

REQUEST FOR PROPOSALS FOR LEGAL SERVICES
WASHINGTON COUNTY COMMUNITY DEVELOPMENT AGENCY
December 3, 2020

Introduction

The Washington County Community Development Agency (the Agency) is inviting interested law firms with experience representing housing and redevelopment authorities and economic development authorities to submit written proposals to provide legal services for the Agency. The Agency is seeking proposals for general counsel as well as firms practicing in the areas of public finance, real estate, property management, collective bargaining, government relations, and appellate law. Contracts for service may start in April, 2021. The Agency anticipates the original contract will be three (3) years in length with an option to extend an additional two (2) years.

The firm or firms will be selected by the Agency's Board of Commissioners and will work closely with the staff of the Agency.

Background

The Washington County Community Development Agency helps communities across the county achieve their housing and economic development goals. Our mission is to promote community and economic development, and provide and maintain affordable, decent and safe housing opportunities in Washington County. The Agency was established in 1974 pursuant to Minnesota Statute, and was organized by the Washington County Board in 1981. The Agency has all the powers and duties of a housing and redevelopment authority and of an economic development agency.

The Agency is empowered under state statute to initiate a broad array of housing, economic and community development programs to address the varying needs of the jurisdictions within the County. Attachment B provides an overview of the Agency's programs and services including recent accomplishments, activities and initiatives. The Agency serves as a partner with local communities and provides ongoing resources, information and technical assistance for housing, economic and community development activities including offering various government programs.

The Agency operates under a seven-member Board of Commissioners, which are appointed by the Washington County Board of Commissioners. Five of the seven commissioners represent a district that matches the boundaries of the County Commissioner districts. One commissioner is an "At-Large" position and the remaining commissioner is a "Public Assistance Commissioner" (or sometimes referred to as a Resident Commissioner), a position which is required by the Department of Housing and Urban Development (HUD). HUD requires that a recipient of public housing assistance or a recipient of the tenant-based Section 8 Housing Choice Voucher program serve as the Public Assistance Commissioner. Further, the Washington County Board of Commissioners has decided that the "At-Large" position on the Agency Board of Commissioners would be a member of the County Board. Once appointed, the Agency's Board of Commissioners exercises all oversight responsibilities including but not limited to matters of programs, personnel, management, finance, and budget. The Agency's Board of Commissioners is responsible for the hiring of the Agency's Executive Director, whose responsibility it is to carry out the policies of the board, to oversee the day-to-day operations of the Agency, and to act as hiring manager.

The Agency currently employs 25 FTE's in four departments: 1) Housing Assistance and Administrative Services; 2) Finance Department; 3) Community Development; and 4) Economic Development. Current initiatives are described in the next section. Staff who work with this requested legal counsel are primarily the department directors, community development staff, and executive director.

Financial Status

The Agency has an annual operating budget of just under \$16 million. Revenue sources include rents, federal and state grants, and special benefit tax levy. The Government Finance Officers Association of United States and Canada awarded the Agency a Certificate of Achievement the Authority for Excellence in Financial Reporting every year since 2004. Agency financial statements are available on the agency website at www.washingtoncountycda.org

The Agency is considered a discretely presented component unit of Washington County, Minnesota, since the Washington County Board of Commissioners appoints the Agency's Board of Commissioners and Washington County has a potential obligation relating to certain housing development bonds issued by the Agency. These bonds carry a general obligation pledge of the County, which enables the Agency to obtain lower borrowing costs for the purpose of financing the construction of housing facilities within the County.

Approximately 40% of the Agency's revenues comes from rents collected from its portfolio of rental properties. The Agency wholly owns and operates fifteen properties with over 950 units including 377 senior units, 485 family units and 96 Public Housing units. The Agency is the managing member of an additional 188 units across 3 properties; 121 senior units (funded with tax exempt, private activity bonds and 4% tax credits) and 67 family units (funded with 9% tax credits). The Agency currently contracts with Shelter Corporation for property management services of all properties.

Approximately 30% of the Agency's revenues are grant resources. The Agency has several federal grant contracts with the U.S. Department of Housing and Urban Development (HUD). Contracts include Community Development Block Grant (administering on behalf of Washington County), HOME Investment Partnerships (administering on behalf of Washington County), Public Housing, Housing Choice Voucher (including Veterans Affairs Supportive Housing, Family Unification, and Mainstream programs), Shelter Plus Care, Family Self-Sufficiency, and Comprehensive Housing Counseling (through Minnesota Homeownership Center as intermediary). The Agency has several contracts with Minnesota Housing Finance Agency including the Bridges rental assistance program, Rehabilitation Loan Program, and Emergency and Accessibility Loan Program. The Agency is a sub-allocator of Low-Income Housing Tax Credits and has a gap financing program. The Agency is not an entitlement bond issuer.

The Agency collects a special benefit tax levy, which accounts for approximately 25% of the Agency annual revenue. The current amount is 90% of the maximum allowed. The levy funds bond debt service and coverage, capital improvements, the Agency's GROW Fund - a gap financing program, new senior affordable housing development, pre-development financing fund, and Open to Business program.

Northland Securities is currently under contract with the Agency as its Financial Advisor to assist with the creation and management of Tax Increment Financing (TIF) districts, issuance of bonds, and Municipal Advisor Services.

Major Agency Initiatives

Future initiatives may include, but are not limited to:

- Conversion of remaining public housing units. The Agency plans to convert a 40-unit apartment development and 9 units in two mixed-finance, privately held developments from the Department of Housing and Urban Development's Public Housing program to an alternative affordable housing financing structure through the Rental Assistance Demonstration (RAD) process in 2021.
- New construction of a senior apartment building. The Agency plans to develop a 60-80 unit apartment development in the next five years. The Agency works collaboratively with cities within Washington County to acquire land for the purpose of constructing new affordable housing developments. Financing sources may include private activity or general obligation bonds, Low Income Housing Tax Credits, HOME funds, Community Development Block Grant funds, state and local gap financing resources, or other similar financing sources.
- Development of supportive housing and possible homeless shelter. The Agency plans to either construct or acquire/convert a facility that would serve as an emergency homeless shelter and permanent supportive housing in the next two years. The Agency works collaboratively with cities within Washington County and Washington County's Community Services department to identify opportunities to support households in need of supportive services to maintain their permanent housing and to assist households without permanent housing.
- Creation of an economic development revolving loan fund. The Agency plans to create a county-wide business revolving loan program to assist communities and businesses with demolition of blighted buildings, commercial building renovation and façade improvements and small business relocation and expansion activities.

Scope of Legal Services

The Agency will consider proposals for each of the services below, separately or any combination of services listed including all.

- 1) General Counsel
- 2) Bond Counsel
- 3) Public Finance
- 4) General Partner counsel when the Agency is the general partner/managing member in an affordable housing partnership
- 5) Unlawful Detainers
- 6) Collective Bargaining
- 7) Real Estate

Legal Services Requirements

To follow are the primary responsibilities for each service area:

- 1) General Counsel Services, including but not limited to:
 - a. Ongoing advice and consultation on Open Meeting Law, Data Privacy Act, and record retention practices.
 - b. Research and submit legal opinions on various matters as requested.
 - c. Provide written updates on new state or federal legislation or judicial decisions impacting the Agency and suggested action or changes in operations or procedures to assure compliance.
 - d. As needed and directed, attendance at Agency's Board of Commissioners meetings (primarily third Tuesday of each month).
 - e. Ongoing advice and consultation on the Fair Housing Law and Minnesota Human Rights Act, especially in regard to program policy development and day to day activities in the Agency's rental assistance and homeownership programs.
 - f. Prepare and/or review property management agreements with the property management company, as needed.
 - g. Ongoing advice and consultation on legal issues pertaining to the administration of the public housing. The Agency expects to convert 49 units through the streamlined RAD process; a 40-unit public housing building owned by the Agency and 9 mixed-finance public housing units privately owned in 2 tax credit properties, by December 31, 2021.
 - h. Ongoing advice and consultation on appellate law, especially pertaining to the Section 8 Housing Choice Voucher Program including preparing findings of fact and submitting appeals to the Minnesota Court of Appeals as directed.
 - i. Ongoing advice and consultation on employment law, including discrimination, harassment, etc. (this service does not include collective bargaining law and representation; see item #6 below).
 - j. Lobbying activities on behalf of the Agency at the state legislature on matters that may affect the Agency.
 - k. Litigation matters may include matters affecting all aspects of the Agency's programs, including but not limited to, appeals on Section 8 Housing Choice Voucher terminations, contractual disputes, employment related matters, fair housing or property management related matters, etc. The Agency is not, at present, a named party in a lawsuit.
 - l. Ongoing advice and consultation on public bidding and construction law.
- 2) Bond counsel services pertaining to the issuance of the full spectrum of taxable and tax-exempt bonds as regulated by state and federal law pertaining to housing development activities, including but not limited to preparation and review of bond financing documents, issuance of opinions, and working with underwriter, financial advisor, trustee, and bondholder if necessary, assisting with compliance activities, conduit policy development etc.
- 3) Public finance law specifically including preparation of Redevelopment Plans, Project Areas and Tax Increment Financing Plans, tax abatement programs, housing finance programs such as

HOME, CDBG, and Low-Income Housing Tax Credits, economic development programs, special tax levy and other typical public finance tools. Ongoing advice and consultation on Low Income Housing Tax Credit representing the Agency as a sub-allocator, including review of annual Qualified Allocation Plan and Program Compliance Manual, review tax credit applications and scoring, preparation of reservation and carry over agreements, 8609 forms, and all other legal matters.

- 4) Ongoing advice and consultation on representing the Agency as a general partner in an LLC, LP, LLP or other partnership for the financing of new affordable housing development or rehabilitation of existing developments. At this time, the Agency is working with a developer in forming an LLC to refinance one of its existing developments. Counsel in this area would represent the Agency as the sole member general partner and prepare/review partnership agreements and legal documents.
- 5) Filing unlawful detainers for public housing tenants (according to the Agency's "Admissions and Continued Occupancy Policy") as well as unlawful detainers for tenants in the remaining Agency portfolio, including potential filings for related infractions including judgments, liens, etc. In an average year, the Agency filed approximately 30 unlawful detainers.
- 6) Collective bargaining law representing the Agency in contract negotiations and legal matters with its AFSCME union. Currently, there is a 14 member AFSCME union with a valid contract through December 2022. Negotiations occur typically in the fall and occur once every two to three years, with the possibility of re-openers occurring annually. Agency staff are the primary negotiators, but counsel is needed for assistance on negotiation strategy, legal advice on contract and labor issues, including employee disciplinary and grievance matters, and final review of proposed contracts.
- 7) Ongoing advice and consultation on real estate development and redevelopment initiatives including environmental law as it pertains to real estate transactions. Prepare and/or review real estate purchase/sale documents. Prepare and/or review joint powers agreements, development agreements, redevelopment contracts, or other legal agreements regarding real estate transactions. Knowledge of environmental laws pertaining to polluted properties, state and federal programs, liability matters is essential. Knowledge and experience of state and federal law regarding relocation requirements is also an essential component for consideration.

General Instructions

Responses must provide complete information as described in this request. Questions about this RFP may be made to Melissa Taphorn, Executive Director at MelissaT@washingtoncountycda.org or 651-202-2821, prior to submission deadline. The Agency reserves all rights to accept or reject any or all proposals.

An electronic copy must be submitted by 4:30 pm on Thursday, December 31, 2020 to MelissaT@washingtoncountycda.org.

Required Proposal Elements

- **PROPOSED SERVICES.** Provide a list that clearly states which of the requested services the firm proposes providing.
- **FIRM DESCRIPTION.** Describe the nature of the law firm's practice. Describe why the firm is qualified to provide the services requested by the Agency.
- **CAPACITY AND TRAINING.** Describe the overall capabilities, qualifications, training, and areas of expertise for each of the principals, partners, and associates of the law firm who will serve the Agency for each service area. Include any proposed staffing changes should the Agency's legal services contract be awarded. Please include the information below:
 - Identify the individuals who will be designated to serve the Agency in each service area including the length of employment for each person, and her/his area of specialization. Additionally, identify personnel who will handle litigation matters.
 - For each identified individual, a description of all instances of discipline against that attorney by the official disciplinary body of any jurisdiction during the preceding five years. This includes all disciplinary complaints and matters which resulted in the issuance of any public sanction, but not limited to, warnings, admonitions, reprimands, and suspensions.
 - Include legal training and number of years of practice, including date of admission to the Minnesota Bar Association, number of years of municipal, housing and redevelopment authority, economic development authority, public housing agency, or other local public sector law practice as a full-time local government attorney and/or in a private law office specializing in local government.
 - Identify relevant professional affiliations, including recent recognitions or awards.
 - Describe how the firm will manage the volume of Agency work so that the Agency can operate in an effective and efficient manner.
 - Describe office staffing, including all permanent employees, general duties, and work schedules.
 - Describe the firm's procedures for providing continuing uninterrupted quality service if staffing changes or if the requested scope of services is significantly increased.
 - Identify any foreseeable or potential conflicts of interest both public and private that could result from such representation and the manner in which you would propose to resolve such conflicts.
- **LITIGATION.** If the firm or any of the attorneys employed by the firm, have ever been sued by cities or other clients for malpractice, been the subject of complaints filed with the State Bar Association, or had discipline imposed by the State Bar Association, please provide information about the nature of the incident, the dates of when the matter began and concluded, and the results of the situation.
- **DEMONSTRATED EXPERIENCE.** For each service area proposed, provide, at minimum,

information on three relevant projects, cases, and/or work products that directly relate to the Agency's programs that demonstrate the skills, knowledge and capacity to represent the Agency.

- **PUBLIC SECTOR AND RELEVANT EXPERIENCE.** List all public and relevant clients for which the firm currently provides services under a fee for services basis or on a retainer basis.
- **PROFESSIONAL REFERENCES.** Provide three professional references for the partner assigned to the Agency, including addresses and work telephone numbers. References should be currently employed public agency officials or agents.
- **COST FOR SERVICES.** Provide the pricing schedule proposed to charge the Agency for each service area the firm is proposing.
 - Describe how the firm intends to charge legal services, either on an hourly or fixed-fee basis. The Agency will not entertain proposals with retainer charges.
 - Any not-to-exceed amount, to be charged for professional fees under each method or alternate method designated.
 - Provide the hourly rates for all partners, associates and paralegals or other employee classifications that will be assigned to the Agency.
 - Identify the minimum increment of time billed for each service including phone calls, correspondence, and personal conferences.
 - Indicate all other costs and reimbursables including travel (per mile), telephone, printing, photocopying, etc.
- **MALPRACTICE INSURANCE.** Provide the level of malpractice insurance carried, including the deductible amount, to cover errors and omissions, improper judgments, or negligence.

Conditions Regarding Process

The Agency will not reimburse any expenses incurred by the firm submitting responses including but not limited to, expenses associated with the preparation and submission of the response and attendance at interviews.

The Agency reserves the right to reject any and all proposals, to request additional information from any or all firms, and to suggest modifications to the terms and conditions or a retainer agreement from that offered by a firm.

Public Record/Confidentiality

Information supplied by each firm to the Agency is subject to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 (the "Act"). Responses submitted become a matter of public record as set forth therein. Such information shall become public unless it falls within one of the exceptions in the Act. If the firm believes any non-public information will be supplied, the firm shall take reasonable steps to identify and provide reasonable justification to the Agency regarding which data, if any, falls within the exceptions to the Act. However, the firm agrees as a condition of submitting a response that the Agency will not be held liable or accountable for any loss or damage which may result from a breach of confidentiality as may be related to the response submitted. The

Agency will not consider any cost information and references submitted by the firm to be non-public, confidential or trade secret material. Simply stating that the document is confidential or making a blanket claim of confidentiality without proper supporting justification is also not a valid reason to declare the document confidential.

Evaluation and Selection Process

Proposals will be screened and evaluated by the Executive Director and department directors, who will provide a recommendation to the Board of Commissioners for selection. Top candidates may be interviewed. Interviews are proposed to take place in January 2021. The criteria for evaluating the proposals are listed below in order of importance and weight given to them in evaluating each proposal:

- 1) Demonstrated depth and breadth of firm experience, expertise of the proposal team and lead attorney(s) in the practice of law proposed, as evidenced in the proposal.
- 2) Outcome of reference checks and oral interviews that demonstrate the capabilities for the area of law proposed.
- 3) Cost of services.
- 4) Ability to staff and perform legal services promptly and in a manner that permits the Agency to operate in an effective and efficient manner.
- 5) Lack of current or potential conflicts of interest with clients who do business with the Agency.

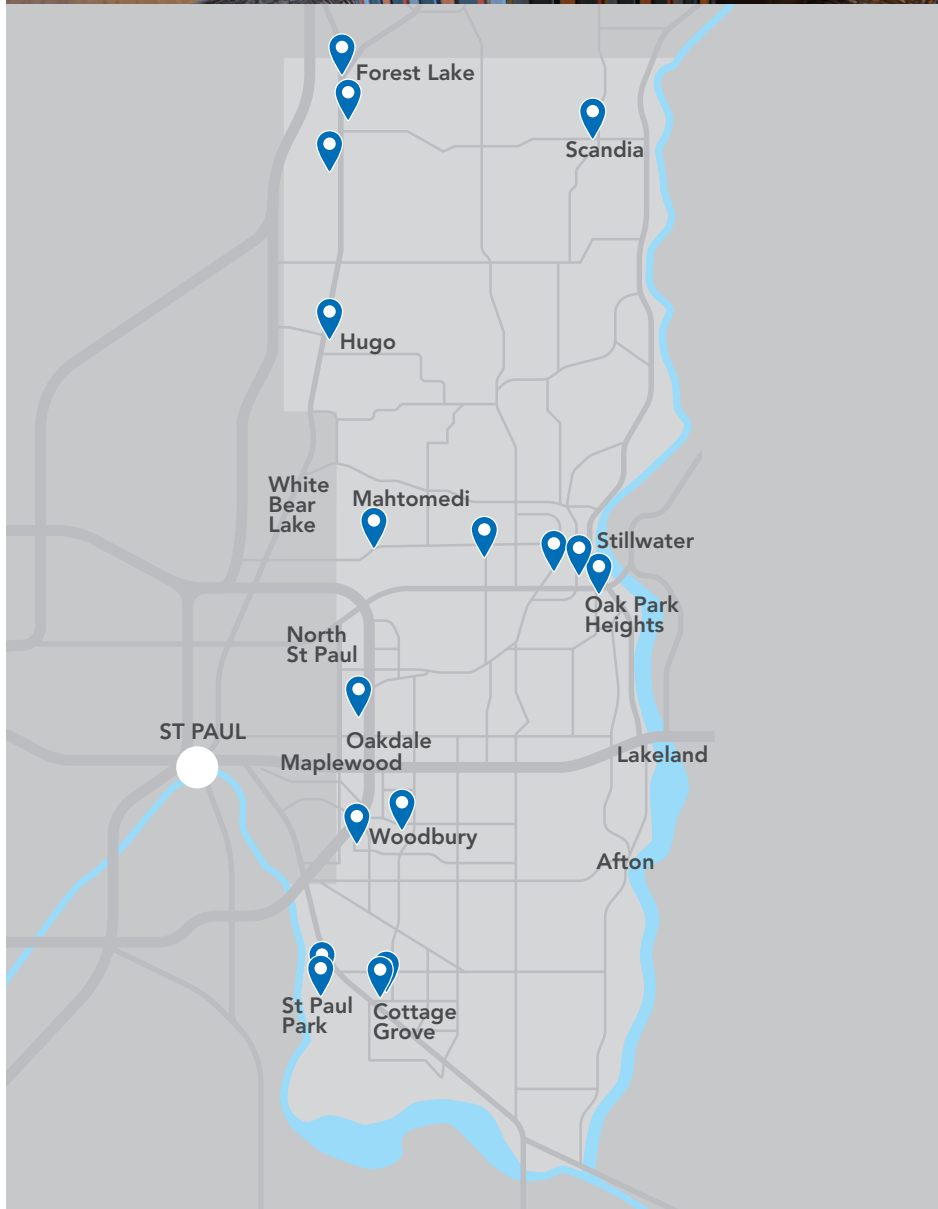
Proposed Agreement

The selected firm(s) will enter into an agreement(s) which will identify the terms of the engagement, which will then be approved by the Agency's Board of Commissioners. Firms will be required to provide appropriate insurance. Other terms, as appropriate, will be discussed. Attachments B and C provide the requisite forms from the federal government (HUD 5369B and 5369C).

We'll help you get there!



The CDA operates 1,146 apartments, providing homes for more than 2,000 Washington County residents.



WashingtonCountyCDA.org



A PARTNER TO COMMUNITIES

The Washington County Community Development Agency helps communities across the county achieve their housing and economic development goals.

Our mission is to promote community and economic development, and provide and maintain affordable, decent and safe housing opportunities in Washington County.

The operations of the CDA are overseen by a seven-member board of commissioners appointed by the Washington County Board of Commissioners.



WashingtonCountyCDA.org

651-458-0936

OUR IMPACT

We help communities expand housing choices

Ensuring that our cities and towns have a range of living options for people at all income levels and life stages strengthens communities and creates the right conditions for economic growth. We work with communities to establish a wide range of housing options and we also engage private developers to secure the capital needed to make housing investments happen.

Properties operated by the CDA provide homes to more than 2,000 Washington County residents, including 500 seniors and 600 families.

We help communities grow businesses and jobs

Since 2016, the CDA has helped business owners, realtors, brokers, and others learn about the advantages of doing business in Washington County. The CDA amplifies the stories of each of the county's 33 communities and elevates the visibility of the county and the region overall. Whether a business needs site information, market data, financing, or planning help the CDA is ready to help businesses thrive in Washington County.

The CDA refers over 500 contacts from real estate professionals to communities each year.

We help homeowners succeed

Owning a home remains a key component of wealth building, especially for middle-class and first-generation homeowners. According to national research, informed homebuyers have higher credit scores and are more financially literate. The CDA's education programs and advice help make homeownership a reality for individuals and families that might otherwise continue to rent or believe that homeownership just isn't possible for them. The CDA also sustains and improves property values across Washington County by providing low-cost grant and loan programs that allow homeowners to make critical improvements to septic, electrical, and plumbing systems. And for those who encounter economic hardship, the CDA works with lenders to modify loans and help homeowners avoid foreclosure.

More than 150 homebuyers and owners participate in the CDA's homeownership education, counseling, and home improvement programs each year.



The CDA created the award-winning TrailSide Senior Living in Forest Lake to expand housing options for seniors.



The Marine General Store in Marine on St. Croix partnered with the CDA's Open to Business program to refinance and buy a generator to protect inventory during a power outage.

We help create housing stability

We work with communities to ensure that people who have unique challenges can live with stability and dignity, including veterans, adults with disabilities, and young adults leaving foster care. We also ensure that families earning the lowest incomes have the housing stability needed to provide a secure and stable environment for their children, fostering their physical health and academic success.

For children and youth, stable homes mean fewer school absences and transfers, better behavior outcomes, and higher test scores. For seniors and persons with disabilities, stable housing offers security, familiarity and contributes to overall well-being.

The CDA serves over 500 households annually with rental assistance, or about 1,400 people; 50 percent are children.

We fix problem sites

Every community is challenged to address sites that are abandoned, contaminated, or otherwise difficult to re-purpose. We help communities renew these problem sites so they can become community assets once again.

At the request of the City of Mahtomedi, the CDA removed contaminated soil and transformed an underutilized property into 79 new apartment homes for seniors.

OUR PROGRAMS AND SERVICES

Housing and homelessness

- Rental assistance programs
- Financial education services to help residents increase their incomes and build wealth for the future
- Education and counseling services for first-time homebuyers
- Loan and grant programs for low- and moderate-income homebuyers and homeowners making critical improvements to their homes
- Assistance with loan modifications and other resources for homeowners at risk of foreclosure

Community development resources

- Financial tools for private developers of affordable housing
- Community Development Block Grants to help cities and townships with critical community-building efforts
- HOME Investment Partnerships Program funding to help create additional safe and decent homes for seniors and families

Economic development resources

- The Open to Business program provides expert guidance and access to capital for small businesses looking to grow or expand in Washington County
- Financial tools and technical guidance to help communities prepare sites for shovel-ready development, including support for pre-development activities and access to a variety of grant and loan programs
- Promotional and networking programs to increase awareness of the advantages of operating a business in Washington County

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

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

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

1. Contingent Fee Representation and Agreement

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

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

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

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

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

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

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

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

(Check the block applicable to you)

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

3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

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

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

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

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

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

4. Organizational Conflicts of Interest Certification

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

- (i) Award of the contract may result in an unfair competitive advantage;
- (ii) The Contractor's objectivity in performing the contract work may be impaired; or
- (iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.

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

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

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

5. Authorized Negotiators (RFPs only)

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

6. Conflict of Interest

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

7. Offeror's Signature

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

Signature & Date:

Typed or Printed Name:

Title:
