

Chapter 33: Housing and Urban Renewal Projects and Programs

§ 33-01 General Provisions.

(a) *Definitions.*

- (1) **"Agency Activity"** shall mean the making of any Disposition, the provision of any Assistance, or the execution of any agreement regarding Disposition or Assistance by the Agency in connection with a Project.
- (2) **"Administrative Code"** shall mean the Administrative Code of the City.
- (3) **"Agency"** shall mean the City's Department of Housing Preservation and Development and any successor agency.
- (4) **"Applicant"** shall mean any potential Sponsor of a Project, without regard to the method used by the Agency to select the Sponsor for such Project, including, but not limited to, any person or entity which has submitted or might potentially submit a qualification statement, proposal, bid, application, or other submission.
- (5) **"Assistance"** shall mean funds or other items of value provided by the Agency to a Sponsor in order to enable such Sponsor to perform Project Activities. Assistance may be made available to Sponsors in any form permitted by applicable Law which is determined by the Agency to be necessary or desirable, including, but not limited to, Loans and Subsidies.
- (6) **"Authorization Letter"** shall mean a letter authorizing an Applicant or Selected Applicant to apply for funding to a potential public or private financing institution for the development of one or more Project(s) on one or more Site(s).
- (7) **"Binding Agreement"** shall mean a legally binding written agreement between a Sponsor and the City which (i) requires such Sponsor to perform or be responsible for the performance of Project Activities in connection with a Project, (ii) has been approved by the Governing Body, if such approval is required by applicable Laws, (iii) has been approved as to form by the Law Department, and (iv) has been duly executed by all parties whose execution of such agreement is required to make such agreement legally enforceable; provided, however, that a net lease, lease, or license agreement between the City and an Applicant or Selected Applicant with regard to possession of or the right to enter all or part of a Site during the term of negotiations regarding a Project or prior to the Disposition of a Site shall not be deemed to be a Binding Agreement.
- (8) **"City"** shall mean the City of New York.
- (9) **"City Housing Goals"** shall mean the purposes set forth in 28 RCNY § 33-01(c).
- (10) **"Commissioner"** shall mean the Commissioner of the Agency or his or her designee.
- (11) **"Disposition"** shall mean the conveyance of fee title or any other real property interest in a Site from the City to a Sponsor. Such real property interests shall include, but shall not be limited to, ground leases, easements, future interests, and other conveyances of less than the entire fee title to a Site. Notwithstanding anything herein to the contrary, such real property interests shall not include any interests conveyed at mortgage foreclosure sales, utility easements, leases entered into by the Agency's Office of Housing Management and Sales, transfers of Jurisdiction over a Site from one City agency to another, or licenses.
- (12) **"EO Clearance"** shall mean that (i) an Applicant, Selected Applicant, or Sponsor and its principals (and, where the Agency deems such additional review to be appropriate, the contractors retained by such Applicant, Selected Applicant, or Sponsor and all of their respective principals) have completed, executed, and submitted the required forms to and attended any required meetings with the Agency's Office of Equal Opportunity, and (ii) the Agency's Office of Equal Opportunity, after review of such information and any other available information, has made no finding of noncompliance with the applicable Laws regarding equal opportunity, labor compensation, locally based enterprises, and other matters monitored by the Agency's Office of Equal Opportunity.
- (13) **"Governing Body"** shall mean the Mayor and/or the City Council, acting singly or in combination in accordance with the powers vested in them by the Charter.
- (14) **"GML"** shall mean the General Municipal Law of the State of New York.
- (15) **"Grant"** shall mean a grant made by the City to a Sponsor for Project Activities pursuant to Article 16 of the GML.
- (16) **"IG Clearance"** shall mean that (i) an Applicant, Selected Applicant, or Sponsor and its principals (and, where the Agency deems such additional review to be appropriate, the contractors retained by such Applicant, Selected Applicant, or Sponsor and all of their respective principals) have completed, executed, and submitted the required forms to and attended any required meetings with the Department of Investigation's Office of the Inspector General and/or the Agency's Sponsor Review Unit, as the case may be, and (ii) the Department of Investigation's Office of the Inspector General and/or the Agency's Sponsor Review Unit, as the case may be, after review of such information and any other available information, has made no finding of derogatory information which indicates that the City should not do business with such party.
- (17) **"Laws"** shall mean any applicable laws, ordinances, orders, rules, and regulations promulgated by any local, state, or federal authority having jurisdiction over the subject matter thereof, as amended from time to time.
- (18) **"Law Department"** shall mean the City's Law Department and any successor agency, or its designee.
- (19) **"Loan"** shall mean a loan made by the City to a Sponsor for Project Activities.
- (20) **"Negotiation Letter"** shall mean a letter informing a Selected Applicant that the Agency will commence negotiations with such Selected Applicant regarding a Project.
- (21) **"PHFL"** shall mean the Private Housing Finance Law of the State of New York.
- (22) **"Program"** shall mean two or more Projects which (i) share the same funding source, Sponsor, grantee, or borrower, or otherwise provide for similar treatment of multiple Sites, and (ii) are deemed by the Agency to constitute a Program.
- (23) **"Project"** shall mean a project which involves Disposition and/or Assistance by the City to a Sponsor pursuant to these Rules for Project Activities to be performed at any Site.
- (24) **"Project Activity"** shall mean any activity performed, caused to be performed, or required to be performed by the Sponsor in connection with a Project, including, but not limited to, the acquisition, design, rehabilitation, construction, improvement, and/or marketing of a Site.
- (25) **"RFP"** shall mean a Request for Proposals.
- (26) **"RFQ"** shall mean a Request for Qualifications.
- (27) **"RPTL"** shall mean the Real Property Tax Law of the State of New York.

(28) **"Rules"** shall mean these rules.

(29) **"Selected Applicant"** shall mean an Applicant selected or approved by the Agency to enter into negotiations with the Agency regarding a Project.

(30) **"Site"** shall mean the real property and improvements, if any, located in New York City which are the subject of a Project performed pursuant to these Rules.

(31) **"Sponsor"** shall mean an Applicant or Selected Applicant, or an entity formed by an Applicant or Selected Applicant and approved by the Agency, which has executed one or more Binding Agreement(s) with the Agency. Unless the Agency elects to limit the types of entities which may serve as Sponsor for a Project, a Sponsor may be an individual, corporation, partnership, joint venture, or any other entity permitted by Law.

(32) **"Subsidy"** shall mean any Assistance by the Agency which is intended to reduce the cost of a Project to its Sponsor. Subsidy may be made available to Sponsors in any form permitted by applicable Law which is determined by the Agency to be necessary or desirable, including, but not limited to, (i) Grants, (ii) real property sale prices which are nominal or are otherwise below the fair market value of such Sites, (iii) Loans at no interest or nominal interest or at interest rates below the prevailing private sector interest rates for similar loans, (iv) Loans which provide for payment or other terms which are more favorable than the prevailing private sector terms for similar loans, (v) Loans which provide that principal and/or interest may be written down or otherwise forgiven, (vi) Tax Benefits, (vii) contractual agreements to provide funding, (viii) waiver or forgiveness of City deposits, fees, charges, taxes, liens, or rights to receive payment, (ix) construction or funding by the City of infrastructure or other improvements which are customarily paid for by real estate developers, (x) rental subsidy assistance administered by the City under the Section 8 Housing Voucher or Certificate Program or any other rental subsidy programs, and (xi) any other Assistance permitted by Law.

(33) **"Tax Benefit"** shall mean a tax abatement, exemption, or waiver granted by the City to a Sponsor in connection with a Project. For the purposes of the preceding sentence, "tax" shall mean City real property taxes and assessments, City water and sewer charges, City and state taxes on the transfer of real property, recording taxes and fees, and any other tax or governmental imposition which a Sponsor may be required to pay in connection with a Project.

(b) *Purpose of Rules.* These Rules set forth the procedures for Site and Sponsor selection for Projects.

(c) *Purpose of Projects.* The Agency shall have the power and authority to initiate and undertake Projects for any public purpose, provided that all Agency Activities to be undertaken in connection with any Project are authorized by applicable Laws. Such public purposes shall include, but shall not be limited to, (i) increasing the supply of available rental and ownership housing which is affordable to persons of low, moderate, and/or middle income; (ii) increasing the supply of available rental and ownership housing which is suitable for and affordable to persons with special needs; (iii) encouraging the construction of new residential housing; (iv) facilitating the conversion of existing non-residential structures into residential housing; (v) promoting the preservation and rehabilitation of existing residential housing; (vi) eliminating conditions in existing residential housing which are unsafe or detrimental to health; (vii) facilitating both residential and non-residential uses in accordance with the provisions of the applicable urban renewal plans or urban development action area projects; (viii) facilitating non-residential uses; (ix) mitigating potential adverse environmental impacts of the development of residential housing and the redevelopment of urban renewal areas; (x) encouraging the investment of private capital for such purposes; (xi) maximizing City revenue; and (xii) minimizing City expenses.

(d) *General Authority.*

(1) *General.* The Agency may make Dispositions and provide Assistance to Sponsors for the purposes and in accordance with the procedures described in these Rules.

(2) *Site Selection.* The Agency may from time to time select Sites for Projects. The provisions regarding the selection of Sites are contained in 28 RCNY § 33-02.

(3) *Sponsor Selection.* The Agency may from time to time select Sponsors for Projects through any competitive or non-competitive process authorized by applicable Law which the Agency deems to be in the best interest of the City, including, but not limited to, direct negotiation, RFQ, RFP, competitive bidding, public bidding, auction, and selection by entities other than the Agency. For Projects involving privately owned Sites, notwithstanding any provision of these Rules to the contrary, the Sponsor and Site may be selected together by any such process and the Agency may consider the characteristics of the Site in addition to any other selection criteria. The provisions regarding the selection of Sponsors are contained in 28 RCNY § 33-03.

(4) *Negotiations.* The Agency may commence, conduct, and/or terminate negotiations with Applicants and/or Selected Applicants. During such negotiations, subject to approval of the Governing Body, where such approval is required by Law, the City may lease or net lease Sites to Applicants and/or Selected Applicants which have complied with all terms of the applicable selection process, applicable Laws, these Rules, and any and all agreements pertaining thereto. The provisions regarding negotiations with Applicants and Selected Applicants are contained in 28 RCNY § 33-04.

(5) *Disposition.* Subject to approval of the Governing Body, the City may convey Sites to Sponsors which have complied with all terms of the applicable selection process, applicable Laws, these Rules, and any and all agreements pertaining thereto. The provisions regarding Disposition of Sites are contained in 28 RCNY § 33-05.

(6) *Assistance.* The City may provide Assistance to Sponsors in order to facilitate Project Activities in such amounts and types as are determined by the Agency to be necessary or desirable. The provisions regarding Assistance are contained in 28 RCNY § 33-06.

(7) *Project Operation.* The Agency may require Sponsors to operate Sites in accordance with regulatory agreements entered into with the Agency. The provisions regarding Project operation are contained in 28 RCNY § 33-07.

(e) *Programs.* Where two or more Projects share the same funding source, Sponsor, grantee, or borrower, or otherwise provide for similar treatment of multiple Sites pursuant to these Rules, the Agency may deem such Projects to constitute a Program. The Agency may repeat a Project or create a Program where the Agency, for any reason, deems it necessary or desirable to do so. Such reasons may include, but shall not be limited to, the continued availability of a particular source of funding, the continued need for a particular type of housing, and the continued interest of any non-City persons or entities, whether private, quasi-public, or public, in performing such type of Projects. The Agency shall determine whether any Project is in a Program and whether any set of Projects constitutes a Program.

(f) *Additional Rules.* The Agency may from time to time promulgate additional rules for certain Programs, which rules shall preempt and supersede these Rules to the extent of any conflict, inconsistency, or ambiguity. Such rules shall be promulgated whenever the Agency determines, for any good and sufficient reason, that additional rules are necessary or desirable in order to facilitate the orderly progress of Agency initiatives to achieve the City Housing Goals. Such reasons may include, but shall not be limited to, the number of Projects in, or the type or number of programmatic requirements of, any Program for which the Agency determines that additional rules are necessary or desirable. The Agency shall determine which rules, if any, apply to any Program or Project.

(g) *Source of Funds.* The Agency may fund any Agency Activity deemed by the Agency to be necessary or desirable in connection with a Project with any available source of funds which is eligible for such purpose under applicable Law. Each Project must comply with all statutory and regulatory requirements with respect to the use of such funds, which requirements shall supersede Project requirements in the event of any conflict or inconsistency.

§ 33-02 Site Selection.

(a) *General.* This Article sets forth procedures for the selection of Sites for Projects. Such determinations shall be made by the Agency, in accordance with the procedures set forth herein, for the purposes of ascertaining whether a Site meets the requirements of a Project and applicable Laws, achieving the City Housing Goals, and protecting and furthering the best interests of the City.

(b) *Determination of Appropriateness.* The Agency may determine to place any Site into any Project where the Agency determines, for any reason, that such Project is an appropriate treatment for such Site. Such reasons, may include, but shall not be limited to, the following:

- (1) The physical conditions or economic characteristics of the Site make it appropriate for the treatment afforded by the Project.
- (2) The Site requires more private investment and/or less Assistance than would be provided under any other appropriate Project or Program, and the Project permits the treatment of the Site with such level of private investment or Assistance.
- (3) The Site requires less private investment and/or more Assistance than would be provided under any other appropriate Project or Program, and the Project permits the treatment of the Site with such level of private investment or Assistance.
- (4) The Site possesses unique features which make the treatment afforded by the Project necessary or desirable.
- (5) The Project addresses a housing need which has not been and is not likely to be fully alleviated by the operations of the private housing market, and the Site is appropriate for inclusion in the Project.
- (6) The Project would return the Site to private ownership and/or private management.
- (7) The interest of one or more private parties in the Site creates special opportunities to develop the Site in unique and beneficial ways, including, but not limited to, ways which provide housing for persons with special needs, maximize City revenue, permit development with less Assistance than would be required if the Site were in another Project or Program, permit production of a greater number of units or a greater proportion of lower income units than would be produced if the Site were in another Project or Program, and/or permit development of more ancillary open space or other public facilities.
- (8) The Site is not City-owned and the owner, or an authorized representative of the owner, has applied to the Agency, pursuant to any process authorized by these Rules, other rules of the Agency, or applicable Law, to have the Site included in a Project which would serve the City Housing Goals.
- (9) The inclusion of the Site in the Project would serve any of the City Housing Goals.

(c) *Selection.* Upon the selection of a Site for a Project, the Agency may, but shall not be required to, prepare a written statement identifying the Site and the Project. Such Site selection document may be in any form which the Agency deems appropriate, including, but not limited to, a letter or memorandum placed in the file for the Project, an Authorization Letter, entry into a book, file, database, or other record of Agency Site Selections, any document prepared in order to comply with applicable Laws (including, but not limited to, the Uniform Land Use Review Procedure, the Urban Renewal Law, and the Urban Development Action Area Act), a document issued as part of any process to select a Sponsor (including, but not limited to, any RFQ, RFP, or bid solicitation), or a Loan commitment letter. Failure to prepare a Site selection document shall not invalidate the selection of a Site for a Project.

(d) *Revocation.* The Agency may revoke a Site selection where the Agency deems such revocation to be necessary or desirable. Upon the revocation of a Site selection, the Agency may, but shall not be required to, prepare a written statement identifying the Site and the Project from which the Site has been removed. Such Site selection revocation document, if any, may be in any of the forms permitted for a Site selection document. Failure to prepare a Site selection revocation document writing shall not invalidate the revocation, and any subsequent selection of a Site for a different Project shall serve to automatically terminate the prior Site selection. After revocation of any Site selection, the Agency may select the Site for any other Project in accordance with these Rules.

§ 33-03 Sponsor Selection.

(a) *General.* This Article sets forth procedures for the selection of Sponsors for Projects. Such determinations shall be made by the Agency, in accordance with the procedures set forth herein, for the purposes of ascertaining whether a potential Sponsor meets the requirements of a Project and applicable Laws, achieving the City Housing Goals, and protecting the best interests of the City. The Agency may select a Sponsor for a Project by any method permitted by Law which it determines will best meet the Project's objectives and the City Housing Goals, including, but not limited to, direct negotiation, RFQ, RFP, competitive bidding, public bidding, auction, selection by entities other than the Agency, and application. For Projects involving privately owned Sites, notwithstanding any provision of these Rules to the contrary, the Sponsor and Site may be selected together by any such method and the Agency may consider the characteristics of the Site in addition to any other selection criteria.

(b) *Direct Negotiation.* Where the Agency deems it to be necessary or desirable, a Sponsor may be selected for a Project without any competitive process. In such event, the Agency may, prior to taking any Agency Activity with respect to such Project, prepare a written statement signed by the Commissioner setting forth the reasons why a more competitive process was not appropriate or desirable. Such statement, if any, shall thereafter be placed with the records concerning the Project which are retained by the Agency and shall be kept on file in accordance with the Agency's usual record retention policies.

(c) *RFQ.* Where the Agency deems it to be necessary or desirable, a Sponsor may be selected for a Project via an RFQ. The RFQ shall describe the Project and/or Program, the Site, the selection process, and such other matters as the Agency deems to be relevant.

- (1) *Issuance.* The Agency may issue RFQs for Projects at any time it deems appropriate and desirable.
- (2) *Distribution.*

(i) *Notice.* At such time as the Agency issues an RFQ for a Project, the Agency may place advertisements in The City Record and/or such other publications as the Agency shall deem appropriate. The Agency may also mail copies of such advertisement to potential Applicants, including, but not limited to, Applicants who have done prior business with the Agency or who have requested to be on a mailing list for such purpose. The advertisement shall include, at a minimum, a short description of the Project or Program, the place a copy of the RFQ can be obtained and the fee, if any, therefor, and the deadline for submission of qualification statements and the fee, if any, therefor.

(ii) *Availability.* A copy of the RFQ shall be made available to all potential Applicants prior to the submission deadline. The Agency shall require all recipients of any RFQ to identify themselves and shall cause a list of recipients to be maintained, which list shall in no event be furnished to any non-governmental party prior to the conclusion of the selection process. The Agency may charge a fee, in an amount to be determined by the Agency, for a copy of the RFQ.

(iii) *Amendments.* The Agency may issue amendments to the RFQ at any time prior to the submission deadline. The Agency shall provide copies of such amendments to all recipients of the RFQ.

- (3) *Public Information.*

(i) *Conference.* Prior to the submission deadline, the Agency may, but shall not be required to, hold an open conference where Agency staff answer questions about submission and Project requirements. The time and place for such conference, if any, shall be indicated in the RFQ and/or any advertisement.

(ii) *Agency Contacts.* Agency staff shall be available during the submission period by telephone and/or in person to answer general questions about the RFQ. The Agency may require that contact with agency personnel by prospective Applicants with respect to an RFQ be limited to one or more

person(s) designated in the RFQ and/or that such contact be in writing.

(4) *Submissions.*

(i) *Time Period.* The deadline for submissions shall be a reasonable period of time after the advertisement first appears and shall be stated in the RFQ.

(ii) *Fee.* The Agency may require an Applicant to pay such non-refundable fee as is determined by the Agency to be appropriate upon submission of a qualification statement.

(iii) *Completeness.* The Agency shall require qualification statements to be submitted in the format and number prescribed in the RFQ and to contain all information and forms required therein.

(5) *Selection.*

(i) *Basic Requirements.* The Agency may reject a qualification statement if the Agency determines that either of the following basic requirements are not met:

(A) *Completeness.* The qualification statement must include all required forms, and such forms must be fully and properly completed and executed, at the time of submission.

(B) *Compliance.* The qualification statement must comply in all respects with all material terms of the RFQ.

(ii) *Threshold Criteria.* The Agency may impose such additional threshold criteria in the RFQ as it deems necessary or desirable. Provided that a qualification statement has passed all basic requirements, the Agency shall consider such threshold criteria as are established in the RFQ. Such threshold criteria shall include, but shall not be limited to, those characteristics of Applicants which have a bearing on their ability to successfully complete the Project (e.g., organizational capacity, comparable experience, financial capacity, and current and projected workload).

(iii) *Competitive Criteria.* The Agency may impose such additional competitive criteria in the RFQ as it deems necessary or desirable. Provided that a qualification statement has passed all threshold criteria, the Agency shall consider such competitive criteria as are established in the RFQ. Such criteria shall include, but shall not be limited to, those characteristics of Applicants which have a bearing on their ability to successfully complete the Project (e.g., organizational capacity, comparable experience, financial capacity, and current and expected workload).

(6) *Limitations.*

(i) *No Obligation.* An RFQ shall not represent any obligation or agreement whatsoever on the part of the City or the Agency, which may only be incurred or entered into by written agreement approved by the Governing Body, if applicable, and the Law Department and duly executed by both parties. The City and the Agency shall not be obligated to pay, nor shall they in fact pay, any costs or losses incurred by any Applicant at any time, including, but not limited to, the cost of responding to the RFQ.

(ii) *No Warranty.* The Agency shall make no warranties, express or implied, with respect to any factual information contained in any RFQ.

(7) *Rights Retained by Agency.* Where it is deemed by the Agency to be in the best interests of the City:

(i) The Agency may withdraw any RFQ in whole or in part at any time.

(ii) The Agency may decline to enter into negotiations with any and all Applicants which submit qualification statements in response to an RFQ.

(iii) The Agency may at any time waive compliance with an RFQ, change any of the terms and conditions of an RFQ, allow certain Applicants to make modifications or additions to their respective qualification statements, require certain Applicants to submit additional information or documentation, or withdraw individual Sites from an RFQ.

(iv) The Agency may negotiate with one or more Applicants who have submitted qualification statements pursuant to an RFQ, and may negotiate with parties which have not responded to the RFQ.

(v) The Agency may negotiate and dispose of any Site on terms other than those set forth in the RFQ.

(d) *RFP.* Where the Agency deems it to be necessary or desirable, a Sponsor may be selected for a Project via an RFP. The RFP shall describe the Project and/or Program, the Site, the selection process, and such other matters as the Agency deems to be relevant. Where a potential Sponsor has previously submitted a proposal and the Agency has issued an RFP soliciting additional proposals to compete with such proposal, such RFP shall contain a copy or summary of such proposal and shall set forth in detail the standards by which the competition shall be judged.

(1) *Issuance.* The Agency may issue RFPs for Projects at any time it deems appropriate and desirable.

(2) *Distribution.*

(i) *Notice.* At such time as the Agency issues an RFP for a Project, the Agency may place advertisements in the *City Record* and/or such other publications as the Agency shall deem appropriate. The Agency may also mail copies of such advertisement to potential Applicants, including, but not limited to, Applicants who have done prior business with the Agency or who have requested to be on a mailing list for such purpose. The advertisement shall include, at a minimum, a short description of the Project or Program, the place a copy of the RFP can be obtained and the fee, if any, therefor, and the deadline for submission of proposals and the fee, if any, therefor.

(ii) *Availability.* A copy of the RFP shall be made available to all potential Applicants prior to the submission deadline. The Agency shall require all recipients of any RFP to identify themselves and shall cause a list of recipients to be maintained, which list shall in no event be furnished to any non-governmental party prior to the conclusion of the selection process. The Agency may charge a fee, in an amount to be determined by the Agency, for a copy of the RFP.

(iii) *Amendments.* The Agency may issue amendments to the RFP at any time prior to the submission deadline. The Agency shall provide copies of such amendments to all recipients of the RFP.

(3) *Public Information.*

(i) *Conference.* Prior to the submission deadline, the Agency may, but shall not be required to, hold an open conference where Agency staff answer questions about submission and Project requirements. The time and place for such conference, if any, shall be indicated in the RFP and/or any advertisement.

(ii) *Agency Contacts.* Agency staff shall be available during the submission period by telephone and/or in person to answer general questions about the RFP. The Agency may require that contact with Agency personnel by prospective Applicants with respect to an RFP be limited to one or more person(s) designated in the RFP.

(4) *Submissions.*

(i) *Time Period.* The deadline for submissions shall be a reasonable period of time after the advertisement first appears and shall be stated in the

RFP.

(ii) *Fee.* The Agency may require an Applicant to pay such non-refundable fee as is determined by the Agency to be appropriate upon submission of a proposal.

(iii) *Completeness.* The Agency shall require proposals to be submitted in the format and number prescribed in the RFP and to contain all information and forms required therein.

(5) *Selection.*

(i) *Basic Requirements.* The Agency may reject a proposal if it determines that either of the following basic requirements are not met:

(A) *Completeness.* The proposal must include all required forms, and such forms must be fully and properly completed and executed, at the time of submission.

(B) *Compliance.* The proposal must comply in all respects with all material terms of the RFP.

(ii) *Threshold Criteria.* The Agency may impose such additional threshold criteria in the RFP as it deems necessary or desirable. Provided that a proposal has passed all basic requirements, the Agency shall consider such threshold criteria as are established in the RFP. Such threshold criteria may include, but shall not be limited to, those characteristics of Applicants which have a bearing on their ability to successfully complete the Project (e.g., organizational capacity, comparable experience, financial capacity, and current and projected workload), those characteristics of the Applicant's proposal which have a bearing on the performance of the Project (e.g., number and size of units produced, rental or sale prices, income levels or special needs of prospective residents, amount of Assistance required, amount of revenue to be received by the City, and design), and any other factors which the Agency deems appropriate.

(iii) *Competitive Criteria.* The Agency may impose such additional competitive criteria in the RFP as it deems necessary or desirable. Provided that a proposal has passed all threshold criteria, the Agency shall consider such competitive criteria as are established in the RFP. Such criteria may include, but shall not be limited to, those characteristics of Applicants which have a bearing on their ability to successfully complete the Project (e.g., organizational capacity, comparable experience, financial capacity, and current and expected workload), those characteristics of the Applicant's proposal which have a bearing on the performance of the Project (e.g., number and size of units produced, rental or sale prices, income levels or special needs of prospective residents, amount of Assistance required, amount of revenue to be received by the City, and design), and any other factors which the Agency deems appropriate.

(6) *Limitations.*

(i) *No Obligation.* An RFP shall not represent any obligation or agreement whatsoever on the part of the City or the Agency, which may only be incurred or entered into by written agreement approved by the Governing Body, if applicable, and the Law Department and duly executed by both parties. The City and the Agency shall not be obligated to pay, nor shall they in fact pay, any costs or losses incurred by any Applicant at any time, including, but not limited to, the cost of responding to the RFP.

(ii) *No Warranty.* The Agency shall make no warranties, express or implied, with respect to any factual information contained in any RFP.

(7) *Rights Retained by Agency.* Where it is deemed by the Agency to be in the best interests of the City:

(i) The Agency may withdraw any RFP in whole or in part at any time.

(ii) The Agency may decline to enter into negotiations with any and all Applicants which submit proposals in response to an RFP.

(iii) The Agency may at any time waive compliance with an RFP, change any of the terms and conditions of an RFP, allow certain Applicants to make modifications or additions to their respective proposals, require certain Applicants to submit additional information or documentation, or withdraw individual Sites from an RFP.

(iv) The Agency may negotiate with one or more Applicants who have submitted proposals pursuant to an RFP, and may negotiate with parties which have not responded to the RFP.

(v) The Agency may negotiate and dispose of any Site on terms other than those set forth in the RFP.

(e) *Competitive Bidding.* Where the Agency deems it to be feasible and desirable, a Sponsor may be selected for a Project via competitive bidding without public advertisement.

(1) *Solicitation.* The Agency may issue written bid solicitations for Projects at any time it deems appropriate and desirable. The bid solicitation shall describe the Project and/or Program, the Site, the competitive factor(s) upon which the bidding is based, the minimum thresholds, if any, for eligibility to bid, the reasons why public bidding is not feasible or desirable, the method by which bids are being solicited and the justification therefor, and such other matters as the Agency deems to be relevant.

(2) *Distribution.*

(i) *Notice.* At such time as the Agency issues a bid solicitation for a Project, the Agency shall inform prospective bidders and solicit bids in such manner as the Agency shall deem appropriate.

(ii) *Availability.* The Agency shall cause a list of recipients of the bid solicitation to be maintained, which list shall in no event be furnished to any non-governmental party prior to the conclusion of the selection process. The Agency may charge a fee, in an amount to be determined by the Agency, for a copy of the bid solicitation.

(iii) *Amendments.* The Agency may issue amendments to the bid solicitation at any time prior to the submission deadline. The Agency shall provide copies of such amendments to all recipients of the bid solicitation as set forth on the list of recipients.

(3) *Public Information.*

(i) *Conference.* Prior to the submission deadline, the Agency may, but shall not be required to, hold an open conference where Agency staff answer questions about submission and Project requirements. The time and place for such conference, if any, shall be indicated in the bid solicitation.

(ii) *Agency Contacts.* Agency staff shall be available during the submission period by telephone and/or in person to answer general questions about the bid solicitation. The Agency may require that contact with agency personnel by prospective bidders with respect to a bid solicitation be limited to one or more person(s) designated in the bid solicitation and/or that such contact be in writing.

(4) *Submissions.*

(i) *Time Period.* The deadline for submissions shall be a reasonable period of time after the issuance of the bid solicitation and shall be stated in the bid solicitation.

(ii) *Fee.* The Agency may require a bidder to pay such non-refundable fee as is determined by the Agency to be appropriate upon submission of a bid.

(iii) *Completeness.* The Agency shall require bids to be submitted in the format and number prescribed in the bid solicitation and to contain all information and forms required therein.

(5) *Selection.*

(i) *Basic Requirements.* The Agency may reject a bid if it determines that either of the following basic requirements are not met:

(A) *Responsiveness.* The bid must include all required forms, such forms must be fully and properly completed and executed, and the bid must comply in all respects with all material terms of the bid solicitation.

(B) *Responsibility.* The Agency may impose such eligibility criteria for bidders in the bid solicitation as the Agency deems necessary or desirable to ensure that only responsible bidders are selected. Each bidder shall be required to comply with all of the eligibility criteria established in the bid solicitation. Such eligibility criteria may include, but shall not be limited to, those characteristics of bidders which have a bearing on their ability to successfully complete the Project (e.g., organizational capacity, comparable experience, financial capacity, and current and projected workload).

(ii) *Competitive Criteria.* The Agency may impose such competitive criteria for the comparative evaluation of bids in the bid solicitation as it deems necessary or desirable. Provided that a bidder has passed all basic requirements, the Agency shall evaluate such bids on the basis of such competitive criteria as are established in the bid solicitation. Such competitive criteria may include, but shall not be limited to, amount of revenue to be received by the City, amount or type of Assistance required, rental or sale prices, income levels of prospective residents, number and size of units produced, and any other factors which the Agency deems appropriate.

(6) *Limitations.*

(i) *No Obligation.* A bid solicitation shall not represent any obligation or agreement whatsoever on the part of the City or the Agency, which may only be incurred or entered into by written agreement approved by the Governing Body, if applicable, and the Law Department and duly executed by both parties. The City and the Agency shall not be obligated to pay, nor shall they in fact pay, any costs or losses incurred by any bidder at any time, including, but not limited to, the cost of responding to the bid solicitation.

(ii) *No Warranty.* The Agency shall make no warranties, express or implied, with respect to any factual information contained in any bid solicitation.

(7) *Rights Retained by Agency.* Where it is deemed by the Agency to be in the best interests of the City:

(i) The Agency may withdraw any bid solicitation in whole or in part at any time.

(ii) The Agency may decline to enter into negotiations with any and all bidders.

(iii) The Agency may at any time waive compliance with a bid solicitation, change any of the terms and conditions of a bid solicitation, allow certain bidders to make modifications or additions to their respective bids, or withdraw individual Sites from a bid solicitation.

(iv) The Agency may negotiate with one or more bidders and may negotiate with non-bidders.

(v) The Agency may negotiate and dispose of any Site on terms other than those set forth in the bid solicitation.

(f) *Public Bidding.* Where the Agency deems it to be feasible and desirable, a Sponsor may be selected for a Project via public bidding.

(1) *Solicitation.* The Agency may issue written bid solicitations for Projects at any time it deems appropriate and desirable. The bid solicitation shall describe the Project and/or Program, the Site, the competitive factor(s) upon which the bidding is based, the minimum thresholds, if any, for eligibility to bid, and such other matters as the Agency deems to be relevant.

(2) *Distribution.*

(i) *Notice.* At such time as the Agency issues a bid solicitation for a Project, the Agency shall place advertisements in The City Record and/or such other publications as the Agency shall deem appropriate. The advertisement shall include, at a minimum, a short description of the Project or Program, the place a copy of the bid solicitation can be obtained and the fee, if any, therefor, and the deadline for submission of bids and the fee, if any, therefor.

(ii) *Availability.* A copy of the bid solicitation shall be made available to all potential bidders prior to the submission deadline. The Agency shall require all recipients of any bid solicitation to furnish identification and shall cause a list of recipients to be maintained, which list shall in no event be furnished to any non-governmental party prior to the conclusion of the selection process. The Agency may charge a fee, in an amount to be determined by the Agency, for a copy of the bid solicitation.

(iii) *Amendments.* The Agency may issue amendments to the bid solicitation at any time prior to the submission deadline. The Agency shall provide copies of such amendments to all recipients of the bid solicitation.

(3) *Public Information.*

(i) *Conference.* Prior to the submission deadline, the Agency may, but shall not be required to, hold an open conference where Agency staff answer questions about submission and Project requirements. The time and place for such conference, if any, shall be indicated in the bid solicitation and/or any advertisement.

(ii) *Agency Contacts.* Agency staff shall be available during the submission period by telephone and/or in person to answer general questions about the bid solicitation. The Agency may require that contact with agency personnel by prospective bidders with respect to a bid solicitation be limited to one or more person(s) designated in the bid solicitation and/or that such contact be in writing.

(4) *Submissions.*

(i) *Time Period.* The deadline for submissions shall be a reasonable period of time after the advertisement first appears and shall be stated in the bid solicitation.

(ii) *Fee.* The Agency may require a bidder to pay such non-refundable fee as is determined by the Agency to be appropriate upon submission of a bid.

(iii) *Completeness.* The Agency shall require bids to be submitted in the format and number prescribed in the bid solicitation and to contain all information and forms required therein.

(5) *Selection.*

(i) *Basic Requirements.* The Agency may reject a bid if it determines that either of the following basic requirements are not met:

(A) *Responsiveness.* The bid must include all required forms, such forms must be fully and properly completed and executed, and the bid must comply in all respects with all material terms of the bid solicitation.

(B) *Responsibility.* The Agency may impose such eligibility criteria for bidders in the bid solicitation as the Agency deems necessary or desirable to ensure that only responsible bidders are selected. Each bidder shall be required to comply with all of the eligibility criteria established in the bid

solicitation. Such eligibility criteria may include, but shall not be limited to, those characteristics of bidders which have a bearing on their ability to successfully complete the Project (e.g., organizational capacity, comparable experience, financial capacity, and current and projected workload).

(ii) *Competitive Criteria.* The Agency may impose such competitive criteria for the comparative evaluation of bids in the bid solicitation as it deems necessary and desirable. Provided that a bidder has passed all basic requirements, the Agency shall evaluate such bids on the basis of such competitive criteria as are established in the bid solicitation. Such competitive criteria may include, but shall not be limited to, amount of revenue to be received by the City, amount or type of Assistance required, rental or sale prices, income levels of prospective residents, number and size of units produced, and any other factors which the Agency deems appropriate.

(6) *Limitations.*

(i) *No Obligation.* A bid solicitation shall not represent any obligation or agreement whatsoever on the part of the City or the Agency, which may only be incurred or entered into by written agreement approved by the Governing Body, if applicable, and the Law Department and duly executed by both parties. The City and the Agency shall not be obligated to pay, nor shall they in fact pay, any costs or losses incurred by any bidder at any time, including, but not limited to, the cost of responding to the bid solicitation.

(ii) *No Warranty.* The Agency shall make no warranties, express or implied, with respect to any factual information contained in any bid solicitation.

(7) *Rights Retained by Agency.* Where it is deemed by the Agency to be in the best interests of the City:

(i) The Agency may withdraw any bid solicitation in whole or in part at any time.

(ii) The Agency may decline to enter into negotiations with any and all bidders.

(iii) The Agency may at any time waive compliance with a bid solicitation, change any of the terms and conditions of a bid solicitation, allow certain bidders to make modifications or additions to their respective bids, or withdraw individual Sites from a bid solicitation.

(iv) The Agency may negotiate with one or more bidders and may negotiate with non-bidders.

(v) The Agency may negotiate and dispose of any Site on terms other than those set forth in the bid solicitation.

(g) *Auctions.* Where the Agency deems it to be feasible and desirable, a Sponsor may be selected for a Project via auction.

(1) *Information.* The Agency may prepare an auction brochure containing written descriptions of the Project, the Site, the eligibility criteria for bidders, the terms and conditions of the auction, and such other matters as the Agency deems to be relevant.

(2) *Distribution of Notice.*

(i) *Notice.* At such time as the Agency elects to select a Sponsor via auction, the Agency shall place advertisements in The City Record and/or such other publications as the Agency shall deem appropriate. The advertisement shall include, at a minimum, a short description of the Project or Program, the place and time where the auction brochure may be obtained, the place and time where the auction will be held, and such other matters as the Agency deems to be relevant.

(ii) *Availability.* The Agency shall require all recipients of the auction brochure to identify themselves and shall cause a list of such recipients to be maintained, which list shall in no event be furnished to any non-governmental party prior to the conclusion of the selection process.

(iii) *Amendments.* The Agency may issue amendments to the auction brochure at any time prior to the auction. The Agency shall send copies of such amendments to all recipients of the auction brochure.

(3) *Public Information.*

(i) *Conference.* Prior to the auction, the Agency may, but shall not be required to, hold an open conference where Agency staff answer questions about the Project and the auction. The time and place for such conference, if any, shall be indicated in the public advertisement for the auction.

(ii) *Agency Contacts.* Agency staff shall be available prior to the auction by telephone and/or in person to answer general questions about the auction. The Agency may require that contact with agency personnel by prospective participants with respect to an auction be limited to one or more person(s) and/or that such contact be in writing.

(4) *Fee.* The Agency may require an auction participant to pay such non-refundable fee as is determined by the Agency to be appropriate upon admission to the auction.

(5) *Eligibility Criteria.* The Agency may impose such eligibility criteria for bidders in the auction as the Agency deems necessary or desirable to ensure that only responsible bidders are selected. Each bidder shall be required to comply with all of the eligibility criteria established in the terms and conditions of the auction. Such eligibility criteria may include, but shall not be limited to, those characteristics of bidders which have a bearing on their ability to successfully complete the Project (e.g., organizational capacity, comparable experience, financial capacity, and current and projected workload). The Agency may reject any bidder at an auction if the eligibility requirements are not met.

(6) *Limitations.*

(i) *No Obligation.* An auction shall not represent any obligation or agreement whatsoever on the part of the City or the Agency, which may only be incurred or entered into by written agreement approved by the Governing Body, if applicable, and the Law Department and duly executed by both parties. The City and the Agency shall not be obligated to pay, nor shall they in fact pay, any costs or losses incurred by any bidder at any time, including, but not limited to, the cost of attending the auction.

(ii) *No Warranty.* The Agency shall make no warranties, express or implied, with respect to any factual information contained in any written description of the auction.

(7) *Rights Retained by Agency.* Where it is deemed by the Agency to be in the best interests of the City:

(i) The Agency may cancel any auction at any time.

(ii) The Agency may decline to enter into negotiations with any and all bidders.

(iii) The Agency may at any time waive compliance with the eligibility requirements for the auction, change any of the terms and conditions of the auction, allow certain bidders to make modifications or additions to their respective bids, or withdraw individual Sites from an auction.

(iv) The Agency may negotiate with one or more bidders and may negotiate with non-bidders.

(v) The Agency may negotiate and dispose of any Site on terms other than those set forth in the written description of the auction.

(h) *Non-Agency Selection.* The Agency may select an Applicant to be the Sponsor of a Project without any Agency selection process where such Applicant has already been selected or designated by (i) the Agency in connection with any Project or Program, (ii) another agency or instrumentality of the City, (iii) any agency or instrumentality of the state or federal government, (iv) any public authority, public benefit corporation, or other quasi-

governmental entity, or (v) any other entity designated by the Agency to perform such selection. Notwithstanding anything to the contrary in the preceding sentence or elsewhere in these Rules, the Agency shall only select a Sponsor pursuant to this 28 RCNY § 33-03(h) where the Agency deems such method of selection to be necessary or desirable, and the Agency shall not be required to select any Applicant solely because such Applicant has been selected by any other entity.

(i) *Non-Agency Process.* The Agency may select an Applicant to be the Sponsor of a Project by a process not set forth in these Rules where funding for such Project is provided by, and the alternative selection process is mandated by, either (i) another agency or instrumentality of the City, (ii) any agency or instrumentality of the state or federal government, (iii) any public authority, public benefit corporation, or other quasi-governmental entity, or (iv) any other entity providing funding. Notwithstanding anything to the contrary in the preceding sentence or elsewhere in these Rules, the Agency shall only select a Sponsor pursuant to this 28 RCNY § 33-03(i) where the Agency deems such method of selection to be necessary or desirable, and the Agency shall not be required to utilize any selection process solely because such selection process has been mandated by any other entity.

(j) *Application.* Where and at such time as the Agency deems it to be necessary or desirable, a Sponsor may be selected for a Project via an application process.

(1) *Distribution.*

(i) *Advertisement.* At such time as the Agency commences an application process for a Project, the Agency or its designee may prepare or cause to be prepared an advertisement describing (i) such aspects of the Project and the selection process as the Agency deems to be relevant, and (ii) the place where application forms can be obtained. The Agency may place such advertisement in The City Record and/or such other publications as the Agency shall deem appropriate. The Agency may also mail copies of such advertisement to potential Applicants, including, but not limited to, Applicants who have done prior business with the Agency or who have requested to be on a mailing list for such purpose.

(ii) *Application Forms.* The Agency or its designee shall prepare or cause to be prepared the forms upon which applications are to be submitted, which forms may require such information as the Agency deems to be necessary or desirable to effectuate the purposes of the Project. Application forms shall be made available by the Agency or its designee to all potential Applicants. The Agency or its designee may charge a fee, in an amount to be determined by the Agency, for application forms.

(iii) *Amendments.* The Agency may change any aspect of the information set forth in the advertisement at any time. The Agency shall amend the advertisement accordingly and shall place such amended advertisement in The City Record, the publications in which the original advertisement appeared, and such other publications as the Agency shall deem appropriate. If it is infeasible for the Agency to publish the amended advertisement in the publications in which the original advertisement appeared, the Agency shall endeavor to provide substantially the same type of notice as was provided with respect to the original advertisement. The Agency may also mail copies of such amended advertisement to potential Applicants who have done prior business with the Agency or who have requested to be on a mailing list for such purpose. Notwithstanding the foregoing, an application process may be terminated by the Agency at any time without advertisement.

(2) *Submissions.*

(i) *Time Period.* The Agency may impose a deadline for submission of applications, which shall be a reasonable period of time after the advertisement first appears. The Agency may, in the alternative, impose no deadline, in which case the Agency shall receive, review, and approve or reject applications on a rolling basis as and when such applications are received.

(ii) *Fee.* The Agency or its designee may require an Applicant to pay such non-refundable fee as is determined by the Agency to be appropriate upon submission of an application or thereafter.

(iii) *Completeness.* The Agency shall require applications to be submitted on the required forms and to be completed and executed in the manner set forth therein.

(3) *Selection.*

(i) *Completeness.* The application must include all required forms, and such forms must be fully and properly completed and executed, at the time of submission. The Agency may reject an application if it determines that such requirements are not met.

(ii) *Selection.* The Agency may review and judge applications and select Sponsors by any method and upon any criteria permitted by Law or these Rules, including, but not limited to, the methods set forth in 28 RCNY § 33-03(b), (c)(5), (d)(5), (e)(5), (f)(5), (g), (h), and (i).

(4) *Limitations.*

(i) *No Obligation.* The publication of an advertisement and the provision and acceptance of application forms shall not represent any obligation or agreement whatsoever on the part of the City or the Agency, which may only be incurred or entered into by written agreement approved by the Governing Body, if applicable, and the Law Department and duly executed by both parties. The City and the Agency shall not be obligated to pay, nor shall they in fact pay, any costs or losses incurred by any Applicant at any time, including, but not limited to, the cost of preparing an application.

(ii) *No Warranty.* The Agency shall make no warranties, express or implied, with respect to any factual information contained in any advertisement.

(5) *Rights Retained by Agency.* Where it is deemed by the Agency to be in the best interests of the City:

(i) The Agency may terminate any application process in whole or in part at any time.

(ii) The Agency may decline to enter into negotiations with any and all Applicants which submit applications.

(iii) The Agency may at any time allow Applicants to make modifications or additions to their applications and/or require certain Applicants to submit additional information or documentation.

(iv) The Agency may negotiate with Applicants and may negotiate with parties which have not submitted applications.

(v) The Agency may negotiate and dispose of any Site on terms other than those set forth in the advertisement.

§ 33-04 Negotiations.

(a) *Notification.* Upon the completion of any selection process, the Agency shall notify each respondent Applicant of the Agency's determination with respect to such Applicant. Such notification may be in such form and delivered in such manner as the Agency deems to be appropriate. With respect to any Selected Applicant, the form of such notification may include, but shall not be limited to, a Negotiation Letter, Authorization Letter, or Loan commitment letter.

(b) *Negotiations.* Negotiations with any Selected Applicant shall be subject to satisfaction of all conditions established in these Rules or imposed by the Agency, Governing Body, or applicable Law.

(1) *Deadlines.* The Agency may require the Selected Applicant to commence or complete negotiations and/or commence or complete other specified actions within a specified time period.

(2) *Deposits.* The Agency may require the Selected Applicant to pay deposits of such types, in such amounts, and at such times as the Agency

deems appropriate. The Agency shall notify the Selected Applicant in writing of (i) the types and amounts of the deposits, if any, which the Selected Applicant is or shall be required to pay, (ii) the date upon which each such deposit shall become due, (iii) whether such deposits are refundable or non-refundable, and (iv) if such deposits are refundable, the conditions under which a refund will be issued.

(3) *Project Requirements.* The Agency may establish Program and Project requirements and conditions for the commencement and continuation of negotiations.

(4) *Schedule.* The Agency may establish a schedule of activities which must be completed as pre-conditions for the Agency Activities to be taken in connection with the Project.

(c) *No Liability.* An Authorization Letter or Negotiation Letter, or any written or oral communication with respect to the selection of a Selected Applicant or the ensuing negotiations, is not a contract or agreement and shall not create any rights on the Selected Applicant's part, including, without limitation, rights of enforcement, equity or reimbursement. No such contract or agreement shall exist, and no such rights shall be created, until the City and the Selected Applicant enter into one or more Binding Agreement(s) requiring such Selected Applicant to perform or be responsible for the performance of Project Activities in connection with a Project.

(d) *Termination.* The Agency may terminate negotiations with a Selected Applicant at any time with or without cause. If the Agency elects to terminate negotiations with a Selected Applicant, the Agency shall notify the Selected Applicant of such termination. Such notification may be in such form and delivered in such manner as the Agency deems to be appropriate.

§ 33-05 Site Disposition.

(a) *Approvals.* The Agency shall not make any Disposition until and unless the following approvals have been granted:

(1) *Governing Body Approval.* All Dispositions shall require prior approval by the Governing Body and shall be subject to any further terms and conditions imposed by the Governing Body as a condition for its approval.

(2) *Law Department Approval.* All legal documents relating to the transfer of title or otherwise relating to the Project shall require prior approval by the Law Department.

(3) *Agency Approval.* Notwithstanding the prior approval of the Governing Body and the Law Department, all Dispositions shall require prior approval by the Agency, which approval may be withdrawn by the Agency, for any reason deemed by the Agency to be in the best interests of the City, at any time prior to Disposition. As a condition precedent to its approval of any Disposition, the Agency may require a potential Sponsor to have satisfied all terms and conditions determined by the Agency to be necessary or desirable, including, but not limited to, the terms and conditions set forth in any selection process, Authorization Letter, Negotiation Letter, or Loan commitment letter.

(b) *Legal Documents.* The Agency may require a Sponsor to execute such legal documents, including, but not limited to, a deed, land disposition agreement, and regulatory agreement, as the Agency deems necessary or desirable to transfer title to the Site, enforce the obligations of the Sponsor, effectuate the purposes of the Project, and otherwise protect the best interests of the City. Such documents may contain such terms and conditions, consistent with these Rules, as are required by the City on a city-wide basis or as the Agency determines are necessary or desirable to transfer fee title or any other real property interest in the Site, enforce the obligations of the Sponsor, effectuate the purposes of the Project, and otherwise protect the best interests of the City.

§ 33-06 Assistance.

(a) *General.* The Agency shall have the power and authority to provide, in connection with any Project, such Assistance, including, but not limited to, Loans and Subsidies, as are authorized to be provided by applicable Law.

(b) *Loans.* The Agency shall have the power and authority to provide, in connection with any Project, such Loans as are authorized to be provided by applicable Law.

(1) *General Considerations.* If the Agency Activities to be undertaken in connection with a Project include a Loan, then the Agency, in making determinations concerning Loan terms, shall act to protect the City's interests as a prudent mortgage lender, provide for a reasonable return (where such return is intended in accordance with the Project and applicable Laws) to the Sponsor, and meet the standards of other lenders, if any.

(2) *Eligible Costs.* Subject to the limitations set forth in these Rules and applicable Laws, a Loan may be made in such amounts as may be required for all Project Activities.

(3) *Commitment Letter.* The Agency may state Loan terms in a commitment letter signed by the Commissioner. Such commitment letter, if any, may contain such terms as the Agency may deem necessary or desirable in order to effectuate the purposes of these Rules and to protect the City's interests as a lender. The closing of the Loan shall be made subject to satisfaction of all the terms and conditions contained in such commitment. The commitment letter may require, among other things, that the Sponsor and its contractors and all of their respective principals obtain necessary City approvals and clearances as a condition precedent to the closing of the Loan.

(4) *Financing.* If a Project includes acquisition, purchase money, construction, or permanent financing to be provided by the City, the Loan for such purpose shall be evidenced by a note and may be secured by such security or collateral documents and by such collateral as the Agency may deem necessary or desirable in accordance with applicable Law. The Loan documents may contain such terms, consistent with these Rules, as the Agency may deem necessary or desirable in order to effectuate the purposes of these Rules and applicable Laws and to protect the City's interests as lender. The Loan documents may provide that the indebtedness evidenced or secured thereby shall evaporate in any manner permitted by applicable Law.

(c) *Subsidies.* The Agency shall have the power and authority to provide, in connection with any Project, such Subsidies as are authorized to be provided by applicable Law.

(d) *Federal Benefits.* Notwithstanding any provision of these Rules to the contrary, any allocation of federal benefits, including, but not limited to, rental subsidies and low income housing tax credits, shall be made in accordance with the federal laws and regulations concerning such benefits. Nothing in these Rules shall be deemed to impose any additional requirements regarding such allocation. The Agency may utilize such administrative procedures, consistent with such laws and regulations, as it deems appropriate to effectuate the purposes of the federal benefits and the City Housing Goals.

(e) *Tax Benefits.* Notwithstanding any provision of these Rules to the contrary, any exemption from or abatement of real property taxes pursuant to the PHFL, GML, RPTL, or Administrative Code, including, but not limited to, exemptions or abatements pursuant to Articles 2, 5, and 11 of the PHFL, Article 16 of the GML, Sections 420-a, 420-b, 420-c, 421-a, 421-b, 422, 488-a, and 489 of the RPTL, and Sections 11-243 and 11-244 of the Administrative Code and any successors thereto, shall be made in accordance with the Laws concerning such benefits. Nothing in these Rules shall be deemed to impose any additional requirements regarding such allocation. The Agency may utilize such administrative procedures, consistent with such Laws, as it deems appropriate to effectuate the purposes of such Laws and the City Housing Goals.

§ 33-07 Project Operation.

(a) *Regulatory Agreement.* A Sponsor may be required to execute a Regulatory Agreement with the Agency as a condition for the Agency Activities taken by the Agency in connection with the Project. The Regulatory Agreement shall be recorded against the Site and shall run with the land for the period set forth therein. The Regulatory Agreement shall require the Sponsor and all of Sponsor's successors and assigns to comply with Project requirements.

(b) *Marketing.* The Agency may require a Sponsor to market vacant dwelling units in accordance with the requirements of a marketing plan prepared by the Agency. Such marketing plan may include such requirements with respect to the marketing as the Agency deems necessary and desirable, including, but not limited to, (i) requirements to ensure outreach to make eligible City residents aware of the availability for rental or sale of such dwelling units, and (ii) requirements to ensure that applications for the rental or sale of dwelling unit are opened and considered in a random order. A marketing plan may, but shall not be required to, contain provisions providing a preference to certain applicants where the Agency deems such preference to be appropriate. Factors for the granting of such preference may include, but shall not be limited to, special needs, residence in the community in which the Site is located, or referral by the Agency to the Sponsor for relocation.

(c) *Use Restrictions.* The Agency may impose restrictions upon the use of a Site and may require a Sponsor to agree to comply with such restrictions as a condition for receiving any Disposition or Assistance. Such use restrictions may be enforced by any means which the Agency determines to be necessary or appropriate, including, but not limited to, provisions in any deed, land disposition agreement, regulatory agreement, note, mortgage, security agreement, lien, restrictive declaration, or other legal document. The Agency may require a Sponsor to provide security for its compliance with use restrictions in such types and amounts as are determined by the Agency to be necessary or desirable. Such types of security may include, but shall not be limited to, surety bonds, letters of credit, or cash.

§ 33-08 Miscellaneous Provisions.

(a) *Termination.* Notwithstanding any provision to the contrary in these Rules or in any document concerning any selection process, Project, or Program, the Agency may reject any Applicant or Selected Applicant and/or terminate any negotiations, selection process, Project, and/or Program at any time and for any reason, including, but not limited to, the reasons set forth in 28 RCNY § 33-08(a)(1), (a)(2), (a)(3), and (a)(4), or without cause.

(1) *Adverse Findings.* The Agency determines at any time that good and sufficient reasons exist why the City should not do business with an Applicant or Selected Applicant or should not allow such Applicant or Selected Applicant to act as Sponsor for a Project. Such reasons shall include, but shall not be limited to, evidence with respect to the Applicant or Selected Applicant or any member of its development team of (i) arson conviction or pending cases; (ii) harassment conviction or pending cases; (iii) arrears or default upon any debt, lease, contract, tax, lien, fee, charge, or obligation to the City; (iv) City mortgage or tax foreclosure proceedings or arrears; (v) unsuccessful record with comparable projects, including, but not limited to, poor workmanship, failure to complete a project expeditiously, substantial and significant building violations or litigation history against other properties, or unsuccessful record of managing residential real property; (vi) inability, due to lack of organizational capacity, competing demands from other projects, or any other factor, to perform all required Project Activities; (vii) bankruptcy or insolvency; (viii) violation of the conflict of interest provisions of the Charter or any other applicable Laws; or (ix) failure to obtain IG Clearance, EO Clearance, or other necessary City clearances.

(2) *Unable to Recommend Sale.* The Agency is unable to recommend to the Governing Body that it grant the approvals required for a Project for any reason, including, but not limited to, a determination by the Agency that (i) the Applicant or Selected Applicant has failed to clear one or more of the required City reviews, (ii) there has been a transfer of ownership interests in the Applicant or Selected Applicant after commencement of negotiations without the approval of the Agency, (iii) adequate City funding for the Assistance to be included in the Project is not available, or (iv) funding to be provided by entities other than the City is not available or is not provided in a timely manner.

(3) *Noncompliance.* An Applicant or Selected Applicant has failed to comply with any term or condition established by the City or the Agency, including, but not limited to, any Program or Project requirement, deposit requirement, deadline, or schedule.

(4) *Best Interests of City.* The Agency or the City has not approved the Agency Activities required for a Project for any reason determined by the Agency or the City to be in the best interests of the City.

(b) *Agency Discretion.* All determinations to be made by the Agency and/or the Commissioner in accordance with these Rules shall be in the sole discretion of the Agency and/or the Commissioner; provided, however, that the Agency and/or the Commissioner shall comply in all respects with applicable Laws.

(c) *Statutory Authority Not Limited.* Nothing in these Rules shall be deemed to prevent the Agency from exercising such greater or additional rights, remedies, privileges, powers, and authority as shall be provided by Law.

(d) *Rights Not Conferred.* These Rules are not intended to confer rights or benefits upon the general public or upon any individual or entity. Nothing in these Rules shall be deemed to confer any rights or benefits whatsoever upon any party which are in addition to any rights deriving from applicable Laws or written contracts with the Agency.

(e) *No Legal Obligation.* At any time prior to the execution of a Binding Agreement, the Agency may withdraw all or any portion of a Site from a Project, change the Agency Activities and Project Activities contemplated in connection with a Project, change the Sponsor selection process for a Project, terminate negotiations with an Applicant or Selected Applicant, commence negotiations with one or more other Applicant(s) or Selected Applicant(s), or take any other action deemed by the Agency to be necessary or appropriate. No selection process, or part thereof or actions in connection therewith, shall represent or result in any obligation or agreement whatsoever on the part of the City or the Agency, which may only be incurred or entered into by written agreement approved by the Governing Body, if applicable, and the Law Department and duly executed by both parties. The City and the Agency shall not be obligated to pay, nor shall they in fact pay, any costs or losses incurred by any Applicant or Selected Applicant at any time, including, but not limited to, the cost of responding to a selection process. An Authorization Letter or Negotiation Letter, or any written or oral communication with respect to the selection of a potential Sponsor or the ensuing negotiations, is not a contract or agreement and shall not create any rights on the part of the Applicant or Selected Applicant, including, without limitation, rights of enforcement, equity or reimbursement. No such contract or agreement shall exist, and no such rights shall be created, until the City and the Sponsor enter into a Binding Agreement. Approval of a Project and any agreements in connection with such Project by the Governing Body, if applicable, and the Law Department shall not obligate the Agency to proceed with the Project or with the execution of such agreements.

(f) *Technical Violations.* Technical violations of these Rules shall not invalidate the selection of any Site, the selection of any Sponsor, or any other Agency Activity taken pursuant to these Rules, nor shall such technical violations give rise to any rights, claims, or causes of action in favor of members of the general public or potential sponsors.

(g) *Compliance With Laws.* All Agency Activities by the Agency pursuant to these Rules shall be made in accordance with applicable Laws. Each Site and Sponsor selected for any Project pursuant to these Rules shall meet the eligibility criteria of the Laws which authorize the Agency to undertake the Agency Activities necessary or incident to the performance of such Project.

(h) *Fees.* The Agency shall promulgate by rule the amount of any fee provided for in these Rules.

(i) *Waivers.* Where literal application of one or more of the provisions of these Rules would result in unnecessary hardship, would involve practical difficulties, or would constitute an unreasonable limitation beyond the intent and purpose of these Rules, the Commissioner may at any time waive in writing such provision or provisions of these Rules with respect to any Project. Such writing shall state the reasons for such waiver.

(j) *Singular and Plural.* With respect to any of the terms used in these Rules, the singular shall be deemed to include the plural and the plural shall be deemed to include the singular, unless the context requires otherwise.

(k) *Effective Date.* These Rules shall be deemed effective as of June 29, 1997.