



# HARRIS COUNTY HOUSING AUTHORITY

8933 Interchange  
Houston, Texas 77054  
713 578-2100  
[www.hchatexas.org](http://www.hchatexas.org)

## REQUEST FOR PROPOSALS FOR BOND COUNSEL SERVICES

**RFP NO.11-01**

The Harris County Housing Authority Harris County Housing Authority (“**HCHA**”) hereby solicits proposals from interested professional firms to provide **Bond Counsel Services** associated with the development of various affordable housing projects to be undertaken by the **HCHA** as specified in this Request for Proposals (“**RFP**”).

This **RFP** contains submission requirements, scope of service, period of services, terms and conditions and other pertinent information for submitting a proper and responsive submittal. RFP #11-01 will be posted on and can be downloaded from the HCHA’s website ([www.hchatexas.org](http://www.hchatexas.org)).

Prospective Offerors desiring any explanation or interpretation of this solicitation must make the request in writing no later than **November 15, 2012**. The request must be addressed to **Horace Allison, AIA, c/o Harris County Housing Authority, 8933 Interchange, Houston, Texas, 77054**. Any information given to a prospective Offeror about this solicitation will be furnished to all other prospective Offerors as a written amendment to the solicitation. All amendment(s) to this solicitation, if issued, will be posted on the HCHA’s website ([www.hchatexas.org](http://www.hchatexas.org)). All Offerors are encouraged to check the HCHA website for amendment(s) issuance.

The proposal(s) must be enclosed in a sealed envelope and labeled as follows: **Bond Counsel Services for the HCHA Affordable Housing Development Program. RFP # 11-01, Due Date and Time: November 27, 2012, 3:00 P.M. (CDT), Name of Offeror \_\_\_\_\_**.

The **RFP** must be addressed to **Horace Allison, AIA, c/o Harris County Housing Authority, 8933 Interchange, Houston, Texas**.

Submittals must reach the **HCHA** no later than **3:00 P.M.** on **November 27, 2012**. Late submissions will be handled in accordance with the provisions in Form **HUD-5369-B** title “Late Submissions, Modifications, and Withdrawal of Offers”. Submittals will be held in confidence and will not be released in any manner until after the contract award.

Submittals will be evaluated on the criteria stated in the **RFP**. Negotiations may be conducted with Offerors who have a reasonable chance of being selected for the award. After evaluation of the submittal and amendments, if any, the contract will be awarded to the responsible firm(s) whose qualifications, price and other factors considered are the most advantageous to the **HCHA**.

The **HCHA** reserves the right to reject any and all submittals.

11-01-12

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Date

*Horace Allison, AIA*

Horace Allison, AIA  
Chief Development Office  
Harris County Housing Authority

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Attachment A:	General Scope of Services
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Attachment C:	Form of Non-Collusive Affidavit Form
Attachment D:	<b>M/WBE</b> Participation Form
Attachment E:	Affirmative Action for Handicapped Workers
Attachment F:	Instructions to Offerors for Non-Construction (Form <b>HUD-5369-B</b> )
Attachment G:	Certifications and Representations of Offerors for Non- Construction Contracts (Form <b>HUD 5369-C</b> )

## **1.0 PROFILE OF THE HARRIS COUNTY HOUSING AUTHORITY**

The Harris County Housing Authority (“**HCHA**”) is currently governed by the Housing Authorities Law, codified in the Texas Local Government Code. It is a unit of government and its functions are essential governmental functions. It operates and manages its housing developments to provide decent, safe, sanitary and affordable housing to low income families, the elderly, and the disabled, and implements various programs designed and funded by the U.S. Department of Housing and Urban Development (“**HUD**”). The **HCHA** is a Public Housing Agency.

The property of the **HCHA** is used for essential public and governmental purposes. The **HCHA** and its property are exempt from all taxes, including sales tax on all its purchases of supplies and services.

The **HCHA** enters into and executes contracts and other instruments that are necessary and convenient to the exercise of its powers.

The **HCHA** maintains contractual arrangements with **HUD** to manage and operate its Affordable Housing and administers the Section 8 Housing Assistance Payments Programs. The **HCHA** programs are federally funded. The **HCHA** revenue is received from federal funds, administrative fees, development grants and rental income.

The **HCHA** currently employs 38 regular full time staff, owns and manages over 1,038 affordable housing units and administers rental assistance for 4100 privately owned rental units through the Section 8 **HCV** programs. Total **HCHA** operating and development budget for the fiscal year 2012 is approximately \$4.6 million.

## **2.0 INTRODUCTION**

The **HCHA** as part of its mission to provide safe, decent and sanitary affordable housing for low-income persons, hereby seeks proposals from registered professional Firms to provide **Bond Counsel Services** for the **HCHA’s Affordable Housing Development Program**. The **HCHA** may finance the projects with a mixture of tax-exempt bonds; investor equity based on 4% Low Income Housing Tax Credits (**LIHTC**), **HOME**, **CDBG**, private debt, etc. This **RFP** will consider qualifications and fees for services in the selection process. The statement of work to be performed is generally listed in **Attachment A**, but may not be all inclusive of the services needed. Consequently, evaluation by the Offeror may lead to alterations in the scope.

The **HCHA** will consider most favorably Offerors who clearly demonstrate a knowledge of the Federal, State or local laws applicable to bond financing of affordable and market rate housing development including **HUD** regulations and requirements and those contained in Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, as well as all applicable Federal, State, County and local laws, codes, ordinances and regulations. The Offeror should have experience in providing legal services for Low Income Housing Tax Credit (**LIHTC**) and Mixed Finance Housing,

bond financing of Single Family & Multifamily developments. The Offeror should have demonstrated experience assisting **PHA**'s using public housing resources, leveraged with non-public housing resources as well as structuring the ownership of the development. The Offeror should also have demonstrated experience with the interaction of Housing Authorities with **HUD** and with **HUD** regulations and requirements relating to mixed finance development. The Offeror must demonstrate experience with the Legal requirements related to conventional financing, bond financing, and the use of **LIHTC**, private debt financing, **FHLB**, **AHP** and other public and private funding mechanisms. All submittals must conform to requirements outlined herein.

All submittals shall be evaluated and up to three of the most qualified (top ranked), responsive and responsible firms will be invited for interviews and discussions. If a contract is awarded, it will be awarded to the responsible firm whose qualifications; price and other factors are deemed most advantageous to the **HCHA**. Any additional requirements and restrictions imposed by **HUD** and others will also be considered in rendering a decision.

**3.0 PROCUREMENT SCHEDULE**

The anticipated schedule for the **RFP** is as follows:

<b>SCHEDULE</b>	
<b>EVENT</b>	<b>DATE</b>
Advertised	November 4, 2012 & November 11, 2012
<b>RFP Issue Date</b>	November 5, 2012
Pre-Submittal Conference	N/A
Deadline for receipt of written questions	November 15, 2012
Response to written questions	November 19, 2012
Submittal Due Date	November 27, 2012

**Pre-Submittal-Conference:**

*Not Used*

**4.0 DELIVERABLES**

One (1) original proposal and seven (7) copies of the typewritten submission, including all required information, must be executed and submitted in a sealed envelope or

package. Any hand made corrections made in the proposal must be initialed by the principal or authorized officer of the Firm.

The original proposal must bear the original signature of a principal or authorized officer of the Firm. Offerors are solely responsible for ensuring that their proposals are actually received by the time and date stated. Receipt at the **HCHA** after the due date and time specified will be cause for rejection.

### **Proposal Due Date/Time**

Offers must be submitted on or before **3:00 p.m. CST on November 27, 2012** in a bound and sealed envelope.

The face of the enveloped or package must contain, in addition to the address below, the title “**Bond Counsel Services for the HCHA Affordable Housing Development Program. RFP # 11-01, Due Date and Time: November 27, 2012, 3:00 P.M. (CDT), Name of Offeror: \_\_\_\_\_**”.

### **Submission Place:**

Offers must be submitted to: **Harris County Housing Authority, Attn: Horace Allison, AIA, Chief Development Officer, c/o Harris County Housing Authority, 8933 Interchange, Houston, Texas 77054.**

Offers by telegram, telephone, facsimile, e-mail, and handwritten proposals will not be accepted by **HCHA**.

## **5.0 PRICES AND TERMS**

The fee proposal shall be inclusive of all fees to be paid for the services during the period designated. There are no other allowable reimbursable expenses. **HCHA** reserves the right to negotiate all elements of the successful firm’s proposal. The fee(s) are inclusive of all necessary costs to provide the proposed services, including but not limited to: employee costs and benefits; clerical support; overhead; profit; supplies; materials; licensing; insurance, etc.. The final fee(s) will be negotiated with the successful Offeror. If negotiations are unsuccessful, the **HCHA** will cease negotiations and commence price negotiations with the next ranked Offeror and so on.





- Coordinate all services with the **HCHA**.
- Coordinate all services with other parties as determined necessary by the **HCHA**.
- Provide the basis, source, and methodology for arriving at conclusions in all materials and reports.
- List the firms(s) name, firm's contact person, telephone number, resumes and profile of expected participants in the procurement of this service. The submittal must provide an execution plan including schedules with tasks on how this work will be accomplished. There may be subsequent instructions issued to the successful candidate in connection with the final process. The submittal must make provisions to meet and comply with all applicable laws and regulatory criteria.

## **7.0 CORRESPONDENCE**

Requests for additional information related to this **RFP** should be made in writing and directed to the **HCHA**'s Chief Development Officer by **November 15, 2012**. This will allow time for the issuance of any necessary amendment(s) to the **RFP**.

An amendment may be issued prior to the opening of the submittals for the purpose of changing or clarifying the intent of this **RFP**. All amendments shall be binding in the same way as if originally written in this **RFP**

Any interpretation affecting all Offerors made prior to the submittal due date will be issued in the form of an amendment. *Amendment(s) will be posted and can be downloaded from the HCHA's website ([www.hchatexas.org](http://www.hchatexas.org)).* Offerors are encouraged to check the **HCHA** website for amendments. The **HCHA** will not be bound by or responsible for any other explanations or interpretations of this **RFP** package other than those given in writing as set forth in this paragraph. Oral instructions, interpretations, or representations will not be binding upon the **HCHA** or **HCHA** representatives.

Sub-consultant(s) and others who have been requested by the consultant to assist in preparing a proposal shall obtain necessary information from the Offeror. They shall not directly contact the **HCHA** or **HCHA** representatives for this information. Submittals received will be publicly opened.

Contracts for these programs and services may be awarded to one or more firms whose submittals were judged to be the most advantageous to the **HCHA**. In the event services are initiated prior to the processing of a fully executed contract, such services would be provided without guarantee of compensation.

## **8.0 DOCUMENT REQUIREMENTS**

The following is a description of the minimum information, which must be supplied by Offerors in their submittals. It is open to all Offerors to give such supplementary facts or

materials that they consider may be of assistance in the evaluation of the proposal submitted. Submittals that omit critical elements may be considered non-responsive. Each submittal shall include a Table of Contents listing the submittal contents. The critical elements of the proposal shall include the following information:

I. Letter of Transmittal;

Signed by the person authorized to commit the Firm to perform the services in the submittal;

II. Table of Contents;

III. Executive Summary

Provide a brief non-technical overview of the Firm's business including the range of services offered. Offerors should provide information reflecting how and why the firm's products and services meet **HCHA**'s needs. List the Offeror's team members, roles, responsibilities, qualifications and identify primary contact person. The Offeror shall identify hereunder if this proposal is a joint venture or partnership with another entity.

IV. Related experience of Offeror with Bond transaction(s)/financing, **HUD, LIHTC, FHLB, HOME, CDBG** regulations for the development and financing of single and multi-family affordable housing developments.

Provide a narrative which explains the Offeror's experience, anticipated relationship and proposed method for coordinating and communicating with the **HCHA**, its consultants, federal, state, city, county, and community representatives.

V. Related experience of Offeror in providing bond counsel services for **PHA** Affordable Housing Programs.

The Offeror must demonstrate an understanding of Texas law related to ownership structure, proposed ownership entity(s) for the **HCHA** in its desire to participate in fees and to develop a legal strategic plan, including specific tasks, responsibilities and time frames to support the timely, cost effective development that is in the best interest of the **HCHA**.

VI. Include a proposed fee schedule with hourly billing rates of the proposed staff and a maximum price for completion of the development transaction.

VI. Methodology/strategy to accomplish the scope of services.

Provide a narrative summary describing the legal issues anticipated based on the **HCHA** undertaking an affordable housing program, in which it desires to develop single family detached and multi-family projects serving the elderly, families, veterans and/or homeless persons.

VIII. Schedule of Performance/Timeliness.

IX. List of business references (minimum of 5) and include a list of all **PHA**'s for which the Offeror has provided bond counsel services related to the development of affordable housing utilizing bond financing, **LIHTC**, mixed finance funding, **HUD** funding, private debt, etc. Provide a brief description of the services provided for the subject transaction, identify if the project was funded, was closed and if construction has been completed. Include the contact person for the **PHA(s)** for the fore-mentioned projects. Include legal report and banking references.

X. Section 3 compliance.

XI. Minority Business Enterprise Participation as per **Attachment D**.

Describe and provide evidence of the Offeror's plans to make a good faith effort to maximize the utilization of minority business enterprise (**MBE**) and/or women business enterprise (**WBE**) firms. In addition, all submittals shall include a completed minority business enterprise form, attached as **Attachment D**.

XII. Certifications and Affidavits

Offerors shall submit the following certifications and affidavit as attached:

**Attachment C**: Form of Non-Collusive Affidavit

**Attachment G**: Certifications and Representations of Offerors for Non-Construction Contracts (Form **HUD** 5369-C)

**Insurance**: Evidence of all appropriate and applicable insurance coverage carried by the firm, including policy coverage periods. Offerors shall furnish **HCHA** with certificates of insurance showing that the following insurance is in force and will insure all operations under this **RFP**, and name **HCHA** as an additional insured. Required insurance levels are as follows:

Workers' compensation in accordance with the State of Texas rules and regulations.

General liability insurance with a single limit for bodily injury of \$1,000,000 per occurrence and property damage limit of no less than \$1,000,000 per occurrence.

The insurance may have a combined aggregate of coverage amounting to no less than \$1,000,000. Such insurance shall protect Offeror against claims of bodily injury or death and property damage to others. If Offeror has a "claims made policy," then the following additional requirements apply: The policy must provide a "retroactive date" which must be on or before the execution date of the Agreement and the extended reporting period may not be less than five years following the completion date of the Agreement.

Automobile liability on owned and non-owned motor vehicles used on the site(s) or in connection herewith for a combined single limit of bodily injury and property damage of not less than \$1,000,000 per occurrence.

## **9.0 RELATED EXPERIENCE**

Provide as a minimum the following information for both the firm(s) and sub-consultant(s):

- a. A statement of firm(s) services provided on projects of similar nature (provide names, title, and telephone number of the Owner's representative for each project).
- b. List of all key members of firm(s) and any sub-consultant(s) who will be assigned to this project. Indicate the level of effort and function of each member on the project. Description of organization structure to showing how the key members will be involved. Include resumes of these individuals. The resumes should include the following minimum information:
  1. Name;
  2. An explanation of the function they will perform and their title by classification;
  3. Their relevant educational background;
  4. Their relevant work experience;
  5. Their work experience with governmental clients; and
  6. Any specialized skills, training, and/or credentials that, relevant to the required services.

## **10.0 METHODOLOGY/STRATEGY TO ACCOMPLISH SERVICES**

The Offeror(s) must describe how it will approach the work associated with the requested services, including an understanding of the scope of services required and unique or innovative approaches to be utilized in performing these services. All graphic

presentations are optional. See **Attachment A** for the general scope of work anticipated. This document **Attachment A** merely serves as a guideline and it is not to be confused as an exhaustive delineation of the work that may ultimately occur.

## **11.0 REFERENCES**

Provide a list of companies or governmental organizations to which your firm(s) is/are currently providing services. If this does not include at least five (5) entities, then provide the names of the entities for which similar services have been provided. For each entity include:

- a. The term (beginning and ending dates) of your contract agreement(s);
- b. Monthly revenues resulting from the work;
- c. A brief description of the scope of work; and
- d. The name, address, and telephone number of the representative of your client that administered your contract(s).

The Legal firm(s) hereby authorizes and request(s) any person, firm, corporation and/or governmental entity to furnish any information requested by the **HCHA** in verification of the references provided and for determining the quality and timeliness of providing the services.

## **12.0 OTHER SUBMITTALS**

The following items must be submitted upon request:

- a. Information concerning the Firm(s) affirmative action plans, policies, etc. (submitted upon request); and
- b. Financial statement for the previous three (3) years (submitted upon request by the three (3) short-listed Firms and Consultants).

## **13.0 EVALUATION CRITERIA**

This is a qualification and fee based selection. Submittals must be prepared in conformance with the guidelines stated herein.

Submittals will be evaluated by a Staff Evaluation/Selection Committee. This team will review the submittals and make a recommendation to **HCHA**. The Committee will present its recommendations to the Board of Commissioners of **HCHA** who have authority to award contracts.

During submittal evaluation, the **HCHA** reserves the right to call for supplementary information from Offerors and to meet with all or any one of them to clarify points of

uncertainty or ambiguity. Offerors agree to cooperate fully and promptly in providing such supplementary information or meeting requests.

Selection of the successful Offeror will be at the sole discretion of the **HCHA**. All submittals shall be evaluated and up to three most qualified (top ranked), responsive and responsible firms will be invited for panel interviews and discussions. If a contract is awarded, it will be awarded to the responsible agency/organization whose qualifications; price and other factors are deemed most advantageous to the **HCHA**. Additionally, the **HCHA** shall have the right to reject any and all proposals at its discretion.

## EVALUATION CRITERIA AND RATING

Evaluation Criteria	Maximum Points
1. Firm's history and resource capability to perform required services.	10
2. Evaluation of the qualifications of the assigned personnel. <ul style="list-style-type: none"> <li>• Knowledge of current bond financing structures that are gaining acceptance in the affordable/mixed income housing community.</li> <li>• Knowledge of local housing and community development issues in the state of Texas.</li> <li>• General knowledge and expertise with affordable housing development and financing programs.</li> </ul>	20
3. Demonstrated related experience in: <ul style="list-style-type: none"> <li>• Drafting and reviewing affordable/mixed income housing bond documents</li> <li>• Meeting HUD and/or TDHCA requirements.</li> <li>• Providing realistic legal options and/or recommendations to achieve the HCHA's Affordable Housing Program goals.</li> <li>• Providing Bond Counsel services related to single and multi-family housing development.</li> <li>• Providing bond counsel services for LIHTC transactions.</li> <li>• Reviewing, negotiating and assistance in obtaining approval of Bond related documents.</li> </ul>	25
4. Budget, cost-control experience and results.	5
5. Understanding of Bond and HUD requirements, and City, County and State codes/ordinances applicable to this work.	10
7. Project planning, methodology/strategy to accomplish task. Viability and relevance of respondent's project approach and narrative summary of anticipated legal issues.	10
7. Schedule of performance/timeliness.	10
8. Section 3 Participation & Compliance.	5

8. Demonstrated ability in accomplishing work of similar nature (reference check)	10
9. Fees Schedule	15
<b>Total Points Possible</b>	<b>120</b>

Submittals will be evaluated and ranked according to points received.

The three (3) short-listed Firm(s) will be afforded a maximum of forty-five (45) minutes to make an oral presentation to **HCHA** personnel.

The oral presentation will be evaluated and ranked by the staff as first, second and third by majority vote. The Firm(s) ranked as number one will be invited to finalize the scope of work and then negotiate a fee based on the final scope of work. The **HCHA** will negotiate all aspects of the fee to arrive at a firm and reasonable price as determined by the **HCHA**. If an agreement cannot be successfully reached with the top ranked Firm(s), the **HCHA** will follow the same procedure with the second ranked firm(s) and if necessary the third.

The **HCHA** reserves the right to award multiple contracts with multiple Offerors. Those Firms will be invited to negotiate all aspects of the fee proposal to arrive at an firm and reasonable cost as determined by the **HCHA**.

**14.0 TRAVEL AND REIMBURSABLES**

There are no other allowable reimbursable expenses.

**15.0 AVAILABILITY OF RECORDS**

The U. S. Department of Housing and Urban Development, the Inspector General of the United States, the **HCHA**, the City of Houston, Harris County and any duly authorized representatives of each, shall have access to, and the right to examine any and all pertinent books, records, documents, invoices, papers, and the like, of the Firm(s) office or Firm, which shall relate to the performance of the services to be provided.

**16.0 AVAILABILITY OF FUNDS**

Funding for the project(s) will be provided by the issuance of bonds, and Federal, State, City, County and/or HCHA funding sources. The selected Offeror must comply with all applicable federal laws and regulations, as well as state laws, county and city ordinances. In the event that funds to be used to finance the services requested under this **RFP** or subsequent contract become unavailable, the **HCHA** may cancel the award and all binding agreements will become null and void upon no less than 24 hours notice in

writing. Said notice shall be delivered by certified mail, return receipt requested. The **HCHA** shall be the final authority to determine the non-availability of funds.

**17.0 ASSIGNMENT OR TRANSFER**

The successful firm shall not assign or transfer any interest in the contract in whole or in part, without written approval of the **HCHA**.

**18.0 FACILITIES**

The **HCHA** reserves the right to inspect the selected Firm's facilities during normal business hours. Proper notice will be given.

**19.0 CONTRACT AWARD**

Acceptance of the Firm's offer for the services specified herein will be made by executing a duly authorized contract prepared by the Offeror and approved by the **HCHA**. All Offerors are cautioned against making assumptions or accepting any representation by any employee, member, officer or representative of the **HCHA** concerning the selection of the Offeror until a contract has been finally negotiated and executed.

Award of contract will be for a two (2) year period based on funding availability with two (2) - one year options.

The contract for providing said service must be approved by the Board of Commissioners of the **HCHA** prior to the initiation of any work.

**20.0 COMPENSATION**

The firm(s) selected for this project must have the financial resources to complete the scope of work and services. Fees will be paid upon the receipt of an acceptable and approvable invoice by the Chief Development Officer.

**21.0 TERMINATION**

Irrespective of any default hereunder, the **HCHA** may any time at its discretion (for convenience or cause) terminate the contract in whole or in part, and in such event the consultant shall be entitled to receive equitable compensation for all work completed and accepted, prior to such termination or cancellation.

**22.0 PATENTS AND ROYALTIES**

The successful Firm(s) shall indemnify and save harmless the **HCHA** and its employees from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or not patented inventions, process or article manufactured or used



in the performance of the contract, including its use by the **HCHA**. If the Firm(s) use(s) any design, device or material covered by letters, patent or copyright, it is mutually agreed and understood that the Firm(s) shall include all royalties or cost arising from the use of such design, device, or materials involved in the work.

### **23.0 STANDARDS OF CONDUCT**

The successful Offeror shall be responsible for maintaining satisfactory standards of employees' competency, conduct, courtesy, appearance, honesty, integrity, and shall be responsible for taking such disciplinary action with respect to any employee, as may be necessary.

### **24.0 CONFLICT OF INTEREST**

No employee, officer or agent of the **HCHA** shall participate directly or indirectly in the selection or in the award of any contract if a conflict, real or apparent, would be involved. Such conflict would arise when a financial or other interest in an agency selected for award is held by:

- an employee, officer or agent involved in making the award; or
- his/her relative including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, domestic partner, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister; or
- his/her business or professional partner; or
- an organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

### **25.0 INDEMNIFICATION AND HOLD HARMLESS AGREEMENT**

**CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD THE HCHA AND THEIR OFFICERS, AGENTS AND EMPLOYEES (THE "INDEMNIFIED PERSONS") HARMLESS FROM ALL LIABILITY, LOSS OR DAMAGE, INCLUDING ATTORNEY FEES AND EXPENSES, RESULTING FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER ASSERTED BY ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE INDEMNIFIED PERSONS' OR CONTRACTOR'S EMPLOYEES), FOR PERSONAL INJURY, DEATH, OR FOR LOSS OF OR DAMAGE TO ANY AND ALL PROPERTY IN ANY WAY ARISING OUT OF OR**

**IN CONNECTION WITH CONTRACTOR'S PERFORMANCE HEREUNDER, CONTRACTOR SHALL BE RESPONSIBLE FOR ALL DAMAGE AND LOSS SUSTAINED BY IT TO ITS TOOLS AND EQUIPMENT UTILIZED IN THE PERFORMANCE OF CONTRACTORS SERVICES HEREUNDER.**

**NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, CONTRACTOR INDEMNIFICATION OF THE INDEMNIFIED PERSONS IS LIMITED TO \$1,000,000 PER OCCURRENCE.**

**HCHA SHALL NOTIFY CONTRACTOR OF ANY CLAIM HCHA RECEIVES NOTICE OF ASSERTED AGAINST THE INDEMNIFIED PERSONS WITH RESPECT TO WHICH INDEMNIFIED PERSONS ARE INDEMNIFIED AGAINST LOSS BY CONTRACTORS HEREUNDER WITHIN FIFTEEN (15) DAYS OF THE HCHA'S RECEIPT OF NOTICE OF SUCH CLAIM, AND SHALL PROMPTLY DELIVER TO CONTRACTOR THE ORIGINAL OR A TRUE COPY OF ANY SUMMONS OR OTHER PROCESS, PLEADING, OR NOTICE ISSUED OR SERVED IN ANY SUIT OR OTHER PROCEEDING TO ASSERT OR ENFORCE ANY SUCH CLAIM. IF THE HCHA OR ANY OF THE INDEMNIFIED PERSONS DO NOT PROVIDE THIS NOTICE WITHIN THE FIFTEEN (15) DAY PERIOD, IT DOES NOT WAIVE ANY RIGHT TO INDEMNIFICATION EXCEPT TO THE EXTENT THAT CONTRACTOR IS PREJUDICED, SUFFERS LOSS, OR INCURS EXPENSE BECAUSE OF THE DELAY.**

**FOLLOWING SUCH NOTIFICATION, AND EXCEPT AS OTHERWISE PROVIDED BELOW, CONTRACTOR SHALL DEFEND ANY SUCH SUIT AT ITS SOLE COST AND EXPENSE WITH ATTORNEYS OF ITS OWN SELECTION WHO ARE REASONABLY SATISFACTORY TO HCHA.**

**CONTRACTOR SHALL CONTROL THE DEFENSE AND ANY NEGOTIATIONS TO SETTLE THE CLAIM, BUT THE INDEMNIFIED PERSONS SHALL HAVE THE RIGHT, IF THEY SEE FIT TO PARTICIPATE IN SUCH DEFENSE AT THEIR OWN EXPENSE. CONTRACTOR SHALL HAVE THE POWER TO SETTLE THE CLAIM WITHOUT THE CONSENT OR AGREEMENT OF HCHA UNLESS THE SETTLEMENT WOULD (I) RESULT IN INJUNCTIVE RELIEF OR OTHER EQUITABLE REMEDIES OR OTHERWISE REQUIRE THE INDEMNIFIED PERSONS TO COMPLY WITH RESTRICTIONS OR LIMITATIONS THAT WOULD ADVERSELY AFFECT THE INDEMNIFIED PERSONS, (II) REQUIRE THE INDEMNIFIED PERSONS TO PAY AMOUNTS THAT CONTRACTOR DOES NOT FUND IN FULL, (III) NOT RESULT IN THE INDEMNIFIED PERSONS' FULL AND COMPLETE RELEASE FROM ALL LIABILITY TO THE CLAIMANTS OR OTHER PARTIES THAT ARE PARTIES TO OR ARE OTHERWISE BOUND BY THE SETTLEMENT OR (IV) ESTABLISH A PRECEDENT(S) WHICH THE INDEMNIFIED PERSONS, IN THEIR SOLE DISCRETION INDIVIDUALLY OR IN THEIR COLLECTIVE DISCRETION AS A GROUP, DETERMINES IS NOT IN THE BEST INTEREST OF THE INDEMNIFIED PERSONS.**

**IF CONTRACTOR NOTIFIES THE HCHA IN WRITING WITHIN TEN (10) DAYS AFTER RECEIPT OF HCHA'S WRITTEN NOTICE OF A CLAIM AND REQUEST FOR INDEMNIFICATION THAT IT ELECTS NOT TO DEFEND THE CLAIM, HCHA OR ANY OF THE INDEMNIFIED PERSONS SHALL ASSUME AND CONTROL THE DEFENSE AND ALL DEFENSE EXPENSES SHALL CONSTITUTE AN INDEMNIFICATION LOSS.**

**26.0 REMOVAL OF EMPLOYEES**

The **HCHA** may request the successful Firm(s) to immediately remove from assignment to the **HCHA** contract or to dismiss any employee found unfit to perform duties due to but limited to one or more of the following reasons:

- Neglect of duty.
- Disorderly conduct, use of abusive or offensive language, quarreling or fighting.
- Theft, vandalism, immoral conduct or any other criminal activity.
- Selling, consuming, possession, or being under the influence of intoxicants, including alcohol, or illegal substances while on assignment at the **HCHA**.

**27.0 SUPERVISION**

The successful Offeror shall provide adequate competent supervision at all times during the performance of the contract. A qualified Lead Bond Counsel and one alternate shall be designated in writing to the **HCHA** prior to execution of the contract. The Lead Bond Counsel or his designee must be available to meet with the **HCHA** personnel at any reasonable time. The successful Offeror shall provide the telephone number(s) where its representative(s) can be reached.

**28.0 STATEMENT OF OWNERSHIP**

The Firm's submittal shall contain an explicit statement of the legal entity with which the **HCHA** will contract: name, address, phone number, and name of principal person assigned to negotiate on behalf of the Firm(s). Furthermore, the Firm(s) shall identify principals of any participating professional firms which subcontracts or joint ventures with the Firm(s), including names, addresses, position, and description of the extent of participation in the project. If the Firm(s) is a subsidiary, its relationship to parent company(s) shall be disclosed. The Firm(s) shall identify the organization and management approach to the project, as well as identify individuals who will be assigned to key management positions. Resumes of these individuals shall be provided.

**29.0 M/WBE PARTICIPATION:**

**M/WBE PARTICIPATION:** The consultant agrees to make its best efforts to subcontract with minority business enterprises and/or women business enterprises (herein called **M/WBE**) certified as such or recognized by **HCHA** as a certified **M/WBE**. Consultant shall make its best efforts to subcontract a sufficient dollar amount with

**M/WBEs** to ensure that a minimum of 30 percent of the final contract dollars are expended on one or more **M/WBEs**. All adjustments that cause the contract price to increase will also increase the total amount that Consultant must make its best efforts to expend on **M/WBEs**.

**USING BEST EFFORTS TO FULFILL M/WBE REQUIREMENT:** In the event **HCHA** has a reasonable belief that Consultant will not use his/her/its best efforts to meet the 30 percent **M/WBE** participation goal, **HCHA** reserves the right to pull work from the contract. Best efforts may be established by showing that Consultant has contacted and solicited bids/quotes from sub-consultants and worked with the **HCHA** to seek assistance in identifying **M/WBEs**.

*FAILURE TO USE YOUR BEST EFFORTS TO COMPLY MAY CONSTITUTE BREACH OF CONTRACT AND SUBJECT THE CONTRACT TO TERMINATION.*

### **30.0 PERTINENT FEDERAL REGULATIONS WITH REGARD TO NONDISCRIMINATION AND EQUAL OPPORTUNITY**

The requirements of Title VIII of the Civil Rights Act of 1968 and Title VI of the Civil Rights Act of 1964, relating to prohibitions against discrimination in housing and the benefits of federally funded programs because of race, color, religion, sex or national origin must be met by the Offeror.

The Offeror must adhere to federal regulations prohibiting discrimination on the basis of age under the Age Discrimination Act of 1975, and prohibit discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1989.

The requirements of Executive Order 11246, relating to equal employment opportunity in connection with federally funded programs must be met by the Offeror.

The Offeror must also meet the requirements of Section 3 of the Housing and Urban Development Act of 1968, relating to the training and employment of individuals, and contracting for business opportunities in metropolitan areas in which federally funded programs are being operated.

The Offeror must meet the requirements of Executive Orders 11625, 12432, and 12138 relating to the use of minority and women's business enterprises in connection with federally funded programs.

## ATTACHMENT A

### GENERAL SCOPE OF SERVICES

The **HCHA** proposes to undertake two to three developments per year comprising of 80 to 120 units each. The development may serve the elderly, families, veterans, homeless and shall be mixed income properties. The developments will be located outside of the city limits of Houston. However, the **HCHA** reserves the right to develop a smaller number of projects inside the city limits of Houston. All **HCHA** project shall meet energy efficiency standards promulgated by **HUD** & the City of Houston. Further all projects must comply with **HCCSD** design Guidelines and/or requirements established by the funding source(s). The **HCHA** developments are typically a combination of villas and multi-storey buildings.

Under the direction of the **HCHA**, the successful Offeror will be responsible for assisting the **HCHA** with ownership structures and document preparation. The Offeror will provide prepare and review documents, issue legal opinions and/or recommendations that will enable the **HCHA** to achieve its affordable housing program goals. The Offeror will also be responsible for analyzing and evaluating the legal implications of bond financing options: conveying to **HCHA** the likely legal implications of the proposals; and, assisting **HCHA** in protecting its interest and resources. If the Offeror is not a Texas based firm, the Offeror will be requested to subcontract with a Texas based firm to assist with filings, provide the Texas corporate legal opinion and ensure that the work is carried out in compliance with Texas Statues. The Offeror will work with the Chief Development Officer to review, comment and sometimes prepare business term sheets, financial proposals and associated documents for approval. The documents shall reflect the agreed upon development and financing strategies of the **HCHA**. Author, review and/or make recommendations regarding the Bond and **LIHTC**/Mixed Finance Proposal and associated documents. Coordinate the submittal and efforts to gain approval of financing proposal(s). Coordinate the financial closing. Participate in team Meetings, Board of Commissioner meetings and other Community meetings.

**HCHA** is seeking Bond Counsel Services related to its affordable housing development program, including but not limited to the following:

- Legal advice on developing and structuring bond issues and financial transactions, including, without limitation the tax aspects thereof.
- Advice regarding new and improved forms of financing for **HCHA**'s development programs or projects, including any refinancing or restructuring.
- Drafting, or participating in the drafting of official statements, trust indentures, loan agreements and other documents relating to the issuance of bonds.

- Advice and analysis regarding relevant Federal, State or municipal law and any proposed Federal, State or local legislation or regulations.
- Rendering opinions concerning the validity of the bonds issued and if applicable, the tax-exempt status of such bonds from Federal, State and local taxes and other related matters.  
Rendering supplemental opinions as the HCHA may require, including due diligence and the exemption of bonds from certain securities laws/
- Related items involving related matters.
- Advising as to procedures, required approvals and filings, schedule of events for timely issuance, potential cost-saving techniques and other legal matters relative to issuance of bonds. Remarketing bonds, refunding bonds or any change affecting bond documents, whether the financing is undertaken by complete bid or negotiated sale, or other financing programs.
- Preparing all applications and other necessary documentation for the Bond Review Board allocation, reservation and approval process and preparing and disseminating all notices for TEFRA hearings.
- Attending conferences with underwriters or structuring agents.
- Preparing Board resolutions and any amendments thereto in order to authorize the issuance of single-family and multi-family bonds, remarketing of bonds, refunding of bonds or any change affecting bond documents.
- Preparing trust indentures, trustee, registrar or paying agent agreements, servicing and administration agreements, loan agreements, mortgage origination agreements and any other agreements or similar documents necessary, related or incidental to bond financing.
- If sale is by competitive bid, assisting in the preparation of the bid documents, notice of sale of the bonds in that matter.
- Assisting in preparation of the preliminary official statement, official statement, private placement memorandum and preparation of the award resolution and any amendments thereto, for the sale of the bonds and reviewing the bond purchase agreement.
- Preparing, obtaining, delivering and filing all closing papers necessary in connection with the sale and issuance of the bonds, including but not limited to certified copies of all minutes, resolutions and orders, certificates such as officers, incumbency, signature, no prior pledge, arbitrage, IRS forms and others and verifications, consent and opinions from accountants, engineers, special consultants and attorneys.
- Issuing standard comprehensive bond counsel opinions as to the legality of the bonds, the security for their payment and the exemption or exclusion from federal taxation of the interest on the bonds.
- Advise the **HCHA** on the legal matters related to interest rate swap agreements.
- Advise the **HCHA** on legal matters related to guaranteed investment contracts (**GIC**).
- Advise the HCHA concerning the maintenance of the tax status of specific obligations, compliance with any requirements for representations or disclosures relating to the

obligations and compliance with any documents issued and executed with respect to the obligations.

- Advise and assist the **HCHA** in preparing necessary legal documents needed to exercise any redemption or defeasance of outstanding bonds.
- Provide advice regarding IRS Code as it applies to the HCHA's bond financing activities and to the programs or projects funded with the proceeds of the bonds (particularly with respect to the structure of the proposed new issuance of bonds, the integration of bond proceeds with HCHA funds or external funds (i.e. HOME, CDBG, PBV, private debt, etc.) and the structure and operation of new programs relating to such bonds
- Prepare the Arbitrage Certificate relating to each new issue of bonds and deliver such Certificate prior to closing
- Work closely with Tax Credit Counsel regarding the investor documents, and review investor documents for consistency with requirements of tax-exempt bond issuance and Bond documents

**ATTACHMENT B**

**Not used**



**ATTACHMENT C**

**FORM OF NON-COLLUSIVE AFFIDAVIT**

STATE OF TEXAS

COUNTY OF HARRIS

\_\_\_\_\_, being first duly sworn, deposes and says that he is

\_\_\_\_\_  
(a partner or officer of the firm of, etc.)

the party making the foregoing proposal or bid, that such proposal or bid is genuine and not collusive or sham; that said bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any manner, directly or indirectly, sought by agreement or collusion, or communication or conference with any person to fix the bid price or affiant or of any other bidder, or to fix any overhead, profit, or cost element of said bid price, or of that of any other bidder, or to secure any advantage against

**THE HARRIS COUNTY HOUSING AUTHORITY**

of any person interested in the proposed Contract; and that all statements in said proposal or bid are true.

\_\_\_\_\_  
Signature of Bidder, if Bidder is an Individual

\_\_\_\_\_  
Signature of Bidder, if Bidder is a Partnership

\_\_\_\_\_  
Signature of Officer, if Bidder is a Corporation

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2003

\_\_\_\_\_  
Notary Public

My Commission expires \_\_\_\_\_

**ATTACHMENT D**

**M/WBE PARTICIPATION**

**M/WBE PARTICIPATION:** The consultant agrees to make its best efforts to subcontract with minority business enterprises and/or women business enterprises (herein called **M/WBE**) certified as such or recognized by **HCHA** as a certified **M/WBE**. Consultant shall make its best efforts to subcontract a sufficient dollar amount with **M/WBEs** to ensure that a minimum of 30 percent of the final contract dollars are expended on one or more **M/WBEs**. All adjustments that cause the contract price to increase will also increase the total amount that Consultant must make its best efforts to expend on **M/WBEs**.

**USING BEST EFFORTS TO FULFILL M/WBE REQUIREMENT:** In the event **HCHA** has a reasonable belief that Consultant will not use his/her/its best efforts to meet the 30 percent **M/WBE** participation goal, **HCHA** reserves the right to pull work from the contract. Best efforts may be established by showing that Consultant has contacted and solicited bids/quotes from subcontractors and worked with the **HCHA** to seek assistance in identifying **M/WBEs**.

**FAILURE TO USE YOUR BEST EFFORTS TO COMPLY MAY CONSTITUTE BREACH OF CONTRACT AND SUBJECT THE CONTRACT TO TERMINATION.**

**NOTIFICATION OF M/WBE PARTICIPATION:** Consultant agrees to promptly complete and return all **M/WBE** Confirmation of Participation and **M/WBE** Confirmation of Payment forms utilized by **HCHA** to confirm **M/WBE** subcontractor by submitting copies of checks made payable to the respective **M/WBE** subcontractor signed by the Contractor.

\_\_\_\_\_  
CONSULTANT

\_\_\_\_\_  
DATE

**BIDDER’S PROPOSED M/WBE PARTICIPATION FORM**

Bidder proposes to work with the following **MBE/WBE** participants:

<u>Name of Participant</u>	<u>M/WBE</u>	<u>Certifying Entity (City/Metro/HISD)</u>	<u>Percent of Total Work</u>

**SAMPLE FORMAT FOR RECORDKEEPING  
ESTIMATED PROJECT WORK FORCE BREAKDOWN**

**M/WBE PARTICIPATION**

<b>JOB CATEGORY</b>	<b>TOTAL ESTIMATED POSITIONS NEEDED FOR PROJECT</b>	<b>NO. POSITIONS OCCUPIED BY PERMANENT EMPLOYEES</b>	<b>NUMBER OF POSITIONS NOT OCCUPIED</b>	<b>NUMBER OF POSITIONS TO BE FILLED WITH M/WBE</b>
<b>OFFICER/SUPERVISOR</b>				
<b>PROFESSIONAL</b>				
<b>TECHNICAL</b>				
<b>OFFICE/CLERICAL</b>				
<b>SERVICE WORKERS</b>				
<b>TRAINEES</b>				
<b>CONTRACTS:</b>				
<b>OTHERS</b>				

\_\_\_\_\_  
**Company**

\_\_\_\_\_  
**Project Name**

\_\_\_\_\_  
**Person Completing Form**

\_\_\_\_\_  
**Date**

## ATTACHMENT E

### AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS

41 CFR 60-741.4

41 CFR 60-250.4

- (a) The Consultant will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Consultant agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection of training, including apprenticeship.
- (b) The Consultant agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- (c) In the event of the Consultant's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- (d) The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notice in a form to be prescribed by the Chief Development Officer, provided by or through the **HCHA**. Such notices shall state the Consultant's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- (e) The Consultant will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract or other understanding, that the Consultant is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- (f) The Consultant will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontract or vendor. The Consultant will take such action with request to any subcontract or purchase orders as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

The Consultant will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam Era in regard to any position for which the employee or applicant for employment is qualified.

The Consultant shall comply with the affirmative action clause prescribe in 41 C.F.R. Section 60-250.4(a) through (m) and the regulations contained in part 60-250.

**ATTACHMENT F**

**Instructions to Offerors for Non-Construction  
Contracts (Form HUD-5369-B)**

# Instructions to Offerors Non-Construction

U.S. Department of Housing  
and Urban Development  
Office of Public and Indian Housing



- 03291 -

## 1. Preparation of Offers

(a) Offerors are expected to examine the statement of work, the proposed contract terms and conditions, and all instructions. Failure to do so will be at the offeror's risk.

(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the cover sheet and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the HA.

(c) Offers for services other than those specified will not be considered.

## 2. Submission of Offers

(a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation, and (2) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice.

(c) Facsimile offers, modifications or withdrawals will not be considered unless authorized by the solicitation.

## 3. Amendments to Solicitations

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Offerors shall acknowledge receipt of any amendments to this solicitation by

- (1) signing and returning the amendment;
- (2) identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer, letter or telegram, or
- (4) facsimile, if facsimile offers are authorized in the solicitation. The HA/HUD must receive the acknowledgment by the time specified for receipt of offers.

## 4. Explanation to Prospective Offerors

Any prospective offeror desiring an explanation or interpretation of the solicitation, statement of work, etc., must request it in writing soon enough to allow a reply to reach all prospective offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offerors.

## 5. Responsibility of Prospective Contractor

(a) The HA shall award a contract only to a responsible prospective contractor who is able to perform successfully under the terms and conditions of the proposed contract. To be determined responsible, a prospective contractor must -

- (1) Have adequate financial resources to perform the contract, or the ability to obtain them;

- (2) Have a satisfactory performance record;
- (3) Have a satisfactory record of integrity and business ethics;
- (4) Have a satisfactory record of compliance with public policy (e.g., Equal Employment Opportunity); and
- (5) Not have been suspended, debarred, or otherwise determined to be ineligible for award of contracts by the Department of Housing and Urban Development or any other agency of the U.S. Government. Current lists of ineligible contractors are available for inspection at the HA/HUD.

(b) Before an offer is considered for award, the offeror may be requested by the HA to submit a statement or other documentation regarding any of the foregoing requirements. Failure by the offeror to provide such additional information may render the offeror ineligible for award.

## 6. Late Submissions, Modifications, and Withdrawal of Offers

(a) Any offer received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it -

- (1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
- (2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the HA/ HUD that the late receipt was due solely to mishandling by the HA/ HUD after receipt at the HA;
- (3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays; or
- (4) Is the only offer received.

(b) Any modification of an offer, except a modification resulting from the HA's request for "best and final" offer (if this solicitation is a request for proposals), is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.

(c) A modification resulting from the HA's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the HA after receipt at the HA.

(d) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the HA is the time/date stamp of HA on the offer wrapper or other documentary evidence of receipt maintained by the HA.



(f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the HA will be considered at any time it is received and may be accepted.

(h) If this solicitation is a request for proposals, proposals may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before award. Proposals may be withdrawn in person by a offeror or its authorized representative if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award. If this solicitation is an invitation for bids, bids may be withdrawn at any time prior to bid opening.

#### 7. Contract Award

(a) The HA will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the HA, cost or price and other factors, specified elsewhere in this solicitation, considered.

(b) The HA may

- (1) reject any or all offers if such action is in the HA's interest,
- (2) accept other than the lowest offer,
- (3) waive informalities and minor irregularities in offers received, and (4) award more than one contract for all or part of the requirements stated.

(c) If this solicitation is a request for proposals, the HA may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

(d) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. If this solicitation is a request for proposals, before the offer's specified expiration time, the HA may accept an offer, whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the HA.

(e) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract.

#### 8. Service of Protest

Any protest against the award of a contract pursuant to this solicitation shall be served on the HA by obtaining written and dated acknowledgment of receipt from the HA at the address shown on the cover of this solicitation. The determination of the HA with regard to such protest or to proceed to award notwithstanding such protest shall be final unless appealed by the protestor.

#### 9. Offer Submission

Offers shall be submitted as follows and shall be enclosed in a sealed envelope and addressed to the office specified in the solicitation. The proposal shall show **the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror, on the face of the envelope.**

It is very important that the offer be properly identified on the face of the envelope as set forth above in order to insure that the date and time of receipt is stamped on the face of the offer envelope. Receiving procedures are: date and time stamp those envelopes identified as proposals and deliver them immediately to the appropriate contracting official, and only date stamp those envelopes which do not contain identification of the contents and deliver them to the appropriate procuring activity only through the routine mail delivery procedure.

[Describe bid or proposal preparation instructions here:]

**ATTACHMENT G**

**CERTIFICATIONS and REPRESENTATIONS of OFFORERS**  
**for NON-CONSTRUCTION CONTRACTS (Form HUD-5369-C)**

# Certifications and Representations of Offerors

## Non-Construction Contract

U.S. Department of Housing and Urban Development  
Office of Public and Indian Housing

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This form includes clauses required by OMB's common rule on bidding/offering procedures, implemented by HUD in 24 CFR 85.36, and those requirements set forth in Executive Order 11625 for small, minority, women-owned businesses, and certifications for independent price determination, and conflict of interest. The form is required for nonconstruction contracts awarded by Housing Agencies (HAs). The form is used by bidders/offerors to certify to the HA's Contracting Officer for contract compliance. If the form were not used, HAs would be unable to enforce their contracts. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

### 1. Contingent Fee Representation and Agreement

(a) The bidder/offeror represents and certifies as part of its bid/offer that, except for full-time bona fide employees working solely for the bidder/offeror, the bidder/offeror:

- (1)  has,  has not employed or retained any person or company to solicit or obtain this contract; and
- (2)  has,  has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) If the answer to either (a)(1) or (a) (2) above is affirmative, the bidder/offeror shall make an immediate and full written disclosure to the PHA Contracting Officer.

(c) Any misrepresentation by the bidder/offeror shall give the PHA the right to (1) terminate the resultant contract; (2) at its discretion, to deduct from contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or (3) take other remedy pursuant to the contract.

### 2. Small, Minority, Women-Owned Business Concern Representation

The bidder/offeror represents and certifies as part of its bid/offer that it:

- (a)  is,  is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.
- (b)  is,  is not a women-owned small business concern. "Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.
- (c)  is,  is not a minority enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals.

For the purpose of this definition, minority group members are:

(Check the block applicable to you)

- |   |   |
|---|---|
| <input type="checkbox"/> Black Americans    | <input type="checkbox"/> Asian Pacific Americans  |
| <input type="checkbox"/> Hispanic Americans | <input type="checkbox"/> Asian Indian Americans   |
| <input type="checkbox"/> Native Americans   | <input type="checkbox"/> Hasidic Jewish Americans |

### 3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

- (1) The prices in this bid/offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder/offeror or competitor relating to (i) those prices, (ii) the intention to submit a bid/offer, or (iii) the methods or factors used to calculate the prices offered;
- (2) The prices in this bid/offer have not been and will not be knowingly disclosed by the bidder/offeror, directly or indirectly, to any other bidder/offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
- (3) No attempt has been made or will be made by the bidder/offeror to induce any other concern to submit or not to submit a bid/offer for the purpose of restricting competition.

(b) Each signature on the bid/offer is considered to be a certification by the signatory that the signatory:

- (1) Is the person in the bidder/offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
- (2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above (insert full name of person(s) in the bidder/offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offeror's organization);  
(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

- (iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.
- (c) If the bidder/offeror deletes or modifies subparagraph (a)2 above, the bidder/offeror must furnish with its bid/offer a signed statement setting forth in detail the circumstances of the disclosure.

**4. Organizational Conflicts of Interest Certification**

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed contract and a prospective contractor's organizational, financial, contractual or other interest are such that:
- (i) Award of the contract may result in an unfair competitive advantage;
  - (ii) The Contractor's objectivity in performing the contract work may be impaired; or
  - (iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.
- (b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract for the convenience of HA if it would be in the best interest of HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this Contract and intentionally did not disclose the conflict to the HA, the HA may terminate the Contract for default.
- (d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

**5. Authorized Negotiators (RFPs only)**

The offeror represents that the following persons are authorized to negotiate on its behalf with the PHA in connection with this request for proposals: (list names, titles, and telephone numbers of the authorized negotiators):

**6. Conflict of Interest**

In the absence of any actual or apparent conflict, the offeror, by submission of a proposal, hereby warrants that to the best of its knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement, as described in the clause in this solicitation titled "Organizational Conflict of Interest."

**7. Offeror's Signature**

The offeror hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.

\_\_\_\_\_  
Signature & Date:

\_\_\_\_\_  
Typed or Printed Name:

\_\_\_\_\_  
Title: