Sanford Housing Authority

1000 Carthage Street
P.O. Box 636
Sanford, NC 27331
919-776-7655
www.shanc.org

RFQ # 15-002
2015 GENERAL LEGAL SERVICES

CENTRAL OFFICE BUILDING, SANFORD, NORTH CAROLINA FOR THE SANFORD HOUSING AUTHORITY, NORTH CAROLINA, Assisted by the Department of Housing and Urban Development.

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Sanford Housing Authority

REQUEST FOR QUALIFICATIONS

RFQ # 15-002

GENERAL COUNSEL LEGAL SERVICES

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GENERAL COUNSEL LEGAL SERVICES

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1 PROPOSAL DEADLINE

Proposals shall be received until **4:00 p.m., EDST, on April 20, 2015** at the Sanford Housing Authority, Attention: Shannon McLean, Executive Director, 1000 Carthage Street, Sanford, North Carolina 27331 (delivery address). Proposals may be submitted prior to the deadline, but no proposal shall be evaluated until after the deadline. No proposals will be accepted after the deadline.

2. STATEMENT OF PURPOSE

The Sanford Housing Authority (hereinafter referred to as the "Housing Authority") is seeking proposals for general counsel legal services. It is the intention of the Housing Authority through this solicitation to enter into a contract with a general counsel that will serve the Housing Authority Board of Commissioners and the Housing Authority Staff in various capacities. The Housing Authority reserves the right to enter into contracts with attorneys other than the general counsel should it be deemed in its best interest.

The Request for Qualifications (RFQ # 15-002) for general counsel legal services is restricted to the Housing Authority only and proposals with respect to other agencies or projects shall not be submitted. Proposals are invited from any North Carolina licensed attorney-at-law or law firm which can comply with the objectives of the Housing Authority and with the United States Department of Housing & Urban Development (HUD) Handbook No: 1530.1 Rev-5 Litigation Handbook, Latest Change in effect as of May 18, 2004.

3. PROFILE OF SANFORD HOUSING AUTHORITY

- The Housing Authority was created in 1949 as evidenced by a Certificate of Corporation from the Secretary of the State of North Carolina.

- The Housing Authority is a public body corporate and politic governed by a 7 member board appointed by the Mayor and Council of the City of Sanford. (One member is always a public housing resident.)

- The Housing Authority manages approximately 487 Public Housing and Affordable Housing Units and 741 Section 8 Vouchers. The Housing Authority manages the properties.

- The Housing Authority has a workforce of 26 full- and part-time employees.

Over the years The Housing Authority has been awarded in various funding, including grants. Some of the funding sources include:

a. Emergency and Safety Grant
b. ROSS Grant
c. Capital Funds program and others

For further information on the Housing Authority, visit our Web Page at www.shanc.org.

4. SUBMISSION PACKAGE

Respondents shall provide **one (1) unbound original** and **eight (8) copies** of their complete submission package along with an electronic copy in a PDF Format on a CD rom in a **sealed** envelope or box. On the outside should be the respondent's name, address, and the due date along with the following information:

General Counsel Legal Services
Request for Qualifications - RFQ # 15-002

The proposal should be delivered or mailed to the following address and contact:

Sanford Housing Authority
Attention: Shannon McLean
Executive Director
1000 Carthage Street
Sanford, North Carolina 27331 (delivery address)

The submission package must be signed by an officer of the respondent who is legally authorized to enter into a contractual relationship on behalf of the respondent, and the respondent shall affix the organization's corporate seal to these documents. In the absence of a corporate seal, the submission package shall be notarized.

All proposals shall become the property of the Housing Authority and shall not be returned to the respondents. All costs incurred in the preparation and presentation of proposals shall be the responsibility of the respondent. No proposal may be withdrawn for a period of sixty (60) days after receipt without the consent of the Housing Authority.

5. CONTACT PERSON

All questions concerning this Request for Qualifications Proposal must be submitted in writing via email only to smclean@shanc.org. The deadline for inquiries regarding this proposal is 5:00 p.m., EDST, April 7, 2015. No questions will be answered after that time. The answers to submitted questions will be answered by way of an addendum. The questions and answers will be posted by 5:00 p.m. EDST on April 17, 2015.

6. SCOPE OF SERVICES

It is the intention of the Housing Authority to enter into an agreement with a qualified law firm to provide legal services on behalf of the Housing Authority at a fixed hourly rate and an alternate bid for Retainer Services and compensation. The Housing Authority will select a general counsel to represent and advise the Housing Authority Board of Commissioners and Staff in the following areas:

1. Real estate, mixed-finance transactions, land use, planning, zoning, private partnering, complex financing, environmental and redevelopment issues, and related matters;
2. State and local government law and legislative issues (*Public Records Act, Open Meetings Law, Local Government Finance Act, Housing Authorities Law)*, and related matters;
3. Federal governmental law and legislative issues *(HUD and executive branch rules and regulations, and federal legislation)*, and related matters;
4. Public financing, tax exempt and taxable multi-family housing revenue bonds, low income housing tax credit matters and related matters;
5. Taxation issues (federal, state, and local) relating to real property, non-profit corporations, public corporations, real estate development partnerships, and related matters;
6. Landlord/tenant and property management issues particularly with respect to public housing, Section 8 and compliance with state law and applicable federal regulations;
7. Legal counsel to Board of Commissioners including attendance at monthly meetings or other special meetings as requested;
8. Provide written legal opinions with respect to the Housing Authority policies, procedures and transactions;
9. Review and interpretation of contracting (construction, architect/engineering, professional, general services, supplies, etc) and procurement issues (U.S. Department of Housing and Urban Development regulatory advice, solicitation

procedures, bid protests, procurement contract development and review) and any related matters;

10. Labor and employment law, workers compensation, employee benefits, Americans with Disabilities Act issues, and related matters;
11. General business issues (debtor-creditor, corporate formation, partnerships, other commercial transactions);
12. Tort issues (insurance coverage, negligence, malpractice, defamation, intentional/unintentional acts causing injury to persons or property) and related matters; and
13. General litigation relating to the areas listed above, including representation in trials, administrative hearings, mediations, arbitrations, federal, state and local proceedings.
14. Legal advice to the Executive Director, Accounting Manager, Department Directors, and Board of Commissioners.
15. Preparation and applications for amendments to the Housing Authority's certificate of public convenience and necessity.

Planning and Development of Low-Income Housing Programs

To perform upon request all legal services in connection with, and to be responsible for all legal phases of the planning, development, initial occupancy, and financing of all low-rent housing projects to be undertaken by the Housing Authority. Such services shall include but not be limited to those categories listed above of the following:

1. Preparation or review of legal documents and papers; rendition of advice and assistance to the officers and employees of the Housing Authority; consultation with parties having dealings with the Housing Authority; supervision as to legality of the official acts and minutes of the Housing Authority; rendition of legal opinions on all matters submitted by the Housing Authority including questions regarding conflicts of interest.

2. Preparation of or review of contracts with surveyors, land negotiators, cost estimators, architects, appraisers, and all parties having dealings with the Housing Authority regarding such planning, development, initial occupancy of such projects; review and legal approbation of such contracts and payments thereon; handling of all legal questions and matters arising under such contracts of the Housing Authority.

3. Rendition of advice and assistance to the Housing Authority, and preparation of such documents as may be necessary in connection with exceptions from and variations of zoning, building and inspection ordinances and regulations.

4. Rendition of advice and assistance to the Housing Authority in acquisition of any interest in real property; assist in the preparation of necessary documents regarding such acquisition; approval of title insurance policies; rendition of legal opinions regarding title, liens and encumbrances, and any other matter affecting title or an interest in real property acquired by the Housing Authority.

5. In any project being constructed through the conventional competitive bidding procedures, counsel may provide review of documents relating to the advertisements and award of construction contracts, including the construction contract, specifications and performance and payment bonds.

6. To provide legal services in connection with the leasing or subleasing of property, the entering into of Agreements to lease, and/or options to purchase property.

7. Assist in the review of documents relating to the Housing Authority's authority to issue obligations including notes and bonds of the Authority, and the preparation of documents in the nature of audit letters. Authority understands and agrees that counsel does not possess any special knowledge respecting tax matters relating the issuance of debt, and that such specialized matters may require employment of specialist pursuant to **K Payment,** Number 14. Employment of Other Counsel, Specialist or Experts.

Management of Low-Income Housing Programs

To perform upon request all legal services in connection with, and to be responsible for all legal phases of low-rent housing projects of the Housing Authority now under management, such services to include but not be limited to the following:

1. Advising the Housing Authority's governing body and staff on all legal matters affecting such projects and programs; consultation with parties having dealings of a legal nature with the Housing Authority; attendance at meetings of the Housing Authority; preparation of Resolutions and related documents; review and approbation of Minutes of the Housing Authority; preparation and rendition of legal opinions to the Housing Authority.

2. Assistance in the negotiation and preparation of contracts, leases and other documents of the Housing Authority.

3. Appearance and representation of the Housing Authority before the governing bodies of the City, County, and other public bodies, excepting the California State legislature and the United States Congress.

To perform upon request all legal services in connection with, and to be responsible for all legal aspects of the Housing Authority's administrative practices. Such services will include but not be limited to the following:

1. Advising the Housing Authority's governing body and Staff on all legal matters affecting the general administration of the Housing Authority. This area shall include but not be limited to finance, personnel practices, employee benefits, affirmative action, general document preparation, general office service, personal service, and equipment contracts;

2. Assistance in the handling of employee grievances;

3. Review and approbation of all the Housing Authority insurance

4. Review and approbation of all inter-governmental agency and joint powers agreement, as well as provide assistance in the negotiation and preparation of such agreements.

7. TYPE OF CONTRACT

If a contract is entered into as a result of this RFQ, it will be a standard **professional services** contract. Negotiations may be undertaken with those attorneys-at-law or law firm(s) whose proposals show them to be qualified, responsible and capable of performing the work. The Housing Authority will enter into a contract that is the most advantageous to the Housing Authority, based upon qualifications, price and other factors. The Housing Authority reserves the right to consider modifications to the RFQ received at any time before the award is made, if such action is in the best interest of the Housing Authority.

8. PERIOD OF PERFORMANCE

The performance period of the contract for legal services entered into as a result hereof shall be for a period of two (2) years commencing upon the Housing Authority's Notice to Proceed, with an option of three (3) additional one (1) year periods for a maximum total of five (5) years, based on satisfactory performance and mutual consent.

9. PROPOSAL CRITERIA

Finalist Evaluation Criteria: The Housing Authority may conduct oral interviews with the finalists who have been selected as a result of this RFQ. The written documentation shall represent 50% of the evaluation and the oral interview shall represent 50% if an interview is conducted. The oral interview will begin with a presentation by the respondent that gives an overview of the team's qualifications as an outside counsel. Additionally, the oral interview will consist of four (4) questions whose value is assigned below. These questions should be addressed after the opening presentation and members of the Selection Team may ask additional questions as follow-up to the assigned questions in order to better understand the respondent's presentation or oral answer. And finally, the oral interview will consist of any follow-up questions the Selection Team may have of the respondent's written submission. These follow-up questions are intended to clarify the written submission. The finalists in the selection process may be asked to participate in an oral interview in Sanford, NC.

ORAL CRITERIA (if used)

Questions worth a total 100 points

1. Oral Presentation, thirty minute limit for presentation. (35 Points)

2. Is any attorney in your firm currently representing, or in the last two (2) years has represented, an SHA public housing resident or Section 8 participant in a legal matter that was in conflict with the Housing Authority's interest in that matter? If so, please state the nature of each such legal matter. "No" = (20 points), "Yes" = (0 points)

3. If selected as General Counsel, you will be required to represent and advise the Board of Commissioners and the Staff. Assume that a question arises regarding the general operation of the Housing Authority and this results in a major difference of opinion between the Board of Commissioners and Housing Authority Staff. What course of action would you take to resolve this management conflict? (20 points)

4. Are you a member of the Housing Development Law Institute ("HDLI"), which is a national organization of attorneys who represent housing authorities across the country? HDLI sponsors two (2) CLE programs during the year. Attendance at these programs is very beneficial in keeping abreast of regulations and issues in federal

housing programs. If you are selected as the General Counsel, would you be willing to: 1) join this national organization, if not already a member; 2) regularly attend the two CLE programs; and 3) waive all hourly fees and expenses associated with joining HDLI and attending the CLE programs. If your answer to any part of this question is "No," why not? (10 points)

5. Additional questions as determined by the selection panel during oral interview. (15 points)

WRITTEN CRITERIA

A. BACKGROUND INFORMATION

Provide a description of your firm including the following information: date firm established, areas of practice, number of attorneys, total number of employees, and office location(s).

B. FACTORS FOR CONSIDERATION IN THE SELECTION PROCESS

The Housing Authority has established certain criteria that will be considered in the process of selecting a firm or individual attorney as legal counsel. A minimum of five (5) years of experience in the general practice of law is required. Following are the factors for consideration along with their corresponding point value. In the first category, Past Performance on Similar Projects, the total number of points is detailed below. The maximum number of points that a respondent may receive is one hundred (100) points for all the factors for consideration.

1. Past Performance on Similar Projects (50 Points)

List previous experience for each area, state the period(s) of performance, scope of services, fee basis, contact person and telephone number. Past performance with public housing and government representation in the following areas should be specifically identified:

A. Real Estate Development and Finance

(i). Real estate, mixed-finance transactions, land use, planning, zoning, private partnering, complex financing and redevelopment issues and related matters. **10 Points**

(ii). Public financing, tax exempt and taxable multi-family housing revenue bonds, low income housing tax credit matters and related matters. **3 Points**

(iii). Taxation issues (federal, state, and local) relating to real property, non-profit corporations, public corporations, real estate development partnerships, and related matters. **1 Point**

(iv). Acquisition and disposition of property in conformity with local, state, and federal regulations. **2 Points**

(v). Environmental issues and related matters. **1 Point**

B. Representation of Public Entity

(i). State and local government law and legislative issues (*Public Records Act, Open Meetings Law, Local Government Finance Act, Housing Authorities Law)*, and related matters. **6 Points**

(ii). Federal governmental law and legislative issues *(HUD and executive branch rules and regulations, and federal legislation)*, and related matters. **3 Points**

(iii). Legal counsel to Board of Commissioners including attendance at monthly meetings or other special meetings as requested. **3 Points**

(iv). Provide written legal opinions with respect to the Housing Authority policies, procedures, and transactions. **1 Point**

C. Public/Private Housing Management

(i). Public Housing landlord/tenant and property management issues including compliance with state law and applicable federal regulations. **5 Points**

(ii) Private landlord/tenant and property management issues. **5 Points**

D. General Experience

(i). Contracting (construction, architect/engineering, professional, general services, supplies, etc) and procurement issues (U.S. Department of Housing and Urban Development regulatory advice, solicitation procedures, protests) and any related matters. **2 Points**

(ii). General litigation relating to the areas listed in the above Scope of Services, including representation in trials, administrative hearings, mediations, arbitrations, federal, state, and local proceedings. **3 Points**

(iii). Labor and employment law, workers compensation, employee benefits, Americans With Disabilities Act issues, and related matters. **3 Points**

(iv). General business issues (debtor-creditor, corporate formation, partnerships, other commercial transactions). **1 Point**

(v). Tort issues (insurance coverage, negligence, malpractice, defamation, intentional/unintentional acts causing injury to persons or property) and related matters. **1 Point**

2. Management and/Work Plan (10 Points)

Describe your firm's technical plan for accomplishing all elements of the Scope of Services. The proposed methodology should demonstrate an understanding of the required services and provide evidence of the attorney's ability to carry out the project. Include a statement of your ability to provide specific detailed statements concerning the nature and date(s) of legal services rendered and an itemization of all expenses.

Indicate which tasks will be performed by the lead attorney and which will be performed by others. Any proposed subcontractors must be identified in the plan and will be required to satisfy all requirements of this solicitation. Indicate the efforts you will make to minimize legal costs such as delegating work to associates or paralegals.

3. *Lead Attorney and Key Personnel* *(25 Points)*

Identify the lead attorney and his/her experience in the areas defined in the Scope of Services. Identify other key personnel with your firm who will work on the contract along with their experience. Experience with public housing/government representation should be specifically identified.

4. *Section 3 Plan* *(15 Points)*

The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirement of Section 3 of the Housing and Urban Development Act of 1968, as amended. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the area of the Section 3 covered project, and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the Section 3 covered project. For the purpose of training and employment, the Section 3 area is the metropolitan area or non-metropolitan county in which the project is located.

ALTERNATE PROPOSAL: Retainer Services and Compensation:

In preparing your proposal: Provide an annual rate with a monthly billing. Explain in detail what the monthly retainer will cover. State your hourly rates above the retainer; in your proposal include the listing of services and cost.

C. FORMS TO BE SUBMITTED WITH PROPOSAL

1. Solicitation Cover Sheet
2. Form of Bid
3. Contractor References
4. Non-Collusive Affidavit
5. Affidavit of Non-Default
6. HUD Form 5369-C Certifications and Representations of Offerors Non-Construction Contracts (8/93)
7. Certification for a Drug-Free Workplace – HUD-50070 (3/98)
8. Certification Regarding Debarment and Suspension HUD 2992 (3/98)
9. Certification of Payments to Influence Federal Transactions - HUD 50071 (3/98)

10. Disclosure of Lobbying Activities, Standard Form LLL
11. E-Verify

D. HUD FORMS/HANDBOOKS APPLICABLE TO THIS SOLICITATION

1. HUD Handbook No: 1530.1 Rev-5 Litigation Handbook, Latest Change in effect as of May 2, 2004.
2. HUD Form 5369-B Instructions to Offerors – Non-Construction (8/93)
3. HUD Form 5369-C Certifications and Representations of Offerors Non-Construction Contracts (8/93)
4. HUD Form 5370-C General Contract Conditions Non-Construction Section I, (10/2006)
5. PIH 2003-24 Procurement of Legal Services by Public Housing Agencies

Failure to provide any of the proposal criteria may be grounds for considering the respondent as non-responsive.

10. EVALUATION OF RESPONSES

Award of any contract resulting from this solicitation shall be made in accordance with HUD and the Housing Authority procurement regulations. All responses received by the Housing Authority by the time and date specified in this RFP shall be evaluated by a Review Team.

The Housing Authority will select the proposals that are the most advantageous to the Housing Authority based on the evaluation criteria stated herein. The Housing Authority reserves the right to negotiate price and other factors with any or all acceptable proposals.

The Competitive Negotiation Process will be used to select the contract award, beginning with the highest ranked firms. The Housing Authority reserves the right to negotiate a contract with respondents who provide the greatest benefit to the Housing Authority, not necessarily the lowest fees.

The Housing Authority reserves the right to negotiate the final scope of services with all Respondents in the competitive range.

The Housing Authority reserves the right to waive any minor irregularities or technicalities in the proposals received.

The Housing Authority reserves the right to accept or reject any or all proposals, to waive informalities, and to award the contract to other than the low bidder should it be deemed in its best interest.

A. Confidential Information Procedures

Upon receipt at the Procurement Office and the conclusion of the Procurement process to include evaluation and contract award, your Proposal is considered a public record except for material which qualifies as "trade secret" information under N.C. Gen. Stat. 66-152 et. seq. After the Proposal opening, your Proposal will be reviewed by the Housing Authority's evaluation committee, as well as other Housing Authority staff and members of the general public who submit public records requests. To properly designate material as trade secret under these circumstances, each Proposer must take the following precautions: (a) any trade secrets submitted by a Proposer should be submitted in a separate, sealed envelope marked "Trade Secret — Confidential and Proprietary Information — Do Not Disclose Except for the Purpose of Evaluating this Proposal," and (b) the same trade secret/confidentiality designation should be stamped on each page of the trade secret materials contained in the envelope.

In submitting a Proposal, each Proposer agrees that the Housing Authority may reveal any trade secret materials contained in such response to all Housing Authority staff and Housing Authority officials involved in the selection process, and to any outside consultant or other third parties who serve on the evaluation committee or who are hired by the Housing Authority to assist in the selection process. Furthermore, each Proposer agrees to indemnify and hold harmless the Housing Authority and each of its officers, employees, and agents from all costs, damages, and expenses incurred in connection with refusing to disclose any material which the Proposer has designated as a trade secret. Any Proposer that designates its entire Proposal as a trade secret may be disqualified.

11. CONTRACTUAL REQUIREMENTS

Contracts issued as a result of this solicitation will incorporate the requirements of this solicitation along with the following standard contract clauses:

A. INSURANCE

Before work begins, selected respondent shall procure from a reputable insurance company authorized to do business in the State of North Carolina the following insurance

policies which provide (at a minimum) the following coverages:

1. Comprehensive General Liability - Shall have minimum limits of $1,000,000 per occurrence combined single limit for bodily injury liability and property damage liability. This shall include premises and/or operations, independent contractors, products and/or completed operations, broad form property damage and a contractual liability endorsement.

2. Workers' Compensation - Coverage to apply to all employees for statutory limits in compliance with the applicable State and Federal laws. The policy must include employers' liability with a limit of $100,000 each accident, $100,000 bodily injury by disease each employee and $500,000 bodily injury by disease policy limit. Coverage is required regardless of any exemptions which might otherwise apply.

3. Business Auto Policy - Not required unless there is a specific relationship to the agreement. If required, the same limits under Comprehensive General Liability shall apply. This shall include owned vehicles, hired and non-owned vehicles and employee non-ownership.

4. Professional Errors and Omissions Liability - Coverage shall have minimum limits of $1,000,000 per claim and $3,000,000 aggregate.

5. Fidelity Bond with limits of $25,000 or more

The Housing Authority is to be included as an Additional Insured on the comprehensive general liability and, if applicable, on the business auto policy. Current, valid insurance policies meeting the requirements herein identified shall be maintained during the entire term of any contract resulting from this solicitation. Renewal certificates shall be sent to the Housing Authority thirty (30) days prior to any expiration date, and the selected respondent's insurer shall give the Housing Authority thirty (30) days prior written notification in the event of cancellation or modification by either selected respondent or its insurer or upon renewal of any coverage required. Selected respondent shall furnish the Housing Authority with a Certificate(s) of Insurance evidencing the coverages required herein before work begins.

It shall be unacceptable for any Certificate of Insurance to contain language or wording to the effect that the insurer shall have no liability for failure to provide the prior notices required herein.

B. INDEMNIFICATION

Contractor agrees to protect, defend, indemnify and hold the Housing Authority, its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of this agreement and/or the performance hereof that are due to the negligence of the contractor, its officers, employees, or agents. Contractor further agrees to investigate, handle, respond to, provide defense for, and defend the same at its sole expense and agrees to bear all other costs and expenses related thereto.

C. TERMINATION FOR CAUSE

The Housing Authority may suspend or terminate this Agreement and all payments to be made hereunder, upon at least three (3) days prior written notice, for cause. Cause shall include, but not be limited to: (1) misappropriation of funds by Contractor or by any of its officers, employees, or agents; (2) failure by Contractor to comply with any term or condition of this Agreement; (3) falsification by any officer, employee or agent of Contractor of any document or information submitted by Contractor (past or present) in connection with the subject matter of this Agreement; (4) Contractor's bankruptcy, insolvency, assignment for the benefit of creditors, marshaling of assets, or other such events; or (5) occurrences reasonably justifying The Housing Authority's opinion, whether or not subsequently confirmed, that Contractor is or is about to become unable to meet its obligations under this Agreement.

In the event of suspension or termination of this Agreement, Contractor shall remit to the Housing Authority any unexpended balance of payments made to Contractor by the Housing Authority. The Housing Authority's acceptance of Contractor's remittance shall not constitute a waiver of any claim that the Housing Authority might have against Contractor.

D. TERMINATION FOR CONVENIENCE

The contract may be terminated by either party provided that a **thirty (30)** day written notice is given to the other party of the contract.

E. DEFAULT

Failure to satisfactorily perform the services required by the contract will be grounds for the Housing Authority to declare the Contractor in default.

F. DISCLOSURE

The selected respondent shall at all times guarantee access by the Housing Authority, HUD, Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and records of the selected respondent which are directly pertinent to that specific contract for the purpose of making audit examination, excerpts and transcriptions. The selected respondent shall be required to retain all pertinent records for a period not less than three (3) years after final payment has been made and all pending matters closed.

G. SECTION 3 CLAUSE

The work to be performed pursuant to this RFP is on a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended.

H. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of any contract resulting from this solicitation, the selected respondent agrees as follows:

1. It will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or handicap.
2. It will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, or handicap. 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.

I. OPTIONS

1. The Housing Authority may extend the term of any contract resulting from this

solicitation for a period not to exceed twelve (12) months by written notice to the selected respondent within ninety (90) days prior to the expiration date of the Contract; provided, that the Housing Authority shall give the selected respondent a preliminary written notice of its intent to extend at least sixty (60) days before such contract expires. The preliminary notice will not commit the Housing Authority to an extension. Any changes in compensation will be based upon changes in the most current Consumer Price Index.

2. If the Housing Authority exercises this option, the extended contract shall be considered to include a similar option provision.
3. The total duration of any contract resulting from this solicitation, including the exercise of any option under this clause, shall not exceed five (5) years.

J. REPORTING CRITERIA

In order for the Housing Authority to effectively monitor the work to be performed, it is necessary that the Housing Authority be kept apprised as to the current status of the matter. In addition, the Housing Authority requires the following information:

1. A realistic budget estimating total costs for the life of the case in all matters involving litigation. Outline the tasks to be undertaken and associated costs. The Housing Authority would like to have this within thirty (30) days of a law firm's commencement of representation in connection with a specific matter. If that is not possible, please advise us immediately. Budget estimates should be kept current as revisions may be warranted by developments in the case.
2. The initial and ongoing strategy for defense/resolution, including factual analysis of issues related to liability and damages; and, a description of planned activity/discovery, along with a timetable for its completion. Include any insight that can be provided regarding the judge, opposing counsel, jurisdiction or venue. This information should be provided within thirty (30) days.
3. Timely, at least every thirty (30) days, updates setting forth the law firm's continuing strategy for defense/resolution, updated damage/liability analyses, updated schedule of discovery, and a brief synopsis of the discovery as it is accomplished.
4. Consideration of alternative dispute resolution (ADR) to expedite the resolution of claims. When appropriate, the law firm's status report should include an assessment of whether/when a particular mailer is suitable for ADR in light of the issues involved and developments in the case.
5. Copies of a description of all motions or documentary evidence relating to liability and/or damages and copies of any amendments to pleadings and developments relating to the pleadings of the case and copies of all internal research memoranda for which the Housing Authority will be billed.
6. Court dates, including hearings on discovery, motion filing dates, discovery cut-off dates,

settlement conferences, trial setting conferences, and trial dates.

7. Forward immediately upon receipt all settlement demand and offers.
8. All releases must be approved by the Housing Authority prior to execution.

K. PAYMENT

Invoices shall be submitted in two (2) copies to the following address and with the following billing criteria:

Sanford Housing Authority
Attn: Shannon McLean, Executive Director
P. O. Box 636
Sanford, NC 27331

All professional legal services provided shall conform to the criteria outlined below:

1. The Housing Authority is committed to obtaining quality legal services and desires to obtain the best outside counsel available and to appropriately compensate them for their services. The Housing Authority is equally committed to obtaining efficient and cost effective legal services.

2. Counsel shall perform legal services at the requests of the Housing Authority. In addition, counsel may receive direct inquiries from the Housing Authority's Board of Commissioners through the Chair. Request from the Housing Authority will be through the Executive Director.

3. The Housing Authority retains counsel based on their expertise and the Housing Authority's confidence in their ability and judgment. The Housing Authority requires that this law firm identify the attorneys considered for an assignment at the inception of any major/significant assignment, project, or case. If attorneys performing services for the Housing Authority are changed because of the law firm's needs, the Housing Authority shall not be charged for time required to educate the new attorneys regarding such matters. The Housing Authority shall not be billed for time required to educate an attorney, paralegal, or clerk.

4. Law firms shall avoid overstaffing any matter. The Housing Authority shall pay for only one attorney to accomplish any single task. For example, the Housing Authority will not pay for two (2) or more attorneys to attend depositions or court hearings, without prior approval. The Housing Authority will not pay for unessential interoffice conferences, an attorney redoing the work of another

attorney, or the routine digesting or summarizing of depositions and documents without prior Housing Authority approval. Extensive legal research projects shall be approved by the Housing Authority in advance of the work.

5. Conferencing among attorneys in the law firm is generally not compensable, unless the conference is a necessary strategy meeting relating to some significant legal event, such as an upcoming trial or deposition or complex transaction. Subject to certain exceptions, such as expert consultations, only the senior attorney's time will be compensable for such attorney conferences.

6. Discovery requests should be reviewed by the law firm. The Housing Authority Executive Director/Staff will work directly with the law firm to obtain information required for responses. The law firm shall advise the Housing Authority of the availability of protective orders and stipulations regarding privileged or confidential information otherwise protected under applicable laws. It is essential that law firms keep the Housing Authority Executive Director /Staff fully and currently informed about the status of the legal matters. It is essential that the Housing Authority's Executive Director /Staff be provided sufficient time to review all significant pleadings or documents prior to filing. Copies of final documents (e.g., significant correspondence, research memoranda, pleadings) shall be sent to the Housing Authority Executive Director.

7. We encourage the appropriate use of paralegals and expect law firms to delegate to qualified paralegals and clerks who can perform tasks at lower cost. Assignment of work to paralegals should not result in duplicative work by attorneys. Routine administrative work does not qualify as billable activity, such as photocopying, filing, typing, document retrieval, etc.

8. Litigation is a matter of special concern because of the potential for high cost. The time spent on any claim or litigation matter must be commensurate with the significance of that matter to the Housing Authority.

9. General overhead and administrative costs are considered part of the hourly rate. Therefore, the Housing Authority will not pay for such costs, including but not limited to:

   - Word processing time and other clerical assistance
   - Overtime and premium charges for billings for attorneys or support staff, or secretarial overtime compensation
   - Office machine attendants
   - Local (not travel related) meals

- Entertainment expenses
- Local (not travel related) transportation
- Review and transportation of firm invoices
- Charges for use of in-house conference rooms
- Heating, air conditioning, lighting, and parking costs.

10. The Housing Authority will pay the actual cost for the reasonable and necessary use of the following:
    - Messenger/hand delivery services
    - Overnight mail delivery services
    - Facsimile transmissions (outgoing only)
    - Photocopying
    - Long distance telephone services
    - Computerized legal research
    - Travel related transportation, accommodations, and meals (if authorized by the Housing Authority in advance)

11. The Housing Authority requires detailed billing setting forth, specifically, the work performed by each individual. All billing time must be in quarter of an hour increments. "Narrative" or "Block" billing is unacceptable. For example, if numerous tasks are undertaken in one day, they should each be identified with a specified time for performing that task and the individual performing it. All conferences, whether telephonic or otherwise, should specify the participants and the subject matter discussed. Also include the program (Conventional, DVI, Section 8, Hope VI, etc) and site and/or person address. All billing must include the specific cost center, such list of cost centers to be provided by the Housing Authority, for the work performed.

12. Likewise, narrative and block billing for expenses is unacceptable. Charges for long distance telephone calls, photocopying, facsimile transmissions, delivery services, etc. shall be broken down by the date the expense was incurred and amount specifically charged per call, copy, facsimile, delivery, etc. Billing for computerized research must reflect a breakdown of usage as to date, time, task and individual. A block bill for computerized legal research is unacceptable.

13. From time to time travel may be necessary. The Housing Authority requests that law firms utilize cost effective travel arrangements. We will not reimburse for first class, business class or similar travel.

14. **Employment of Other counsel, Specialist or Experts**. Counsel will not employ or otherwise incur an obligation to pay other counsel, specialists or experts for services in connection with services herein without prior approval of the Housing Authority.

15. **Interest of Members of Authority.** No member of the governing body of the Housing Authority for which services are to be provided under this agreement, and no other officer, employee of agent of the Housing Authority who exercises any functions or responsibilities in connection with managing or carrying out of the Housing Authority programs shall have any personal interest, direct or indirect, in this Agreement.

16. **Interest of Other Local Public Officials**. No member of the governing body of the locality in which the Housing Authority functions, and no other public official of such locality, who exercises any functions or responsibilities in the review, approval, managing or carrying out of Housing Authority programs shall have any personal interest direct or indirect in this Agreement.

17. **Interest of Certain Federal Officials**. No member of, or delegate to the congress of the United States, and no Resident Commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom.

18. **Interest of Counsel.** Counsel (including partners, associates and professional employees) for which services are to be provided under this agreement, covenants that he/she does not now have any interest and shall not acquire any interest, direct or indirect, in any of the Housing Authority's programs, properties, materials or services hereunder. Counsel further covenants that in the performance of his/her duties hereunder no person having any such interest shall be employed directly by the Housing Authority.

19. Should Attorneys receive any amount as attorney's fees taxed by any Court to the opposing party in litigation, including eviction proceedings, or should any amount be collected from a tenant as a legal fee, then such amount shall be reported by Attorneys to the Housing Authority and shall be credited against the next payment to Attorneys.

20. Notification of Public Record.

ALL RESPONDENTS ARE NOTIFIED THAT THEIR RESPONSES TO THIS RFP WILL BE PUBLIC RECORDS AVAILABLE FOR INSPECTION AND COPYING BY THE PUBLIC.

Housing Authority for which services are to be provided under this agreement, and no other officer, employee of agent of the Housing Authority who exercises any functions or responsibilities in connection with managing or carrying out of the Housing Authority programs shall have any personal interest, direct or indirect, in this Agreement.

FORM OF BID

2014 GENERAL LEGAL SERVICES

TO: Sanford Housing Authority
1000 Carthage Street
Sanford, North Carolina 27331

Gentlemen:

1. The undersigned, having familiarized (himself) (themselves) with the local conditions affecting the cost of the work, and with the Specifications (including Request for Qualifications, Instructions to Offerors Non Construction, Certifications and Representations of Offerors Non Construction Contract, Supplementary Instructions to Bidders, this bid, the form of Non-Collusive Affidavit, the form of Contract, the Contract Conditions Non-Construction, Section I, the Bid Summary, and the Addenda (if any thereto), as prepared by the Sanford Housing Authority, and on file at www.shanc.org; hereby proposes to furnish General Legal Services for the Sanford Housing Authority as described in the Specifications; all in accordance therewith.

Base Proposal: Fixed Hourly Rate

_____

_____

Dollars **In your proposal include the listing of services and cost.**

Alternate Proposal: Retainer Services and Compensation

Annual Retainer Rate with a Monthly Billing:

_____

_____

Dollars **Explain what the Monthly retainer will cover.**

2. In submitting this bid, it is understood that the right is reserved by the Sanford Housing Authority, North Carolina to reject any and all bids. If written notice of the acceptance of this bid is mailed, telegraphed or delivered to the undersigned within 30 days after the opening thereof, or at any time thereafter before this bid is withdrawn, the undersigned agrees to execute and deliver a contract in the prescribed form and furnish the required bond within ten (10) days after the contract is presented to him for signature which Contract shall incorporate all of the requirements contained in the plans and specifications above described.

3. Bid Security in the sum of Not Applicable Dollars ($_____) in the form of _____ is submitted herewith in accordance with the Specifications.

4. Attached hereto is an affidavit in proof that the undersigned has not entered into any collusion with any person in respect to this proposal or any other proposal or the submitting of proposals for the contract for which this proposal is submitted.

5. The bidder represents that he ( ) has, ( ) has not, participated in a previous contract or subcontract subject to the equal opportunity clause prescribed by Executive Orders 10925, 11114, or 11246 or the Secretary of Labor; that he/she ( ) has, ( ) has not, filed all required compliance reports; and that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained prior to subcontract awards. (The above representation need not be submitted in connection with contracts or subcontracts which are exempt from the clause.)

6. Certification of Nonsegregated Facilities. By signing this Form of Proposal, the bidder certifies that he/she does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he/she does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The bidder agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. He further agrees that (except where he/she has obtained identical certifications from proposed subcontractors for specific time periods) he/she will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause: that he will retain such certifications in his files; and that he/she will forward a notice to his proposed subcontractors as provided in the Instruction to Bidders.

Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

Date _____

_____
Name of Bidder

_____
Official Address

License No. _____

By _____

Title _____

Phone: _____

Email: _____

FORM OF NON-COLLUSIVE AFFIDAVIT

A F F I D A V I T

(Prime Bidder)

State of_____)ss.

County of _____)

_____ , being first duly sworn, deposes and says:

That he/she is_____
(Partner or Officer of the Firm of, etc.)
the party making the foregoing proposal or bid, that such proposal or bid is genuine and not collusive or sham; that said bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham bid or to refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to affix the bid price of affiant or of any other bidder, or to fix any overhead, profit or cost element of said bid price, or of that of any other bidder, or to secure any advantage against the Sanford Housing Authority or any person interested in the proposed contract; and that all statements in said proposal or bid are true.

Signature of: _____ Name
of Bidder if Bidder is an Individual

_____
Name of Partner if Bidder is a Partnership

_____
Name of Officer if Bidder is a Corporation

INSTRUCTION S FOR AFFIDAVIT OF NON-DEFAULT

This form must be signed by all principals who will work on this contract. Principals may all use, sign, and file the same form or they may file separate forms.

Principals include all individuals, joint ventures, partnerships, corporations, trusts, nonprofit organizations or any other public or private entity that will participate in the contract as a prime contractor.

In the case of partnerships, all general partners (regardless of their percentage interest) and limited partners having a 25 percent or more interest in the partnership are considered to be principals. In the case of public or private corporations or governmental entities, principals include the president, vice president, secretary, treasurer and all other executive officers who are directly responsible to the board of directors, or any equivalent governing body, as well as all directors and each stockholder having a 10 percent or more interest in the corporation.

Exception for corporation - All principals must personally sign the certification. If, however, a public agency is a principal, all of its officers, directors, commissioners, trustees and stockholders with 10 or more of the common (voting) stock need not sign personally if they all have the same record of report. Only the officer who is authorized to sign for the corporation or agency must personally sign the certification. However, any person who has information to report which is substantially different from that of his or her organization must report that activity on this form and sign his or her name.

If you cannot certify and sign the certificate as it is printed because some statements do not correctly describe your record, then use a pen and strike through those parts that differ with your record, and sign that part you permitted to remain and which does describe you or your record.

Attach a signed explanation of the terms you have struck out on the certification and report the facts of your correct record. Item (e) above relates to felony convictions within the past 10 years. A felony conviction will not cause your participation to be disapproved unless there is a criminal record or other evidence that your previous conduct or method of doing business has been such that your participation in the project would make it an unacceptable risk.

AFFIDAVIT OF NON-DEFAULT

AFFIDAVIT

(Prime Proposer)

STATE OF

:

COUNTY OF _____:

_____, being duly sworn according to law, deposes and says:

1. That he/she is_____ (a partner/officer of the

firm of_____), the party making the foregoing Proposal or Proposals.

2. He/she further certifies as follows:

(a) that all the statements made by me are true, complete and correct to the best of my knowledge and belief and are made in good faith;

(b) that for the period beginning 10 years prior to the date of this certification, and except as shown on the attachment, I have not experienced defaults or noncompliance under any contract for the U. S. Department of Housing and Urban Development, or any other governmental agency with which I have contracts;

(c) to the best of my knowledge there are no unresolved findings raised as a result of HUD audits, management reviews or any other governmental investigations concerning me or work under any of my contracts;

(d) there has not been a suspension or termination of payments under any HUD contract in which I have had a legal or beneficial interest attributable to my fault or negligence;

(e) I have not been convicted of a felony and am not presently, to my knowledge, the subject of a complaint or indictment charging a felony. (A felony is any offense punishable by imprisonment for more than one year, but does not include any offense classified as a misdemeanor under the laws of a State and punishable by imprisonment of two years or less.);

(f) I have not been suspended, debarred or otherwise restricted by any Department or Agency of the Federal government, any State government, the City of Sanford, NC, or the Sanford Housing Authority from doing business with such Department or Agency;

(g) I have not defaulted on an obligation covered by a bond and have not been the subject of a claim under any fidelity bond;

(h) all the names of the parties known to me to be principals in this contract in which I propose to participate are included on resumes submitted with this proposal;

(i) to my knowledge I have not been found by HUD or the State of North Carolina to be in noncompliance with any applicable civil right laws;

(j) I am not a Member of Congress or a Resident Commissioner or otherwise prohibited or limited by law from contracting with the Sanford Housing Authority;

(k) I am not an officer or employee or commissioner of the Sanford Housing Authority who is prohibited or limited by law from contracting with SHA; and

(l) statements above (if any) to which I cannot certify, have been deleted by striking through the words with a pen. I have initialed each deletion (if any) and have attached a true and accurate signed statement (if applicable) to explain the facts and circumstances which I think help to qualify me as a responsible principal in this project.

By: _____
Signature of Individual if the Proposer is an Individual

Sworn to and Subscribed _____
Signature of Partner if the Proposer is a Partnership

Before me this _____day

_____ of_____,

20___. Signature of Officer if the Proposer is a Corporation

_____

Notary Public _____
(Title) Place Corporate Seal Here

Certifications and Representations of Offerors
Non-Construction Contract

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

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

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

1. Contingent Fee Representation and Agreement

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

(1) [ ] has, [ ] has not employed or retained any person or company to solicit or obtain this contract; and

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

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

(c) Any misrepresentation by the bidder/offeror shall give thePHA 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 businessconcern," 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 toExecutive 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)

[ ] Black Americans
[ ] Hispanic Americans
[ ] Native Americans
[ ] Asian Pacific Americans
[ ] Asian Indian Americans
[ ] 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)(l) 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)(l) 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)(l) through (a)(3) above; and

(iii) As an agent, has not personally participated, and willnot participate in any action contrary to subparagraphs (a)(l) 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 andbelief 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 discoversan 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 organizationalconflict 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 representationfrom 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:

Certification for a Drug-Free Workplace

U.S. Department of Housing and Urban Development

form **HUD-5369-C** (8/93)

Previous edition is obsolete

ref. Handbook 7460.8

Applicant Name

Program/Activity Receiving Federal Grant Funding

Acting on behalf of the above named Applicant as its Authorized Official, I make the following certifications and agreements to the Department of Housing and Urban Development (HUD) regarding the sites listed below:

I certify that the above named Applicant will or will continue to provide a drug-free workplace by:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Applicant's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

b. Establishing an on-going drug-free awareness program to inform employees ---

(1)The dangers of drug abuse in the workplace;

(2)The Applicant's policy of maintaining a drug-free workplace;

(3)Any available drug counseling, rehabilitation, and employee assistance programs; and

(4)The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

c. Making it a requirement that each employee to be engagedin the performance of the grant be given a copy of the statement required by paragraph a.;

d. Notifying the employee in the statement required by paragraph a. that, as a condition of employment under the grant, the employee will ---

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction; e. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph d.(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federalagency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

f. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph d.(2), with respect to any employee who is so convicted ---

(1)Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2)Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

g. Making a good faith effort to continue to maintain a drugfree workplace through implementation of paragraphs a. thru f.

2. Sites for Work Performance. The Applicant shall list (on separate pages) the site(s) for the performance of work done in connection with the HUD funding of the program/activity shown above: Place of Performance shall include the street address, city, county, State, and zip code. Identify each sheet with the Applicant name and address and the program/activity receiving grant funding.)

Check here ☐ if there are workplaces on file that are not identified on the attached sheets.

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)

Certification Regarding Debarment and Suspension

U.S. Department of Housing and Urban Development

Name of Authorized Official	Title

Signature	Date
X	

form **HUD-50070** (3/98)
ref. Handbooks 7417.1, 7475.13, 7485.1 & .3

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 statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civillycharged 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 toany of the statements 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 primaryparticipant is providing the certification set out below.

2. The inability of a person to provide the certification required belowwill 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 or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of factupon which reliance was 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 of default.

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 thisproposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into 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 submittingthis 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 certificationof 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 Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to requireestablishment 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 of default.

Certification B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission ofthis 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 certify toany 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 tierparticipant is providing the certification set out below.

2. The certification in this clause is a material representation of factupon 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 immediatewritten 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 erroneous 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 thisproposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into 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 with which this transaction originated.

6. The prospective lower tier participant further agrees by submittingthis 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 certificationof 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 Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to requireestablishment 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 theseinstructions, 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)

SAMPLE
LEGAL SERVICES CONTRACT

This agreement made as of the first day of _____, 2015, between the Sanford Housing Authority (Authority) and _____
_____(Attorneys).

I

The contract term shall be for the two years or from _____2015, through _____, 2017 except that either party may terminate the contract without cause by thirty days written notice mailed to the other party.

OPTIONS

1. The Housing Authority may extend the term of any contract resulting from this solicitation for a period not to exceed twelve (12) months by written notice to the selected respondent within ninety (90) days prior to the expiration date of the Contract; provided, that the Housing Authority shall give the selected respondent a preliminary written notice of its intent to extend at least sixty (60) days before such contract expires. The preliminary notice will not commit the Housing Authority to an extension. Any changes in compensation will be based upon changes in the most current Consumer Price Index.

2. If the Housing Authority exercises this option, the extended contract shall be considered to include a similar option provision.

3. The total duration of any contract resulting from this solicitation, including the exercise of any option under this clause, shall not exceed five (5) years.

TERMINATION FOR CAUSE

The Housing Authority may suspend or terminate this Agreement and all payments to be made hereunder, upon at least three (3) days prior written notice, for cause. Cause shall include, but not be limited to: (1) misappropriation of funds by Contractor or by any of its officers, employees, or agents; (2) failure by Contractor to comply with any term or condition of this Agreement; (3) falsification by any officer, employee or agent of Contractor of any document or information submitted by Contractor (past or present) in connection with the subject matter of this Agreement; (4) Contractor's bankruptcy, insolvency, assignment for the benefit of creditors, marshaling of assets, or other such events; or (5) occurrences reasonably justifying The Housing Authority's opinion, whether or not subsequently confirmed, that Contractor is or is about to become unable to meet its obligations under this Agreement.

In the event of suspension or termination of this Agreement, Contractor shall remit to the Housing Authority any unexpended balance of payments made to Contractor by the Housing Authority. The Housing Authority's acceptance of Contractor's remittance shall not constitute a waiver of any claim that the Housing Authority might have against Contractor.

TERMINATION FOR CONVENIENCE

The contract may be terminated by either party provided that a **thirty (30)** day written notice is given to the other party of the contract.

DEFAULT

Failure to satisfactorily perform the services required by the contract will be grounds for the Housing Authority to declare the Contractor in default.

The Attorneys agree to render to Authority services under this contract including:

(a) Supervision of and appearance when necessary in summary ejectment proceedings against tenants of the Authority.

(b) Preparation of opinions on legal questions arising in policy formulation and management of the Authority and its housing units and non-profit organizations.

(c) Legal advice to the Executive Director, Department Directors and Board of Commissioners.

In addition, Attorneys agree to render to the Authority, legal services in connection with the development of new projects including, but not limited to, the following:

(a) Review and interpretation of loan and construction contracts.

(b) Appearance before governmental entities and groups of citizens whose cooperation is necessary or desirable for construction of projects.

(c) Assistance in obtaining modification of state legislation to facilitate projects.

(d) Preparation and applications for amendments to the Authority's certificate of public convenience and necessity.

II

In consideration of legal services rendered, the Authority shall pay the Attorneys as follows:

(a) For items listed in Article II and any other legal services required for the normal operation of the Authority, the Authority shall pay the Attorneys _____ per hour for paralegal services, _____ per hour for associates, and _____ per hour for partners.

(b) For legal services requested by the Authority for non-subsidized activities, the Authority agrees to pay _____ per hour for paralegals, _____ per hour for associates, and _____ per hour for partners.

All fees are payable based upon monthly invoices describing services and hours of service for that month. No service shall be charged to the Authority unless the Authority has requested the services in advance. Services may be requested by the Chairman, Board of Commissioners, Chief Executive Officer, Chief Operations Officer and Chief Financial Officer.

III

General overhead and administrative costs are considered part of the hourly rate. Therefore, the Housing Authority will not pay for such costs, including but not limited to:

- Word processing time and other clerical assistance
- Overtime and premium charges for billings for attorneys or support staff, or secretarial overtime compensation
- Office machine attendants
- Local (not travel related) meals
- Entertainment expenses
- Local (not travel related) transportation
- Review and transportation of firm invoices
- Charges for use of in-house conference rooms
- Heating, air conditioning, lighting, and parking costs.

The Housing Authority will pay the actual cost for the reasonable and necessary use of the following:

- Messenger/hand delivery services
- Overnight mail delivery services
- Facsimile transmissions (outgoing only)
- Photocopying
- Long distance telephone services
- Computerized legal research

- Travel related transportation, accommodations, and meals (if authorized by the Housing Authority in advance)

Such reimbursements shall be made upon submission of itemized statements.

IV

Attorneys shall retain complete files and records of all activities performed for the Authority for a period of not less than five years following the initiation of the activity. During the contract period and the required records retention period, Attorneys agree to provide, upon the request of the Authority, copies of the materials held by the Attorneys which pertain to the Authority.

V

Attorneys agree, during the term of this contract, to carry Professional Liability and General Liability insurance in limits of at least $1,000,000, and Fidelity Bond with limits of $25,000 or more and shall provide the Authority an insurance certificate certifying that the required insurance and bond are in force.

Workers' Compensation - Coverage to apply to all employees for statutory limits in compliance with the applicable State and Federal laws. The policy must include employers' liability with a limit of $100,000 each accident, $100,000 bodily injury by disease each employee and $500,000 bodily injury by disease policy limit. Coverage is required regardless of any exemptions which might otherwise apply

Professional Errors and Omissions Liability - Coverage shall have minimum limits of $1,000,000 per claim and $3,000,000 aggregate.

Business Auto Policy - Not required unless there is a specific relationship to the agreement. If required, the same limits under Comprehensive General Liability shall apply. This shall include owned vehicles, hired and non-owned vehicles and employee non-ownership

VI

The Attorneys agree, that during the term of this contract or any extension thereof, they shall not discriminate in their hiring practices on the basis of race, color, creed, sex, handicap, or national origin.

VII

Should Attorneys receive any amount as attorney's fees taxed by any Court to the opposing party in litigation, including eviction proceedings, or should any amount be collected from a tenant as

a legal fee, then such amount shall be reported by Attorneys to Authority and shall be credited against the next payment to Attorneys.

VIII

This contract is not assignable by either party.

IX

No member, officer, employee of the Authority, or his/her partner, employee, or immediate family member during his/her tenure, or for one year thereafter, shall have any interest, direct or indirect, in this contract or the proceeds thereof.

Interest of Members of Authority. No member of the governing body of the Authority for which services are to be provided under this agreement, and no other officer, employee of agent of the Authority who exercises any functions or responsibilities in connection with managing or carrying out of the Authority programs shall have any personal interest, direct or indirect, in this Agreement.

Interest of Other Local Public Officials. No member of the governing body of the locality in which the Authority functions, and no other public official of such locality, who exercises any functions or responsibilities in the review, approval, managing or carrying out of Authority programs shall have any personal interest direct or indirect in this Agreement.

Interest of Certain Federal officials. No member of, or delegate to the congress of the United States, and no Resident Commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom.

Interest of Counsel. Counsel (including partners, associates and professional employees) for which services are to be provided under this agreement, covenants that he/she does not now have any interest and shall not acquire any interest, direct or indirect, in any of the Authority's programs, properties, materials or services hereunder. Counsel further covenants that in the performance of his/her duties hereunder no person having any such interest shall be employed directly by the Authority.

IN WITNESS WHEREOF, the parties do hereunto set their signatures:

_____
Attorney

SANFORD HOUSING AUTHORITY
By: _____, Executive Director

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:]

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. 1/31/2017)

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

3. Termination for Convenience and Default

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

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

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)

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.

merits by a court of competent jurisdiction.
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 there of which are not disposed of by agreement, shall be resolved under this clause.

(b) All claims by the Contractor shall be made in writing and submitted to the HA. A claim by the HA against the Contractor shall be subject to a written decision by the HA.

(c) The HA shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HA's decision, shall notify the HA in writing that it takes exception to such decision, the decision shall be final and conclusive.

(d) Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against the HA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HA that it submit a final voucher and release, whichever is earlier, then the HA's decision shall not be final or conclusive, but the dispute shall be determined on the

(e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the HA.

8. Contract Termination; Debarment

9. Assignment of Contract

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

10. Certificate and Release

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

11. Organizational Conflicts of Interest

(a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this contract and a contractor's organizational, financial, contractual or other interests are such that:
  (i) Award of the contract may result in an unfair competitive advantage; or
  (ii) The Contractor's objectivity in performing the contract work may be impaired.

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

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

(d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

12. Inspection and Acceptance

(a) The HA has the right to review, require correction, if necessary, and accept the work products produced by the Contractor. Such review(s) shall be carried out within

30 days so as to not impede the work of the Contractor. Any product of work shall be deemed accepted as submitted if the HA does not issue written comments and/or required corrections within 30 days from the date of receipt of such "Local government" means a unit of government in a State and, if chartered, established, or

product from the Contractor.

(b) The Contractor shall make any required corrections promptly at no additional charge and return a revised copy of the product to the HA within 7 days of notification or a later date if extended by the HA.

(c) Failure by the Contractor to proceed with reasonable promptness to make necessary corrections shall be a default. If the Contractor's submission of corrected work remains unacceptable, the HA may terminate this contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

13. Interest of Members of Congress

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

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

No member, officer, or employee of the HA, no member of the governing body of the locality in which the project is situated, no member of the governing body in which the HA was activated, and no other pubic 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

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

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.

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

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-

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.

(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.

(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 (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 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 HUDassisted 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.

any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

(e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

(f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

22. Procurement of Recovered Materials

(a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

(b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of $10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of $10,000 of the item both under and outside that contract.

form

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

Special Attention of:

Public Housing Agencies;
Regional Directors;
Regional Counsel;
State/Area Coordinators;
Public Housing Directors;
FO Counsel

NOTICE PIH 2003-24 (HA)

Issued: September 26, 2003

Expires: September 30, 2004

Cross Reference: 24 CFR Part 85; HUD Handbook 7460.8 REV 1, Procurement Handbook for Public Housing Agencies (REV 2 pending); HUD Litigation Handbook 1530.1 REV-4, dated May 8, 1981, as amended (CHG 1, February 17, 1994; CHG 2, February 15, 1996).

Subject: Procurement of Legal Services by Public Housing Agencies

1. Purpose and Applicability. This Notice sets forth procedures for the procurement of legal services by Public Housing Agencies (PHAs). This Notice supersedes similar guidance previously provided to HUD staff and PHAs including PIH 90-47, Procedures for Procuring Professional Services. This Notice is not intended as the primary source of guidance in this area, but is provided to remind all HUD Offices and PHAs of the proper procedures for procuring legal services and to briefly review areas of common interest and concern. This Notice applies to all PHA procurements of legal services that are funded in whole, or in part, with HUD grant funds subject to 24 CFR part 85 (e.g., Operating Fund subsidies and Capital Fund).

2. Background. PHAs obtain required outside legal services through procurement contracts. Such procurement is subject to the requirements set forth in 24 CFR Part 85, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," in particular, 24 CFR § 85.36. In accordance with 24 CFR § 85.22, the costs of legal services incurred under HUD grants (including those obtained under contract) must be reasonable and necessary. Section 85.22(b) incorporates the Office of Management and Budget (OMB) Circular A-87, which contains a set of cost principles that PHAs must use for determining the allowability of costs they incur under Federal grants and provides guidance in their use.

Contracts for litigation services are also to meet the requirements of the HUD Litigation Handbook 1530.1 REV-4 dated May 8, 1981 (the "Litigation Handbook"), as amended (CHG 1, February 17, 1994; CHG 2, February 15, 1996).

3. Methods of Procurement. Section 85.36(d) permits PHAs to use all of the contracting methods listed below. PHAs are expected to choose the method of procurement, which is reasonable based on the facts surrounding the particular situation. The methods of procurement outlined in section 85.36(d) are:

   Small purchase procedures (85.36(d)(1)). Those relatively simple and informal procurement methods for securing services, supplies or other property that do not cost more than $100,000 (the simplified acquisition threshold fixed at 41 U.S.C. 403(11) and currently set at $100,000) in the aggregate or a lower dollar amount as established by the PHA (e.g., to conform to State law). If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.

   Sealed bids (85.36(d)(2)). This method is normally not appropriate for securing legal services. Sealed bidding may only be used when it is possible to quantify the costs of the required services (e.g., number of hours) to permit the submission of firm bids and award a firm fixed-price contract to the lowest responsive and responsible bidder considering only price and price-related factors. In addition, it is often critical to consider other factors besides price (e.g., experience) when selecting a legal services contractor. Sealed bidding does not permit the use of other factors.

   Competitive proposals (85.36(d)(3)). This method is generally preferred when procuring professional services because it allows for the consideration of technical quality or other factors (in addition to price) for securing services estimated to cost more than $100,000 or a lower threshold as established by the PHA (e.g., to conform to State law). Competitive offers are solicited, proposals are evaluated and award is made to the offeror whose proposal is most advantageous to the PHA, with price and other factors (as specified in the solicitation) considered. Either a fixed-price or cost reimbursement type contract may be awarded. This method is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the conditions in § 85.36(d)(3) must be followed.

   Noncompetitive proposals (85.36(d)(4)). This method may only be used when the other methods of procurement are infeasible and the circumstances described in § 85.36(d)(4) are applicable (e.g., legal services are available from only a single source; public exigency or emergency for the requirements will not permit a delay resulting from competitive solicitation; after solicitation of a number of sources, competition is determined inadequate; or HUD authorizes the use of noncompetitive proposals. An example of a situation considered to violate the requirements of full and open competition in § 85.36 would be noncompetitive award to an attorney for legal services on a retainer basis.

4. Time and Materials Contracts (85.36(b)(10)). Legal services can be procured on an hourly basis using a type of contract known as time-and-materials (or sometimes, "labor-hour") contracts. Under these contracts, the contractor's services are pre-priced (usually, in terms of hours) in the contract, and the PHA orders services in unit amounts (e.g., hours) as needed until the funds in the contract are exhausted. PHAs may use this type of contract only after the PHA determines that no other contract is suitable; and, if the contract includes a ceiling price that the contractor exceeds at its own risk.

5. Obtaining Legal Services by Procurement or Employment Methods. PHAs may employ an attorney directly (house counsel), or the PHA may enter into a procurement contract with an attorney or firm. The procurement of legal services shall follow the procedures outlined in paragraph 3 above. The employment of house counsel is not covered by 24 CFR § 85.36. PHA house counsel are ineligible to receive procurement contracts for legal services. All services of a PHA house counsel would be part of his/her employment contract and are not to be procured separately. Where legal services are desired outside of the scope of services provided by the PHA house counsel, PHAs may use one of the procurement procedures described in paragraph 3 above.

6. Contracts for Litigation Services.
   a. General Requirements and Regional Counsel Approval.

      In addition to the requirements described above in paragraph 3, the Litigation Handbook sets thresholds for Regional Counsel and Headquarters Program Associate General Counsel approval of litigation service contracts. With the exception of litigation involving a PHA acting as a section 8 private developer, a PHA must submit to HUD Regional Counsel for prior written concurrence any litigation service contract where the fee is expected to exceed $100,000 with a private attorney involving PHA program, project, or activity receiving loan, grant or other subsidy assistance from HUD. Such contracts shall make provision for reasonable fees and reimbursement of necessary expenses. If additional funding or budget revision will be required to cover the cost of litigation services, the PHA shall consult appropriate Field and Regional Offices staff.

      Upon receiving a request for concurrence, if Regional Counsel is satisfied that the PHA has not violated HUD requirements or is otherwise not at fault (Note: In cases where the PHA is at fault, the Regional Counsel may authorize the limited use of program funds for the PHA's defense to facilitate settlement or obtain judicial definition of the required relief.), the Regional Counsel shall concur in a request received from the PHA for approval of a contract for litigation services if he/she is also satisfied that: the contract contains adequate protection against fraud and abuse; the contract contains all mandatory provisions for professional service contracts for the program or activity giving rise to the litigation; and the contract amount is reasonable. The contract amount will be considered reasonable if it does not exceed

the rates prevailing in the same or similar localities for the same or similar services or the PHA can demonstrate special circumstances that require payment of a higher amount. Regional Counsel's concurrence signifies that the attorney's fee (proposed contract price) under the contract is an allowable project expense, but is not a certification that there are sufficient project funds available to cover the contract amount.

b. Headquarters Program Associate General Counsel Approval. No contract for attorney's fees for litigation services entered into by any PHA, which calls for an estimated maximum price in excess of $200,000 may be approved by the Regional Counsel without the prior concurrence of the Headquarters Program Associate General Counsel.

c. Use of Fixed-Price Contracts. Fixed-price proposals will be approved only where the issues are uncomplicated, extensive preparation probably is not required, and any trial that may ensue probably will not be lengthy. Ordinarily, a fixed-price proposal in excess of $100,000 shall not be approved but Regional Counsel may approve a higher amount for good cause. For additional information regarding the above litigation services requirements, consult paragraphs 2-2f(3), 3-3b(3) and 5-4 of the Litigation Handbook.

7. Contract Addendum – Legal Services Protocol. As indicated above, recent attention to the key role that attorneys play in PHA activities prompt the following guidance to promote and improve the Department's partnership with PHAs. Attached to this Notice is a form of addendum to an engagement letter, which the Department urges to follow in procuring and utilizing legal services. The form of engagement letter is intended to set a course that will be helpful to both PHA and HUD partners, clarifying a method of operation for HUD's statutory oversight responsibilities while optimizing the statutory directive in section 2(a)(1)(C) of the United States Housing Act of 1937 "to vest in public housing agencies that perform well, the maximum amount of responsibility and flexibility in program administration, with appropriate accountability to public housing residents, localities, and the general public."

8. Legal Fee Management Service Contracts. PHAs may also find it helpful to engage a legal fee management firm when heavy demand or high local priorities or other conditions merit secure oversight of legal services.

/s/

Michael M. Liu

Assistant Secretary

for Public and Indian Housing

Attachment

ATTACHMENT

LEGAL SERVICES CONTRACT PROTOCOL

The Department urges inclusion of the following provisions into all legal services contracts executed and/or administered by Public Housing Agencies, unless no federally provided funds will be used to administer the contract.

* * * *

ADDENDUM TO ENGAGEMENT AGREEMENT

1. The [name of Public Housing Agency] (PHA) and [name of legal service individual or firm] (LSP) engaged to provide professional legal services to the PHA in connection with [briefly and precisely describe the nature, scope and limits of the legal services to be provided by the LSP] agree that the provisions of this Addendum to the Engagement Agreement are hereby incorporated into PHA and LSP's engagement agreement as if they had been set forth at length therein.

2. During the pendency of the legal services engagement, LSP shall not, without HUD approval, represent any officer or employee of PHA, in her/his individual capacity, in connection with potential civil liability or criminal conduct issues related to PHA operations.

3. LSP has an obligation not to, and shall not, interfere with, disrupt, or inappropriately delay or hinder any authorized monitoring, review, audit, or investigative activity of HUD (including the Office of Inspector General), the General Accounting Office (GAO), or the officers and employees of HUD and GAO. Any and all representation by LSP cannot be inconsistent with the foregoing obligation. Specifically, LSP shall not deny access to HUD, GAO, or the officers and employees of HUD and GAO, to PHA records in response to document demands by HUD, GAO, or the officers and employees of HUD and GAO, notwithstanding possible discovery privileges that would otherwise be available to PHA. HUD requires public housing agencies to provide HUD, GAO, or the officers and agents of HUD and GAO, with "full and free" access to all their books, documents, papers and records. See 24 CFR. §85.42(e)(1); HUD Handbook 7460.7 REV-2, §1-2(B)(2).

4. PHA and LSP shall make available for inspection and copying, by HUD (including the Office of Inspector General), GAO, and the officers and employees of HUD and GAO, all invoices, detailed billing statements, and evidence of payment thereof relating to LSP's engagement. Such records constitute "PHA records" and are subject to section 3, above.

5. If HUD or PHA determines that LSP is violating any provision of this Addendum to the Engagement Agreement, it shall timely notify LSP of such violation. LSP will have 48 hours following its receipt of the notice of violation to cease and desist from further violation of the addendum. If LSP fails to adequately cure the noticed violation within 48 hours: (A) HUD, in its discretion, may demand that PHA terminate the professional legal services engagement for breach, or, henceforth, satisfy all costs associated with the engagement with non-Federal funds; and/or (B) PHA, in its discretion, may terminate the professional legal services engagement for breach. Additionally, HUD may sanction LSP pursuant to 24 CFR. Part 24.

6. Should any part, term, or provision of this Addendum to the Engagement Agreement be declared or determined by any court of competent jurisdiction to be illegal or invalid, the validity of the remaining parts, terms, and provisions shall not be affected.

Date: [Enter date]

_____
[Enter name of PHA Exec. Dir.]

_____
[Enter name of LSP key partner]