

SOUTH CAROLINA STATE HOUSING FINANCE & DEVELOPMENT AUTHORITY'S
POLICIES FOR IMPLEMENTING QUALIFIED CONTRACT REQUESTS
EFFECTIVE FEBRUARY 1, 2024

The South Carolina State Housing Finance and Development Authority (Authority) is responsible for implementing Internal Revenue Code Section 42 and related Treasury Regulations, including the Qualified Contract process. These policies cover the process by which owners of low-income housing tax credit (LIHTC) projects will request a Qualified Contract. The Authority may add to or amend the policies at any time.

SECTION I –GENERAL POLICIES FOR QUALIFIED CONTRACT REQUESTS

An owner initiates the Qualified Contract option by submitting a request to the Authority.

- A. **Eligible Properties.** Owners are not eligible to submit a Request if they or a previous owner waived their ability to do so. Otherwise owners are may not submit a Request until the commencement of the 15th year of the Compliance Period for all buildings.
- B. **Scope of Request.** The Request must be for all of the buildings in the overall development (regardless of whether made on a building basis) and must include all units.
- C. **Completeness.** The inability to provide required documents will render the submission invalid.
- D. **Costs.** All third-party costs or any costs incurred by the Authority in processing the review of the Request, will be the Owner's sole responsibility.
- E. **Determination of One-Year Period.** The Authority will determine the start and end of the One-Year Period. Time spent on negotiation related to the eligibility or the calculation of the Qualified Contract price will not be included in the one-year period. The Authority will provide notice of the One-Year Period to the owner.
- F. **Bad Faith.** Bad faith conduct on behalf of the Owner may result in a determination that requirements for Qualified Contract have not been met and/or a referral for Suspension or Debarment under the Authority's policy.

SECTION II – QUALIFIED CONTRACT PROCEDURE

- A. **Eligibility Determination Request.** Owners start the process by submitting an Eligibility Determination Request with all minimum documentation and a nonrefundable administrative fee of \$5,000. This submission does not bind the Owner to submit a Qualified Contract request and does not start the One-Year Period.
- B. **Minimum Documentation Required for an Eligibility Determination.**
 - 1. Qualified Contract Request Form
 - 2. Completed 8609s
 - 3. Legal opinion to confirm when each building reaches the end of year-15 compliance period
 - 4. Signed Form 8821
 - 5. Copies of the two most recent Compliance Review close-out letters
 - 6. Copy of most recently filed Annual Owner Certification form

7. Copies of the restrictive covenants, any additional affordability restrictions and regulatory agreements (HOME, Authority USDA Rural Development, local funding, etc.)
8. PBRA Agreement (if applicable)
9. Waiver of First Right of Refusal or Option Agreement (if applicable)

C. Qualified Contract Request Process.

Step 1: Upon receipt of a determination of eligibility, the Owner may submit a full Application for a Qualified Contract. A request must include the following:

- a check for \$15,000.00 for the cost of a third-party accountant’s review and compliance inspector;
- all required documents listed below; and
- any additional items or fees identified by the Authority.

Step 2: Upon receipt of the above, the Authority will order

- a Qualified Contract price determination and
- 100%-unit inspection of the low-income portion of the project.

The Authority will not consider a price determination submitted by the Owner. The Owner must correct any physical condition deficiencies identified by the inspector.

Step 3: The one-year period will not commence prior to the Owner

- receiving the price calculation and providing notification of the decision to move forward;
- correcting any identified physical deficiencies;
- submitting all required documentation; and
- paying fees due.

Step 4: The Owner must notify all of the current residents of the pending process no less than 14 days prior to the start of the One-Year Period. The notification must include a clear, Authority-approved statement regarding tenants’ rights regarding terminations and rent increases.

D. Documentation Required to Request a Qualified Contract. All of the following documentation is necessary. The requirement for all years of operation starts with the year of the project’s placed in-service date (as indicted on the Forms 8609) and ends with the calendar year proceeding the submission.

1. Qualified Contract Eligibility Determination Letter
2. Partnership Tax Returns for last 3 years
3. Capital Contribution Schedule for all years of operation
4. Audited annual financials for last 3 years
5. Monthly operating statements for the most recent 48 months
6. Current Rent Roll
7. Appraisal by an Authority approved appraiser (dated within 60 days of the qualified contract request)
8. Project Needs Assessment (dated within 60 days of the qualified contract request)
9. Title Report (dated within 60 days of the qualified contract request)
10. Phase I Environmental (dated within 60 days of the qualified contract request)

11. Written consent for Qualified Contract submission by all ownership entity partners and/or members, including a right of first refusal.
12. Copies of all leases affecting any portion of the land or improvements
13. A copy of the listing agreement with an Authority approved broker to include a marketing plan.

SECTION III – COMPLETING THE PROCESS

- A. If the Authority presents a bona fide contract to acquire the project for the Qualified Contract price within the One-Year Period, the possibility of terminating the extended use period early is immediately and forever removed. By participating in the Qualified Contract process, the Owner voluntarily and irrevocably waives, on behalf of itself and its successors and assigns, any future right to participate in the Qualified Contract process. The project remains bound to the recorded LIHTC requirements for the duration of their term.

There is no requirement that the prospective buyer subsequently purchase the project. Whether such a transaction closes is a separate, legally unrelated matter.

- B. If a prospective buyer offers to purchase a development for an amount equal to or greater than the Qualified Contract Amount, even if the offer is received at the last second of the last day of the One-Year Period, then the One-Year Period will suspend as Owner and prospective buyer negotiate.
- C. A bona fide contract means a written agreement signed by the buyer evidencing intent to purchase the project at or above the Qualified Contract price. Evidence of the buyer's intent includes the following based on commercially reasonable terms:
 - an earnest money deposit;
 - a timeline for the closing process; and
 - either a letter from a lender affirming the ability to close or proof of available funds in excess of the purchase price.
- D. If the Authority is unable to present such an offer, the extended use period will terminate by operation of law at the end of the One-Year Period and the project will enter the Decontrol Period described below.

SECTION IV – DECONTROL PERIOD

- A. During the three (3) year period following termination of the extended use period, the Owner will not:
 - Evict or terminate the tenancy of any existing LIHTC tenant (absent good cause).
 - Increase gross rent in a manner or amount not otherwise permitted by Section 42.
- B. Owner is still subject to Compliance Monitoring during the three (3) year period and therefore must continue to pay the annual compliance monitoring fees when due.
- C. The Authority may post on its website and/or notify interested parties of the project being in the Decontrol Period, including local Legal Aid and/or other tenants' rights groups.