



Who changed the regulatory agreement?

What is a regulatory agreement and why is it important regarding HAHPI?

A regulatory agreement is a type of use restriction, typically recorded, that establishes certain rules, regulations, and restrictions on use and operation of affordable housing properties. The United States Department of Housing and Urban Development ("HUD") and other Federal/State/City regulate affordable properties with the same type of agreement. For HAHPI, the regulatory agreements are the single most important documents as they define how each property will operate and what rent restrictions must remain in the place for the 65 year lease.

From the beginning of the bidding process, all of the income restrictions for each of the properties were described in detail in the offering memorandum, and these same rent restrictions were used in all the appraisals ordered by the City. In fact, the regulatory agreements were mentioned in the offering memorandum 9 times, including the following:

“Upon the conclusion of the visit to the Successful Proposer’s base of operations, the City and the Successful Proposer shall have 30 days to negotiate the terms of the Purchase and Sale Agreement for the Real Property and the forms of the leases and Regulatory Agreements for the Real Property.”

“By operating the Properties as qualifying ‘housing projects’ under regulatory agreements with the City, the acquirer may annually file a claim of exemption from real property taxes.”

“Each Property will have its own Lease, and each Property will be governed by its own unique regulatory agreement, which will provide affordable rental guidelines for the entire sixty-five year lease term.”

On March 31, 2012, part of Addendum #5 supplied by the City contained the draft Regulatory Agreements. Each of the Regulatory Agreements matched the rent restrictions as contained in the Offering Memorandum, which included Mod and GAP units. In Addendum #4, bidders made inquiries regarding the regulatory agreement and the city replied.

On May 10, 2012, during a conference call with CBRE, it was mentioned that there may be an opportunity to change the rent restrictions. Then, on May 15, 2013, in the Best and Final Proposal Submissions, the following section was included and was very ambiguous (please note: this was only one week prior to the deadline for Best and Final Offer):

“Area Median Income (AMI) Levels: Please confirm whether your firm seeks to reduce the AMI levels at any of the 12 affordable projects. If so, please confirm the proposed AMI level modifications by project.”

When the Best and Final document was released, the question and answer period was closed, and therefore, the bidders had no way to get clarifying questions answered about this dramatic change in the offering.

It appears that, when the City/CBRE received all the initial bids, they tried to figure out a way to “push” through a non-conforming bid. It was at this time the City/CBRE decided to change the rules and then included latitude regarding changing the existing rent structures that have been in place since conception of the properties. It is also interesting to note that each bidder had assumed for 2 months, after receipt of the offering memorandum before their bid was due, that the existing AMI’s were to remain. All the documents including existing regulatory agreements that some of the properties already had recorded supported this understanding and preamble. The Best and Final, which alluded to this significant and confusing change, only offered the bidders 1 week to redo their bid based on the new suggested criteria, and this information was never even offered to the bidders who did not make the Best and Final round.

For reference, please find the following documents attached:

- Draft Regulatory Agreement released by the City/CBRE and Exhibit E’s (Rent Restrictions) for each of the properties
- Final 4 Pages of the Offering Memorandum
- Addendum #4 – Please see questions #20-24
- Addendum #5