



Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**

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GUIDELINES FOR SELECTION OF DESIGNEES
PURSUANT TO
M.G.L. CHAPTER 40T
“PUBLICLY-ASSISTED AFFORDABLE HOUSING”

1. BACKGROUND

On November 24, 2009, the Commonwealth enacted Senate Bill 2190, “An Act Preserving Publicly-Assisted Affordable Housing,” creating Chapter 40T of the Massachusetts General Laws (“Chapter 40T” or the “Act”). A key aspect of Chapter 40T is the authority granted to the Department of Housing & Community Development (“DHCD” or the “Department”) to make an offer and/or respond to a right of first refusal when the owner of a covered property intends to sell such property. The statute permits DHCD to name a designee to assume the agency’s rights and responsibilities in undertaking the purchase and ownership of covered properties pursuant to the processes established under the law (“Designee” or “Designees”).

2. PURPOSE

The purpose of these Guidelines is to set out the standards and procedures by which DHCD will select a Designee pursuant to the Act and the related regulations found at 760 CMR 64 (the “Regulations”), in particular G.L. c. 40T, § 3(b), and 760 CMR 64.04, and the January 13, 2010, Request for Responses in regard to Prequalification of Designees (“RFR”), available at <http://www.mass.gov/hed/docs/dhcd/legal/s-111-requestforproposal.pdf>, as amended from time to time. These guidelines are promulgated pursuant to 760 CMR 64.04 (1), and shall be made available on the Department’s website.

3. PROCUREMENT PROCESS

In order to have a ready pool of potential Designees, DHCD will typically procure a Designee in 2 stages.

A. Prequalification. The first stage, “Prequalification,” will establish the general qualifications of interested parties. The prequalification process is conducted through a Request for Responses (RFR) process posted on CommBUYS (www.commbuys.com) as bid number S119269-vCurrent and

on the DHCD Chapter 40T webpage, <http://www.mass.gov/hed/economic/eohed/dhcd/legal/mgl-chapter-40t.html>.

B. Contents. Each response to the RFR shall indicate the development size capacity or capacities for which the respondent would like to be considered, as detailed below. Each response to the RFR shall also indicate which other restrictions (for example, restricting the designation to elderly or family developments, developments that utilize or do not utilize tax credit financing, or developments with or without the need for supportive services) the respondent would like to include in its prequalification, if any. Each response should also include basic identifying and contact information for each prequalified entity, including primary contact person's name and title, address, telephone, and email, and entity fiscal year-end date. DHCD shall review each request for prequalification to determine whether (based on the materials submitted with the response and in response to subsequent inquiries) placement on a particular list (Statewide or Local, as detailed below) is appropriate and whether restrictions requested (e.g., geographical coverage, size, type) are warranted.

C. Initial Review and Listing of Prequalified Potential Designees.

1. Review Timeframes. Within 30 days of submission of an application for prequalification, DHCD will review any submitted qualifications. DHCD will approve requested prequalification, disqualify the response, or request additional information. DHCD is solely responsible for evaluating the qualifications of interested organizations and determining their appropriate placement on one of the prequalified potential designee lists.

2. Maintenance of Two Separate Lists. DHCD will add each potential Designee to one of the two existing lists of prequalified potential designees. One list is for non-geographically constrained organizations with the capacity to undertake development projects across the Commonwealth ("Statewide Organizations"); the second list is for geographically constrained organizations that have the capacity to undertake development projects within a particular municipality, county or region, but not statewide ("Local Organizations"). Each new potential designee in its RFR response must clearly indicate whether it wishes to be considered a Local or a Statewide Organization.

3. Review of Classification by List. A potential designee wishing to be categorized as a Local Organization and placed on the Local Organization List must identify a service area (or "footprint") for purposes of 40T that is limited to a municipality, a portion of a municipality, or to a group of adjacent municipalities. (The response may refer to an entire county in lieu of specific municipalities within the county for ease of reference.) DHCD will review the service area proposed by the potential designee and will make the final determination as to whether a potential designee is qualified as a Local or Statewide Organization, and the appropriateness of the proposed service area, based on demonstrated experience and capacity of the potential designee. If an organization is asking to be considered for designation outside the neighborhoods where it has previously developed or preserved housing, DHCD will review the

following criteria: reasons stated by the organization for the proposed expansion, conformity of the expansion with the organization's workplan, representation by the organization's board of directors, and other relationships in the proposed neighborhoods. Following the review, DHCD will communicate to the organization the neighborhoods where the organization will be considered for designation.

4. Organization of Lists. Each new potential designee that is determined by DHCD to be qualified for placement on the Statewide Organization List will be added to such list in chronological order according to the date that DHCD receives a complete RFR response from such organization. The Local Organization List is arranged geographically by region of the state, and by applicable sub-regional areas, to the extent applicable, rather than based on a chronological ordering. Each entry on one of the lists shall include (a) basic identifying and contact information for each prequalified entity (including fiscal year-end date) taken from the response to the RFR and (b) information about the organization's renewal cycle pursuant to Part 4 (B) of these Guidelines.

5. Further Categorization of Organizations. Based on the RFR responses, DHCD reserves the right to categorize the prequalified potential designees further based on the type and size of the property that a prequalified potential designee has the capacity to handle. In reviewing any request for prequalification, DHCD may determine that, based on experience of the respondent, other measures of capacity, and the criteria outlined above, additional or different restrictions may be imposed on a respondent. If the respondent disagrees with DHCD's determination in regard to applicable restrictions, the respondent may choose to request to provide additional relevant information or to withdraw its request for prequalification. Each entry on one of the lists shall contain, in addition to the information described above, a section for notes regarding limitations on capacity or other restrictions on the type of project the potential designee may undertake.

D. Process for Designee Selection

The second stage of the process will occur upon DHCD's receipt of a Notice of Sale. As time is of the essence in this process, all potential designees except municipalities must be prequalified in accordance with Part 3 (A). To select a designee for a particular property, DHCD will take the following steps:

1. Identification of Potentially Qualified Local Organizations. DHCD will determine if the property falls in the approved service area "footprint" of any Local Organizations, and, if so, whether the organization would be eligible for designation on the basis of previously approved restrictions on its qualifications.

2. Identification of Potentially Qualified Statewide Organization. DHCD will review the ordered list of Statewide Organizations and identify the next two organizations on the Statewide Organization List that meet the site-specific criteria below. If an organization on the Statewide

Organization List is skipped over because of limitations on its qualifications, the organization will retain its place on the ordered list for the next potential designation that meets the limitations on its qualification. Once the Statewide Organization List has been exhausted, organizations will be considered again in order starting with the first on the chronologically ordered list. If an organization has been designated and acted as the Commonwealth's designee through the right of first offer stage (G.L. c. 40T, § 3), even if the choice is made not to make a timely offer for the target property, that organization's opportunity to act as designee will be considered exhausted and the next qualified designee on the list will be considered for the next possible designation.

3. Confirmation of Eligibility. Using the site specific selection criteria below, DHCD will evaluate and confirm whether the next two Statewide Organizations in order for selection on the ordered Statewide Organization List and any applicable Local Organization(s): (a) initially satisfy the site selection Criteria in Part 5 below, and (b) have an interest in serving as Designee. If one of the next two Statewide Organizations on the ordered Statewide Organization List is unwilling or does not meet the site selection criteria, the next willing and initially qualified statewide organization on the Statewide Organization List to meet the site selection criteria will be submitted to the municipality instead. DHCD will then forward to the affected municipality the names of (i) the two willing and initially qualified Statewide Organizations that are next in order for selection on the Statewide Organization List (these organizations will be referred to in consecutive order based on their order on the ordered Statewide Organization List, as the Primary Potential Statewide Designee and the Alternative Potential Statewide Designee) and (ii) any willing and initially qualified Local Organizations.

4. Consultation with the Municipality. DHCD will send a letter to the affected municipality requesting the municipality's position in regard to the designation and providing the names of the potential designees identified in Part 3 (D) (3) above. If the affected municipality asks in writing to be the designee within 5 business days after being contacted by DHCD, DHCD will immediately designate the affected municipality. This designation is not assignable and requires the municipality to enter into a purchase contract to acquire the property itself rather than through its own designee. In such case, the municipality must enter into a designation agreement with DHCD pursuant to DHCD's standard form designation agreement within 10 days of its notification of DHCD that it desires to serve as the designee for the property. Alternatively, the affected municipality may forward to DHCD its recommendations on the qualifications of the two Statewide Organizations and any Local Organizations(s) identified in DHCD's notice to the municipality. In selecting a potential designee, DHCD will give particular consideration to the preference of a municipality proposing significant funding for the transaction or a municipality that has previously funded or placed a regulatory restriction on the property; provided, that DHCD will only select the Alternative Potential Statewide Designee in lieu of the Primary Potential Statewide Designee if either the municipality or DHCD identifies serious concerns regarding the capacity or qualifications of the Primary Potential Statewide Designee. Municipal officials must choose to have the

municipality serve as the designee or recommend a potential Designee within 5 business days after being contacted by DHCD. As time is of the essence, DHCD may choose to disregard municipal recommendations received after that timeframe. DHCD is not required to designate the organization preferred by the municipality if the municipality does not choose to serve as the designee itself.

5. *Selection.* Taking into consideration feedback from the municipal consultation and an evaluation of the site-specific criteria of the willing and initially qualified Local and Statewide Organizations forwarded to it, DHCD will select the Designee. If DHCD chooses a Statewide Organization, it will choose the Primary Potential Statewide Designee unless the Primary Potential Statewide Designee does not meet the requirements of Part 5 for site-specific designation. In that case, DHCD may choose the Alternative Potential Designee or a qualified Local Organization. If DHCD is unable to complete a designation agreement with the selected potential designee within 5 business days of informing the potential designee of its selection, DHCD may cease negotiations with the initially selected potential designee and choose another of the potential designees forwarded to the municipality (including the Alternative Potential Statewide Designee), based on the criteria originally used. After exhaustion of the names on the Statewide Organization List and the Local Organization List initially forwarded to the municipality, DHCD may choose the next willing and initially qualified prequalified potential designee on the Statewide Organization List.

E. Designation for Multiple Properties Simultaneously: Properties being offered for sale as a package by the owner will generally be treated as a single transaction and DHCD will select one Designee for the transaction. DHCD also may opt to treat the simultaneous offer for sale of multiple properties by a single owner, regardless of whether the properties are offered as a package, as a single transaction. DHCD, with the consent of the owner, may decide to select Designees for individual properties in a portfolio sale if the size or separation of the properties would make a portfolio transaction more difficult to finance.

4. PREQUALIFICATION CRITERIA

In order to be prequalified, organizations must meet the following standards: These standards must be met by the respondent as potential designee/developer, but in some cases the respondents can identify a consultant or contractor who may have specific experience not present on the potential designee/developer's staff.

A. Initial Prequalification Criteria

1. Direct experience within the past 5 years in negotiating for and acquiring existing "publicly assisted housing" as defined in Ch. 40T.
2. Direct experience within the past 5 years in overseeing and managing the rehabilitation of occupied multi-family housing.

3. Demonstrated commitment to preserving affordable housing.
4. Expertise in Massachusetts and federal publicly-assisted housing financing programs
5. Successful experience in structuring complex real estate financing transactions. In the case of respondents requesting prequalification for designation for tax credit developments, successful experience in structuring large complex real estate financing transactions, including tax credit developments.
6. Demonstrated capacity to engage productively with tenant organizations and low- and moderate-income tenants of multi-family housing regarding property development issues.
7. Sound financial position and demonstrated ability to attract necessary development debt and equity financing.
8. Satisfactory history of fair housing compliance.

B. Requirements for Continuing Eligibility

1. In order to maintain its status as a prequalified potential designee, each prequalified potential designee must submit for review at least once every four years the documentation required in Part 4 (A) of the RFR.
 - (a) During the transition period until all prequalified potential designees are on the four-year renewal cycle, the following submission requirements shall apply to currently prequalified potential designees that were prequalified before December 31, 2014:
 - (i) Each currently prequalified potential designee that submitted its initial response to the RFR in 2010 and 2011 must submit updated prequalification review materials within six months of its fiscal year-end date occurring in 2017.
 - (ii) Each currently prequalified potential designee that submitted its initial response to the RFR in 2012 and 2013 must submit updated prequalification review materials within six months of its fiscal year-end date occurring in 2018.
 - (iii) Each currently prequalified potential designee that submitted its initial response to the RFR in 2014 must submit updated prequalification review materials within six months of its fiscal year-end date occurring in 2019.
 - (iv) Thereafter, each such prequalified potential designee must submit updated prequalification review materials every four years by the anniversary of review material due date pursuant to Part 4 (B) (1) (a) (i)–(iii) above.

(b) Each other prequalified potential designee must submit updated prequalification review materials within six months of the fiscal year-end date following every four-year anniversary of its initial response to the RFR.

(c) Each prequalified potential designee that changes its fiscal year shall promptly notify the Department and seek guidance as to how the change in fiscal year will affect periodic renewal under these Guidelines.

(d) DHCD shall send a reminder of prequalification review at least 60 days prior to the due date. A prequalified potential designee may request an extension of time to respond, which shall be granted by DHCD only for good cause shown.

2. Upon receipt of the prequalification review materials, DHCD shall promptly notify the prequalified potential designee whether the submitted materials were sufficient to retain prequalification status, or additional materials are necessary. If the prequalified potential designee fails to provide requested review materials timely, or if the materials submitted in response to the DHCD's request for additional information are deemed insufficient after providing opportunity to cure, DHCD may remove the prequalified potential designee from the prequalification list to which it has been assigned.

C. Reclassification or Changed Circumstances

1. Any prequalified potential designee may request re-classification from the Local Organization List to the Statewide Organization List, or vice versa, upon submission of a request for reclassification, together with such information required for periodic requalification in Part 4 (B) (1) above as may be relevant and such additional information as the prequalified potential designee may consider relevant. DHCD shall consider the information presented, and take appropriate action.

2. Any prequalified potential designee may request a change in the restrictions on its qualification upon submission of a request for revision of restrictions, together with such information required for periodic requalification in Part 4 (B) (1) above as may be relevant and such additional information as the prequalified potential designee may consider relevant. DHCD shall consider the information presented, and take appropriate action.

3. If any of the contact information for a prequalified potential designee changes, the prequalified potential designee shall promptly notify DHCD of the change.

4. If circumstances change such that a reasonable person would consider the change to affect the continuing qualification of a prequalified potential designee to continue to participate in the Chapter 40T designation process, the prequalified potential designee shall promptly notify DHCD of the relevant circumstances and provide DHCD with any requested information to allow DHCD to determine whether the prequalified potential designee should retain its status.

5. If any prequalified potential designee fails to comply with the requirements of the Act, the Regulations, the RFR, or these Guidelines, or ceases to continue to qualify as a prequalified potential designee after following the process outlined in Part 4 (C) (4), DHCD can take appropriate action, which may include requiring cure of the defect or removal from the list of prequalified potential designees.

5. SITE-SPECIFIC SELECTION CRITERIA

In order to be selected to act as Designee for a particular purchase opportunity, prequalified potential designees must continue to meet all of the Prequalification Criteria above and also meet the following additional criteria at the time of selection:

A. Requirements at Time of Selection for a Particular Purchase

1. Current organizational capacity to exercise the authority and undertake the obligations of Designees pursuant to the Act and the Regulations.
2. Ability to provide property management and asset management for the subject property through existing third-party relationships or internal capacity.
3. Experience by the individual identified with primary oversight of the Scope on behalf of the Designee within the prior 5 years of successfully managing all due diligence aspects of acquiring existing “publicly assisted housing” as defined in Ch.40T, including but not limited to site control, deal structuring, assembling and/or obtaining requisite financing and permits/approvals, and assessing capital needs.
4. Direct experience within the prior 5 years in successfully assembling financing for, developing and managing a development comparable in type or size to the subject development.
5. If deemed by DHCD to be relevant to the subject property, direct experience by the organization and by assigned individuals in the organization within the prior 5 years in undertaking successful rehabilitation of occupied multi-family rental properties in Massachusetts.
6. If DHCD determines that the acquisition and rehabilitation of the subject property would not be feasible without tax credits, direct experience by the organization and by assigned individuals in the organization within the prior 5 years in undertaking successful rehabilitation of occupied multi-family rental properties using tax credit financing.
7. Good standing status with the U.S. Department of Housing & Urban Development (HUD), DHCD, MassDevelopment, MassHousing, Massachusetts Housing Investment Corporation and Massachusetts Housing Partnership, and CEDAC.

8. Satisfactory history of fair housing compliance. DHCD may consult with Massachusetts Commission against Discrimination, the Office of the Attorney General and its Fair Housing Counsel to determine satisfactory fair housing status.

B. Grounds for Exclusion

DHCD may exclude a prequalified organization for any of the following reasons:

1. The development is of a type or size that the organization has not previously undertaken or has not successfully completed;
2. The organization is already serving as a designee for another development;
3. DHCD determines, in its sole discretion, based on staffing at the prequalified organization and properties under development, that the organization is not able to devote sufficient resources to proposed property acquisition, rehabilitation, and operation.
4. DHCD determines, in its sole discretion, that the organization lacks the financial capacity to successfully undertake the particular development.

C. Site-Specific Selection Process

DHCD shall request an update to the information previously provided under Part 5 (A) and (B) for it to evaluate a potential designation from the two willing and initially qualified Statewide Organizations next in order on the ordered Statewide Organization List and from all willing and initially qualified Local Organizations at the time that DHCD forwards their names to the municipality for its feedback. The requested update should include all relevant information since the date of the materials provided in the organization’s most recent quadrennial precertification review pursuant to Part 4 (B). In addition, if capacity for site-specific selection is to be demonstrated through third-party relationships, the contracts with such third-party relationships, redacted to protect confidential or privacy-protected information, shall be provided to DHCD at the time that the organization provides its other updated information to DHCD under this provision. DHCD shall make its initial determination of a potential designee based on the initial prequalification submissions, any subsequent reclassification or renewal submissions, and the site-specific information provided in regard to Part 5 (A) and (B) submitted at the end of the municipality’s feedback period in Part 3 (B) (4), with any extensions of time for submission of materials requested by a potential designee and granted by DHCD for good cause shown taken into account. If additional information comes to the attention of DHCD during the designation and right of first offer/right of first refusal process that indicates that the potential designee or selected designee fails to meet the site-specific selection criteria of Part 5 (A) and (B), DHCD may rescind the initial potential designation or completed designation and commence designation negotiations with another potential designee in the order detailed in Part 3 (B) (5).

If DHCD excludes a Statewide Organization for one of the reasons listed above, it will not affect the organization's position on the ordered Statewide Organization List described in Part 3(A).