

**THE CITY OF NEW YORK
DEPARTMENT OF FINANCE**

NOTICE OF RULEMAKING

Pursuant to the power vested in me as Commissioner of Finance by sections 389(b) and 1043 of the New York New York City Charter and section 11-354(a) of the Administrative Code of the City of New York, and following consultation with the Commissioner of Housing Preservation and Development, I hereby promulgate the within Rules Relating to Qualification as a Responsible Bidder. These rules were published in proposed form on November 6, 2006. A hearing for public comment was held on December 7, 2006.

/s/ Martha E. Stark
Commissioner of Finance

Matter underlined is new.

Rules Relating to Qualification as a Responsible Bidder

Section 1. Title 19 of the Compilation of the Rules of the City of New York is amended by adding a new Chapter 45 (Rules Relating to Qualification as a Responsible Bidder) to read as follows:

§ 45-01. Purpose and Scope.

Section 11-354 of the New York City Administrative Code provides that real property sold pursuant to a foreclosure action brought by the City of New York under such section may be sold only to the highest responsible bidder. As authorized by such section, the Commissioner of Finance, after consultation with the Commissioner of Housing Preservation and Development, promulgates these rules establishing criteria by which a purchaser may be deemed a responsible bidder. These rules shall apply to all sales of real property pursuant to judgments in foreclosure actions brought pursuant to New York City Administrative Code § 11-354 to foreclose a tax lien.

§ 45-02. Definitions.

(a) “Affiliate” means (1) any other person controlling or controlled by or under common control with the bidder; or

(2) any other person, as defined in this section, who has, directly or indirectly, a five percent (5%) or greater ownership interest in the bidder, or any other person in which the bidder, a partner or shareholder of the bidder, or partner or shareholder of any person that is a partner or shareholder of the bidder, has a five percent (5%) or greater ownership interest; or

(3) any individual who is a member of the immediate family (whether by birth or marriage) of a person who is an affiliate, which includes for purposes of this definition a spouse, a domestic partner as defined in §1150(13) of the New York City Charter, a brother or sister of the whole or half blood (including an individual related by or through legal adoption) of such individual or his/her spouse or domestic partner, a lineal descendant or ancestor (including an individual related by or through legal adoption) of any of the foregoing, or a trust for the benefit of any of the foregoing; or

(4) any person who is a nominee of an affiliate, or serves in the capacity of a straw-buyer for an affiliate. The term “ownership” includes beneficial ownership effected by ownership of intermediate entities.

(b) “Bidder” means a person that intends to bid in a sale of property foreclosed pursuant to New York City Administrative Code § 11-354, and includes any subsidiary, parent or affiliate of such bidder, as defined herein.

(c) “Control” means the power to direct the management and policies of such bidder directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. The terms “controlling” and “controlled” have meanings correlative to the foregoing.

(d) “Owner” shall mean and include the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person, firm or corporation, directly or indirectly in control of a dwelling, or an affiliate of an owner.

(e) “Person” means any natural person, individual, corporation, partnership, joint venture, association, limited liability company, joint stock company, trust or estate (including any beneficiary thereof), unincorporated organization or government or any agency or political subdivision thereof, or other business entity, and any fiduciary acting in such capacity on behalf of any of the foregoing.

§ 45-03. Responsible bidder criteria. The criteria used by the Departments of Finance and Housing Preservation and Development to determine whether a bidder qualifies as a responsible bidder for the purchase of real property pursuant to New York City Administrative Code §11-354 may include the following:

(a) The bidder, if a natural person, must be at least eighteen years of age.

(b) The bidder must not be the owner or an affiliate of the owner of the property that is subject to the foreclosure judgment.

(c) The bidder must not have been a former owner or an affiliate of the former owner of the property during the period of time in which any part of the current tax arrears accrued.

(d) The bidder shall not have been finally adjudicated by a court of competent jurisdiction, within seven years of the date on which such bidder would otherwise be deemed responsible, to have committed grand larceny or tenant harassment, or to have violated any section of article one hundred fifty (relating to arson), one hundred seventy-five (relating to offenses involving false written statements), one hundred seventy-six (relating to insurance fraud), one hundred eighty (relating to bribery not involving public servants, and related offenses), one hundred eighty-five (relating to fraud on creditors) or two hundred (relating to bribery involving public servants, and related offenses) of the Penal Law or any similar laws of another jurisdiction, and there must be no civil or criminal proceedings pending against the bidder for any such acts. A responsible bidder may not be an affiliate of a person who has committed any of the acts specified in this subdivision.

(e) The bidder must not be, at the time of the bid, suspended or debarred from contracting with the City, any agency of the City, any public authority, or any other governmental entity.

(f) With respect to other City obligations, the bidder must not:

(1) be delinquent in the payment of any taxes or charges to the City of New York;

(2) be in default in or on any other monetary or non-monetary obligation to the City;

(3) be the owner or an affiliate of an owner of real property, or for one year prior to the sale of the property, have been the owner or an affiliate of an owner of property that has an average of three or more hazardous or immediately hazardous violations of record per dwelling unit under the New York City Housing Maintenance Code, or that is subject to a lien or liens for the repair or the elimination of any dangerous or unlawful conditions pursuant to §27-2144 of the New York City Administrative Code, in an amount equal to or greater than one thousand dollars;
or

(4) be the owner or an affiliate of an owner of real property that is the subject of pending litigation or an unpaid judgment resulting from litigation to enforce the New York City Housing Maintenance Code by the Department of Housing Preservation and Development's Housing Litigation Division.

For purposes of this subdivision, a bidder is delinquent in the payment of taxes if a tax or charge on a property owned by the bidder remains unpaid following the last date such tax or charge could be paid before accruing interest. For purposes of this subdivision, a bidder who has entered into an in rem installment agreement for the payment of delinquent taxes or charges, and who has not defaulted on such agreement at any time, shall not be considered to be delinquent in the payment of taxes or charges.

(g) The bidder may not have lost title to real property in New York City by reason of a tax lien foreclosure proceeding or other tax enforcement within five years prior to the date of the sale and may not be the owner or an affiliate of the owner of real property that is the subject of any such enforcement proceedings in New York City.

(h) The bidder, upon request, shall demonstrate to the satisfaction of the Departments of Finance and Housing Preservation and Development that he or she has adequate experience in or has resources in the following areas:

(1) residential management experience;

(2) financial capacity;

(3) rehabilitation experience;

(4) ability to work with government and community organizations;

(5) neighborhood ties;

(6) ability to finance or obtain financing for any required rehabilitation; and

(7) intent and ability to improve, manage and maintain the foreclosed property.

The Departments of Finance and Housing Preservation and Development may also consider whether the entity is a not for profit organization or neighborhood-based for-profit individual or organization.

(i) The responsible bidder shall agree to the following conditions where applicable:

(1) If the property subject to the foreclosure sale is operated as a limited profit housing company project within the meaning of Article II of the Private Housing Finance Law, or a redevelopment company pursuant to Article V of such law, or a housing development fund company pursuant to Article XI of such law, a bidder may be required by the Department of Housing Preservation and Development to execute an agreement in which the bidder agrees that the property will continue to be subject to any statutory covenants and restrictions pursuant to

Articles II, V or XI of such law for any period of time remaining during which such property would otherwise have been subject to such covenants and restrictions.

(2) If the property subject to the foreclosure sale is subject to any statutory covenants or restrictions imposed as a result of a loan, grant, tax benefit or other expenditure of public funds made pursuant to the Private Housing Finance Law or pursuant to Article 16 of the General Municipal Law, a bidder may be required by the Department of Housing Preservation and Development to execute an agreement in which the bidder agrees that the property will continue to be subject to any such statutory covenants and restrictions for any period of time remaining during which such property would otherwise have been subject to such covenants and restrictions.

(j) Public servants may be eligible to purchase the property that is the subject of the foreclosure sale in accordance with New York City Charter § 2604. However, any officer or employee of the City of New York who has participated in decisions or matters affecting the disposition of such property or has such matters under active consideration will not be considered a responsible bidder within the meaning of Administrative Code § 11-354 and these rules.

(k) A successful bidder at the foreclosure sale shall furnish a disclosure statement to the Departments of Finance and Housing Preservation and Development, setting forth the address and the block and lot numbers of all properties that he or she owns or for which he or she is an owner or an affiliate of an owner within the City of New York. Such statement shall be submitted upon demand prior to closing on the property that is the subject of the sale.

(l) The Departments of Finance and Housing Preservation and Development may require potential responsible bidders to provide any information immediately upon demand that is necessary to determine whether such bidders are responsible bidders pursuant to these rules. Such information shall be provided prior to closing of the sale of the foreclosed property, and no deed for such property shall be executed unless the Departments have determined that the winning bidder is a responsible bidder pursuant to these rules. The failure to provide relevant information requested specifically by the Department of Finance or Housing Preservation and Development shall exclude a bidder from consideration as a responsible bidder.

(m) The Commissioner of Finance reserves the right, if an investigation establishes to his or her satisfaction that any provision in this section has been violated, to declare a default and revoke the sale or to take any other action permitted under the terms and conditions of sale or applicable provisions of law. A material misrepresentation of any of the information or disclosures required as a condition to finding a bidder to be responsible pursuant to these rules shall be deemed a default of the terms of sale of the property and will result in forfeiture of any deposit made by such bidder toward the purchase of such property.

§45-04. Pre-approval of Responsible Bidders. The Departments of Finance and Housing Preservation and Development may review the qualifications of any potential bidder prior to any foreclosure sale pursuant to Administrative Code § 11-354 to determine whether any such potential bidder qualifies as a responsible bidder in accordance with this chapter.

§45-05. Incorporation of rules. These rules shall be deemed to be incorporated into any judgment of foreclosure made pursuant to Administrative Code § 11-354 and shall be deemed to be incorporated into the terms of a foreclosure sale of any property subject to such judgment.

§45-06. Severability. If any sentence, paragraph, section or part of these rules shall be adjudged invalid by a court of competent jurisdiction such judgment shall not impair or invalidate the remainder thereof but shall be confined to that part.

Statement of Basis and Purpose

The purpose of these rules is to establish criteria by which a bidder may be deemed qualified as a responsible bidder to purchase property sold pursuant to a foreclosure by the City pursuant to New York City Administrative Code § 11-354. The Code authorizes the Commissioner of Finance, after consultation with the Commissioner of Housing Preservation and Development, to promulgate rules establishing such criteria.

Local Law 37 of 1996 amended § 11-354, which provides an additional method to enforce the payment of tax liens held by the City. This section allows the City to foreclose on a property when a tax, assessment, sewer rent or surcharge, water rent, or any other charge that is a made a lien, or interest and penalties thereon, becomes outstanding for at least one year from the date that the tax, assessment or other legal charge became a lien. For class one property and class two property that is a residential condominium or cooperative, that period is at least three years. As amended, the Administrative Code requires that the parcel be sold only to the highest responsible bidder.

The rule provides that a responsible bidder may not be a former or current owner of the property that is the subject of the bidding, or an affiliate of such owner. In addition, the rules require that the bidder not have outstanding tax or other obligations to the City or serious Housing Maintenance Code violations. Bidders would also have to demonstrate experience in various areas related to housing, and agree to maintain housing as affordable under applicable programs. As the bidder would be seeking to purchase real property, the rules further provide that a responsible bidder may not have committed relevant acts such as arson, bribery, fraud and tenant harassment.

The applicability of the criteria established in this rule is limited to purchases of property at auction sale resulting from foreclosures brought pursuant to §11-354. These rules would not be applicable to a bidder's eligibility to purchase property or a determination of responsibility under other Code provisions.