financed, or has received other MSHDA funding, documentation of approval to participate in the QC process by MSHDA's Director of Asset Management (or other responsible division) within the previous 60 days;
- Copies of all occupancy or use restrictions affecting the project (other than zoning) and agreements for project-based assistance, if any; and
- Non-refundable PA fee of \$500, as discussed in Section XI of this Guide.

MSHDA will endeavor to respond to a PA submitted by an owner within forty-five (45) days of receipt. MSHDA will notify the owner in writing whether or not the owner is eligible to submit a QCR, and of the basis for any determination of ineligibility. MSHDA will also notify an eligible owner of any deficiencies in the PA. A PA will not be considered approved by MSHDA until all deficiencies are corrected. If all deficiencies are not corrected within thirty (30) days after receipt of MSHDA's notice, the PA will be deemed withdrawn by the owner. An owner who is not eligible to submit a QCR at the time MSHDA reviews the PA but will be eligible at a later date may resubmit a PA after that date. A resubmitted PA must include all documentation required in the original PA, including the \$500 fee.

## SECTION VI – QUALIFIED CONTRACT REQUEST

After a determination of eligibility by MSHDA, the owner's next step in the process of requesting a QC is to submit a complete QCR application, together with all required exhibits, the non-refundable fee and the deposit for third party expenses as outlined below. The QCR must be submitted within six (6) months after MSHDA's approval of the PA, as discussed in Section V of this Guide. The owner may request, and MSHDA may approve, for good cause, an extension of the deadline to submit the QCR. The owner's QCR must be submitted on the form contained in Appendix A-2 of to this Guide and must include all of the following:

1. **APPRAISAL** - A current (performed within 6 months prior to submission of the QCR) appraisal of the project performed by a State Certified General Appraiser.

2. **CAPITAL NEEDS ASSESSMENT (CNA)** - A current (performed or updated within 6 months prior to submission of the QCR) Capital Need Assessment (CNA) must be included in the QCR. A CNA is a detailed outline of the current and future physical and related financial needs of a multifamily project. The guidelines for completing a CNA are located on MSHDA's website at [www.michigan.gov/mshda](http://www.michigan.gov/mshda) (select "Developers and Contractors", then "Michigan Combined Application for Rental Housing").
3. **ENVIRONMENTAL REVIEW** – An up-to-date Phase I, and Phase II if necessary. The guidelines for completing an Environmental Review are located on MSHDA's website at [www.michigan.gov/mshda](http://www.michigan.gov/mshda) (select "Developers and Contractors", then "Michigan Combined Application for Rental Housing").
4. **LOCAL CODE COMPLIANCE LETTER** – A current (dated within 6 months of submission of the QCR) letter from the municipality indicating that the project is in compliance with all applicable zoning, building and safety codes and local ordinances.
5. **CALCULATION OF QUALIFIED CONTRACT PRICE AND WORKSHEETS A – F** - A fully completed calculation of the QCP, which must include Worksheets A – F (as discussed in Section VII of this Guide). See Appendix A-3.
6. **QCP SUPPORTING DOCUMENTS AND OTHER FINANCIAL DATA** – Documents to support the calculations in each of Worksheets A, B, C, D, E and F, accompanied by the signed Independent Accountant's Report on Applying Agreed Upon Procedures (see Appendix A-4). These include, but are not limited to copies of the following documents:
  - a. Annual audited financial statements for all years of operation since the commencement of the Compliance Period.
  - b. Annual partnership tax returns for all years of operation since the start of the Compliance Period.
  - c. Loan documents for all debt currently secured by the project and an estoppel letter from each lender indicating that the loan is in good standing, the outstanding loan amount and that the owner is not in default.
  - d. Copies of the last 24 months of operating statements for the project certified by the owner, which will fairly apprise a potential purchaser of the project's operating expenses, debt service, gross receipts, net cash flow and debt service coverage ratio.
  - e. Current rent roll.
7. **OTHER ITEMS** -
  - a. Name, address, telephone number, and primary contact person of the accounting firm that completed Worksheets A – F.
  - b. Thorough narrative description of the project, including all unit and site amenities, suitable for familiarizing prospective purchasers with the project.
  - c. Narrative description of all income, rental and other restrictions, if any, applicable to the operation of the project, plus copies of all regulatory, use

and other agreements restricting the income, rents or other aspects of the operation of the project.

- d. Detailed set of color, digital photographs of the project (on CD or DVD), including the interior and exterior of representative apartment units and buildings, the main project entrance, and the project grounds. Photographs must have been taken within six (6) months prior to submission of the QCR. These photographs may be posted on MSHDA's website or the website of the real estate broker contracted to market the project.
- e. If any portion of the land or improvements is leased, copies of the leases must be included. Copies of residential tenant leases are not required.
- f. Title report showing all outstanding liens and encumbrances on the title.
- g. The owner's Partnership or Operating Agreement and all amendments.
- h. Additional information as may be requested by MSHDA (or the listing agent), including but not limited to, additional rent rolls, income certifications and other Section 42 compliance records, records with respect to repair and maintenance of the project, operating expenses, and debt service.

8. **CONFLICTS OF INTEREST DISCLOSURE** - Completed Conflicts of Interest Disclosure signed by the owner, in the form contained in Appendix A-5.

9. **FEES** - Nonrefundable QCR processing fee in the amount equal to **\$1,500 per project plus \$25.00 per residential unit** (includes all low-income units and all market rate units) and deposit for third party expenses in the amount of **\$5,000**.

**SECTION VII – CALCULATING THE QUALIFIED CONTRACT PRICE**

The QCP is derived from a statutory formula set forth in Section 42(h)(6)(F) of the Code. The statutory formula allocates the purchase price between the low-income portion of the project and the market rate portion of the project, if any. Section 42(h)(6)(F) defines the term "Qualified Contract" as a bona fide contract to acquire (within a reasonable period of time after the contract is entered into) the non low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the applicable fraction (specified in the LURA) multiplied by (i) the sum of: (I) the outstanding indebtedness secured by, or with respect to, the building (not to exceed qualifying building costs), (II) the adjusted investor equity in the building, plus (III) other capital contributions not reflected in amounts described in (I) or (II), reduced by (ii) cash distributions from (or available for distribution from) the project. The formula for calculating the value of the low-income portion may be expressed as:

$$\text{Applicable Fraction} \times \left( \text{Outstanding Indebtedness} + \text{Adjusted Investor Equity} + \text{Other Capital Contributions} - \text{Cash Distributions} \right) = \text{Price for Low-income portion of the building}$$

Then, the QCP may be calculated as follows:

$$\text{Qualified Contract Price} = \text{FMV of the non-low income portion of the building} + \text{Price for Low-income portion of the building}$$

Under § 1.42–18(b)(3) of the proposed regulations, the fair market value of the non low-income portion of the building is its fair market value at the time of the agency's (in this case, MSHDA) offer of sale to the general public, or prior to the time the property is listed for sale with the real estate broker engaged by the agency. Because the intent of the extended long-term commitment is the continued use of the low-income portion of the building as low-income housing, the Treasury Department and the IRS have taken the position that fair market value must reflect the restrictions on the use of the low-income portion of the building. Therefore, the proposed regulations provide that the valuation must take into account the existing and continuing requirements under the LURA for the building.

Worksheets have been developed for assistance in calculating the QCP. The QCP for the low-income portion of the project is equal to the applicable fraction of the project's outstanding indebtedness (**Worksheet A**), adjusted investor equity (**Worksheet B**), and other capital contributions (**Worksheet C**), but not to exceed the qualifying building costs (**Worksheet F**), *reduced* by the total cash that has been distributed, or is available for distribution, from the project (**Worksheet D**). If the project has any market rate units, the QCP is increased by the fair market value of those units (**Worksheet E**). The Worksheets are contained in Appendix A-3 to this Guide, and must be certified by an independent CPA in accordance with the standards set forth in Appendix A-4.

In addition to the calculations derived based on the Worksheets discussed above, the QCP may be impacted by the results of the appraisal, CNA, environmental reports, local code compliance letter, QCP supporting documents and Other Financial Data, or any of the other items as required in Section VI of this Guide. MSHDA reserves the right, at any time, to request additional information to document the QCP calculation or other information submitted.

## SECTION VIII - MSHDA ACCEPTANCE OF THE QCR AND QCP

MSHDA will conduct an initial in-house review of the QCR and may also contract with an independent CPA and other consultants to review the owner's QCP, the environmental report, the appraisal and any other supporting documents submitted with the QCR. **MSHDA's initial review of the QCR will be completed within sixty (60) days after submission.** MSHDA will identify any deficiencies in the QCR and make a determination of whether the QCP is acceptable within that time.

If the QCR is complete, the QCP is acceptable and the owner has met all other QCR submission requirements, MSHDA will notify the owner and the 1YP will commence as of the date of submission of the acceptable QCR. **The 1YP for presentation of a QC by MSHDA will not begin until the owner has met all of the submission requirements, including an acceptable QCP.**

If MSHDA identifies any deficiencies in the QCR or determines that the QCP is not acceptable, MSHDA will notify the owner in writing of any error or deficiency in the QCR or the supporting documents, the QCP worksheets or other information submitted. MSHDA will also notify the owner of any disallowed items used in the calculation of the QCP, and any proposed adjustment in the QCP. Further processing of the QCR will be

suspended until the error or deficiency is corrected or the adjusted QCP is accepted by the owner. If the owner is willing to accept the adjusted QCP it must do so in writing within 30 days of MSHDA's notice, or the owner will be deemed to have rejected the QCP, as adjusted, and further processing will be suspended.

If an owner disagrees with any proposed adjustment in the QCP required by MSHDA, the owner may appeal in writing. A meeting will be arranged with representatives of the owner, MSHDA and the reviewing CPA to attempt to resolve the disagreement. **The 1YP will not begin until MSHDA and the owner have mutually agreed to the QCP in writing.**

**OWNERS SHOULD NOTE** that an owner's failure to respond promptly to any notification from MSHDA regarding the QCR, or failure to resubmit or correct any items in a timely fashion after a request by MSHDA, will result in the suspension of the processing of the QCR and may result in the owner being required to submit new or updated QCR information.

## SECTION IX – MARKETING THE PROPERTY

Upon final determination that the QCR is acceptable, MSHDA will contract with a licensed real estate broker to list and market the property on behalf of the owner. The owner will be responsible for payment of all commissions, fees and expenses owed to the broker. MSHDA and/or the listing broker may also take any of the following steps to identify an interested purchaser:

- Posting the property information on websites; or
- Creation of an informational flyer and submission to a pre-established mailing list. This list will include (i) owners of tax credit properties; contacts at management companies, (ii) other public funding agencies in the state; (iii) local and national nonprofit and for-profit owners interested in preserving housing; and (iv) tax credit investor contacts

MSHDA and/or the listing broker will also act as a conduit for requests for additional information from owners by prospective purchasers and collecting and forwarding that information to the prospective purchasers.

All pertinent project information that is requested by a prospective purchaser must be provided within five (5) business days of request. Pertinent project information may consist of pictures of the project, a summary indicating location, amenities, number of units and building description, maintenance and repair records, operating statements, service contracts, utility bills, rent rolls, tenant leases, etc. Owner (or any other party designated by the owner) contact information will also be provided to interested parties. The owner is responsible for providing assistance with site visits and inspections. The owner must act in good faith at all times during the QC process, and must otherwise cooperate fully with MSHDA and the listing broker in the search for a QP and a QC.

Responsibilities of the owner include but are not limited to:

- Allowing MSHDA, its agents and employees, the listing broker and prospective purchasers access to the property for inspections, tests and review of tenant files; and
- Keeping MSHDA informed of any interested party, and letters of intent or offers from potential purchasers

Marketing of the project will continue until such time that a QC is presented or the 1YP has expired. The listing price of the property will be the final, accepted QCP. The final sales price will be the amount agreed upon by the owner and the purchaser in a binding, written purchase agreement. In the event that the owner refuses to accept a bona fide offer at the QCP, or the owner fails to close a sale following execution of a binding, written purchase agreement, the owner will be deemed to have forfeited its right to utilize the QC provisions of Section 42 for that project and the project will be required to comply with the provisions of the LURA for the remainder of the Extended Use Period.

## **SECTION X – OFFERS TO PURCHASE**

### Receipt of an Offer

Any prospective purchaser wishing to submit an offer should submit the offer in writing to the listing broker prior to expiration of the 1YP. The listing broker will promptly review the offer with MSHDA within five (5) business days of receipt. If MSHDA determines that the offer is complete and meets the requirements for a QC under Section 42, the listing broker will present the offer to the owner. MSHDA's determination that the offer is a QC and presentment of the QC to the owner satisfies the requirements of Section 42 of the Code. Whether a QC is accepted or rejected, the Extended Use Period will continue, unless the closing does not occur for reasons other than a default by the owner or matters within the owner's control, as described below.

Upon receipt of an offer of a QC, the owner and the prospective purchaser shall have a sixty (60) day Negotiation Period to negotiate the other terms of the transaction. No later than the end of the Negotiation Period, the owner must accept or reject the QC. A failure to accept or reject will be deemed a rejection.

An owner may not require a higher price than the QCP, but may accept an offer at less than the QCP. Consequently, any offer that is submitted to the listing broker even though it does not qualify as a QC will be presented to the owner for review and possible acceptance. If the owner accepts an offer at less than the QCP and closes on the sale of the project within the 1YP, however, the Extended Use Period will not terminate and MSHDA's obligation to market the project and present a QC will end.

### The Owner's Acceptance of the Qualified Contract

If the owner accepts the QC prior to the end of the Negotiation Period and agrees to sell the property, the owner must proceed diligently and in good faith to closing. The owner shall assign its obligations under the LURA to the purchaser at the closing.

### The Owner's Rejection of the Qualified Contract

The owner is not required to accept any QC that is offered. Under Code Section 42(h)(6)(E)(i)(II), however, MSHDA's only obligation is to present the owner with a QC, or bona fide contract to acquire the property for the QCP. If the owner rejects an offer

of a QC at (or above) the QCP from a QP, the project shall remain subject to the provisions of the LURA throughout the entire Extended Use Period, and MSHDA will have no further obligation to market the project. In addition, the owner will be liable for payment of any broker's fee or commission that is earned upon presentation of a QC if the owner chooses to reject it.

#### Qualified Contract Is Accepted But Fails to Close

If the sale pursuant to any QC that is accepted by the owner does not close for any reason other than a default by the owner or matters within the owner's control (e.g. failure of a condition precedent to closing such as the purchaser's inability to obtain financing or the purchaser's dissatisfaction with other aspects of the project), then MSHDA will continue to seek offers at the QCP through the end of the 1YP and the owner's obligation to cooperate in the marketing of the project will continue. If no other QC is presented to the owner during the 1YP, then the project will be treated as if no QC had been presented and the Extended Use Period will terminate.

If the sale does not close due to a default by the owner or other matters within the control of the owner (such the owner's failure to clear title, to provide financial information or otherwise act in good faith), then unless another QC is presented, accepted and closed, the project shall remain subject to provisions of the LURA for the entire Extended Use Period. In addition, the owner will be liable for payment of any broker's fee or commission that is earned upon presentation of a QC but the sale fails to close due to a default by the owner.

#### Qualified Contract Is Not Presented

If MSHDA is unable to present the owner with a QC by the expiration of the 1YP, the Extended Use Period will be terminated. The project will, however, continue to be subject to the 3YP as required by Section 42(h)(6) of the Code. During the 3YP, the owner may not:

- Evict or terminate the tenancy of an existing tenant of a low-income unit, other than for good cause; or
- Increase the gross rent with respect to such unit except as permitted under Section 42 of the Code.

If an existing LIHTC tenant vacates the unit during the 3YP, the unit will no longer be considered low income and the 3YP restriction will cease with respect to that unit. The owner will be required to submit annual certifications as required by MSHDA for the duration of the 3YP.

#### Obligations of the Purchaser

A prospective purchaser is at all times expected to act in good faith, and to proceed diligently to closing once a QC has been accepted. The purchaser shall enter into a written assumption of the owner's obligations under the LURA at closing.

## SECTION XI - FEES AND CHARGES

1. **Preliminary Application Fee** - MSHDA will assess owners a non-refundable fee of **\$500** for processing the PA.
2. **Qualified Contract Request Fee and Deposit** - MSHDA has established a non-refundable QCR processing fee of **\$1,500 per project plus \$25.00 per residential unit** (includes all low-income units and all market rate units). The non-refundable QCR processing fee must be submitted at the time the QCR is submitted to MSHDA, along with a deposit of \$5,000 for third party expenses. This deposit will be held by MSHDA in a non-interest bearing account. If the third party expenses are less than \$5,000, then the balance of the deposit will be refunded. If the expenses exceed \$5,000, the owner must remit the balance to MSHDA upon receipt of an invoice.
3. **Third Party Expenses** - Owners must pay all costs incurred by MSHDA in connection with the review of the QCR, the QCP and supporting information, all commissions, fees and expenses owed to any broker for services rendered, and any other third party expenses incurred by MSHDA, including reviews of the Phase I and Phase II (if applicable) Environmental Reports and the appraisal. MSHDA will not terminate the Extended Use Period with respect to any project until all such third party expenses are paid. All other costs associated with the preparation and submittal of the QCR are the responsibility of and must be paid by the property owner.

## SECTION XII - MISCELLANEOUS

1. MSHDA reserves the right to waive any requirement applicable to the QCR for good cause shown.
2. MSHDA reserves the right to waive the 1YP and terminate the Extended Use Period following the end of the Compliance Period (subject to the continuing restrictions for the 3YP) if it determines that the property cannot or is not likely to be marketed and sold for the QCP.
3. MSHDA reserves the right to disqualify any third party consultant used by an owner if MSHDA determines that a conflict of interest exists between the owner and the consultant or between MSHDA and the consultant, if the quality or integrity of the consultant's work has been determined to be unacceptable, or if other substantive issues arise. Owners may request a list of any disqualified consultants.
4. MSHDA reserves the right to modify this Guide or the QCR process at any time. An owner is responsible for ensuring that it is using the most current Guide and other forms or information published by MSHDA in completing and submitting a QCR. Any owner whose QCR has been submitted and found acceptable may, however, elect to proceed under the guidelines or procedures that were in effect at the time of submission.

5. NOTICE: ANY PERSON WHO, WITH INTENT TO DEFRAUD OR CHEAT, INCLUDING ANY FALSE STATEMENT OR REPRESENTATION, OBTAINS MONEY, OR THE USE OF AN INSTRUMENT, FACILITY, ARTICLE OR OTHER VALUABLE THING OR SERVICE, INCLUDING WITHOUT LIMITATION, PARTICIPATION IN PROGRAMS INITIATED PURSUANT TO THIS ACT, IS GUILTY OF A CRIME, PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN TEN (10) YEARS OR A FINE OF NOT MORE THAN \$15,000 OR THREE TIMES THE VALUE OF THE THING OBTAINED BY FRAUD, WHICHEVER IS GREATER, OR BOTH.

### **SECTION XIII - APPENDICES**

- A-1 Preliminary Application (Form QCR-PA)
- A-2 Qualified Contract Request (Form QCR)
- A-3 Qualified Contract Price Worksheets A - F
- A-4 Independent Accountant's Report on Applying Agreed Upon Procedures
- A-5 Conflicts of Interest Disclosure