The Georgia Housing and Finance Authority (GHFA) is responsible for administering the low-income housing tax credit (LIHTC) program for the State of Georgia. The Internal Revenue Code (Code), Treasury Regulation 1.42-18, and Internal Revenue Bulletin: 2012-22 contain some of the basic provisions for handling qualified contract requests. The purpose of this policy is to set forth the policies procedures to be followed by GHFA and the owners of Low Income Housing Tax Credit (LIHTC) developments who are considering making a request for a qualified contract.

**FEDERAL DEFINITION**

The qualified contract is defined in Section 42 (h)(6)(F) of the Code as 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 of

(i) The sum of

(I) The outstanding indebtedness secured by, or with respect to, the building, plus

(II) The adjusted investor equity in the building, plus

(III) Other capital contributions not reflected in the amounts described in subclause (I) or (II), reduced by

(ii) Cash distributions from (or available for distribution from) the project.

“Adjusted investor equity” is defined in Section 42 (h)(6)(G) as the aggregate amount of cash taxpayers invested with respect to the project increased by the amount equal to

(i) Such amount, multiplied by

(ii) The cost of living adjustment for such calendar year. Cost of living increases in excess of five percent should not be taken into account.

Section 42(h)(6)(E)(i)(II) of the Code provides that the extended use period shall terminate if a housing credit agency is unable to present a qualified contract to a taxpayer who has requested such a contract. The initial compliance period for a development receiving a LIHTC allocation is 15 years. For HTC allocations made in 1990 and after, an extended use agreement required by Section 42(h)(6) of the Code extends the compliance period up to a minimum of 15 additional years.

Section 42(h)(6)(E)(i)(II) of the Internal Revenue Code created a provision that housing credit agencies respond to the request for presentation of a qualified contract for LIHTC developments with expiring compliance periods. The qualified contract request may not be initiated until year
15 of the compliance period. The request for presentation of a qualified contract is a request that the housing credit agency find a buyer (who will continue to operate the property as a qualified low-income property) to purchase the property for a qualified contract price (QCP) pursuant to IRS regulations. If the housing credit agency is unable to find a buyer within one year, the extended use period is terminated.

SECTION I – GHFA General Policies for Qualified Contracts Requests

A. Eligible Properties. Properties are not eligible to submit a Request until all of the following requirements have been met:
   
   • The commencement of the 15th year of the Compliance Period for all buildings in the property;
   
   • The completion of any extension of the right to Opt Out made in any recorded Land Use Restriction Agreement for the property;
   
   • The completion of all required Periods of Affordability set out in any Land Use Restriction Agreement or Covenant filed with the property including but not limited to restrictions for loans made under the HOME Partnership Program;
   
   • The full Property must be in full compliance with Section 42 requirements prior to submission of a Request.

B. Scope of Request. The Request must be for all of the buildings in the property regardless of whether initial allocations were made on a property or a building basis and must include all market rate units.

C. Completeness. The Qualified Contract Pre-Application and Qualified Contract Request must be complete and include all required documents. The inability to provide required documents will preclude the submission of a Qualified Contract Request.

D. Costs. All third party costs incurred in meeting the requirements of the QC will be the sole responsibility of the Owner. Price TBD.

E. Determination of One Year Period. Time lapsed during disputes or negotiation regarding the calculation of the QC Price will not be included in the one-year period, and accordingly that time will be added-on to the one-year period at DCA’s discretion.

F. Bad Faith. Disputes resulting from unreasonable, unprofessional, and/or bad faith conduct on behalf of the Owner, may result in DCA issuing a written determination that DCA’s obligation to present a QC has been met. Owners are not allowed to make a payment to a prospective purchaser to avoid a qualified contract purchase.

SECTION II – QUALIFIED CONTRACT PROCEDURE

A. Eligibility Determination Pre Application
Step 1: Owner must submit an Eligibility Determination Pre-Application Request with all minimum documentation as set forth below. This request will determine whether the Owner has met all of the requirements of eligibility more fully set forth in Section 1A above. The submission of a Pre-Application does not bind the Owner to submit Request and does not start the QC period. (See subsection C, Step 6 below for the start.)

Step 2: Mail the nonrefundable Eligibility Determination fee of $2,500, payable to 
Georgia Housing and Finance Authority, to:
GA Department of Community Affairs
Attn: HFDD – Qualified Contract
60 Executive Park Drive S NE
Atlanta, GA 30329

Step 3: DCA will review the Eligibility Determination package to confirm that the prerequisites have been met and the property is eligible to request a Qualified Contract.

Step 4: DCA will send the Owner a Determination Letter confirming the eligibility of the property to submit a full Qualified Contract package.

B. Minimum Documentation Required for a Pre Application Eligibility Determination
   1. Completed 8609s
   2. Legal opinion to confirm when each building reaches the end of year-15 compliance period
   3. Signed Form 8821
   4. Copies of two most recent DCA Compliance Review close-out letters
   5. Copy of most recently filed Annual Owner Certification (AOC) form
   6. Copies of any additional affordability restrictions and regulatory agreements (HOME, USDA Rural Development, local funding)
   7. PBRA Agreement (if applicable)
   8. Waiver of First Right of Refusal or Option Agreement (if applicable)

C. Qualified Contract Request Process

Step 1: Upon receipt of a DCA Pre-Application Determination that the property is eligible to submit a Qualified Contract request, the Owner may submit a full Application for a Qualified Contract.

Step 2: Owner submits a Request for QC Application, a non-refundable QC fee in the amount of $7,500, and all required documents listed in Section II (D) below to the address above.

Step 3: DCA will 1) review the Request for completeness and accuracy, 2) submit the request to the contracted certified public accountant for a determination of the QC price, and 3) order a 100% unit inspection to assess conformity with Uniform Physical Conditions Standards (UPSC). Any physical deficiencies identified by the inspector must
be corrected by the Owner 1) in advance of listing the property with the Approved Broker, or 2) negotiated into the contract price, with funds held in reserve by a 3rd party at closing.

**Step 4:** DCA notifies the Owner within 60-days’ receipt of a complete submission of the Qualified Contract Price. The one-year Period commences upon issuance of this letter. The Owner must sign and return the letter to DCA within 14-days.

**Step 5:** DCA may require the Owner to list the property with a DCA Approved Broker and provides documents listed in Section II(D) to Broker.

**Step 6:** Upon approval of the Qualified Contract request, the Owner must notify all of the current residents of the pending process within 14-days of the commencement date.

**D. Documentation Required to Request a Qualified Contract**

Due diligence documents must be dated within 60 days of submission the Request.

2. Partnership Tax Returns for all years of operation
3. Capital Contribution Schedule for all years of operation
4. Audited annual financials for all years of operation
5. Monthly operating statements for the most recent 36 months
6. Current Rent Roll
7. Appraisal
8. Property Needs Assessment
9. Title Report
10. Phase I Environmental
11. Written consent by all LP partners and/or LLC members
12. Copies of all leases affecting any portion of the land or improvements
    Draft of the Exclusive Listing Agreement with an Approved Broker

All documents must be submitted in order for DCA to commence review of the request.

**SECTION III – COMPLETION OF THE PROCESS**

A. If DCA presents a bona fide contract to acquire the Property for the QC price, the possibility of terminating the extended use period is removed forever and the property remains bound to the LURC provisions. There is no requirement that the prospective buyer actually purchase the property. Whether the transaction closes is a separate, legally unrelated matter.

B. If DCA is unable to present a QC within the one-year period, the LURC will terminate by operation of law and the Property will enter the Decontrol Period. DCA will notify the Owner of the Decontrol Period dates upon expiration of the QC period.
SECTION IV – DECONTROL PERIOD

A. Owner must notify all of the current residents and any applicants using DCA’s form within 14-days of the notification in Section III(B) above. The form will describe tenants’ rights and options for enforcement.

B. During the three (3) year period following the termination of a LURC, the Owner will not:
   1. Evict or terminate the tenancy of any existing LIHTC tenant (absent good cause), or
   2. Increase gross rent in a manner or amount not otherwise permitted by Section 42.

DCA defines a lease non-renewal as a termination.

C. The Owner must:
   1. Provide DCA with a updated Rent Roll at the Decontrol Period start date;
   2. Continue to update MITAS by the 10th of each month;
   3. Notify DCA if the Property is sold during the Decontrol Period via the MITAS database;
   4. Complete the Annual Owner Certification; and
   5. Provide DCA with a proof of mailing certificate from the USPS, as proof that all low-income residents have been served notice of the termination date of the low income rent and income restrictions.

SECTION V – EXPECTATIONS FOR BUYERS AND SELLERS

A. An Eligible Qualified Contract Buyer must:
   1. Demonstrate the existence of lines of credit and/or other financial resources to pay the QC price for a Property upon request of the Owner;
   2. Be prepared to complete any due diligence and underwriting during a time frame not to exceed 75 days from the date the Purchase and Sale Agreement.
   3. Have the ability to close on a contract no later than 120 days from the date the Purchase and Sale Agreement.
   4. Meet DCA qualification requirements as set forth in the QAP in effect at the time of the request. The DCA may approve at its own discretion, buyers that may not meet all of the QAP requirements of experience and compliance performance.
   5. Engage the services of a DCA approved management agent.

B. An Owner must:
   1. Respond to inquiries from an Eligible Buyer or Broker within three business days.
   2. Disclose material information and knowledge related to the Property even if not discovered during the Due Diligence period.
   3. Refrain from demanding non-refundable earnest money as a condition beyond what is reasonable in a similar commercial transaction.
4. In the event an Owner receives and accepts an offer lower than the QC price, DCA will suspend marketing activities and the running of the one-year period. If a sale is executed at a price lower than the QC price, the new owner retains the right to request a Qualified Contract at a future time. If the sale does not go through at the lower price, DCA will resume marketing activities and the running of the one-year period. (Any brokerage listing fees incurred by the termination of the listing agreement are the sole responsibility of the Owner.)

DISCLAIMERS

DCA may add to or amend these policies at any time.

DCA is not obligated to nor will it undertake to investigate of the accuracy of the information submitted. DCA expressly does not warrant the accuracy of the information or of the quality or marketability of the housing. Interested parties should undertake their own independent evaluation of the feasibility, suitability, and risk.

In executing its responsibilities under Section 42, DCA itself is not acting in the capacity of a real estate agent or real estate broker.

By extension of this Request, DCA and the contracted Broker can furnish all submitted documents and forms to an interested buyer upon written notice of such interest to make a bona fide offer to purchase a property available through the Qualified Contract Process.