

Niles Housing Commission

❖ 251 Cass Street Niles, MI 49120 ❖ Office: (269) 683-2783 ❖ Fax: (269) 683-7435

# Request for Proposals Legal Services

Proposals are due at the address shown above no later than  
Friday, April 5, 2024 at 3:00 PM EST

Board of Commissioners Designated Contact: Sanya Vitale

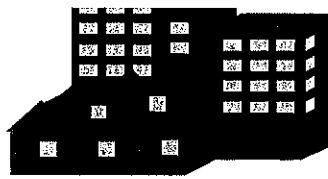
Telephone (574) 400-3600

E-mail: [svitale0603@gmail.com](mailto:svitale0603@gmail.com)

## Introduction

The Niles Housing Commission (hereinafter referred to as “NHC” or an unincorporated instrumentality of the City of Niles, Michigan and duly organized and existing pursuant to the City of Niles Municipal Ordinance 182, is soliciting proposals from qualified firms for legal services for a two (2) year period beginning May 1, 2024 and ending April 30, 2026 with an opportunity for a one (1) year extension.

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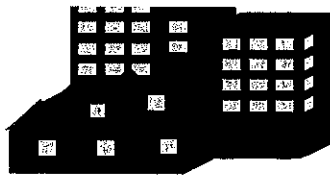
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### **Submission Instructions and Important Information**

The anticipated schedule for this Solicitation is as follows:

Resolution Number: 2024-14

Resolution Approval Date: March 13, 2024

Solicitation issued: March 22, 2024

Proposal due date: April 5, 2024

Projected award date: April 10, 2024

**Proposals should be sealed and delivered to the address shown above no later than Friday, April 5, 2024 at 3:00 PM EST. Please submit one (1) original of your response to this RFP. There are no page limits and no requirements for font, margin and/or paper size.**

The Niles Housing Commission business hours are 8:00 AM to 4:00 PM EST, Monday through Friday. Additionally, the Niles Housing Commission is closed on federally recognized holidays.

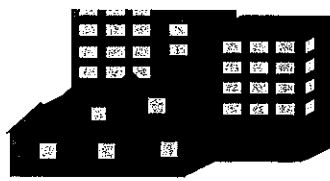
All proposals received and time stamped by the Niles Housing Commission prior to the proposal submittal deadline shall be accepted as timely submitted.

No late proposals will be accepted or reviewed. Proposals will be opened promptly at the time and date specified.

The responsibility for submitting a proposal on or before the stated time and date is solely and strictly the responsibility of the Proposer. Proposers are responsible for informing any commercial delivery service, if used, of all delivery requirements and for ensuring that the required address information appears on the outer wrapper or envelope used by such service. The Niles Housing Commission will in no way be responsible for delays caused by mail delivery or caused by any other occurrence. All expenses involved with the preparation and submission of proposals to the Niles Housing Commission, or any work performed in connection therewith, shall be borne by the Proposer(s).

The submittal of a proposal by a Proposer will be considered by the Niles Housing Commission as constituting an offer by the Proposer to perform the required services at the stated prices. A Proposer may submit a modified proposal to replace all or any portion of a previously submitted proposal up until the proposal due date. The Niles Housing Commission will only consider the latest version of the proposal.

**Requests for additional information or inquiries must be made in writing and received by the** Niles Housing Commission is an equal opportunity housing provider. We do not discriminate on the basis of race, color, national origin, religion, sex, family status or disability. This document is available in an alternate, accessible format upon request. We shall furnish appropriate auxiliary aids when necessary so that individuals with disabilities may have an equal opportunity to participate and enjoy the services and programs provided by NHC.



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Niles Housing Commission's designated contact person for this Solicitation. The Niles Housing Commission will issue responses to inquiries and any changes to this Solicitation it deems necessary in written addenda issued prior to the proposal due date.

### Definitions:

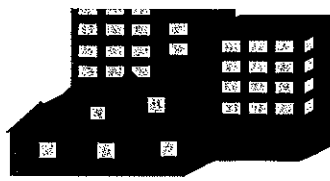
1. **Administrative Offices:** the NHC's Main Administration Building located at 251 Cass St. Niles, MI 49120
2. **Contractor or Consultant:** the Proposer that receives any award of contract from the NHC as a result of this Solicitation, which is also known to be as the "Prime Contractor" or the "Prime Consultant"
3. **CFR:** Refers to the official Code of Federal Regulations
4. **NHC:** Niles Housing Commission
5. **Offeror, Proposer or Submitter or Respondent:** the person, firm, entity or organization submitting a response to this Solicitation.
6. **Scope of Services or Scope of Work:** refers to the Scope of Work Identified on Page 9 of this Solicitation which details the work to be performed by the Contractor or Consultant
7. **Section 3:** Section 3 of the United States Housing and Urban Development Act of 1968, and the implementing regulations in 24 Code of Federal Regulations (CFR) Part 135, as amended by interim rule published on May 31, 1995 (60FR 28325)
8. **Solicitation or RFP:** This Request for Proposals (RFP)
9. **HUD:** United States Department of Housing and Urban Development Federal agency which funds and monitors operations of the Niles Housing Commission. Nothing contained in this RFP or in the contract resulting from the selection process shall be construed to create any contractual relationship between the successful proposer and HUD.

### Rules, Regulations, and Licensing Requirements

The Proposer shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, especially those applicable to conflict of interest and collusion. Proposers are presumed to be familiar with all Federal, State and local laws, ordinances, codes, rules and regulations that may in any way affect the goods or services offered, including, but not limited to:

1. Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations in 24 Code of Federal Regulations (CFR) Part 135, as amended by interim rule published on May 31, 1995 (60 FR 28325).
2. Executive Order 11246 "Equal Employment Opportunity", as amended by executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR Chapter

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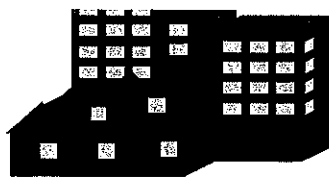
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60), as well as the Americans with Disabilities Act of 1990 and implementing regulations, the Rehabilitation Act of 1973, as amended, Chapter XXX of Michigan Statutes and any and all other local, State and Federal directives, ordinances, rules, orders, and laws relating to people with disabilities.

3. Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 6).
4. HUD's reporting requirements and regulations, as specified in the Grant Agreement and required of the Owner.
5. All applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).
6. Compliance with Executive Order 12549 "Debarment and Suspension", which stipulates that no contract(s) are "to be awarded at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs.
7. Mandatory standards and policies related to energy efficiency which are contained in the CLEAN, RENEWABLE, AND EFFICIENT ENERGY ACT; Act 295 of 2008 issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
8. Davis-Bacon Act as amended (40 U.S.C. 276a to 276a-7) and as supplemented by Department of Labor (DOL) regulations 29 CFR part 5, the Copeland Anti-Kickback Act (40 U.S.C. 276c and 18 U.S.C. 874) as supplemented by DOL regulations (29 CFR part 3), and the Agreement Work Hours and Safety Standards Act (40 U.S.C. 327-333) as supplemented by DOL regulations 29 CFR part 5, regarding labor standards for federally assisted construction sub-agreements.
9. HUD procurement regulations as set forth in 24 C.F.R. Part 85 and 24 CFR Part 963 as further explained in HUD Handbook 7460.8 Rev. 1.
10. Executive Order 13279 and all applicable HUD regulations related to the requirement for equal participation of Faith-Based and Community Organizations in HUD programs and activities. It is the policy of the HHA that it shall not discriminate against an organization on the basis of the organization's religious character or affiliation.
11. The prohibitions against discrimination on the basis of disability under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations issued pursuant thereto (24 CFR Part 8); The Americans with Disabilities Act (42 U.S.C. 12101 et seq. and its implementing regulation at 28 CFR Part 36; and the Architectural Barriers Act of 1968, as amended (42 U.S.C 4151) and regulations pursuant thereto (24 CFR Part 40).

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**Proposal and Contract Expectations and Terms**

Proposers are requested and advised to be as complete as possible in their response. The NHC reserves the right to 1) contact any proposer to clarify any response; 2) contact any current users of the proposer's services; 3) solicit information from any available source concerning any aspect of the proposal; 4) check references; 5) conduct credit and background checks; and, 6) seek and review any other information deemed pertinent to the evaluation process.

The NHC reserves the right to cancel this RFP, or to reject, in whole or in part, any and all proposals received in response to this RFP, upon its determination that such cancellation or rejection is in the best interest of NHC. The NHC further reserves the right to waive any minor informalities or the failure of any Proposer to comply therewith, if it is in the public interest to do so. Finally, the NHC reserves the right to terminate the process at any time, if deemed by the NHC to be in its best interests.

The NHC reserves the right to reject and not consider any proposal that does not meet the requirements of this RFP, including but not necessarily limited to incomplete proposals and/or proposals offering alternate or non-requested services.

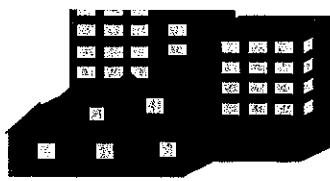
The NHC reserves the right not to award a contract pursuant to this RFP. Proposals which appear unrealistic in the terms of management commitments or are indicative of failure to comprehend the complexity of this RFP and subsequent contracts may be rejected.

The NHC reserves the right to terminate a contract awarded pursuant to this RFP, at any time for its convenience upon thirty (30) business day's written notice to the successful proposer(s).

The NHC reserves the right to request and evaluate additional information from any respondent regarding respondent's responsibility after the submission deadline as the NHC deems necessary.

The NHC may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the Proposer's best terms from a monetary and technical standpoint. The NHC reserves the right to enter into contract negotiations with the recommended Proposer. Negotiations shall be conducted with the top ranked Offeror. If, in the event, the NHC and the top ranked Proposer cannot reach an agreement that is in the best

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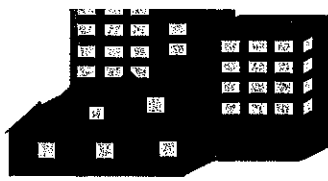
interest of the NHC, the Board of Commissioners may select to cancel negotiations with the top ranked Proposer and move to the second ranked Offeror. If the NHC and the recommended Proposer cannot negotiate a successful contract, the NHC may terminate said negotiations and begin negotiations with another recommended Proposer. This process will continue until a contract acceptable to the NHC has been executed or all proposals are rejected. No Proposer shall have any rights against the NHC arising from such negotiations or termination thereof.

The NHC reserves the right to request additional data, discussion and/or a presentation of the proposal. The successful Proposer shall be expected to execute a standard professional service contract with NHC. The term of the contract shall be effective when executed by NHC and shall continue for two years (specific dates to be identified in contract negotiations), unless sooner terminated in accordance with the contract.

In the event that a Proposer wishes to take an exception to any of the terms of this Solicitation, the Proposer shall clearly indicate the exception in its proposal. No exception shall be taken where the Solicitation specifically states that exceptions may not be taken. Further, no exception shall be allowed that, in the NHC's sole discretion, constitutes a material deviation from the requirements of the Solicitation. Proposals taking such exceptions may, in the NHC's sole discretion, be deemed nonresponsive.

Proposers are hereby notified that all information submitted as part of, or in support of proposals will be available for public inspection after opening of proposals, in compliance with Michigan's Freedom Of Information Act; ACT 442 OF 1976, popularly known as the "Public Record Law". The Proposer shall not submit any information in response to this Solicitation which the Proposer considers to be a trade secret, proprietary or confidential. The submission of any information to the NHC in connection with this Solicitation shall be deemed conclusively to be a waiver of any trade secret or other protection, which would otherwise be available to Proposer. In the event that the Proposer submits information to the NHC in violation of this restriction, either inadvertently or intentionally, and clearly identifies that information in the proposal as protected or confidential, the NHC may, in its sole discretion, either (a) communicate with the Proposer in writing in an effort to obtain the Proposer's written withdrawal of the confidentiality restriction or (b) endeavor to redact and return that information to the Proposer as quickly as possible, and if appropriate, evaluate the balance of the proposal. Under no circumstances shall the NHC request the withdrawal of the confidentiality restriction if such communication would in the NHC sole discretion give to such Proposer a competitive advantage over other proposers. The redaction or return of information pursuant to this clause may render a proposal non-responsive.

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Each proposal will be reviewed to determine if the proposal is responsive to the submission requirements outlined in the RFP. A responsive proposal is one which follows the requirements of the RFP, includes all documentation, is submitted in the format outlined in the RFP, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may result in a proposal being deemed non-responsive.

As may be further detailed herein, the NHC may, on an as-needed basis, require the successful proposer to provide services pertaining to NHC-related matters within the following areas, each pertaining to applicable Federal, State and local regulations, statutes, laws and codes: Human Resources; Accounting, Finance and related audits; Operations; Maintenance; Development and Modernization; Information Technology; Federal, State and/or Federal Housing Programs; HUD; Real Estate and Tax Credit; and any other matter the NHC needs services for.

Please note that the preceding is not intended to be an all-inclusive listing of all of the legal issues that the NHC may retain the successful proposer to provide, but is intended to be a representative listing of issues that the NHC and similar housing commissions and/or authorities previously required such services for.

The NHC shall retain the right to have the successful proposer provide services in any matter that the NHC believes the legal firm is qualified to provide.

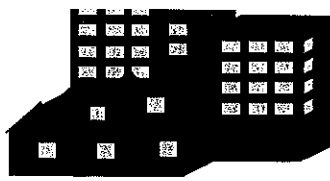
The successful proposer will only be providing work pertaining to legal issues commonly addressed by a legal counsel and the successful proposer will not be requested to provide any non-legal program work such as those commonly provided by professional services consulting firms.

If the successful proposer does not have an in-house qualified person to provide any services required by the NHC, the successful proposer may propose to retain another counsel who is such a qualified person. Such retention must have the prior written approval of the NHC and HUD prior to agreement. Any contracts, billing and/or payment for such additional counsel must be approved through formal resolution and previously approved by HUD and the NHC.

The NHC reserves the right to, at any time during the ensuing contract period, and without penalty to the legal counsel retained as a result of this RFP, conduct additional competitive solicitations to retain additional legal counsel when it is in the best interests of the NHC to do so. Accordingly, the legal counsel retained as a result of this RFP shall have the right to also respond to any such additional solicitation process, if conducted.

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The selected Proposer shall at all times guarantee access by the NHC, HUD, the Attorney General or any duly authorized representatives to any books, documents, papers, and records of the selected Proposer which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts and transcriptions.

The selected Proposer shall be required to retain all pertinent records for a period not less than five (5) years after final payment has been made and all pending matters closed.

In submitting a response, the Proposer acknowledges that the NHC shall not compensate the Proposer for any submission or contract negotiation costs, including costs of preparation, appearances for interviews, and/or travel expenses. It is essential that the Proposer selected as Outside Counsel will have the necessary knowledge, skills and experience to implement all aspects of the work. All work is to be performed with the highest degree of professional standards, in compliance with HUD regulations, NHC policies and procedures, criteria and requirements, and State and local laws and regulations, and the Michigan Bar.

The NHC will reject the proposal of any Proposer who is debarred by HUD from providing services to public housing authorities and other HUD grantees.

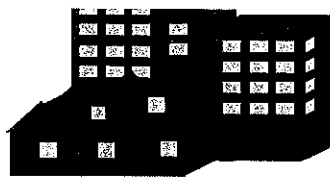
Due care and diligence has been used in preparation of this information, and it is believed to be substantially correct. However, the responsibility for determining the full extent of the exposure and the verification of all information presented herein shall rest solely with the proposer. The NHC and its representatives will not be responsible for any errors or omissions in these specifications, nor for the failure on the part of the proposer to determine the full extent of the exposures.

The NHC is committed to promoting participation in our contracts by businesses owned and operated by minorities and women and Section 3 Business Concerns. It is the policy of the NHC to use best good faith efforts, consistent with applicable federal regulations, to fully promote participation and utilization of these firms in all areas of contracting. Selected Proposers are expected to make reasonable efforts to further the objectives of Section 3 business concerns.

Proposer will ensure that it; and persons working on its behalf, do not undertake any representation or other relationship that places it in an actual or potential conflict of interest position with any other entity. The NHC requires the proposer to disclose the conflict in writing to the Niles Housing Commission Chair. The NHC's consent and waiver to the conflict must be obtained in writing.

Proposers shall be responsible for informing themselves with respect to all conditions, which might in any way affect the cost or performance of any of the work. Failure to do so shall be at

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the sole risk of the Proposer and no relief shall be given for errors or omissions by the Offeror.

The selected proposer shall furnish the NHC original Certificates of Insurance evidencing the required coverage on the effective date of the Agreement(s) resulting from this RFP.

All documents submitted to the NHC in a digital format must be compatible with Microsoft Word and other comparable PC-programs. All documents and products created by the selected individual or firm and their sub-contractors shall become the exclusive property of the NHC.

By responding to this RFP, the Proposer acknowledges that for any contract signed as a result of this RFP, the authority to proceed with the work is contingent upon the availability of funding.

This RFP does not represent a commitment or offer by NHC to enter into contract, or other agreement with proposer. The proposal and any information made a part of the proposal will become a part of NHC's official files without any obligation on NHC's part to return it to the individual proposer. This RFP and the selected firm's proposal will, by reference, become a part of any formal agreement between the firm and NHC resulting from this solicitation. An authorized representative of the Proposer must sign proposals.

The Proposer shall not collude in any manner or engage in any practices with any other proposer(s), which may restrict or eliminate competition. Violations of this instruction will cause the proposal to be rejected. This prohibition is not intended to preclude joint ventures or subcontracts.

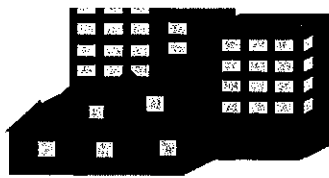
**Scope of Work**

The Niles Housing Commission of Niles, Michigan requests proposals from qualified legal firms to provide services in all legal matters. NHC is looking for a firm with experience in the following areas of legal services: housing development and management; real property laws and codes, Michigan state public employer labor and employment law and federal subsidy programs (i.e.

Public housing programs). The NHC encourages submission from legal firms that are certified as Minority and Women Business Enterprises and Section 3 certified firms. The attorney or firm selected should at a minimum be able to provide the following services:

1. Attendance and guidance during any or all Board of Commissioners meetings (regular or special) and other meetings as requested, and supervision, as to legality of the official minutes of the NHC.

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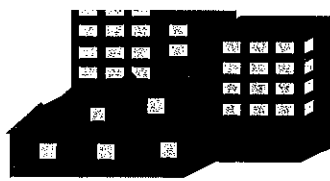


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2. Serve as General Counsel to the Board counsel and represent the Board in any legal matters;
3. Advise the Board of Commissioners regarding all matters of a legal nature, including but not limited to the Board's powers, duties and responsibilities, legal methods, and procedures;
4. All legal work necessary in connection with the solicitation and award of the Management services contract and/or contracts currently required by HUD, including the completion and review of all resolutions and forms necessary.
5. Drafting, review and/or approval of all legal documents, papers, contracts, agreements, certifications, resolutions, specifications, bonds, waivers, and such other legal drafting including all payments thereunder as may be required.
6. Reviewing, advising, and representing the NHC in connection with disputes arising out of the bid process.
7. Reviewing, advising, and representing the NHC with regard to disputes arising out of contracts between the NHC and its vendors.
8. Advising and representing the NHC with regard to issues and claims arising out of construction contracts.
9. Provide advice on the legality of the substance of resolutions and motions of the Board of Commissioners;
10. Provide written legal opinions requested by the Board on varying with respect to procurement regulations of the Local Government Statute, Code of Federal Regulations, HUD Procurement Standards, NHC Procurement Policy, other Federal, State and local guidelines, regulations and laws as necessary;
11. Provide written legal opinions requested by the Board or the NHC and attend meetings as necessary for the resolution of disputes between the Housing NHC and contractors, residents, and/or vendors.
12. Provide all necessary legal services as may be requested by the NHC regarding real estate procedures, as well as the completion of real estate transactions, including the review of utility easements and for the acquisition of or disposition of property to certify conformance to Local, State and Federal regulations;
13. Appearance for, representation and defense of the NHC, in court, in all litigated matters except as herein otherwise provided.
14. Instituting and bringing to conclusion in court of original jurisdiction, all actions for the recovery of possession of dwelling units or for the collection of rent.
15. Represent the NHC in all eviction matters (Federal and non-Federal) as requested and performance of services necessary in the prosecution of contested eviction actions.
16. Preparation, modification and approval of the NHC's dwelling lease

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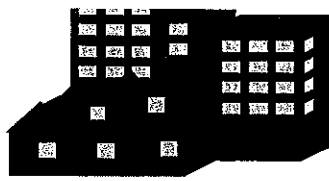
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17. Advice and assistance to the NHC in connection with the tenant grievance hearings, including appearances at hearings if requested.
18. Provide legal services and legal representation in the areas of labor and employment law including personnel rules policies and/or procedures, collective bargaining agreements, employment and unemployment compensation, discrimination and wrongful termination claims, equal opportunity and worker's compensation;
19. Review of employee benefits contracts, including but not limited to retirement and/or pension plan documents, group annuity contracts, group medical insurance contracts, life insurance contracts and disability contracts.
20. Review all potential terminations and make recommendations as to appropriate actions, as well as draft notices of termination
21. Consultation to other attorneys representing the NHC in litigation in which the NHC's liability insurance carrier has retained counsel to represent the NHC and, if needed, appearance in said litigation on behalf of the NHC.
22. Provide responses to legal questions and matters arising under contracts of the NHC and rendering of legal opinions on matters submitted by the NHC;
23. Review of requirements, obligations and procedures for complete and efficient processing of bankruptcy notices related to a) Employee matters (payroll) and b) Current or previous public housing residents
24. Furnish legal advice as requested on civil rights and fair housing requirements, including claims involving violations of the Civil Rights Act of 1964, the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA);
25. Providing legal representation and act as liaison with HUD's Legal Department, HUD's Office of Public Housing Investment which administers HUD's mixed-finance regulations;
26. Have thorough knowledge and understanding of Michigan's Open Meetings Act (OMA) is 1976 PA 267, MCL 15.261 through 15.275;
27. Advise and assist the NHC on matters subject of Title 24 of the Code of Federal Regulations (HUD regulations), the Housing Act of 1937, the Affordable Housing Act of 1990, the Quality Housing and Work Responsibility Act of 1998, the Chapter 125, State of Michigan Planning, Housing, And Zoning (Chapter 125), Section 504 of the Rehabilitation Act of 1973 ("Section 504") and Title II of the Americans with Disabilities Act of 1990 ("ADA"), Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, ("Fair Housing Act"), Title VI of the Civil Rights Act of 1964 and the respective implementing regulations for each Act; Michigan's LANDLORD AND TENANT RELATIONSHIPS Act 348 Of 1972

**FIRM QUALIFICATIONS**

The description of respondent's qualifications and experience shall evidence/demonstrate that

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## Niles Housing Commission

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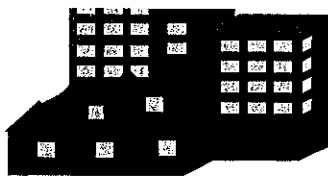
respondent possesses the following:

1. A broad and practical knowledge of HUD rules, regulations, requirements, law and related procedures; knowledge of various housing programs of the U.S. Department of Housing and Urban Development (HUD) with particular emphasis on the Public and Indian Housing Programs and experience in implementing same.
2. Knowledge and work experience with Administrative regulations and the law in matters relating to, but not limited to the following areas: Davis-Bacon Act, Lease and Grievance procedures, Affirmative Action regulations, ; Michigan's Landlord And Tenant Relationships Act 348 Of 1972 and the programs of the Berrien County Department of Family and Children Services which impact low income housing, Lead-Based Paint Poisoning Prevention Action, the ROSS Family Self-Sufficiency Program, HUD Disposition, Demolition and Development programs and laws and regulations relating to non-discrimination based on handicap in federally-assisted programs with emphasis on Section 504 of the Rehabilitation Act of 1973 and the Architectural Barriers Act of 1968.
3. Strong analytical and interpretive skills, as well as verbal and written communication expertise, particularly with regard to housing and urban development matters; and experience in applying same.
4. Ability to provide legal services involving housing development and management; financing involving advance, permanent and temporary notes; litigation, real property laws and codes; human services arbitrations and federal subsidy programs.
5. Skills, capabilities, capacity and work experience of a demonstrated level that would assure completion of the scope of work in a timely and satisfactory manner.
6. All necessary and/or required licenses, registrations, and certifications.
7. Certification that the firm/individual is not debarred, and has all necessary and/or required insurance coverage in effect.
8. Five or more years of experience representing a housing authority, municipal government and/or similar equivalents.
9. The successful Proposer 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.

### **PROPOSAL REQUIREMENTS**

The following is a description of the minimum information which must be supplied in your proposal. You may give supplementary facts or other materials that you consider may be of assistance in the evaluation.

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### **Executive Summary**

Provide a brief summary of your firm's approach to the work associated with the requested services, demonstrate an understanding of the scope of services required, and approaches to be utilized in performing these services, specifically related to the rules, regulations associated with public housing authorities.

### **Experience**

Describe how long the Attorney or Law Firm has been in business and current structure.

Provide any other names under which the firm has done business and the dates it operated under each name and the locations at which it operated under each name.

Describe the experience of the Proposer conducting comparable services during the most recent five-year period similar in scope to the services required by NHC.

Provide a list of companies or governmental agencies or organizations to which your firm is currently or has provided services to within the last five (5) years. If this does not include at least three entities, then provide the names of the entities for which similar services have been provided.

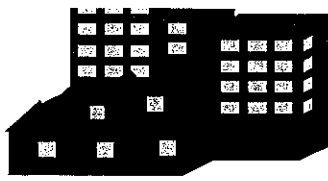
For each client entity include:

- The term (beginning and ending dates) of your contract agreement(s)
- A brief description of the scope of work
- Explain the roles performed by the proposer for the client entity
- total dollar value of the contract
- contract duration
- The name and contact information of the individual that administered your contract(s)
- Statement or notation of whether Proposer is/was the prime contractor or subcontractor or sub consultant.
- Where possible, list and describe those services performed for government clients or similar size private entities and any work performed for the NHC.

### **Qualifications**

Provide the qualifications and experience the firm has in providing services outlined in Scope of Services., including Board certifications held. Describe the Proposer's past performance and experience and state the number of years that the Proposer has been in existence, the current number of employees, and the primary markets served.

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Describe Proposer's experience with public housing legal issues including applicable State of Michigan and Federal public housing regulations.

Describe any other experiences related to the work or services described in the Scope of Services and any other information which may be specific to the required services to be provided (e.g. certified legal, training, seminar, etc.).

The Proposer shall describe its approach to project organization and management, responsibilities of Proposer's management and staff personnel that will perform work in this project. List all key members of the firm who will be committed to this contract. Include resumes for these individuals. Indicate the level of effort and function of each member of the firm toward the execution of this contract. Prepare an organizational chart to show how the key members will be involved.

Proposers shall identify any pending litigation in which they are involved either as a witness or as a party. Please include any/all information concerning any prior or pending litigation, either civil or criminal, involving a governmental agency or which may affect the performance of the services to be rendered herein, in which the Proposer, any of its employees or subcontractors or sub consultants is or has been involved within the last three (3) years.

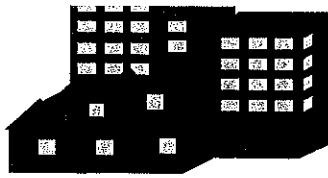
**Affirmative Action/Section 3 Compliance Plans**

Explain method and procedures that your firm will use to achieve meaningful Section 3, Minority and Women Business and compliance with Section 3 of the Housing and Urban Development of 1968 (optional and as allowable). Proposers may obtain a maximum of 5 points by claiming a Section 3 business preference, if eligibility requirements are met, and/or committing to hire Section 3 workers

As warranted, the proposer can demonstrate compliance with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations in 24 CFR Part 135, as amended by interim rule published on May 31, 1995 (60 FR 28325) by:

- Including with the proposal the Proposer's plan for recruiting and selecting low and very low-income persons for job training and employment opportunities resulting from work awarded through NHC, and, where applicable, awarding contracting work to businesses that employ at least 30% of their workforce include low- and very low-income persons.
- Meet all requirements listed under Section 3 of the HUD Act of 1968 (and provide all required Section 3 documents) required with proposal and listed in the Section 3 Checklist

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### **Schedule of Performance/Timeliness/Deliverables**

Each proposal shall include a description of how the firm intends to assume responsibility of existing legal matters and how soon the firm would be in a position to provide services. Describe Proposer's methodology and recommended solutions in performing the services described in the Scope of Services and describe Proposer's specific policies, plans, procedures or techniques to be used in providing the services to be performed.

The description should also include the firm's availability for all future services outlined in the Scope of Work section.

### **Financial Statements and Cost**

Provide the Firm's most recent certified business financial statements as of a date not earlier than the end of the Proposer's preceding official tax accounting period, together with a statement in writing, signed by a duly authorized representative, stating that the present financial condition is materially the same as that shown on the balance sheet and income statement submitted, or with an explanation for a material change in the financial condition. A copy of the most recent business income tax return will be accepted if certified financial statements are unavailable.

- Provide hourly billing rates for services. Provide the structure of rates for partners, associates, paralegals, couriers, etc.
- Selected proposer must be capable of tracking and billing (invoicing) all work hours and materials (if reimbursable) by specific program or funding source as required by NHC.
- Any proposer not capable or willing to comply with this requirement will be considered non-responsive.
- Preferred formatting will be agreed upon during contract negotiations.
- All costs related to this contract will be governed by federal regulations and HUD Handbook No. 7460.8 REV 2.

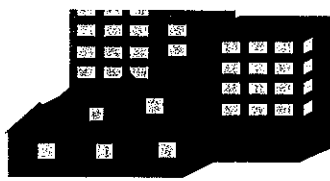
### **Exclusions**

Costs as described in the following section shall be underwritten by the NHC subject to the approval process described herein in addition to amounts bid on the basis of this specification:

All reasonable and necessary expenses paid out or incurred on behalf of the NHC in the provision of required services as described such as court costs, witness fees, recording fees, etc., but not including the Attorney's office or overhead expenses.

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All reasonable and necessary expenses for traveling and subsistence in connection with the performance of the duties of said Attorney, outside the area within which the Authority is authorized by law to operate. Such compensation shall be limited to the amount allowed in accordance with the terms of the NHC Travel Policy current at the time the expense is incurred.

Fees and costs for litigation which, in the agreed opinion of both the Authority and the Attorney, are extraordinary or lengthy and beyond the Scope of Work outlined within this RFP. In each case, the Attorney shall notify the NHC in writing and the matter will be reviewed. If agreement cannot be reached, the NHC will submit the matter to the Regional Counsel for the Department of Housing and Urban Development, and in the event any such litigation is in the opinion of the Office of the Regional Counsel extraordinary, the Attorney shall, upon written request of the NHC, perform such litigation which for the purpose of this specification, is considered extra services. In the event the Regional Counsel is of the opinion that such litigation is not extraordinary, it shall so notify the NHC and its Attorney before the opinion and final determination of Regional Counsel shall be or become binding upon said NHC and its Attorney. Law firms responding to this Request for Proposal shall include as part of their proposal a separate hourly rate to cover special or extraordinary litigation which the NHC from time to time may request of the Attorney. This litigation shall be beyond the Scope of Work section of this RFP.

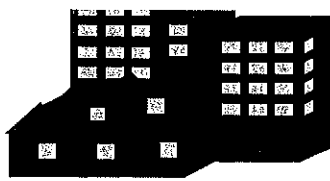
**Insurance**

The successful Proposer shall provide AHA with evidence of all appropriate and applicable insurance coverage carried by the firm, including policy coverage periods. Proposer shall furnish AHA with certificates of insurance, showing that the following insurance is in force and will insure all operations under this RFP.

All insurance shall be carried with companies that are financially responsible and admitted to do business in the State of Michigan. Proposer 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 days prior written notice.

- **Professional Liability Insurance** – The successful Proposer shall maintain a policy of professional liability insurance in the amount of at least \$2,000,000 per occurrence.
- **Workers' Compensation** in accordance with the State of Michigan rules and regulations
- **General Liability Insurance** with a single limit for bodily injury of \$1,000,000 per

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occurrence and property damage limit of no less than \$1,000,000 per occurrence.

- **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.

### EVALUATION FACTORS

Selection of a successful Proposer will be the sole discretion of NHC. All appointed members of the NHC will review Proposer responses to this RFP. Proposals will be evaluated using the following evaluation criteria. Proposers will be selected based on the highest cumulative score, as provided below. The NHC, however, reserves the right to reject any and all proposals and to waive any informality in proposals received for any reason whatsoever.

The criteria are itemized with their respective weights for a maximum total of one hundred (100) points per Commissioner and 5 additional points for Section 3 compliance.

#### 45 Points

##### Firm Qualifications

The proposer's demonstrated understanding of the NHC'S requirements; the appropriateness of the technical approach (including labor categories, estimated hours and skill mix) and the quality of the work plan; the proposer's technical capabilities (in terms of personnel, equipment and materials) and the management plan (including staffing of key positions, method of assigning work and procedures for maintaining level of service, etc.)

#### 45 Points

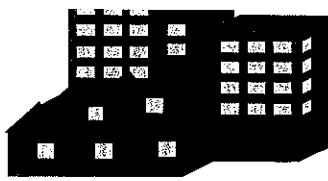
##### Firm Experience

The proposer's demonstrated experience in performing similar work and the proposer's demonstrated successful past performance (including meeting costs, schedules and performance requirements) of contract work substantially similar to that required by this solicitation as verified by reference checks or other means. Firms must demonstrate experience in the following areas: 1) affordable and public housing representation services, 2) court appearances for housing claims not limited to evictions, property damages, and other related claims against public housing residents, 3) legislative experience with appurtenant housing laws and legislation, 4) government corporations providing public housing, 5) public sector legal matters involving labor relations and other issues, 6) real estate development.

#### 10 Points

##### Price Evaluation

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The price proposal will be evaluated subjectively including an evaluation of how well it matches Proposer's understanding of the NHC's needs described in this Solicitation, the Proposer's assumptions, and the value of the proposed services. The pricing evaluation is used as part of the evaluation process to determine the highest ranked Proposer. The NHC reserves the right to negotiate the final terms, conditions and pricing of the contract as may be in the best interest of the HHA.

### **5 Points (Optional)**

#### **Section 3 Preference**

Proposers may obtain a maximum of 5 points by claiming a Section 3 business preference, if eligibility requirements are met, and/or committing to hire Section 3 workers

During proposal evaluation, NHC reserves the right to call for supplementary information from Proposers and to meet with all or any one of them to clarify points of uncertainty or ambiguity. If selected, candidates may be requested to attend an interview to discuss the proposed scope of work, including availability of equipment and staffing, accounting and payment procedures, schedules, qualification of subcontractors proposed for portions of the work, and such other items as are directly related to the proposal prior to being awarded the contract.

Interviews and negotiations may be conducted with contractors who have a reasonable chance of being selected for award. After evaluation of the proposal revisions, if any, the contract will be awarded to the responsible firm whose qualifications, price and other factors considered are advantageous to NHC.

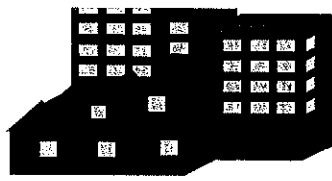
### **Negotiations**

Any Proposer recommended for negotiations shall complete a Collusion Affidavit

### **Contract Award**

Any contract, resulting from this Solicitation, will be submitted to the Board of Commissioners for approval. All Proposers will be notified in writing when the Board of Commissioners makes an award recommendation. The Contract award, if any, shall be made to the Proposer whose proposal shall be deemed by the NHC to be in the best interest of the HHA. Notwithstanding the rights of protest listed below, the NHC's decision of whether to make the award and to which Proposer shall be final.

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### **Forms and Attachments**

Submit the following Forms and HUD Certifications, which shall constitute a part of the RFP and any contract. All work will be performed in accordance with professional standards, HUD regulations, requirements and criteria, local codes, regulations, ordinances, and statutes.

Form HUD-2992: Certification Regarding Debarment and Suspension

Form HUD-50071: Certification of Payments to Influence Federal Transaction

Form HUD-5369-B: Instructions to Offerors Non-Construction

Form HUD-5369-C - Certifications and Representations of Offerors, Non-Construction Contract

Form HUD-5370-C - General Conditions Non-Construction Contracts (Provided for informational purposes and does not need to be submitted with the proposal).

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## Certification Regarding Debarment and Suspension

### Certification A: Certification Regarding Debarment, Suspension and Other Responsibility Matters – Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief that its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal debarment or agency;

b. Have not within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statement, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statement in this certification, such prospective participant shall attach an explanation to this proposal.

#### Instructions for Certification (A)

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was in place when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of these regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines this eligibility of its principals. Each participant may, but is not required to, check the Non-procurement list.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph (6) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

**Certification B: Certification Regarding Debarment, Suspension, Ineligible and Voluntary Exclusion – Lower Tier Covered Transactions**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to testify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**Instructions for Certification (B)**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become by reason of changed circumstances.

4. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of these regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into an lower tier transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement list.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph (5) of these instructions, if a participant in a lower covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies including suspension and/or debarment.

Applicant	Date
Signature of Authorized Certifying Official	Title

# Certification of Payments to Influence Federal Transactions

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

Applicant Name

Program/Activity Receiving Federal Grant Funding

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.

**Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties.  
(18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official	Title	
Signature	Date (mm/dd/yyyy)	

# Instructions to Offerors Non-Construction

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



- 03291 -

## 1. Preparation of Offers

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

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

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

## 2. Submission of Offers

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

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

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

## 3. Amendments to Solicitations

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

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

- (1) signing and returning the amendment;
- (2) identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer,
- (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 if the lack of it would be prejudicial to any other prospective offerors.

## 5. Responsibility of Prospective Contractor

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

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

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

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

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

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

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

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

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

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

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



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

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

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

## **7. Contract Award**

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

(b) The HA may

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

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

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

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

## **8. Service of Protest**

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

## **9. Offer Submission**

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

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

[Describe bid or proposal preparation instructions here:]

# Certifications and Representations of Offerors

## Non-Construction Contract

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

OMB Approval No: 2577-0180 (exp. 7/30/96)

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's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above (insert full name of person(s) in the bidder/offers's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offers's organization);

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the bidder/offeror deletes or modifies subparagraph (a)2 above, the bidder/offeror must furnish with its bid/offer a signed statement setting forth in detail the circumstances of the disclosure.

#### **4. Organizational Conflicts of Interest Certification**

(a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed contract and a prospective contractor's organizational, financial, contractual or other interest are such that:

(i) Award of the contract may result in an unfair competitive advantage;

(ii) The Contractor's objectivity in performing the contract work may be impaired; or

(iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.

(b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract for the convenience of HA if it would be in the best interest of HA.

(c) In the event the Contractor was aware of an organizational conflict of interest before the award of this Contract and intentionally did not disclose the conflict to the HA, the HA may terminate the Contract for default.

(d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

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

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

#### **6. Conflict of Interest**

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

#### **7. Offeror's Signature**

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

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Signature & Date:

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Typed or Printed Name:

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Title:

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# 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. 1/01/2014)

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.

### 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.

- (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)(i) 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.

#### 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.

##### 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 thereof 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

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.

##### 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 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



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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.