

PUERTO RICO HOUSING FINANCE AUTHORITY

ANNEX P
QUALIFIED CONTRACT PROCESS
2016

Qualified Contract

The qualified contract (**QC**) is an offer to acquire the tax credit property for a defined price to assure continued affordability restrictions. IRS regulations determine that if the Authority is unable to present an agreement for a QC price, the extended use period can be terminated. A QC may be requested at any point after the fourteenth (14th) year of the compliance period.

The terms, conditions, and procedures contained in this Process (**Process**) will allow the Authority to administer QC requests from property owners (**Owner**) who intend to make a request under IRS Code Section 42(h)(6)(E)(i)(II) (**QC Request**) to produce a QC.

Initial Eligibility

The Authority will require an initial application (**Initial Application**) to determine eligibility, before an Owner may submit a QC Request. The IP will not bind Owners to submit a QC Request and does not start the one year threshold (**OYT**). The Authority will accept IPs at any time during the year. Upon receipt of the IP, the Authority will determine if the property is eligible for consideration.

Information submitted in the IP shall include at a minimum:

1. Documented ownership of all properties, including address and other pertinent property information (**Attachment 1**).
2. copy of Tax Credit (**Tax Credits or LIHTC**) documents, including:
 - a. first year 8609s for all buildings in the Project;
 - b. all loan and regulatory agreements, including LURA (documents submitted should include original, current, and any amendments);
3. Owner certification that all necessary documentation, defined in the list below, is available and that all other purchase options will be waived;
4. non-refundable preliminary application fee; and
5. Owner certification and documentation of release of existing purchase options.

Evaluation

Eligibility to request a QC will be based on previous commitments and actions of the Owner, and compliance with regulatory requirements on the property. Properties will be eligible to submit a QC Request if:

1. The property has completed the initial 15-year compliance. Dates for determining compliance with the initial 15 years are:
 - a. the last day of the 14th year of the compliance period of the last building placed in service, or

- b. the last day of the 14th year of the last allocation of a multiple year allocation to the same property.
2. There exists no waiver of rights to a QC in the LURA.
3. The property is not subject to affordability and regulatory restrictions based on financing and rental subsidies received on the property other than the Section 42 LIHTC financing (*i.e.*, HOME, Sec. 8, etc).
4. The property complies with financial, audit, and compliance requirements under LIHTC and other financing resources.
5. The property is not subject to existing purchase options, including a non-profit general partner's right of first refusal. Owners must obtain a full waiver of existing purchase options and rights of first refusal in order to make an eligible QC Request.

Eligibility Determination

The Authority will notify the Owner upon completion of the pre-application eligibility review, indicating whether the property is eligible or not to make a QC Request.

If a project is deemed eligible for a QC, the Owner will receive a notification letter and application packet. The Authority must receive a non-refundable review and processing fee to begin the QC Request review. The QC Request from an Owner will be accepted at any time during the calendar year.

The QC Request must include:

1. QC Request letter (**Attachment 2**) where the Owner certifies that:
 - a. has reviewed all due diligence materials used in the calculation of the QC worksheets and that they are **solely responsible** for documents and information used in the calculation of the QC Price (**QCP**) (worksheets A-E in Appendix), using the procedures set forth in Section 42(h)(6)(F) of the Internal Revenue Code. The Owner will sign a statement verifying the accuracy of the assumptions used in the computation of the QCP and will hold the Authority harmless in the use of the development information;
 - b. will reasonably cooperate with the Authority in all aspects related to the sale of the property.
2. **The Application Packet**, containing:
 - a. First year 8609s for all buildings in the Project.
 - b. Completed worksheets A through E. An independent certified public accountant must certify all computations.

- c. Annual partnership tax returns for all years of operation since the start of the compliance period.
- d. Annual property audited financial statements for all years.
- e. Loan documents for all secured debt during the compliance period (original, current, and any interim amendments).
- f. Partnership agreement (original, current and all interim amendments).
- g. Current and complete rent-roll.
- h. A narrative description of the project, including amenities.
- i. Sales prospectus (applicable if property is currently being offered for sale.)
- j. Physical needs assessment for the entire property.
- k. Phase I environmental (Phase II analysis, if conditions from the Phase I analysis determine a Phase II is necessary).
- l. Appraisal for the property.
- m. Market study for the property.
- n. Current title report.

Owners will incur all costs associated with necessary third party reports. Should third party costs exceed the Owner's initial deposit, the Authority will request additional funds. If the Owner is unable to contribute necessary funds, the OYT will be suspended, and the Authority may halt processing or terminate a QC Request.

The non-refundable QC fees are:

1. Preliminary application: \$1,000.
2. QC Request: \$4,000. It must be submitted when the QC Request Letter is presented to the Authority.

The Authority may revise fees as necessary to insure the cover the Authority's corresponding expenses.

The OYT shall begin when the Authority receives a complete QC Request package including all of the above items. The OYT will be delayed or suspended pending receipt of all applicable items.

Review Process

1. After *all* documents are received the Authority will notify the Owner and start the OYT.
2. The Authority will verify the QC calculations and supporting documentation to determine the viability of extending a QC offer.
3. The Authority will conduct the following notice of LIHTC properties seeking QCP:
 - a. The Authority will post on its website a listing of properties, with property information, determined eligible to submit a QC.
 - b. The Authority will provide information on properties, with property information, for which a completed QC Request has been received. Information may be forwarded to:
 - i. Posted on the Authority website.
 - ii. Current owners of Authority portfolio and LIHTC properties.
 - iii. Interested affordable housing preservation organizations and stakeholders.

Presenting a QC

Under IRS (42(h)(6)(E)(i)(II)), the Authority's obligation is to present to the Owner a bona fide contract to acquire the property for the QCP (**Contract**). Once the QCP is affirmed, and a prospective buyer is identified, and the Authority has determined to pursue this course of action, the Authority will present a Contract to the Owner. If the Authority presents a Contract (regardless if the Owner accepts it or not), the possibility of terminating the extended use period is removed, and the property remains bound to the provisions in the LURA. Should the Owner choose to accept the Contract, the buyer will be responsible for adhering to the provisions in the LURA.

If the Owner does not accept the Contract, the property will remain under the existing affordability restrictions. There is no requirement in the IRS Code that the prospective buyer purchase the property. Whether or not the seller executes a contract and closes the transaction is a separate, legally unrelated matter.

Three-Year Eligibility for Existing Tenants

If the Authority does not present a Contract prior to the expiration of the OYT (or a longer period as the Owner may agree to in writing) the Project may be released from the LURA's requirements.

However, the Project will be subject to the requirements of Section 42(h)(6)(E)(ii) for a three-year period beginning at the end of the compliance period where the Owner may not:

1. evict or terminate a tenancy (other than for good cause) of an existing tenant of any low income unit; or
2. increase the gross rent with respect to any low-income unit except as permitted under Section 42 of the Code, as well as the requirements of the regulatory agreement.

Requirements

Qualified Contract Price: The Authority will resolve every case of doubt or interpretation in determining the QCP, both with regard to the overall process and for particular properties, in favor of a lower value.

QC Process Amendments: The Authority may add to or amend the Process with at least 30 days notice on the website and to Owners engaged in the QC Process.

Disqualification of QC Request:

1. Owners may cancel the QC Request at anytime during the Process. However the Authority may determine that an Owner cannot submit another request.
2. The Authority must have continuous cooperation from the Owner respecting all aspects of property information, financial statements, and tax returns. Lack of cooperation will cause the Process to terminate.
3. Should the Authority receive notification of IRS's investigation or audit regarding the tax credit property at any time during the QC Request, the OYT will be suspended and the Process will stop until the audit or investigation is complete.
4. Default or material noncompliance with Section 42 will result in suspension of the review until the Authority can respond.

In the event of a suspension due to noncompliance or audit, the property must operate under the LURA.

ATTACHMENT 1: Initial Application

Please complete the preliminary application forms and return forms and documentation, a multifamily fee payment form (available for download at www.bgfpr.com/principalsubsidiaries/housing-finance-authority) and a check for the application fee to:

**Puerto Rico Housing Finance Authority
Attn: Multifamily Housing Finance and Development Dept.
P.O. Box 71361
San Juan, Puerto Rico 00936-8461**

Owner:

Taxpayer Identification #

Project Name:

PRHFA Project ID #:

Property Address:

Date of Allocation:

1. Owner/ General Partner(s) Contact Information:

Entity Name

Address

Principal

Fax

Email

Entity Name

Address

Principal

Fax

Email

2. Total # of Buildings:

Total #of Units:

Total # Low Income Units:

<u>BIN #</u>	<u>Placed in Service Date</u>	<u>1st Year Credits Claimed</u>
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Is the property a Mixed-Income Development?

3. Does the Property Agreement or other legal documentation grant any form of preference for purchasing the property? (e.g., a right of first refusal granted to a nonprofit partner?)

If yes, provide information on the individual or entity holding such right.

Entity Name	Address	Principal	Phone
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4. Has the property been cited for any violations that have required an 8823 to be filed with the IRS that remains uncorrected?

If yes, state the nature and date of the violation (including copies of 8823s).

Nature of Violation	Violation Date
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5. Is the property subject to additional affordability restrictions (e.g., USDA Rural Development, HUD, state/local funding, etc)?

If yes, submit copy of restrictions.

6. Does the property have project-based rental assistance?

I CERTIFY, to the best of my knowledge, that:

1. the information in this application is complete and accurate;
2. all purchase options will be waived.

I UNDERSTAND, AGREE AND ACCEPT THE PROCESS, INCLUDING THAT THE OYT DOES NOT START UNTIL THE AUTHORITY DETERMINES THAT THE OWNER MEETS ALL SUBMISSION REQUIREMENTS.

Owner:

Date:

ATTACHMENT 2: Qualified Contract Request letter

Puerto Rico Housing Finance Authority
Attn: Multifamily Housing Finance and Development Dept.
P.O. Box 71361
San Juan, Puerto Rico 00936-8461

Re: **Qualified Contract Request Letter**

Property Name:

Tax Credit Number:

Address:

Dear :

I hereby request that the Puerto Rico Housing Finance Authority (**PRHFA**) present a Qualified Contract (**QC**) for the purchase of [**Property Name**]. This request is made pursuant to Section 42(h)(6)(E)(i)(II) of the Internal Revenue Code (**Code**). We understand that PRHFA will have one year from its receipt of this letter and all of the accompanying information described below, to present a QC to purchase the Project.

We have enclosed:

1. First year 8609s for all buildings in the Project.
2. Worksheets A –E. Completed, or reviewed and approved, by the accountant for the Project, [Accountant’s Name].
3. Annual tax returns for all years of operation since the start of the compliance period.
4. Annual property financial statements for all years.
5. Loan documents for all secured debt during the compliance period (original, current, and any interim amendments).
6. Partnership agreement (original, current and all interim amendments).
7. Current and complete rent-roll.
8. A narrative description of the Project, including amenities.
9. Sales prospectus (applicable if property is currently being offered for sale).

We understand that the one-year period allowed for offering a QC will not begin until all information is received and PRHFA deems it satisfactory.

We also understand that the above information may be shared with prospective purchasers, real estate brokers and agents of PRHFA and summary data may be posted on PRHFA’s website.

We will reasonably cooperate with PRHFA and its agents with respect to PRHFA’s efforts to present a QC for the purchase of the Project. In this regard, we understand that prior to the presentation of a QC, we may need to share Project due diligence with PRHFA and with prospective purchasers, including but not limited to, additional rent rolls, Project tax returns, income certifications and other Section 42 compliance records, records with respect to repair and maintenance of the Project, operating expenses and debt service. Provided, before

information is shared with a prospective purchaser, we may require that it enter into a commercially reasonable form of nondisclosure agreement.

We will also share with PRHFA, at its request, the documents and other information that were used to prepare the enclosed calculation of QCP, including Worksheets A - E. We also agree to allow PRHFA, its agents, and prospective purchasers, upon reasonable prior written notice, to visit and inspect the Project, including representative units.

We also understand that if PRHFA finds a prospective purchaser willing to present an offer to purchase the Project for an amount equal to or greater than the QCP, we agree to enter into a commercially reasonable form of earnest money agreement or other contract of sale for the Project which will allow the prospective purchaser a reasonable period of time to undertake additional, customary due diligence prior to closing the purchase.

Sincerely,

Owner

Attachment

ATTACHMENT 3: Qualified Contract Price

Before the Authority can begin review of a QCP and begin marketing the project you must complete the QCP Form attached to these instructions (**QCP Form**). This calculation shall establish the minimum price at which the Authority can market the Project and present an offer for its purchase.

To fill out the QCP Form, you must complete Worksheets A through E, where applicable. The results of Worksheets A through E are transferred to the QCP Form to determine the QCP.

The QCP Form is derived from Section 42(h)(6)(F) of the Code. The statutory formula divides the purchase price between the low and non low-income portion of the Project, if any. The QCP for the low-income portion of the Project equals the applicable fraction of the Project indebtedness (Worksheet A), adjusted investor equity (Worksheet B), and other capital contribution (Worksheet C), **reduced** by the total cash distributions from, or available for distribution, from the Project (Worksheet D). If the Project has any market rate units or commercial space the QCP is increased by the fair market value of those units (Worksheet E).

The OYT for finding a buyer shall NOT commence until the QCP Form, and Exhibits A through E, are complete and delivered to the Authority with the pre-application, QC Request, all support documents requested, all charges paid to the Authority and third party contractors and a QC Request letter. An independent certified public accountant from an accredited accounting firm must prepare and certify the QCP Form.

QUALIFIED CONTRACT PRICE

A. Low-Income Portion of Payment

- i. Outstanding Indebtedness secured by, or with Respect to the Building (Worksheet A) \$ _____
- ii. Adjusted Investor Equity (Worksheet B) \$ _____
- iii. Other Capital Contributions not reflected in i or ii (Worksheet C) \$ _____
- iv. **TOTAL of i, ii, iii** \$ _____
- v. Cash Distributions from or available from, the Project (Worksheet D) \$ _____
- vi. **LINE iv LESS LINE v** \$ _____
- vii. Applicable fraction (LURA) _____ %
- viii. Low-Income Portion of QC Price [Line (vi) multiplied by Line (vii)] \$ _____

B. Fair Market Value of Non Low-Income Portion Of Building(s) (Worksheet E) \$ _____

C. Qualified Contract Price
[Line A (viii) PLUS Line B] \$ _____

WORKSHEET A

Outstanding Indebtedness

1. Mortgage Loans:		
i. Lender		
ii. Principal Balance		\$ _____
iii. Accrued Interest		\$ _____
iv. Maturity Date:		
v. Other Information:		
SUBTOTAL		\$ _____
2. Other Loans/Indebtedness:		
i. Lender		
ii. Principal Balance		\$ _____
iii. Accrued Interest		\$ _____
iv. Maturity Date:		
v. Other Information:		
SUBTOTAL		\$ _____
TOTAL		\$ _____

WORKSHEET B

Adjusted Investor Equity

Adjusted Investor Equity (AIE) is the aggregate amount of cash that taxpayers invested with respect to the low-income buildings, increased by the applicable cost-of-living adjustment.

Not all capital contributions with respect to the Project qualify as AIE. Cash invested in the Project should be included in Worksheet B only if:

1. cash is contributed as a capital contribution and not as a loan or advance; and
2. the amount
3. amount is reflected in the adjusted basis of the Project (cash contributions used to directly fund adjusted basis and cash contributions used to pay off a construction or bridge loan, the proceeds of which directly funded adjusted basis); and
4. there was an obligation to invest the amount as of the beginning of the credit period (cash invested before the beginning of the credit period and cash invested after the beginning of the credit period for which there was an obligation to invest at the beginning of the credit period).

BCY: calendar year with or within which the first taxable year of the credit period ends.

Subsections (ii) and (iii): lower of the Consumer Price Index (CPI) figures or 5% for applicable years.

Adjusted Investor Equity

- i. BCY: _____
- ii. Average CPI figure for the most recent 12-month period ending in ____: _____
- iii. Average CPI figure for 12-month period ending in ____ of the BCY: _____
- iv. Cost-of-living adjustment [Divide ii by iii] _____
- v. Investment Amount \$ _____

Total Adjusted Investor Equity [Multiply v by iv]: \$ _____

If the AIE differs from the equity amount used in the Project’s Final Cost Certification, explain the difference.

WORKSHEET C

Other Capital Contributions

Not limited to cash and, therefore, include “in-kind” contributions such as land. However, if you include any non-cash contributions in this worksheet, please describe in detail the type of contribution, the value you have assigned to the contribution, and your justification for assigning that value.

Do not include in this Worksheet C any amounts included in Worksheets A or B. Further, all amounts included in this worksheet must constitute contributed capital and not be debt or advance.

1. Investment Amount \$ _____

i. Name of Investor: _____

ii. Date of Investment: _____

iii. Use of Contributions/ Proceeds: _____

iv. Other Information: _____

2. Investment Amount \$ _____

i. Name of Investor: _____

ii. Date of Investment: _____

iii. Use of Contributions/ Proceeds: _____

iv. Other Information: _____

3. [Add as needed.]

TOTAL (1 - _____) \$ _____

WORKSHEET D

Cash Distributions from or available from the Project

The QCP is reduced by the total of all cash distributions from, or available from, the Project.

In Section A, set forth all cash distributions with respect to the Project beginning with the BCY through the date of the completion of Worksheet D. This shall include all cash payments and distributions from net operating income. Distributions set forth in Section A shall include, but not be limited to amounts paid to partners or affiliates as fees and those distributed to partners as a return of capital or otherwise.

A. Cash Distributed

- 1. BCY Distributions
 - i. Total Distributions \$ _____
 - ii. Recipient _____
 - iii. Type (e.g., return of capital, fee, etc.) _____

- 2. BCY+1 Distributions
 - i. Total Distributions \$ _____
 - ii. Recipient _____
 - iii. Type (e.g., return of capital, fee, etc.) _____

- 3. BCY+ through 13 Distributions
 - i. Total Distributions \$ _____
 - ii. Recipient _____
 - iii. Type (e.g., return of capital, fee, etc.) _____

- Total BCY through BCY+13 Distributions (Sum of Lines 1(i) - 14(i))** \$ _____

B. Cash Available for Distribution:

- 1. Replacement Reserve Account(s) \$ _____
 - a. Available for Distribution \$ _____

- 2. Operating Reserve Account(s) \$ _____
 - a. Available for Distribution \$ _____

- 3. Other Reserve Accounts (identify account, terms) \$ _____
 - a. Available for Distribution \$ _____

- 4. Partnership Accounts Other than Reserves \$ _____
 - a. Available for Distribution \$ _____

- Total Available for Distribution**
(Sum of Lines 1a- 4a) \$ _____

Total Cash Distributed and Available for Distribution
(Sum of Sections A and B) \$ _____

C. All Non-Cash Distributions:

1. Asset Distributed
Recipient
Date of Distribution
Estimated Value of Asset at time of Distribution \$ _____
Valuation Method
Reason for/ or Characterization of Distribution

2. Asset Distributed
Recipient
Date of Distribution
Estimated Value of Asset at time of Distribution \$ _____
Valuation Method
Reason for/ or Characterization of Distribution

TOTAL VALUE OF ASSETS AVAILABLE FOR DISTRIBUTION \$ _____

TOTAL AVAILABLE FOR DISTRIBUTION (CASH + ASSETS) \$ _____

WORKSHEET E

Fair Market Value on Non-Low-Income Portion of Building(s)

Fair market value of the non-low income portion of the Project is \$_____.