

---

---

**REQUEST FOR PROPOSALS**

**RFP NO. 12-05**

The Harris County Housing Authority (HCHA) hereby solicits proposals from qualified not-for-profit or for-profit multi-family housing developers to construct affordable housing developments on properties to be located by the developers and acquired by HCHA in Harris County (outside) the city limits of Houston, Texas.

This RFP contains submission requirements, scope of services, period of services, terms and conditions and other pertinent information for submitting a proper and responsive proposal. Prospective offerors desiring any explanation or interpretation of the solicitation must request it in writing no later than 4:00 p.m. July 31, 2012. Horace Allison, AIA, 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.

The proposal must be enclosed in a sealed envelope and labeled as follows:

**PROPOSAL FOR DEVELOPERS OF MULTI-FAMILY HOUSING  
LOW INCOME HOUSING TAX CREDIT PROJECTS**

---

**NAME OF OFFEROR**

**REQUEST FOR PROPOSALS (RFP) #12-05**

**PROPOSAL DUE DATE AND TIME:  
August 15, 2012, 4:00 P.M. (CST)**

**PROPOSALS MUST BE ADDRESSED TO:**

**Horace Allison, AIA  
Chief Development Officer  
HARRIS COUNTY HOUSING AUTHORITY  
8933 INTERCHANGE  
HOUSTON, TEXAS 77054  
713-6694514, 713-669-4592 (Fax)**

A Pre-Proposal Conference will be held on Tuesday, July 17, 2012 at 10:00 a.m. in the HCHA Boardroom, 2<sup>th</sup> Floor, 8933 Interchange, Houston, Texas 77054.

---

---

Proposals must reach the HCHA no later than **4:00 p.m. (CST) on August 15, 2012**. Late submissions will not be considered for award of contract. Late submissions will be handled in accordance with the provisions in Form HUD-5369-B title “Late Submissions, Modifications, and Withdrawal of Offers”. Proposals will be held in confidence and not released in any manner until after the contract award.

Proposals 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 proposal revisions, 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 proposals.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Horace Allison, AIA  
Chief Development Officer  
Harris County Housing Authority

---

**RFP NO. 12-05**

**CONTENTS**

	PAGE
1.0 Profile of the Harris County Housing Authority	5
2.0 Introduction	5
3.0 Procurement Schedule	6
4.0 Correspondence	7
5.0 Scope of Work	7
6.0 General Requirements	11
7.0 Deliverables	12
8.0 Development Team	12
9.0 Proposal Requirements	13
10.0 Proposal Evaluation Criteria	17
11.0 Conflict of Interest	20
12.0 Contract/Awards	21
13.0 Availability of Records	21
14.0 Standards of Conduct	21
15.0 Removal of Employees	21
16.0 Minority/Women Business Participation	21
17.0 Using Best Efforts to Fulfill MBE/WBE Requirements	22
18.00 Pertinent Federal Regulations with Regard to Nondiscrimination and Equal Opportunity	22

---

## ATTACHMENTS

- Attachment A: MOU Agreement/Due Diligence Checklist
- Attachment B: Form of Non-Collusive Affidavit
- Attachment C: M/WBE Participation
- Attachment D: Instructions to Offerors for Non-Construction  
(Form HUD-5369-B)
- Attachment E: Certifications and Representations of Offerors for Non-  
Construction Contracts (Form HUD 5369-C)
- Attachment F: General Contract Conditions, Non-Construction  
(Form HUD-5370-C)
- Attachment G: Standards for Home Loans

---

## **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 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 program and administers the Section 8 Housing Choice Voucher Programs. The HCHA programs are federally funded along with development grants and rental income.

The HCHA currently employs 37 regular full time staff, owns and manages 788 units of affordable housing and administers rental assistance for 4100 privately owned rental units through the Section 8 HCV programs. Total HCHA operating and development budgets for the fiscal year 2012 is approximately \$4.6 million.

## **2.0 INTRODUCTION**

### **Background**

The HCHA as part of its mission to provide safe, decent and sanitary affordable housing for low-income persons, hereby seeks proposals from qualified not-for-profit or for-profit housing developers to construct affordable housing using Low-Income Housing Tax Credits.

The selected developer(s) will apply for Low-Income Housing Tax Credit (LIHTC) allocations from Texas Department of Housing and Community Affairs (TDHCA) in the 2013 Round. Projects sites are to be proposed by the Offeror(s), but must be on land located in Harris County (outside the city limits of Houston, Texas).

Title to one or more selected sites will be acquired by HCHA or an entity controlled by HCHA. HCHA will provide limited soft funding for the selected project(s), to assist in qualifying for low-income targeting points under the 2013 Qualified Allocation Plan. Such funding should be proposed by the Offeror(s) and may be derived from HCHA's monies available to HCHA for affordable housing. If funds provided by HCHA are federal funds, the recipient project(s) will be subject to Davis-Bacon wages. The remaining funding for the selected project(s) will be tax credit equity, and other funds obtained by the developer. With this RFP, HCHA is seeking to fund one or more proposals from developers or development teams for the new construction of affordable

---

housing units. Developers responding to this RFP are not precluded from submitting proposals or bids on other subsequent RFPs from HCHA.

### **Mixed-Finance Public Housing**

The mixed-finance approach to the development of affordable housing has dramatically changed the manner in which public housing authorities can deliver affordable housing units. This approach is central to HCHA’s ability to invest in affordable housing in that it: (1) permits development of projects which include both assisted housing units and market rate housing units; (2) permits HCHA to enter into partnership arrangements with non-profit and private developers to own mixed-finance developments; (3) permits private, third party management of mixed-finance developments; and (4) permits HCHA to assign capital subsidies to such properties.

The mixed-finance approach also encourages the leveraging of public housing financial resources inclusive of but not limited to grant funds with other private and public funds. Not only is there more flexibility in funding of mixed-finance projects, there is also flexibility in mixing unit types such as “affordable” or market-rate units with assisted housing units.

Therefore, HUD is encouraging public housing authorities to begin approaching the development of new units in as entrepreneurial a manner as possible.

### **3.0 PROCUREMENT SCHEDULE**

<b>SCHEDULE</b>	
<b>EVENT</b>	<b>DATE</b>
RFP Advertised	July 8 & 15, 2012
RFP Available for Distribution	July 9, 2012
Pre-Proposal Conference	July 17, 2012
Deadline for Receipt of Written Questions	July 31, 2012
Response to Written Questions	August 5, 2012
Proposal Due Date	August 15, 2012
Selection of Developer(s)	September
Developer Submits LIHTC pre-application	December 2012

---

## **Pre-Proposal Conference**

A pre-proposal conference will be held at 10:00 P.M. CST on July 17, 2012 in the HCHA Boardroom, 2<sup>th</sup> Floor, 8933 Interchange, Houston, Texas 77054.

In order to maintain a fair and impartial competitive process, HCHA can answer questions only at the pre-proposal conference and in response to written questions received within the specified timeframe. HCHA must avoid private communication with the prospective Offerors during the evaluation period. This pre-proposal conference and the written questions will be the only opportunities for Offerors to ask questions as to form and content. Please respect this policy and do not attempt to query HCHA personnel regarding this RFP except during the pre-proposal conference.

Answers to questions which HCHA deems to relate to proprietary information and/or unique design, legal or financing strategies will be kept confidential.

### **4.0 CORRESPONDENCE**

Following the pre-proposal conference, HCHA will allow until 4:00 P.M. CST on July 31, 2012, for Offerors to submit questions in writing to Horace Allison, AIA Chief Development Officer, at HCHA (713) 669-4514 or fax to (713) 669-4592. This will allow issuance of any necessary amendment to the RFP.

An amendment may be issued prior to the opening of proposals 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 proposal due date will be issued in the form of an amendment. 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. All Offerors are directed to visit/monitor the HCHA website for amendment(s) issued.

Proposals will be publicly opened.

### **5.0 SCOPE OF WORK**

HCHA's goal in issuing this RFP is to provide additional affordable rental housing options for low-income residents in the Harris County.

#### **5.1 Project Description**

HCHA is looking for one or more LIHTC project(s) located in Harris County (outside the city limits of Houston, Texas), which require assistance in financing. To maximize the competitiveness of an LIHTC proposal, the development should target tenants in the 30% - 60% Area Median Income.

---

HCHA will provide capital resources to develop affordable housing rental unit(s) in the project. The affordable housing units will be subject to an Operating Agreement with HCHA.

HCHA may contribute capital resources for this Initiative. The selected developer is responsible for preparing a LIHTC application in the 2013 round, as well as identifying additional funding from private and/or non-governmental sources, including foundations and private organizations.

Development of the units will be subject to the MOU Agreement/Due Diligence Checklist (see Attachment “A”), the Development Agreement and other agreements as dictated by the funding sources.

## **5.2 The Proposed Initiative**

This initiative is being undertaken by HCHA to provide additional affordable housing options for families in Harris County. The initiative has the following core elements:

### **5.2.1 New Housing.**

New multifamily units will be constructed which respect the development patterns and scale of the surrounding community to provide a housing resource for low-income residents in Harris County.

### **5.2.2 Acceptable Site.**

HCHA must approve the location and condition of the proposed site. The selected developer(s) will be required to provide a Phase I Environmental Survey to HCHA concurrently with providing same to the TDHCA, and HCHA’s selection of any project is subject to an acceptable Phase I and compliance with HCCSD Concentration Policy. The site cannot be located in the Cities of Houston, Pasadena and Baytown.

### **5.2.3 Ownership Structure.**

The development(s) funded under this initiative will be “mixed-finance project(s).” Fee title to the land will be acquired by HCHA or a related tax-exempt entity, and will be leased to the development partnership on a long-term ground lease (55 years). A HCHA-controlled entity will serve as the general partner of the development partnership. Development of the project will be turn-key, with the developer providing a fixed-price construction contract. Affordable housing units in the development will be subject to an Operating Agreement with HCHA and a LURA to ensure compliance with all HCHA, HCCSD, LIHTC and HUD requirements.

---

## **5.2.4 Financing Sources.**

This initiative will be financed from a combination that may include federal funding sources provided by HCCSD, HCHA, Low-Income Housing Tax Credits, and private resources. The selected developer is responsible for preparing a Low-Income Housing Tax Credit application in the 2013 round, application(s) for CDBG/HOME funding and seeking private funds for the project. Proposals must identify and justify the amount of HCHA resources that are needed for the proposed project.

## **5.3 HCHA's Role**

HCHA has assembled a team of legal, financial, and architectural/planning experts (the "HCHA Team") to assist in the implementation of this initiative. HCHA will assume one or more of the following roles in the development of the selected project(s):

### **5.3.1 Lender/Grantor**

Capital funds may be made available for use by the developer for the acquisition of land and/or construction of the development.

### **5.3.2 Asset Manager**

HCHA will monitor and enforce the terms of the Management and Operating Agreements.

### **5.3.3 Sub-recipients Grant Fund Administrator.**

HCHA may be a sub-recipient of CDBG/HOME program funds of which rental housing is considered an important component. As such, HCHA has ultimate oversight responsibilities to assure that any project receiving CDBG/HOME financing is completed in accordance with all program rules and according to the approved plans and schedules.

### **5.3.5 Mixed-Finance Proposal Coordinator**

HCHA must insure that projects meet all requirements for the mixed-finance approach. The developer will work closely with HCHA in the preparation and submission of all required legal documentation.

### **5.3.6 Supportive Services and Economic Development Program Provider**

HCHA's supportive services and economic development programs will be made available to the residents at the selected project(s).

---

### **5.3.7 Development Partner.**

The specific ownership structure will be negotiated; however, HCHA does not intend to have significant involvement in the day-to-day development management activities.

## **5.4 Developer's Role**

The responsibilities of the selected developer(s) will include, but are not limited to, the following:

- Undertake predevelopment activities;
- Develop architectural plans consistent with LIHTC Rules and regulations, HUD guidelines, HCCSD Affordable Housing Standards, HCCSD Minimum Standards for Residential New Construction, HCCSD Affordable Multi-unit Concentration Policy and obtain City approvals and permits;
- Develop and manage an implementation schedule;
- Obtain additional leveraged funds from private, non-governmental sources;
- Prepare and submit a Low Income Housing Tax Credit application in the 2013 round and funding application(s) to HCCSD for CDBG/HOME funds;
- Develop a project budget;
- Coordinate all development activities, including reporting and budget requirements, with HCHA;
- Determine a general management structure, prepare a management plan for the property, and recommend a property manager, subject to approval by HCHA;
- Provide all necessary financial guarantees and assurances to the lenders and tax credit investors;
- Develop and implement a "Section 3" resident employment program;
- Solicit construction bids and enter into a contract for construction;
- Oversee construction and ensure completion in a timely manner;

- 
- Assist HCHA in preparation and submission of all required funder(s) materials;
  - Obtain commitments from grantors, lenders and tax credit investors for financing the project, such commitments to be on forms and with parties reasonably acceptable to HCHA; and
  - Deliver units consistent with LIHTC and HUD guidelines.

## **5.5 HCHA Financial Resources**

HCHA can provide the following types of financial resources to facilitate the development of the selected project(s):

### **5.5.1 Capital Subsidy**

Capital funds may be made available from HCHA to be used only in connection with the production of the affordable housing units. All of the affordable units in the project will be eligible for capital subsidy. Capital subsidy can be either in the form of a grant or loan and must not exceed HUD-published TDC limits.

### **5.5.2 Other Financial Resources**

The developer is expected to apply for Low Income Housing Tax Credits in the 2013 round and CDBG/HOME funds. Additional private resources needed to complete the project will be the responsibility of the developer

## **5.6 Income Structure and Use Restrictions**

HCHA seeks to provide housing to a mix of affordable and market rate housing for eligible households, including the low and very low income. Offerors may target occupancy to low-income households with incomes from 30% to 60% of area median income and market rate (subject to any income restrictions associated with other funding sources).

## **5.7 Project Design Review**

HCHA and the Developer will enter into a Development Agreement which will set forth the parameters of the development process. In the absence of information to the contrary in the proposal, HCHA will assume that the Offeror agrees and will design and build to the standards of the HCCSD program and LIHTC Program. Offerors who believe these standards to be unachievable or inadvisable should so state in their proposals and suggest alternatives.

---

HCHA will review all design and construction documents. HCHA will review design documents at three phases of completion: 20%, 50%, and 90%.

### **5.8 Legal and Ownership Structure**

The specific ownership structure will be determined by the selected developer and HCHA. To the extent that the project includes any affordable housing units, the owner will be required to enter into an Operating Agreement with HCHA that will set forth the responsibilities of the parties, the methodology for providing funding and all applicable LIHTC/HUD/HCCSD use restrictions and regulations.

## **6.0 GENERAL REQUIREMENTS**

All proposals must conform to requirements outlined herein. The HCHA reserves the option to require oral presentation of proposals or to request additional information from selected candidates.

### **Withdrawal of Proposals**

Proposals may **not** be withdrawn for ninety (90) days from the submission deadline date.

### **Mistakes in Proposals**

If a mistake in a proposal is suspected or alleged, the proposal may be corrected or withdrawn during any negotiations that are held. If negotiations are not held, or if best and final offers have been received, the Offeror may be permitted to correct a mistake in its proposal and the intended correct offer may be considered based on the conditions that follow:

- The mistake and the intended correct offer are clearly evident on the face of the proposal.
- The Offeror submits written evidence that clearly and convincingly demonstrates both the existing offer and such correction would not be contrary to the fair and equal treatment of other Offerors.

Mistakes after award shall not be corrected unless the HCHA Counsel makes a written determination that it would be disadvantageous to the HCHA not to allow the mistake to be corrected. The approval or disapproval of requests of this nature shall be in writing by the HCHA's Counsel.

### **Incurred Costs in Preparing Proposals**

Offeror will be responsible for all costs incurred in preparing a response to this RFP. All material and documents submitted by prospective development teams will become the property of the HCHA and will not be returned. Any developer selected for further negotiations, as well as a developer ultimately selected to enter into a contractual agreement with the HCHA, will be responsible for all costs incurred by it during negotiations.

---

## **7.0 DELIVERABLES**

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

An unbound original and five (5) bound copies (a total of six) of the complete submission package must be received by the HCHA's Chief Development Officer, Horace Allison, AIA, by 4:00 P.M. CST on August 15, 2012. The original and all copies of the submission package must be submitted in a sealed envelope and addressed to Horace Allison, AIA, Chief Development Officer, Harris County Housing Authority, 8933 Interchange, Houston, Texas 77054. On the outside of the envelope should be the Offeror's name and address, phone number, the due date of August 15, 2012, and the RFP title "Request for Proposals for Developers of Multi-Family Housing Low-Income Housing Tax Credit Projects."

The submission package must be signed by an officer of the Offeror who is legally authorized to enter into a contractual relationship in the name of the Offeror. In the absence of a corporate seal, the submission package must be notarized by a Notary Public.

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.

## **8.0 DEVELOPMENT TEAM**

The development team must be capable of handling the development and ongoing oversight of a rental development project. The following will be viewed as favorable by the selection committee:

- Previous experience developing affordable housing of 300 units or more;
- Previous experience involving layered financing including, but not limited to, Low-Income Housing Tax Credits;
- Financial capacity to complete the project, including providing all necessary guaranties;
- Administrative capacity to complete the project;
- Successful experience in applying to the TDHCA for an allocation of the Tax Credit; and
- The management entity that is proposed must have previous experience with managing affordable housing of 300 units or more.

The developer partner can be headed by a non-profit community-based developer or a for-profit developer, or be a joint venture. The team should include (1) an experienced

---

developer of multi-family housing (or developer consultant providing technical assistance in building or strengthening capacity of the developer); (2) a licensed general contractor with demonstrated financial capability; (3) a registered architect with multifamily residential design experience, and (4) a management agent with experience in managing multi-family rental complexes. The developer may perform any of these functions, if qualified. HCHA reserves the right to accept or reject individual members of the development team

## **9.0 PROPOSAL REQUIREMENTS**

The development team, i.e., the Offeror, is required to submit the following information, although HCHA reserves the right to request additional information upon review of initial submissions:

### **9.1 Structure of the Team**

All entities that comprise the team are to be identified, indicating their specialization(s) and specific contribution to the team. Offerors are encouraged to include on the team specialists for all components of the program including design, construction, financing, and management services. The form of relationship between participants should be designed to meet the needs of the team and the program; however, the team leader should be clearly identified. Ultimately, the identified team leader will be held responsible for the performance of all members of the development team. If the team members are unrelated parties, the team leader should enter into individual agreements with each member to assure performance.

Offerors must submit an organization chart showing all of the individuals that will be assigned to this program. Also, resumes of the key individuals are to be included with a detailed description of the responsibilities that they will be required to perform. HCHA is interested in assessing the capacity and capability of teams and their ability to respond to the demands of this initiative. Additionally, HCHA will assess the capability of the project manager, the lead individuals in each discipline, and the design team.

### **9.2 Experience of Team Members**

Descriptions of relevant experience should be provided for each member of the development team. Additionally, any previous collaboration among some or all members of the team should be noted. Successful experience in the development of similar projects to the one proposed for this RFP will be favored. Likewise, experience in housing development efforts with resident and community participation will be favored.

---

### **9.3 References**

Offerors must submit at least 5 references for the team leader and 3 references for each of the other major team participants.

### **9.4 M/WBE Participation**

The Offeror must submit information showing the composition of the team, clearly indicating where, and to what extent, minority and female business enterprises are to be utilized. HCHA has established 30 percent M/WBE participation as a goal. In addition, all proposals shall include a completed minority business enterprise form attached as (Attachment “C”).

### **9.5 Financial Statement**

Current financial statements of the developer and the team leader (if other than the developer) of the proposing team must be submitted. These statements should demonstrate the financial capacity of the developer, or the entity that would most likely be responsible for executing all applicable guarantees. Financial statements may be submitted in a separate, sealed envelope (one copy only) marked “Financial Statements – Confidential.”

### **9.6 Project Design Concepts and Location**

In a narrative and diagrammatic presentation, Offerors should provide a detailed description of the proposed project(s) including tenant amenities and any other relevant information. HCHA is requesting that the team submit conceptual designs. A legal description and street address of the proposed project site must also be included.

It is recognized that the selected developer is responsible for the financial success of the development and the developer is expected to propose accordingly. HCHA is interested in facilitating the development of successful rental housing. Thus, design concepts are expected to respond to the need to produce an economically viable product that will be competitive in the Low-Income Housing Tax Credit Program. Offerors must submit an outline specification identifying key materials, building components, and mechanical systems and equipment. It should be noted that HCHA has the right to review the evolution of the project’s design throughout the development process. A preliminary construction estimate must also be provided.

### **9.7 Financing Plan**

Offerors must submit a Sources and Uses of Funds, and a general Development and Operating Proforma that presents the primary elements of the development and operating costs, as well as the necessary operating projections for the development. It is understood that these are preliminary estimates. For the estimate, the Offeror should assume that the development will be exempt from ad valorem taxes. As noted earlier, housing development and operation are subject

---

to Davis Bacon wages as applicable. The selected Offeror will be expected to refine the financing plan as the development plan, including design and construction estimates, are finalized.

The narrative of the financing plan should clearly identify the amount of HCHA resources that are needed for the project as well as the amount of Low-Income Housing Tax Credits and other public/private resources that will likely be available for a project of this nature. The plan should also identify any anticipated cash investment by the Offeror.

The financing plan should include an initial proforma and a reasonably detailed 15-year spreadsheet showing operating budgets in balance for the duration. The development proforma should show all sources and uses of development funds and reasonably detailed explanation for development costs. The 15-year spreadsheet should show rents or other payments for each distinct type of housing unit. It should also break operating expenses into typical, separate categories. Trending assumptions should be clearly stated and documented. A Year 1 Operating Budget must be included.

## **9.8 Proposed Ownership Structure**

HCHA and the selected Offeror will negotiate the specifics of the ownership structure after selection. HCHA or a HCHA-related entity will serve as the general partner of the development partnership in order to maintain the ad valorem tax-exemption that will apply due to HCHA's ownership of the fee title to the land. If the Offeror is comprised of more than one legal entity, the Offeror must identify the various legal entities to be involved in the ownership of the improvements and the nature of their involvement. With respect to the development entity and/or the management agent, a precise description of any joint venture arrangements, including respective equity and decision making interests shall be provided.

## **9.9 Proposed Fee Structure**

Offerors should submit a proposed fee structure expressed as a percentage of development costs or construction costs, as appropriate, including a proposed split of the developer fee with HCHA, based upon HCHA's role as set out in Section 5.3 above and in accordance with the terms outlined in the MOU (Attachment "A"). The proposed fees should include the amount and timing of payment of developer fee and overhead, contractor profit, overhead and general requirements, and property management fees.

## **9.10 Analysis of Success of Tax Credit Application**

Offerors are requested to provide an analysis of the likely success of receiving an allocation of the Low-Income Housing Tax Credit based on the 2013 Qualified Allocation Plan approved by the TDHCA Board, and the proposed development and partnership with HCHA.

---

## **9.11 Property Management Plan**

HCHA is deeply committed to excellent professional property management for the proposed project over the long term. The Offeror should propose an existing firm to carry out the property management of the new development that has an excellent reputation and experience in the management of multifamily rental housing. HCHA reserves the right to approve or disapprove the proposed management entity and to request additional managers.

Please describe the persons will manage the properties and supply a detailed resume of the firm which will be responsible for property management. Also submit a written management plan used currently by the proposed firm at a comparable property. Please note that LIHTC/CDBG/HOME housing units are subject to certain HUD and LIHTC regulations.

## **9.12 Development Schedule**

Offerors shall submit a preliminary Development Schedule that addresses the planning, predevelopment and development phase activities for the development and provides a time line for the development process, indicating key assumptions and milestones.

## **9.13 Community Participation**

Offeror should discuss how it would envision giving the community input as the development concept is finalized. Please provide a description of efforts that will be made to keep the community informed during the development process. In addition please provide a description of efforts that will obtain community and political support during the process and ongoing operation of the project.

## **9.14 Section 3 Participation**

Pursuant to Section 3 of the HUD Act of 1968, if additional job training, employment, and other economic opportunities are generated by this initiative, then to the greatest extent feasible, these opportunities must be directed to low-income and very low-income persons. In addition to employment and training opportunities, Section 3 also seeks to benefit businesses owned by low-income persons.

HCHA has a strong commitment to the Section 3 program policy. Offerors should discuss how the project will accommodate HUD “Section 3” program requirements for the employment of and the utilization of businesses owned and operated by low-income persons.

## **9.15 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. The insurance shall cover the use of all equipment, hoists and vehicles used on the site(s) not covered by offeror's automobile liability. 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.

All insurance shall be carried with companies that are financially responsible and admitted to do business in the State of Texas. Offeror shall not permit the insurance policies required to lapse during the period for which the Agreement is in effect. All certificates of insurance shall provide that no coverage may be cancelled or non-renewed by the insurance company until at least thirty (30) day's prior written notice has been given to HCHA.

#### **9.16 Required Certifications and Affidavits**

Offerors must complete and submit the following forms, all of which are included as attachments.

- Representations, Certifications and Other Statements of Offerors (Non-Construction Contracts) – Public and Indian Housing Program (Form HUD-5369-C) (Attachment “E”)
- Non-Collusive Affidavit (Attachment “B”)
- M/WBE Participation (Attachment “C”)
- General Contract Conditions, Non-Construction (Form HUD-5370-C) (Attachment “F”)

### **10.0 PROPOSAL EVALUATION CRITERIA**

Proposals will be evaluated by a HCHA selection committee. The selection committee will be advised by consultants and attorneys already retained by HCHA. The selection

---

committee will present its recommendations to the HCHA Board of Commissioners who will make the final selection.

Proposals will be evaluated using the six (6) Developer Evaluation Criteria outlined below. After the initial scoring of proposals, those deemed by the committee to be within the competitive range may, at HCHA's option, be asked for a telephone or personal interview to clarify issues and, if necessary, following the interview, to submit "best and final" offers.

After the interviews and the receipt of any best and final offers, each of those Offerors will be reevaluated and rescored. HCHA reserves the right to conduct negotiations with more than one of finalist Offerors. Selection of a proposal does not constitute HCHA's approval of a design. One or more Offerors with the highest overall scores, whose proposals are most advantageous to HCHA considering price, technical and other factors, as specified in this RFP, will be selected as development partner(s) of choice.

HCHA reserves the right to accept or reject individual members of each proposed development team or assemble a separate team from members of different teams.

HCHA reserves the right to accept or reject in part, or reject all proposals and to re-solicit new proposals. HCHA may also reject any proposals that are incomplete or non-responsive and any proposals that are submitted after the deadline. This RFP is being issued subject to HCHA Board of Commissioners approval, to the extent necessary.

In evaluating the submitted proposals, the HCHA will consider the following criteria:

<b>EVALUATION CRITERIA</b>	<b>POSSIBLE POINTS</b>
<p><b>1. Experience and Qualifications.</b>  The experience, qualifications, and financial capability of the development team as partially evidenced by the timely and successful completion of similar projects involving multi-family rental housing developments and Low Income Housing Tax Credits. Reference checks will provide affirmation of the Offeror’s competence with respect to the development and management of such projects.</p>	<b>30</b>
<p><b>2. Feasibility.</b>  The feasibility of the proposal as evidenced by a well considered, achievable financial structure and a reasonable series of development and operating cost assumptions with and emphasis on containment of per unit total development cost. Feasibility is also measured by the degree to which a project is ready to start construction.</p>	<b>20</b>
<p><b>3. Leveraging of HCHA Funds.</b>  Preference will be given to projects that minimize the amount of HCHA funds required on a per unit basis and maximize the leveraging of additional resources.</p>	<b>15</b>
<p><b>4. Development Concept and Plan.</b>  The degree to which the plans meet the HCCSD Standards and the criteria set forth in the TDHCA 2013 LIHTC Qualified Allocation Plan, enhancing the likelihood of receiving a Tax Credit allocation. Familiarity with neighborhood conditions and community participation processes is important.</p>	<b>15</b>
<p><b>5. Fee Structuring and Timing.</b>  The reasonableness of the percentage fees and timing of receipt of such fees for the various team members will be evaluated. The proposal provided for a split of the developer fee with HCHA will be considered.</p>	<b>15</b>
<p><b>6. Section 3 Participation.</b>  The Offeror’s experience in developing and implementing Section 3 plans.</p>	<b>5</b>
<b>TOTAL POSSIBLE POINTS</b>	<b>100</b>

---

## 11.0 CONFLICT OF INTEREST

The development team warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest. Conflict of interest is defined as a situation in which the nature of work under this contract and the Offeror's organizational, financial, contractual or other interests are such that:

- Award of the contract may result in an unfair competitive advantage; or
- The Offeror's objectivity in performing the contract work may be impaired. In the event the Offeror has an organizational conflict of interest as defined herein, the Offeror shall disclose such conflict of interest fully in the proposal submission.
- The Offeror 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 Chief Development Officer which shall include a description of the action which the Offeror has taken or intends to take to eliminate or neutralize the conflict. HCHA may, however, terminate the contract if it is in its best interest.
- In the event the Offeror was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Chief Development Officer, HCHA may terminate the contract for default.
- The provisions of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the Offeror. The Offeror shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.
- No member of or delegate to the U.S. Congress or Resident Commissioner shall be allowed to any share or part of this contract or to any benefit to arise. This provision shall be construed to extend to this contract if made with a corporation for its general benefit.
- No member, officer, or employee of HCHA, no member of the governing body of the locality in which the project is situated, no member of the governing body in which the HCHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year there after, have any interest, direct or indirect, in this contract or the proceeds thereof.
- HCHA reserves total discretion to determine the proper treatment of any conflict of interest disclosed under this provision.

---

## **12.0 CONTRACT/AWARDS**

A contract shall be awarded in accordance with the terms and conditions of this RFP to the one or more Offeror(s) whose proposal(s) are most advantageous to HCHA considering price, technical and other factors as specified in this RFP. HCHA reserves the right to negotiate and award any element of this RFP, to reject any or all proposals, or to waive any minor irregularities or technicalities in proposals received, as the best interest of HCHA may require.

The Contract for Developers of Multi-Family Housing Low-Income Housing Tax Credit Projects, as anticipated by this RFP document, will be subject to the approval of the HCHA's Board of Commissioners.

## **13.0 AVAILABILITY OF RECORDS**

The U. S. Department of Housing and Urban Development, the Inspector General of the United States, the HCHA, the HCCSD, 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.

## **14.0 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.

## **15.0 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 one or more of the following reasons:

- Neglect of duty.
- Disorderly conduct, use of abusive or offensive language, quarreling, intimidation by records or action 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.

## **16.0 MINORITY/WOMEN BUSINESS PARTICIPATION**

The firm(s) awarded the contract agrees to subcontract with minority business enterprises and/or women business enterprises, certified as such or recognized by the HCHA as such. The offeror shall subcontract a sufficient dollar amount with MBE/WBE to ensure the final contract dollars are expended on one or more MBE/WBEs. All adjustments to

---

increase the contract will also increase the total amount that the offeror must expend on MBE/WBEs.

#### **17.0 USING BEST EFFORTS TO FULFILL MBE/WBE REQUIREMENTS**

In the event HCHA has a reasonable belief that the offeror will not use its best efforts to meet the 30 percent (30%) MBE/WBE participation goal, HCHA reserves the right to pull work from the contract. Best efforts may be established by showing the offeror has contracted and solicited bids/quotes from subcontractors in identifying MBE/WBEs.

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

#### **18.0 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"**

**MOU Agreement/Due Diligence Checklist**

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
HARRIS COUNTY HOUSING AUTHORITY  
AND|  
[DEVELOPER NAME]  
[NAME OF PROJECT]**

This Memorandum of Understanding (the "MOU") is between Harris County Housing Authority ("HCHA"), a Texas housing authority, and [*Developer Name*] ("**Developer**"), and is dated effective as of \_\_\_\_\_.

Developer is a developer of affordable housing in the State of Texas. HCHA is a tax-exempt governmental entity whose mission is to provide safe, decent and sanitary housing for low-income persons. Developer and HCHA hereby agree to work cooperatively to develop affordable housing at the following location, in accordance with the terms of this MOU:

\_\_\_\_\_ Apartments, being a \_\_\_\_-unit [*family or seniors*] development to be located in \_\_\_\_\_, Harris County, Texas (the "Project").

Or

\_\_\_\_\_ Houses for rent to families to be located in \_\_\_\_\_, Harris County, Texas (the "Project").

In order to accomplish this purpose, the parties agree as follows:

**AGREEMENT**

**A. Ownership Structure.**

1. HCHA will form a limited partnership to be called \_\_\_\_\_ (the "**Partnership**") for the purpose of owning the Project. HCHA will form a single-purpose entity-subsiary to act as the sole general partner (the "**General Partner**").

2. Developer may designate an affiliate to serve as a special limited partner of the Partnership (the "**Special LP**"). Any rights of the Special LP must be agreed to by HCHA.

3. The duties of the General Partner and the Special LP shall be set forth in a partnership agreement (the "**Partnership Agreement**") to be entered into among the General Partner, the Special LP, and an equity investor as the limited partner. All operating deficits and compliance issues will be guaranteed by the Special LP, Developer and [*name individual guarantors*].

4. Title to the land for the Project shall be taken in the name of HCHA or a subsidiary, and HCHA shall then enter into a long-term ground lease (the "**Ground Lease**") with the Partnership as tenant; the Partnership will own the improvements that constitute the Project. Funding for the acquisition of the land will come from the financing of the Project, and shall be paid to HCHA in the form of an up-front Ground Lease payment [*or may come from HOME funds available to HCHA*]. Upon termination of the Ground Lease, ownership of the improvements constituting the Project shall revert to HCHA. The terms and provisions of the Ground Lease will be subject to the approval of Developer and the equity investor, which approval shall not be unreasonably withheld, delayed or conditioned.

5. HCHA or its qualified designee will receive a right of first refusal to acquire the Project. In addition, if this is a tax credit project, HCHA or its designee will have the right to acquire the Project at the end of the 15-year tax credit compliance period for the statutory minimum price.

B. **Due Diligence**

As a condition to HCHA's participation in the Project, HCHA requires Developer to provide due diligence information on the Project and its proposed financing and operations pursuant to the due diligence checklist (the "**Checklist**") attached hereto as Exhibit A. Developer shall deliver the due diligence items on the Checklist at the times stated on the Checklist. Developer also agrees to provide additional information when and as requested by HCHA in order for HCHA to apply for HOME funds, if applicable, and to consider its participation in the Project. Failure of Developer to deliver to HCHA due diligence items acceptable to HCHA shall be grounds for HCHA to terminate this MOU in its discretion.

C. **Financing.**

1. [*For Bond Transactions*] On behalf of the Partnership, Developer [*will apply/has applied*] for a reservation of up to \$ \_\_\_\_\_ in private activity bonds (the "**Bonds**") to be issued by \_\_\_\_\_ ("**Issuer**"). If the Partnership receives a reservation of Bonds, Developer shall be responsible for selecting the manner in which the Bonds will be sold to facilitate debt financing for the Project and negotiating the Bond financing terms on behalf of the Partnership, provided that HCHA shall have the right to review and approve the financing arrangements and the terms and conditions of any Bond or loan documents.

[*For Other Transactions*] Developer will be responsible for arranging the necessary construction and permanent financing for the Project (the "**Loan**"). Developer proposes to use [*name proposed lenders*] for the Loan. Developer shall be responsible for negotiating the Loan terms on behalf of the Partnership, provided that HCHA shall have the right to review and approve the financing arrangements and the terms and conditions of any Loan documents.

2. On behalf of the Partnership, Developer [*will apply/has applied*] for an

MEMORANDUM OF UNDERSTANDING – PAGE 2

Houston\_1\893749\1  
41143-1 9/3/2008

## FORM

allocation of up to \$\_\_\_\_\_ in low-income housing tax credits ("**Tax Credits**") from the Texas Department of Housing and Community Affairs ("**TDHCA**"). If the Partnership receives an allocation of Tax Credits, the Developer shall be responsible for selecting the manner in which the Tax Credits will be sold to facilitate equity financing ("**Equity**") for the Project, and negotiating the equity financing terms on behalf of the Partnership, provided that the Developer receives bids from at least three equity providers and that HCHA shall have the right to review and approve the identity of the Equity provider (the "**Investor LP**"), the financing arrangements and the terms and conditions and the final documentation, as applicable, of any Equity financing documents prior to finalization of the equity commitment. The Equity financing documents are expected to include the Partnership Agreement.

3. [If applicable] Developer will timely complete the HOME application package (provided by HCHA) and deliver it to HCHA for review and processing.

4. Developer will be responsible for arranging the necessary construction and permanent financing for the Project ("**Loans**"), provided that the Developer receives bids from at least three lenders and that HCHA shall have the right to review and approve the identity of the lender, the commitment, financing arrangements and the terms and conditions of any loan documents prior to finalization of the loan commitment(s) and the final documentation, as applicable.

5. Developer shall pay all costs and fees associated with applying for the [*Bonds/Loan*] and Tax Credits, which costs, along with all other pre-development costs incurred by Developer (to the extent included within the approved budget), shall be reimbursed at closing from the proceeds of the [*Bonds/Loan*] and Equity. In the event this MOU is terminated or the transaction fails to close as contemplated herein, Developer shall be solely responsible for all costs described above and HCHA and its affiliates shall have no responsibility for payment or reimbursement of such costs.

6. Developer and [*name additional parties*] shall provide any guarantees of construction completion financing, operating expenses, Tax Credit delivery, and the like that may be required in conjunction with the [*Bond/Loan*] financing or the equity financing. Developer will also be responsible for excess development costs to get to permanent loan conversion in excess of the sources available to the Partnership, including equity and HOME funds, if any. HCHA and its affiliates will have no personal liability on any financing. The lenders will only require key principal guaranties for bad faith carve outs from the General Partner for its acts.

7. [*Insert information as to HOME funds for the Project*]

### D. Design and Construction.

1. The Project consists of \_\_\_\_\_ [*units, houses*]. [*Describe size, unit-house mix, proposed income mix*]. All buildings will have at least 50% brick or stone exterior and will conform to the minimum building standards as published by Harris County Housing Authority. Any deviations must be documented and pre-approved by the

appropriate officials of HCHA.

2. Developer shall provide comprehensive development services to the Partnership pursuant to a Development Agreement to be entered into by the Partnership and Developer.

3. Developer shall prepare and promptly provide HCHA a detailed development budget and financial projections for the term of the Project, and provide HCHA with updates of such budget and projections generated from time to time.

4. Developer shall be responsible for obtaining the services of design professionals for the design of the site plan and the proposed improvements for the Project. The design of the Project shall be subject to HCHA's review, comment and approval. HCHA shall additionally have the right to review and comment upon the final plans and specifications for the Project, and such plans must be approved by HCHA prior to the Partnership entering into a construction contract. HCHA will require the preparation of a Plan and Cost Review by an independent engineering firm and independent monthly inspections which can be coordinated with similar requirement by the lender(s) and/or Equity provider.

5. Developer shall be responsible for negotiating one or more construction contracts for the construction of the site improvements for the Project. HCHA shall have the right to review and approve the identity of the general contractor (who may be an affiliate of Developer) and any construction contract relating to the Project prior to the execution thereof.

6. Developer shall be responsible for obtaining all governmental approvals and permits needed in order to construct and operate the Project.

7. Developer and its affiliates shall guarantee to the Partnership, the Investor LP and any lender, delivery of the Project on time and within the approved budget. HCHA or its affiliate shall have the right to review and approve any change orders or any changes in the scope of work or plans and specifications (costing over \$10,000 for a single change or \$25,000 in the aggregate) during construction.

8. The Project shall be constructed so as to comply with ADA, Section 504 HOME and Harris County requirements, as applicable under federal and state law. [i.e. If the Project is a seniors project—all showers/bathtubs will have grab bars and all door openings will be at least 2 fee 8 inches wide.]

9. Any unused construction contingency will be paid to the Partnership.

10. [add HOME requirements if applicable]

E. **Management and Operation.**

1. *[If Developer Wants To Do Property Management]* The parties agree that Developer or its affiliate shall be initial property manager for the Project pursuant to a Property Management Agreement to be entered into between the Partnership and the property manager. The property manager shall be entitled to receive compensation in its role as property manager in an amount that would be customary for similarly situated properties, provided such amount shall not exceed 5% of the Project's gross revenue. The property manager shall be appointed for an initial term of 2 years following construction completion with automatic one-year renewal periods provided that there is no event of default by the property manager, and provided further that the extension options shall, at HCHA's option, be terminable if HCHA has obtained a full release for Developer on all guarantees. In the event Developer (or its affiliate) is replaced as the property manager, HCHA will get a release for Developer for ongoing Tax Credit compliance guarantees on a going forward basis, but such release shall not release Developer for noncompliance liability arising during its management.

*[For Third Party Property Management]* Developer shall be responsible for recommending a third party property management firm to provide management services to the Project and negotiating the terms of a contract with such firm, on behalf of the Partnership. HCHA shall have the right to review and approve the identity of the property management firm.

2. The Partnership and the property management firm shall use a Property Management Agreement approved by HCHA.

3. The property manager shall be responsible for all compliance issues and operating deficits guarantees to the Investor LP and the Partnership; these shall be guaranteed by Developer, Special LP and their affiliates.

4. The Project shall be managed in compliance with all applicable HOME and Harris County requirements. HCHA's utility allowance schedule will be used for calculating the net rent on all rent restricted units whether they are rent restricted by the HOME program or the Low Income Housing Tax Credit program .

F. **Social Services.**

So long as Developer's affiliate is the property manager for the Project, Developer shall be responsible for coordinating and monitoring social services for the residents of the Project during the Tax Credit compliance period within the budget available in the operating budget for the Project. The social services plan must be approved in advance by HCHA. *[If this is a seniors project—The Project will provide free transportation services for residents which will consist of a minimum of scheduled minivan (or equivalent) transportation 5 or 6 days a week to local shopping (grocery store, drugstore, and similar basic need stores).*

G. **Community Support.**

Developer shall be responsible for interfacing with the community and attempting to obtain community support for the Project. Developer shall keep HCHA informed of its activities.

H. **Fees and Expenses.**

1. Developer shall be entitled to receive a development fee (the "**Development Fee**") for its services in developing the Project. The amount of the Development Fee shall be equal to 15% of the Project's total development costs, subject to applicable regulations. Developer shall pay to HCHA a co-developer fee for its services out of the Development Fee equal to 50% of any HOME funds used in the Project. HCHA's fee shall be paid \$\_\_\_\_\_ at closing of the [*bonds/construction loan*] and the balance pro-rata with payment of deferred Development Fee to the Developer with 50% going to Developer and 50% going to HCHA until all of HCHA's fee is paid and thereafter as the balance of the deferred Development Fee, if any, is paid to Developer for every \$0.80 of deferred Development Fee that Developer receives, HCHA will receive \$0.20 as Partnership distribution or fee. Any budgetary overruns other than those resulting from HCHA-required change orders, after HCHA has approved the final permitted plans and specifications, shall be deducted from Developer's % of the entire Development Fee if they cannot be otherwise accommodated within the approved development budget.

2. The General Partner shall be entitled to receive one or more fees for its services in such capacity. Such fee shall be payable from the Partnership's net cash flow after payment of the Development Fee in full. Such fee shall equal the Investor LP's administration fee, if any.

3. After payment of the Development Fee, the General Partner's fee under 2 above, and any other priority net cash flow payments established in the Partnership Agreement, and payment to the Investor LP of 10% of remaining net cash flow, the General Partner and the Special LP shall be entitled to an incentive management fee equal to up to 25% of gross revenue; but in no event shall the General Partner's 80% of the incentive management fee be less than 25% of the ad valorem taxes saved had HCHA not been the owner of the land on which the Project is built or a minimum annual fee of \$\_\_\_\_\_, and if the incentive management fee is not sufficient to pay such amount, then such amount shall be paid as a guaranteed fee by the Developer, Special LP or their affiliates. Such incentive management fee shall be split 80% to the General Partner and 20% to the Special LP. In addition, the proceeds of a capital transaction, after payment of all priorities established in the Partnership Agreement, shall be distributed to 80% to the General Partner, 10% to the Special LP and 10% to the Investor LP.

4. Neither party shall enter into any contractual relationship or agreement relating to the Project that would cause either financial or legal liability to the other, without the other party's prior written consent.

MEMORANDUM OF UNDERSTANDING – PAGE 6

Houston\_1\893749\1  
41143-1 9/3/2008

5. All expenses incurred by HCHA in connection with this MOU, including but not limited to costs for staff time to review the proposed Project, third-party reports, HCHA's general counsel, Partnership Counsel (as hereinafter defined), and other expenses incurred by HCHA in connection with the proposed Project (the "**Costs**"), shall be included in the Project's development budget and reimbursed by the Partnership to HCHA concurrently with the initial closing and funding of financing to the Partnership (the "**Closing**"), provided that if the transaction closes, HCHA will pay for the Costs of its general counsel. If the transaction does not close because Developer elects not to pursue the Project for whatever reason, Developer will reimburse HCHA for the Costs of HCHA's general counsel up to the time that Developer delivers written notice to HCHA that Developer elects not to pursue the Project.

6. When it signs this MOU, Developer shall simultaneously deliver a check to HCHA in the amount of \$10,000, payable to HCHA, as a nonrefundable deposit against the Costs described in paragraph 5.

I. **Long Term Ownership.**

At the end of the 15-year Tax Credit compliance period, the General Partner, HCHA, or HCHA's designated affiliate shall have a right of first refusal to acquire the Project for a price equal to the outstanding indebtedness secured by the Project plus any exit taxes. In addition, at the end of the 15-year Tax Credit compliance period, the General Partner shall have an option to acquire the interests of the Investor LP and the Special LP. The parties recognize that HCHA desires to have long-term ownership of the Project and shall cooperate in establishing opportunities for such ownership by HCHA.

J. **Miscellaneous.**

1. This MOU reflects the entire understanding between the parties and may only be amended in writing, signed by both parties. This MOU is a contract and not merely an "agreement to agree".

2. Each party hereto is prohibited from assigning any of its interests, benefits or responsibilities hereunder to any third party or related third party, without the prior written consent of the other party, such consent not to be unreasonably withheld, conditioned, or delayed.

3. The parties agree to execute such documents and do other such reasonable things as may be necessary or appropriate to facilitate the development of the Project and the consummation of their agreement herein.

4. This MOU may be executed in several counterparts, each of which shall be deemed to be an original and all of which together shall constitute one contract binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

5. THIS MOU SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF TEXAS, EXCLUSIVE OF CONFLICT OF LAWS PRINCIPLES.

6. In case any one or more of the provisions contained in this MOU for any reason are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision hereof, and this MOU will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

7. The parties hereto submit exclusively to the jurisdiction of the state and federal courts of Harris County, Texas, and venue for any cause of action arising hereunder shall lie exclusively in the state and federal courts of Harris County, Texas.

8. Should any party employ an attorney or attorneys to enforce any of the provisions hereof, to protect its interest in any manner arising under this MOU, or to recover damages for the breach of this MOU, the non-prevailing party in any action pursued in courts of competent jurisdiction (the finality of which is not legally contested) agrees to pay to the prevailing party all reasonable costs, damages and expenses, including specifically, but without implied limitation, attorneys' fees, expended or incurred by the prevailing party in connection therewith.

9. The subject headings contained in this MOU are for reference purposes only and do not affect in any way the meaning or interpretation hereof.

10. This MOU shall continue until terminated upon the occurrence of one of the following conditions:

(i) HCHA and Developer sign a mutual consent to terminate this Agreement;

(ii) [If a 9% credit deal] The Project has not received a commitment for Tax Credits by August 15, 200\_\_, if this is a 9% tax credits Project, unless the Project is on the waiting list by TDHCA, and then by December 31, 20\_\_;

(iii) The Project has not received a commitment for [Bond/Loan] financing by \_\_\_\_\_;

(iv) The debt and Equity financing for the Project are not closed by \_\_\_\_\_;

(v) The terms of the debt and Equity financing for the Project are unacceptable to HCHA, in its sole discretion, and HCHA provides Developer notice of such fact and a 30-day opportunity to provide financing terms that are acceptable to HCHA and Developer, but Developer does not do so;

---

FORM

- (vi) [If a 9% credit deal] The land for the Project is not purchased by November 1, 20\_\_, unless the Project is on the waiting list by the TDHCA, and then by February 28, 20\_\_;
- (vii) HCHA's Board of Directors takes action to disapprove the Project;
- (viii) Developer fails to deliver Checklist items as required herein;
- (ix) Either party breaches its obligations under this MOU, the non-breaching party provides the breaching party notice of such fact and a 15-day opportunity to cure, and the breaching party fails to do so; or
- (x) Either party files for bankruptcy protection, makes an assignment for the benefit of creditors, has a receiver appointed as to its assets, or generally becomes insolvent.

11. Upon termination of this MOU for any of the reasons cited above, neither party shall have any ongoing obligation to the other with respect to this MOU and the Project, except for the obligation of Developer to reimburse HCHA for Costs as provided herein.

12. In addition, the provisions of this MOU with respect to the Project will be terminated when the General Partner is admitted to the Partnership and HCHA and Developer and their affiliates, as applicable, enter into definitive agreements with respect to the governance of the Partnership and the development, construction, financing, and operation of the Project as contemplated herein.

13. The parties acknowledge that HCHA and the General Partner will be represented by Winstead P.C. ("**HCHA's general counsel**") and the Partnership will be represented in this transaction by \_\_\_\_\_ ("**Partnership Counsel**"). All costs of HCHA's general counsel and the Partnership Counsel will be considered Costs hereunder and paid as provided herein. Developer, the Special LP, and their affiliates will be represented by separate counsel and will not be entitled to rely on Partnership Counsel for representation in this matter.

[remainder of page intentionally left blank, signature page follows]

---

FORM

EXECUTED to be effective as of the date set out on the first page.

HARRIS COUNTY HOUSING  
AUTHORITY

By: \_\_\_\_\_  
Guy Rankin, IV, Executive Director

[NAME OF DEVELOPER]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT A

CHECKLIST OF DUE DILIGENCE  
FOR TAX CREDIT TRANSACTIONS

[Date]

NOTE: These items may be duplicates of those required by the investor and/or lender.

LAND ACQUISITION AND THIRD PARTY REPORTS			
Received	Item	Deadline	Notes
<input type="checkbox"/>	Project Description, including number of units, unit sizes, and amenities	MOU	
<input type="checkbox"/>	Site Location information, with map	MOU	
<input type="checkbox"/>	Site Plan, Plans and Specs	MOU	
<input type="checkbox"/>	Market Study – Some formal information regarding market need is required at time of MOU	MOU/APP	
<input type="checkbox"/>	Letter of Consistency from HCCED	MOU	
<input type="checkbox"/>	Appraisal	APP	
<input type="checkbox"/>	Phase I Environmental and additional reports if Phase I is qualified	MOU	
<input type="checkbox"/>	Soils Report	Closing	
<input type="checkbox"/>	Evidence of site control	MOU	
<input type="checkbox"/>	Evidence of zoning, if applicable	MOU	
<input type="checkbox"/>	Evidence of will serve letters for all utilities	MOU	
<input type="checkbox"/>	Title commitment with all exceptions	Closing	
<input type="checkbox"/>	Survey	Closing	
<input type="checkbox"/>	Earnest Money Contract	Closing	
<input type="checkbox"/>	Copy of Earnest Money Check	Closing	

DEVELOPMENT AND DEVELOPMENT TEAM			
Received	Item	Deadline	Notes
<input type="checkbox"/>	Detailed Development Budget,	MOU/APP	

MEMORANDUM OF UNDERSTANDING -- PAGE 11  
Houston\_1\893749\1  
41143-1 9/3/2008

	including input assumptions, projected source and use of funds, projected cash flow, using the assumption that the development will bear full property tax valuation, using format of the TDHCA		
<input type="checkbox"/>	Developer Financial statements including a list of contingent liabilities and commitments as compiled by a CPA firm	MOU	
<input type="checkbox"/>	Developer List of tax credit developments that developer has developed along with key performance data for each development	MOU	
<input type="checkbox"/>	Developer Reference from Compliance Division of the TDHCA	MOU	
<input type="checkbox"/>	Developer Evidence of insurance	Closing	
<input type="checkbox"/>	Developer Signed Memorandum of Understanding with HCHA	MOU	
<input type="checkbox"/>	Evidence that plans and specs will meet and/or exceed minimum bid specs required by HCHA	Closing	
<input type="checkbox"/>	General Contractor Resume with evidence of experience	Closing	
<input type="checkbox"/>	Developer Financial statements including a list of contingent liabilities and commitments as compiled by a CPA firm	Closing	
<input type="checkbox"/>	General Contractor References	Closing	
<input type="checkbox"/>	General Contractor Evidence of insurance	Closing	
<input type="checkbox"/>	Architect Resume and list of similar experience	Closing	
<input type="checkbox"/>	Architect References	Closing	

FORM

<input type="checkbox"/>	Architect Evidence of insurance	Closing	
<input type="checkbox"/>	Property Manager Resume	Closing	
<input type="checkbox"/>	Property Manager Financial statements including a list of contingent liabilities and commitments as compiled by a CPA firm	Closing	
<input type="checkbox"/>	Property Manager List of tax credit developments that developer has developed along with key performance data for each development	Closing	
<input type="checkbox"/>	Property Manager Reference from Compliance division of TDHCA	Closing	
<input type="checkbox"/>	Property Manager Evidence of insurance	Closing	
FINANCING			
Received	Item	Deadline	Notes
<input type="checkbox"/>	Equity Tax Credit pre-application	As submitted	
<input type="checkbox"/>	Equity Tax credit application	As submitted	
<input type="checkbox"/>	Equity TDHCA correspondence	As available	
<input type="checkbox"/>	Equity Letter of interest – investor (non-binding)	App	
<input type="checkbox"/>	Equity Letter of interest – debt (non-binding)	App	
<input type="checkbox"/>	Equity Limited Partnership Agreement with all Exhibits	Closing	
<input type="checkbox"/>	Equity Other Closing Documents	Closing	
<input type="checkbox"/>	Equity LURA	Post Closing	
<input type="checkbox"/>	Equity Final Syndication Commitment, including evidence that bids have been received from at least three competing firms	As available	

MEMORANDUM OF UNDERSTANDING – PAGE 13  
Houston\_1\893749\1  
41143-1 9/3/2008

<input type="checkbox"/>	Debt Application for debt financing	As submitted	
<input type="checkbox"/>	Debt Financing commitment, including evidence that bids have been received from at least three competing firms	As available	
<input type="checkbox"/>	Debt Loan documents including all Exhibits	As available	
<input type="checkbox"/>	HOME Application for HOME financing	As available	
<input type="checkbox"/>	HOME Financing Commitment	As available	
<input type="checkbox"/>	HOME Loan documents including all Exhibits	As available	
<input type="checkbox"/>	HOME Grant and Regulatory Agreements with copies of HCCED approvals	As available	
<input type="checkbox"/>	HOME Ground Lease Agreements	As available	

CONSTRUCTION AND OPERATIONS			
Received	Item	Deadline	Notes
<input type="checkbox"/>	Social Services Description of services to be provided	Closing	
<input type="checkbox"/>	Social Services Resume and references of service provider	Closing	
<input type="checkbox"/>	Social Services Final Contract	Closing	
<input type="checkbox"/>	Construction Initial Plan Cost Review	Pre-Closing	
<input type="checkbox"/>	Construction Copy of monthly loan draws and periodic equity draws	Post closing	
<input type="checkbox"/>	Construction Monthly inspection reports	Post closing	
<input type="checkbox"/>	Construction Evidence of Completion	Post closing	
<input type="checkbox"/>	Initial Lease-up Weekly Lease-up Report through	Post closing	

MEMORANDUM OF UNDERSTANDING – PAGE 14

Houston\_1\893749\1  
41143-1 9/3/2008

FORM

	100% initial occupancy		
<input type="checkbox"/>	Initial Lease-up Weekly, Monthly and Quarterly HOME and DBRA reports	Post closing	
<input type="checkbox"/>	Initial Lease-up Monthly Rent Roll	Post closing	
<input type="checkbox"/>	Construction and Lease-up Copies of financial statements that are required by Limited Partner and/or Lender	Post closing	
<input type="checkbox"/>	Description of points requested under TDHCA program and evidence that items have been included in development and /or operational budgets and proformas, where applicable	Post closing	

ORGANIZATIONAL			
Received	Item	Deadline	Notes
<input type="checkbox"/>	Organization, formation, governance and authority documents for all partners	Closing	
<input type="checkbox"/>	Organizational chart for Special LP	MOU/Closing	
<input type="checkbox"/>	Organizational chart and contact information list for Property Management Company	As available	
<input type="checkbox"/>	Organizational chart and contact information list for Construction Company	As available	
<input type="checkbox"/>	Organizational chart and contact information list for Development Company	As available	
<input type="checkbox"/>	Resumes for all Development Team Leaders	As available	
<input type="checkbox"/>	Organizational chart and contact information list for site staff	As available	

---

**ATTACHMENT "B"**

**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 \_\_\_\_\_, 2002

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

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

---

**ATTACHMENT “C”**

**M/WBE PARTICIPATION**

**M/WBE PARTICIPATION:** The Contractor agrees to utilize its good faith and best efforts to subcontract with minority business enterprises and women business enterprises (herein called M/WBE) certified as such or recognized by HCHA as a certified M/WBE. Contractor shall attempt to subcontract a sufficient dollar amount with M/WBE to meet the HCHA goal of 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 Contractor must expend on M/WBEs.

**USING BEST EFFORTS TO FULFILL M/WBE REQUIREMENTS:** In the event HCHA has a reasonable belief that Contractor will not use his/her 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 a showing that Contractor has contacted and solicited bids/quotes from subcontractors and worked with the HCHA to seek assistance in identifying MBE/WBEs.

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

**NOTIFICATION OF M/WBE PARTICIPATION:** Contractor 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 participation. Contractor agrees to submit proof of payment made to each M/WBE subcontractor by submitting copies of checks made payable to the respective M/WBE subcontractor signed by the Contractor.

---

**CONTRACTOR**

---

**DATE**

**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>HEQ. SALES/RENTAL MANAGEMENT</b>				
<b>OFFICE/CLERICAL</b>				
<b>SERVICE WORKERS</b>				
<b>TRACE</b>				
<b>JOURNEYMAN</b>				
<b>HELPERS</b>				
<b>APPRENTICES</b>				
<b>TRAINEES</b>				
<b>CONTRACTS:</b>				
<b>OTHERS</b>				

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

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

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

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

---

**ATTACHMENT “D”**

**INSTRUCTIONS TO OFFERORS FOR NON-CONSTRUCTION  
FORM HUD -5369-B**

## Instructions to Offerors Non-Construction

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

I O I I n  
-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,
- (3) 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 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 offers 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:1

---

**ATTACHMENT "E"**

**CERTIFICATION AND REPRESENTATIONS OF OFFERORS 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/offers 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/offers represents and certifies as part of its bid/offer that, except for full-time bona fide employees working solely for the bidder/offers, the bidder/offers:

- (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/offers shall make an immediate and full written disclosure to the PHA Contracting Officer.

(c) Any misrepresentation by the bidder/offers 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/offers 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/offers 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/offers 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/offers, directly or indirectly, to any other bidder/offers 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/offers 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/offers' 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/offers' organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offers' 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:

---

**ATTACHMENT "F"**

**GENERAL CONTRACT CONDITIONS, NON-CONSTRUCTION  
FORM HUD 5370-C**

# General Conditions for Non-Construction Contracts

## Section I – (With or without Maintenance Work)

## U.S. Department of Housing and Urban Development

Office of Public and Indian Housing  
Office of Labor Relations  
OMB Approval No. 2577-0157 (exp. 01/31/2014)

Public Reporting Burden for this collection of information is estimated to average 0.08 hours 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. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

**Applicability. This form HUD-5370-C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:**

- 1) **Non-construction contracts** (*without* maintenance) **greater than \$100,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 968.105) **greater than \$2,000 but not more than \$100,000 - use Section II;** and
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$100,000 – use Sections I and II.**

- (d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

### 3. Termination for Convenience and Default

- (a) The HA may terminate this contract in whole, or from time to time in part, for the HA's convenience or the failure of the Contractor to fulfill the contract obligations (default). The HA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to the HA all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.
- (b) If the termination is for the convenience of the HA, the HA shall be liable only for payment for services rendered before the effective date of the termination.
- (c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (default), the HA may (i) require the Contractor to deliver to it, in the manner and to the extent directed by the HA, any work as described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause, paragraph 2, above; (ii) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the HA; (iii) withhold any payments to the Contractor, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the HA by the Contractor.
- (d) If, after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the HA, and the Contractor shall be entitled to payment as described in paragraph (b) above.
- (e) Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

## ~~Section I - Clauses for All Non-Construction Contracts greater than \$100,000~~

### 1. Definitions

The following definitions are applicable to this contract:

- (a) 'Authority or Housing Authority (HA)' means the Housing Authority.
- (b) 'Contract' means the contract entered into between the Authority and the Contractor. It includes the contract form, the Certifications and Representations, these contract clauses, and the scope of work. It includes all formal changes to any of those documents by addendum, Change Order, or other modification.
- (c) 'Contractor' means the person or other entity entering into the contract with the Authority to perform all of the work required under the contract.
- (d) 'Day' means calendar days, unless otherwise stated.
- (e) 'HUD' means the Secretary of Housing and Urban development, his delegates, successors, and assigns, and the officers and employees of the United States Department of Housing and Urban Development acting for and on behalf of the Secretary.

### 2. Changes

- (a) The HA may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.
- (b) If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the HA shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if the HA decides that the facts justify it, the HA may receive and act upon a

proposal submitted before final payment of the contract.

### 4. Examination and Retention of Contractor's Records

- (a) The HA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
- (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:
  - (i) appeals under the clause titled Disputes;
  - (ii) litigation or settlement of claims arising from the performance of this contract; or,
  - (iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

A breach of these Contract clauses may be grounds for termination of the Contract and for debarment or denial of participation in HUD programs as a Contractor and a subcontractor as provided in 24 CFR Part 24.

## 5. Rights in Data (Ownership and Proprietary Interest)

The HA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials and documents discovered or produced by Contractor pursuant to the terms of this Contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of this Contract.

## 6. Energy Efficiency

The contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under this contract is performed.

## 7. Disputes

- (a) All disputes arising under or relating to this contract, except for disputes arising under clauses contained in Section III, Labor Standards Provisions, including any claims for damages for the alleged breach there of which are not disposed of by agreement, shall be resolved under this clause.
- (b) All claims by the Contractor shall be made in writing and submitted to the HA. A claim by the HA against the Contractor shall be subject to a written decision by the HA.
- (c) The HA shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HA's decision, shall notify the HA in writing that it takes exception to such decision, the decision shall be final and conclusive.
- (d) Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against the HA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HA that it submit a final voucher and release, whichever is earlier, then the HA's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.
- (e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the HA.

## 8. Contract Termination; Debarment

## 9. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the HA under the contract may be assigned to a bank, trust company, or other financial institution. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership approved by the HA.

## 10. Certificate and Release

Prior to final payment under this contract, or prior to settlement upon termination of this contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the HA a certificate and release, in a form acceptable to the HA, of all claims against the HA by the Contractor under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Contractor in stated amounts set forth therein.

## 11. Organizational Conflicts of Interest

- (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 this contract and a contractor's organizational, financial, contractual or other interests are such that:
  - (i) Award of the contract may result in an unfair competitive advantage; or
  - (ii) The Contractor's objectivity in performing the contract work may be impaired.
- (b) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract or any task/delivery order under the contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The HA may, however, terminate the contract or task/delivery order for the convenience of the HA if it would be in the best interest of the 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 Contracting Officer, the HA may terminate the contract for default.
- (d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

## 12. Inspection and Acceptance

- (a) The HA has the right to review, require correction, if necessary, and accept the work products produced by the Contractor. Such review(s) shall be carried out within 30 days so as to not impede the work of the Contractor. Any

product of work shall be deemed accepted as submitted if the HA does not issue written comments and/or required corrections within 30 days from the date of receipt of such product from the Contractor.

- (b) The Contractor shall make any required corrections promptly at no additional charge and return a revised copy of the product to the HA within 7 days of notification or a later date if extended by the HA.
- (c) Failure by the Contractor to proceed with reasonable promptness to make necessary corrections shall be a default. If the Contractor's submission of corrected work remains unacceptable, the HA may terminate this contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

### 13. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit to arise there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

### 14. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the HA, no member of the governing body of the locality in which the project is situated, no member of the governing body in which the HA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

### 15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal Action" means any of the following Federal actions:

- (i) The awarding of any Federal contract;
- (ii) The making of any Federal grant;
- (iii) The making of any Federal loan;
- (iv) The entering into of any cooperative agreement; and,
- (v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

- (i) An individual who is appointed to a position in the Government under title 5, U.S.C., including a position under a temporary appointment;
- (ii) A member of the uniformed services as defined in section 202, title 18, U.S.C.;
- (iii) A special Government employee as defined in section 202, title 18, U.S.C.; and,
- (iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, appendix 2.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Recipient" includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, or cooperative agreement. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibition.

- (i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph (i) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, if the payment is for agency and legislative activities not directly related to a covered Federal action.

(b) For purposes of paragraph (b)(i)(1)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(c) The following agency and legislative liaison activities are permitted at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by subdivision (b)(ii)(1)(a) of this clause are permitted under this clause.

(2) Professional and technical services.

(a) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply in the case of-

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a

person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(b) For purposes of subdivision (b)(ii)(2)(a) of clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by subdivisions (b)(ii)(2)(a)(i) and (ii) of this section are permitted under this clause.

(iii) Selling activities by independent sales representatives.

(c) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:

(i) Discussing with an agency (including individual demonstration) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and

(ii) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) Agreement. In accepting any contract, grant, cooperative agreement, or loan resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

(e) Penalties. Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(f) Cost Allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation (FAR), or OMB Circulars dealing with cost allowability for recipients of assistance agreements. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of FAR Part 31 or the relevant OMB Circulars.

---

## 16. Equal Employment Opportunity

During the performance of this contract, the Contractor agrees as follows:

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to (1) employment; (2) upgrading; (3) demotion; (4) transfer; (5) recruitment or recruitment advertising; (6) layoff or termination; (7) rates of pay or other forms of compensation; and (8) selection for training, including apprenticeship.
- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the

Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

## 17. Dissemination or Disclosure of Information

No information or material shall be disseminated or disclosed to the general public, the news media, or any person or organization without prior express written approval by the HA.

## 18. Contractor's Status

It is understood that the Contractor is an independent contractor and is not to be considered an employee of the HA, or assume any right, privilege or duties of an employee, and shall save harmless the HA and its employees from claims suits, actions and costs of every description resulting from the Contractor's activities on behalf of the HA in connection with this Agreement.

## 19. Other Contractors

HA may undertake or award other contracts for additional work at or near the site(s) of the work under this contract. The contractor shall fully cooperate with the other contractors and with HA and HUD employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or HA employee.

## 20. Liens

The Contractor is prohibited from placing a lien on HA's property. This prohibition shall apply to all subcontractors.

## 21. Training and Employment Opportunities for Residents in the Project Area (Section 3, HUD Act of 1968; 24 CFR 135)

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of

---

apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

## **22. Procurement of Recovered Materials**

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

---

**ATTACHMENT "G"**

**STANDARDS FOR CDBG/HOME LOANS**

**HCCSD Affordable Housing Standards- Revised May 2011**

[http://www.hctx.net/CmpDocuments/103/Housing%20Policies/Housing\\_Standards\\_Table\\_of\\_Contents.pdf](http://www.hctx.net/CmpDocuments/103/Housing%20Policies/Housing_Standards_Table_of_Contents.pdf)

**HCCSD Minimum Standards for Residential New Construction- Revised June 2011**

[http://www.hctx.net/CmpDocuments/103/Housing%20Policies/Housing\\_Standards\\_Tab\\_IV\\_new.pdf](http://www.hctx.net/CmpDocuments/103/Housing%20Policies/Housing_Standards_Tab_IV_new.pdf)

**HCCSD Affordable Multi-unit Concentration Policy**

[http://www.hctx.net/CmpDocuments/103/Housing%20Policies/Appendix\\_Multi\\_unit\\_concentration\\_Policy\\_031011.pdf](http://www.hctx.net/CmpDocuments/103/Housing%20Policies/Appendix_Multi_unit_concentration_Policy_031011.pdf)

---

---

# HARRIS COUNTY HOUSING AUTHORITY

8933 Interchange Houston, Texas 77054 | 713.669-4514 P|

---

## AMENDMENT OF SOLICITATION

### AMENDMENT # 2

DATE: 8/2/12

(Original Signed)

**ISSUED BY:** HORACE ALLISON, AIA, Chief Development Officer

**AMENDMENT TO SOLICITATION NUMBER:** *REQUEST FOR PROPOSALS # 12-05*

*DEVELOPER OF MULTI-FAMILY HOUSING LOW INCOME HOUSING TAX CREDIT PROJECTS*

THE DATE AND TIME SPECIFIED (**AUGUST 15, 2012, 4:00 PM (CST)**) FOR RECEIPT OF PROPOSALS IS **UN-CHANGED**.

THE SOLICITATION MENTIONED ABOVE IS AMENDED AS SET FORTH BELOW. PROPOSERS MUST ACKNOWLEDGE RECEIPT OF THIS AMENDMENT PRIOR TO THE HOUR AND DATE SPECIFIED FOR RECEIPT OF PROPOSALS BY SIGNING THIS FORM BELOW.

### DESCRIPTION OF AMENDMENT

#### Q & A

**Question:** Should the Sample Format for Recordkeeping-Estimated Project Work Force Breakdown be filled out and submitted with the Offeror's proposal?

**Response:** *Yes.*

**Question:** What is the deadline for site control?

**Response:** *See Amendment #1 on HCHA's website.*

**Question:** *Given that the QAP is not finalized, is site selection able to be modified based on the TDHCA scoring/QAP changes*

**Response:** *See Amendment #1 on HCHA website.*

---

---

# HARRIS COUNTY HOUSING AUTHORITY

8933 Interchange Houston, Texas 77054 | 713.669-4514 P|

---

## AMENDMENT OF SOLICITATION

### AMENDMENT # 2

DATE: 8/2/12

(Original Signed)

**ISSUED BY:** HORACE ALLISON, AIA, Chief Development Officer

**AMENDMENT TO SOLICITATION NUMBER:** *REQUEST FOR PROPOSALS # 12-05*

*DEVELOPER OF MULTI-FAMILY HOUSING LOW INCOME HOUSING TAX CREDIT PROJECTS*

THE DATE AND TIME SPECIFIED (**AUGUST 15, 2012, 4:00 PM (CST)**) FOR RECEIPT OF PROPOSALS IS **UN-CHANGED.**

THE SOLICITATION MENTIONED ABOVE IS AMENDED AS SET FORTH BELOW. PROPOSERS MUST ACKNOWLEDGE RECEIPT OF THIS AMENDMENT PRIOR TO THE HOUR AND DATE SPECIFIED FOR RECEIPT OF PROPOSALS BY SIGNING THIS FORM BELOW.

### DESCRIPTION OF AMENDMENT

#### Q & A

**Question:** Should the Sample Format for Recordkeeping-Estimated Project Work Force Breakdown be filled out and submitted with the Offeror's proposal?

**Response:** *Yes.*

**Question:** What is the deadline for site control?

**Response:** *See Amendment #1 on HCHA's website.*

**Question:** *Given that the QAP is not finalized, is site selection able to be modified based on the TDHCA scoring/QAP changes*

**Response:** *See Amendment #1 on HCHA website.*

# HARRIS COUNTY HOUSING AUTHORITY

8933 Interchange Houston, Texas 77054 | 713.669-4514 P|

## AMENDMENT OF SOLICITATION

---

---

### AMENDMENT # 1

DATE: July 23, 2012

(Original Signed)

ISSUED BY:

HORACE ALLISON, AIA, Chief Development Officer

**AMENDMENT TO SOLICITATION NUMBER: *REQUEST FOR PROPOSALS # 12-05  
DEVELOPER OF MULTI-FAMILY HOUSING LOW INCOME HOUSING TAX CREDIT  
PROJECTS***

THE DATE AND TIME SPECIFIED (**AUGUST 15, 2012, 4:00 PM (CST)**) FOR RECEIPT OF PROPOSALS IS **UN-CHANGED**.

THE SOLICITATION MENTIONED ABOVE IS AMENDED AS SET FORTH BELOW. PROPOSERS MUST ACKNOWLEDGE RECEIPT OF THIS AMENDMENT PRIOR TO THE HOUR AND DATE SPECIFIED FOR RECEIPT OF PROPOSALS BY SIGNING THIS FORM BELOW.

#### DESCRIPTION OF AMENDMENT

**ITEM #1** Pre-proposal Sign in Sheet (**Attachment "A"**)

**ITEM #2** Questions made by Offerors and Responses to Offerors.

#### Q & A

Question: The map included in the RFP does not show the correct Texas State Representative Districts.

**Response:** *The HCHA will issue a corrected map as part of an Amendment; see (Attachment "B")*

Question: Will the proposer need to demonstrate site control at the time of submitting its response to this RFP?

**Response:** *Evidence of site control is not required at the time of the proposal's submission. However, before the HCHA enters into a MOU with the developer, the developer must provide evidence of site control.*

Question: Can a developer propose a project located in the City of Houston's ETJ?

**Response:** *Yes.*

- Question: There were some references to Public Housing and mixed finance proposals are they applicable in this RFP?  
**Response:** *Please disregard the Public Housing references. The HCHA does not operate Public Housing. However, due to the multiple funding sources the projects are considered a mixed finance developments.*
- Question: What is expected as it relates to Social Services?  
**Response:** *The developer will provide supportive and economic development programs for the residents subject to HCHA's approval.*
- Question: Can a developer submit a Bond/4% LIHTC deal in response to this RFP?  
**Response:** *Yes.*
- Question: The MOU makes reference to developer fee sharing based on the amount of HOME dollars. If there is no HOME funding, can a developer propose an alternative developer and fee sharing schedule?  
**Response:** *Yes. Proposals will be evaluated, in part, based on the developer fee structure and pay out that are most advantageous to the HCHA.*
- Question: Will the HCHA be providing Guarantees?  
**Response:** *No. The HCHA will not be providing guarantees.*
- Question: Will the provision of a shuttle service to get residents to the nearest public transportation be and acceptable alternative if the project is located in an area that is not immediate adjacent to public transportation?  
**Response:** *Yes.*
- Question: What is the age for Qualified Seniors?  
**Response:** *55+.*
- Question: How many transactions (developments) will the HCHA undertake this year?  
**Response:** *The HCHA will undertake two transactions and if possible a third.*
- Question: Can the projects be located in the same general area?  
**Response:** *The HCHA's preference is that projects be distributed throughout the County to avoid concentration of assisted units in any given area and to avoid competition between HCHA properties.*
- Question: Will the HCHA only select one Developer for all of the projects?  
**Response:** *The HCHA may select one or more developers to partner with, to develop multiple projects.*
- Question: When will the HCHA issue an RFP for Project Based Vouchers?  
**Response:** *The HCHA plans to issue a project based voucher RFP in August 2012.*
- Question: Can a developer propose a project in the City Limits of Houston?  
**Response:** *If a project is proposed within the City Limits of Houston, it must contain housing units for Veterans.*

- Question: Can a developer change a site once he is selected?  
**Response:** *The answer is no, unless there are some (very unusual circumstances) changes in the QAP that makes the site previously selected unacceptable. The HCHA will look unfavorable on site switching. Therefore, developers are encouraged to be very thorough and selective in their site selection(s).*
- Question: If HCHA elects to project base vouchers in a transaction, how many vouchers will be assigned?  
**Response:** *The max number of project based vouchers would be 20. All 20 would be assigned to one transaction.*
- Question: Does the HCHA have a preference as to the project's location?  
**Response:** *The Northwest, Northeast and Southeast and areas where there is not a concentration issue.*
- Question: Is it a requirement that the HCHA name be displayed on the project signage?  
**Response:** *Yes. The HCHA is an integral part of the transaction; therefore its name must be included on project signage.*
- Question: Who should signs the Form of Non-Collusive Affidavit?  
**Response:** *The person authorized to sign on behalf of the entity submitting the proposal. Typically this would be the authorized representative of the Developer or Development Team.*

EXCEPT AS PROVIDED HEREIN. ALL TERMS AND CONDITIONS OF THE SOLICITATION REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT. I ACKNOWLEDGE THE RECEIPT OF AMENDMENT NUMBER 1

**NAME of FIRM:** \_\_\_\_\_

**NAME and Title of Signer:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**PHONE NUMBER:** \_\_\_\_\_

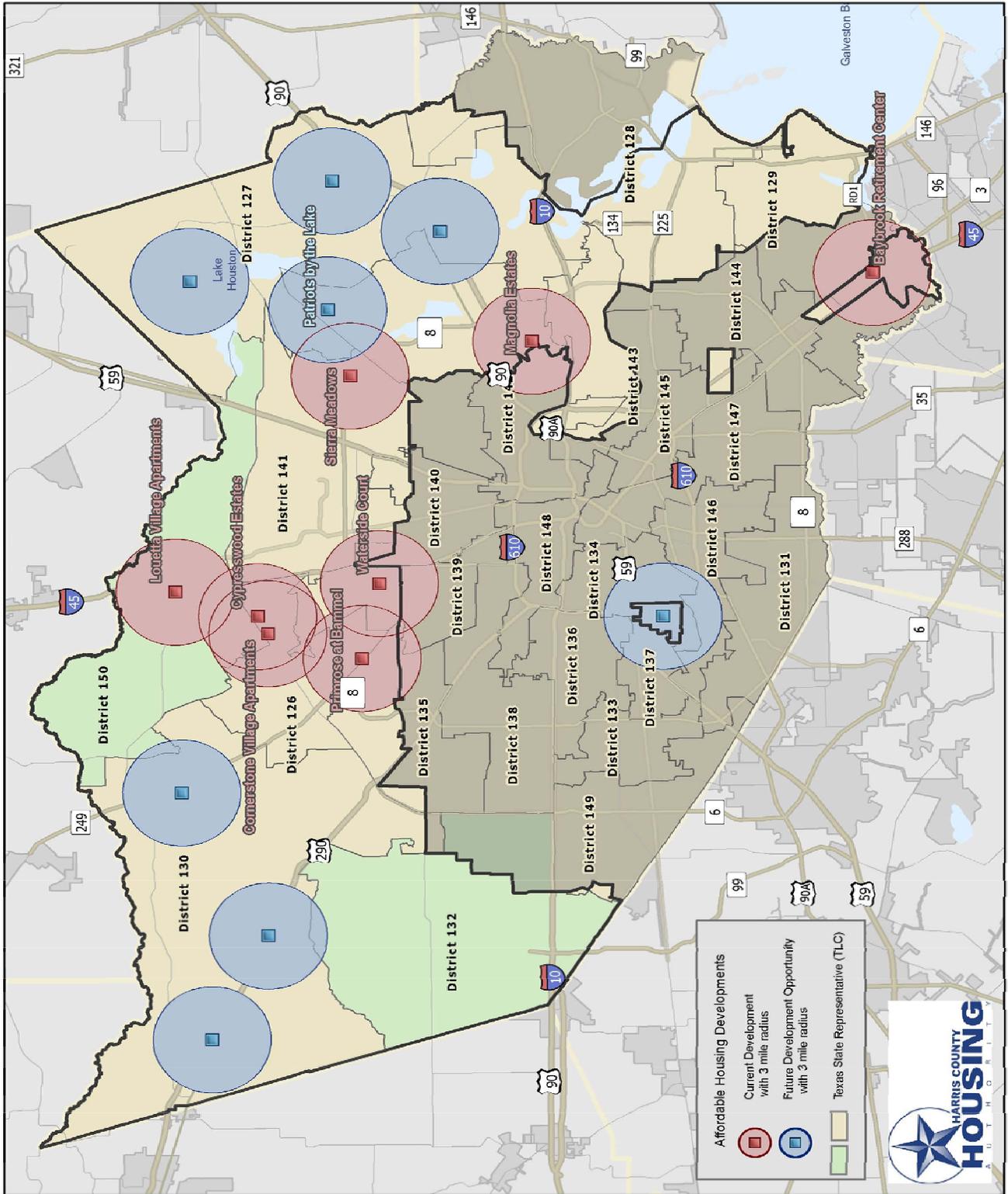
## ATTACHMENT "A"

### RFP Pre-proposal Conference Attendance List

RFP 12-05

Jennifer	Bartlett	National Community Renaissance
Carlos	Mendiouh	CM Construction
Sue	Lovell	McCormick Baron and Salazar
George	Johnson	George Johnson Development
Mark	Sonnier	George Johnson Development
Alice	Wong	Beacon Hill Group
Audrey	Martin	DMA Companies
Donna	Rickenbacker	Marque Consultants
Megan	Deluna	Sagebrook Development
Robbye	Meyer	Arx Advantage
Mary Ellen	Forgay	M.E. Forgay and Associates
Will	Henderson	Carleton Development
Willam	Encinas	Cesar Chavez Foundation

# ATTACHMENT "B"



<b>District #</b>	<b>Texas State Representative Name</b>
126	Patricia Harless
127	Dan Huberyt
128	Wayne Smith
129	John E. Davis
130	Allen Fletcher
131	Alma Allen
132	Bill Callegari
133	Jim Murphy
134	Sara Davis
135	Gary Elkins
136	Beverly Woolley
137	Scott Hochberg
138	Dwayne Bohac
139	Sylvester Turner
140	Armando Walle
141	Senfronia Thompson
142	Harold Dutton
143	Ana Luna Hernandez
144	Ken Legler
145	Carol Alvarado
146	Borris Miles
147	Garnet Coleman
148	Jessica Farrar
149	Hubert Vo
150	Debbie Riddle