

**Right of First Refusal (“ROFR”) FAQ**  
**Explaining ROFR Language in Paragraph 8 of QAP**

1. Q. To satisfy the requirement in Section (C)(8)(b) under the Competitive Criteria (9% Projects Only) in Section VI, must the Agreement include all of the three options described in clauses (i) –(iii)?
  - A. Yes, all three options must be included in the Agreement and the General Partner must have the right to choose (in its sole discretion) to exercise any of them. In addition, the Agreement cannot limit the General Partner to choose only one course of action from among the three described in Section (C)(8)(b). For example, if, as described in clause (i), the General Partner elects to seek the consent of the Limited Partner to sell the project to the ROFR grantee in connection with the ROFR grantee’s exercise of the ROFR and the Limited Partner refuses to give its consent, the General Partner may then elect to offer the project for sale publicly as described in clause (iii).
  
2. Q. Can the General Partner offer the project for sale publicly as described in clause (iii) of Section (C)(8)(b) without first attempting to utilize the options described in clauses (i) and/or (ii)?
  - A. Yes, the Agreement cannot require the General Partner to utilize options (i) or (ii) prior to offering the property for sale publicly in accordance with clause (iii).
  
3. Q. What types of activities would constitute offering the project for sale publicly?
  - A. A public offer to sell the project must be conducted in a manner consistent with the reasonable efforts that a willing seller would take to attract competitive offers to purchase property similar to the project. For example, such efforts may include:
    - (i) listing the project for sale for a reasonable period of time in any local, regional or national newspaper, and/or online with any third-party listing service that is in the business of listing real property for sale to the general public; and/or
    - (ii) Engaging a real estate broker to solicit bids from the general public for the purpose of selling the project.The existence and terms of the ROFR may be disclosed in connection with any such public offering.
  
4. Q. If the General Partner offers the project for sale publicly but no party other than the ROFR grantee makes an offer to purchase it, what would the ROFR grantee then be entitled to do?
  - A. The ROFR grantee would be entitled to purchase the project at the price it offered, which may be equal to the ROFR Purchase Price, as long as such price is not less than the minimum purchase price permissible under Section 42(i)(7) of the Code.

5. Q. What is meant in Section (C)8(b)(i) that the consent of one or more Limited Partners “may not unreasonably be withheld, conditioned or delayed”?
  - A. If the General Partner is required under the Agreement to obtain the consent of one or more Limited Partners to a sale of the project to the ROFR grantee in connection with the ROFR grantee’s exercise of the ROFR, such Limited Partner or Limited Partners, as applicable, must have a reasonable non-pretextual basis for withholding its/their consent to such sale, consistent with the actual reasonable expectations of the parties at the time of the execution of the Agreement, and any conditions to such consent and any delay in either giving or withholding consent must similarly be reasonable in light of the actual reasonable expectations of the parties at the time of the execution of the Agreement.
  
6. Q. What is meant in Section (C)8(b)(i) by consent of “one or more limited partners of the owner (each, a ‘Limited Partner’)”?
  - A. The course of action described in clause (i) is subject the consent of one or more limited partners of the Owner if the Agreement so provides. HPD does not take a position as to whether the Agreement should expressly require such consent or whether the General Partner should be required to obtain such consent from all or fewer than all such limited partners. The reference to “one or more” of such limited partners is intended only to reflect that Agreements may expressly require the General Partner to obtain such consent from any number of limited partners, may not require any such consent or may be silent with respect to such consent and is not intended to change the percentage of limited partners required to consent to a sale in connection with the ROFR grantee’s exercise of the ROFR.
  
7. Q. What is meant by “bona fide third party offer to purchase the project” offer in Section C(8)(b)(ii)?
  - A. HPD encourages the parties to define the term “bona fide third party” in both the letter of intent and the Agreement. At a minimum, the letter of intent and Agreement should provide that an offer will not cease to be a bona fide third party offer merely as a result of such offer having been solicited by the GP or ROFR grantee.