Municipal Housing Authority for the City of Yonkers
Request for Proposals for General Counsel–Legal Services
RFP # 2018-01

The Municipal Housing Authority for the City of Yonkers (MHACY) hereby solicits proposals from attorneys or law firms offering to provide General Counsel legal services to MHACY as specified in this Request for Proposals ("RFP").

The RFP 2018-01 package contains submission requirements, project descriptions, terms and conditions and other pertinent information for submitting a proper and responsive proposal

This RFQ is the only information provided to prospective proposers and is available online starting 08/12/2018 at www.mhacy.org.

The RFP questions deadline is August 22, 2018 at 1:00 PM Eastern Standard Time (EST).

All you question shall be email to Carlos G. Laboy-Diaz @ claboy@mhacy.org. No later than August 22, 2018 at 3:30 PM Eastern Standard time. NO TELEPHONE CALLS, ALL COMMUNICATION MUST BE BY EMAIL

Proposals must reach MHACY no later than 3:00 p.m. (EST) on September 4, 2018. Late submissions will be handled in accordance with the provisions in Form HUD-5369-B.

Note:

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

MHACY reserve the right to reject any and all proposals and waive any irregularities or informalities if it is in the Housing Authority best interest to do so. The Authority reserves the right to cancel this RFP or to reject, in whole or in part, any and all proposals received in response to this RFQ, upon its determination that such cancellation or rejection is in its best interest of the Housing Authority.

MHACY is an Equal Opportunity Employer and does not discriminate on the basis of race, sexual orientation, color, national origin, sex, religion, age, disability, or family status in employment or the provision of services. The MHACY solicits and encourages the participation of minorities and small businesses in procurement.

Contact, related to this procurement, with members of the MHACY Board of Commissioners, or MHACY officers and employees other than the contact person shown above, during the procurement process could result in disqualification of a proposal.

Joseph Shuldiner
Executive Director
Municipal Housing Authority for the City of Yonkers
1511 Central Park Avenue
Yonkers, New York 10710

August 8, 2018

CONTENTS

1. Profile of the Municipal Housing Authority for the City of Yonkers
2. Introduction
3. Scope of Work
4. General Requirements
5. Deliverables
6. Correspondence
7. Proposal Requirements
8. Proposal Evaluation Criteria
9. Contract Term
10. Availability of Records
11. Standards of Conduct
12. Supervision
13. Cancellation
14. Availability of Funds
15. Conflict of Interest
16. Conditions and Limitations
17. Minority/Women Business Participation
18. Pertinent Federal Regulations with Regard to Nondiscrimination and Equal Opportunity
19. HUD and MHACY Guidelines
20. Declaration (Required Submittal)

ATTACHMENTS

Attachment A: Form of Non-Collusive Affidavit
Attachment B: M/WBE Participation
Attachment C: Form HUD-5369-A
Attachment D: Form HUD-5369-B,
Attachment E: Form HUD-5370-C
Attachment F: HUD Notice PIH 2003-24 (HA) dated September 26, 2003
Attachment G: Legal Guidelines and Billing Policies for Outside Counsel to the Municipal Housing Authority for the City of Yonkers
Attachment H: MHACY Standard Form of Contract.

1.0 PROFILE OF THE MUNICIPAL HOUSING AUTHORITY FOR THE CITY OF YONKERS

The Municipal Housing Authority for the City of Yonkers, located at 1511 Central Park Avenue, Yonkers, NY, 10710, was established under New York General Statutes to serve the public and affordable housing needs of the City of Yonkers and to provide safe, decent and sanitary housing to low and moderate-income residents.

The Authority is governed by a seven (7) member Board of Commissioners 5 of whom are appointed by the Mayor of the City of Yonkers for rotating 5-year terms, and 2 resident commissioners each serving two-year terms who are elected by their fellow residents. The Authority is the second largest public housing authority in the New York Metropolitan Statistical Area (MSA) with a Public Housing portfolio that includes over 1,900 units of affordable housing and public housing on 18 residential sites located throughout the City. In addition, the Authority administers approximately 2,614 units of Section 8 existing housing.

Over the past three years, the MHACY has redeveloped over 1,300 units through HUDs Rental Assistance Demonstration Program and the MHACY current provides the property management to these properties. The Authority seeks to upgrade and revitalize its remaining housing portfolio and properties available for development by starting, among other initiatives, with the redevelopment of those developments and any parcels available to expand the availability of affordable housing units in the City of Yonkers.

2.0 INTRODUCTION

2.1 Background

Through this RFP, MHACY is soliciting proposals from Offerors to provide legal services in the following areas:

1. General Counsel

The successful Offeror will be utilized on an "as needed" basis.

3.0 SCOPE OF WORK

The legal services to be provided are described below. The listing is illustrative only and requirements are not limited to the said listing:

- ✓ State and local government law and legislative issues;
- ✓ Federal government (HUD Experience) law and legislative issues;
- ✓ Real estate and property issues
- ✓ Cooperation Agreements
- ✓ Housing Development Fund Company formation
- ✓ Development agreements
- ✓ RAD Legal Issues
- ✓ LIHTC Issues
- ✓ Legal counsel to Board of Commissioners, including attendance at Board meetings, Committee, and special meetings as requested;
- ✓ Open records and public meeting issues;
- ✓ Investigations;
- ✓ Provide written legal opinions as to MHACY policies, procedures and real estate transactions;
- ✓ Contracting and procurement issues;
- ✓ General business issues;
- ✓ Litigation and litigation support;
- ✓ General legal advice to the Board of Commissioners and MHACY staff;
- ✓ Program counsel for Public Housing, Section 8, RAD, HDFC and LIHTC programs.
- ✓ Energy Performance Contracts

4.0 GENERAL REQUIREMENTS

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

MHACY reserves the right to select the Offeror determined to be the most responsive and responsible, and in the judgment of MHACY, that best meet its needs for the specified services. MHACY further reserves the right to negotiate all terms of the contract including price.

Proposals must list the names, agency(ies), contact person, telephone numbers, resumes and the profile of expected participants in the implementation of the services. There may be subsequent instructions, if any, issued to the selected offeror in connection with the final process.

Confidentiality of Proposals:

There will be no public opening of proposals. All proposals and information concerning same shall remain confidential until all negotiations are completed and the Notice of Award is issued. Offerors are hereby notified that all proposals received by MHACY shall be included as part of the official contract file. Therefore, any part of the proposals that are not considered confidential, privileged or proprietary under any applicable Federal, State or local law shall be available for public inspection upon completion of the procurement process. Any material submitted by the Offeror that is to be considered as confidential must be clearly marked as such; however, the applicable provisions of Federal, State and local laws shall govern the confidentiality.

5.0 DELIVERABLES

Proposal Due Date/Time

One (1) original proposal and five (5) copies must be submitted on or before 3:00 p.m. EST on September 04, 2018. All responses must be enclosed in a sealed envelope and labeled as follows: Legal Services RFP, MHACY, Due Date and Time: Monday, September 04, 2018, 3:00 P.M. (EST). The response must be addressed to Joseph Shuldiner, Executive Director, The Municipal Housing Authority for the City of Yonkers, 1511 Central Park Avenue, Yonkers, New York, 10710.

All costs incurred in preparing and submitting proposals and in supplying supplementary information shall be borne by Offerors. MHACY will not defray any costs incurred in connection therewith. **Offers by telephone, facsimile, e-mail, and handwritten proposals will not be accepted by MHACY.**

Modifications or Withdrawals

Proposals may not be changed, modified, or withdrawn after the time and date specified for proposal submission. All requests to change, modify or withdraw a proposal prior to the proposal due date must be in writing and bear the same Offeror name appearing on the proposal already submitted.

6.0 CORRESPONDENCE

All you question shall be email to Carlos G. Laboy-Diaz @ claboy@mhacy.org. No later than August 22, 2018 at 3:30 PM Eastern Standard time. NO TELEPHONE CALLS, ALL

COMMUNICATION MUST BE BY EMAIL. This will allow issuance of any necessary amendment to the RFP.

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

Any interpretation affecting all Offerors made prior to the proposal due date will be issued in the form of an amendment. MHACY will not be bound by or responsible for any other explanations or interpretations of this RFP package other than those given in writing as set forth in this paragraph. Oral instructions, interpretations, or representations will not be binding upon MHACY or MHACY representatives.

Subcontractor(s) and others who have been requested by the Offeror to assist in preparing a proposal shall obtain necessary information from the Offeror. They shall not directly contact MHACY or MHACY representatives for this information. **Proposals will not be publicly opened and read.**

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

7.0 PROPOSAL REQUIREMENTS

7.1 Document Requirements

The following is a description of the minimum information which must be supplied by Offerors in their proposals. It is open to all Offerors to give such supplementary facts or materials that they consider may be of assistance in the evaluation of the proposal submitted. Proposals that omit critical elements may be considered nonresponsive. Each proposal shall include a Table of Contents listing the proposal contents. Proposal packages must contain, at a minimum, the following information and materials:

A. Letter of Transmittal

The letter must be signed by the person authorized to commit the organization to perform the services in the proposal.

B. Table of Contents

C. Executive Summary

Provide a brief summary of your firm's experience in performing similar work for public housing authorities and your approach to the work associated with the requested services, to include an understanding of the scope of services required and unique or innovative approaches to be utilized in performing these services.

D. Experience

Describe how long the Attorney or Law Firm has been in business under the present name and structure. Provide any other names under which the film has done business and the dates it operated under each name and the locations at which it operated under each name.

Describe the experience of Offeror conducting comparable services during the most recent five- year period similar in scope to MHACY's project. Provide a list of companies or governmental organizations to which your firm is/are currently providing services. If this does not include at least three (3) entities, then provide the names of entities for which similar services have been provided. For each client entity include:

- The term (beginning and ending dates) of your contract agreement(s).
- A brief description of the scope of work.
- The name, address, and telephone number of the individual that administered your contract(s).
- Specific reference to work performed related to the proposed scope of work
- Explain the roles performed by the proposed personnel in the previous projects.

E. Qualifications

Provide the qualifications and experience the firm has in the providing the services referenced in the scope of services required in this RFP (see Sections 2.0 and 3.0), Board Certifications held, and resumes of all persons who would be assigned to provide the requested services.

Describe Offeror's experience with HUD's regulations, LIHTC regulations, RAD regulations and notices, experience in the formation and management of Housing Development fund Companies, experience in the development and negotiation of PH cooperating agreements, and public housing and section 8 legal issues including applicable State of New York and Federal regulations. List all key members of the firm who will be committed to this project. Indicate the level of effort and function of each member of the project. Prepare an organizational structure to show how the key members will be involved. Include resumes of these individuals.

F. Schedule of Performance/Timeliness/Deliverables

Each proposal shall include a description of how the firm intends to assume the responsibility of existing legal matters and how soon the firm, if selected, would be in a position to provide services.

G. Affirmative Action Plans

Explain method and procedures that will be used to achieve meaningful minority and women business participation in the project. Indicate proposed levels of participation by MBE and WBE firms.

H. Cost

Offerors shall provide an hourly fee for services to be provided. Provide a detailed schedule of tasks and associated fees. The fees associated with each task should be itemized. All fees shall be negotiable. Any proposed retainer arrangement must clearly describe the amount of the retainer and the services covered by the retainer fee. The Offeror's fee, while a secondary component, will be considered in addition to other technical factors in determining the offer most advantageous to MHACY. Because MHACY is a governmental entity with limited resources, innovative and creative fee arrangements proposed by the Offeror that minimize risk and cost to MHACY will be considered favorably.

I. Organizational Documents

Include in a separate section for attachments the following items:

- A copy of the most current annual report (if available).
- A statement that the fim1 is fmm1cially sound mid has financial resources sufficient to successfully perform the services described herein.
- If the firm intends to subcontract/joint venture any portion of the services rendered under this proposal, a statement identifying the subcontractor's or joint venture's name, address, phone number, and organizational documents. Subcontractors/ventures will be evaluated as a part of the Offeror's team. MHACY reserves the right to accept or reject subcontractors/joint ventures.

J. Insurance

The successful Offeror shall provide MHACY with evidence of all appropriate and applicable insurance coverage carried by the firm, including policy coverage periods. Offerors shall furnish MHACY with certificates of insurance showing that the following insurance is in force and will ensure all operations under this RFP. Required insurance levels are as follows:

K. Proof of Professional Liability Insurance

The successful Offeror shall maintain a policy of professional liability insurance in the amount of at least $2,000,000.

L. Workers' compensation in accordance with the State of New York rules and regulations.

M. General liability insurance with a single limit for bodily injury of$1,000,000 per occurrence and property damage limit of no less than $1,000,000 per occurrence. The insurance may have a combined aggregate of coverage amounting to no less than $2,000,000. Such insurance shall protect Offeror against claims of bodily injury or death and property damage to others. If Offeror has a "claims made policy," then the following additional requirements apply: The policy must provide a "retroactive date" which must be on or before the execution date of the Agreement and the extended reporting period may not be less than five years following the completion date of the agreement.

N. Automobile liability on owned and non-owned motor vehicles used on the site(s) or in com1ection herewith for a combined single limit of bodily injury and prope1ty damage of not less than $1,000,000 per occurrence.

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

0. Certifications and Affidavits

Offerors shall submit the following certifications and affidavit as attached:

Attachment	A:	Form of Non-Collusive
Attachment	B:	Affidavit; M/WBE Participation;
Attachment	D:	Certifications and Representations of Offerors for Non-Construction Contracts (Form HUD 5369-C); and Declaration

7.2 Conflict of Interest by Offeror

If a conflict of interest arises, the Offeror must be willing to continue to represent MHACY and be in a position to inform other existing or potential clients that they must find representation elsewhere in particular situations. MHACY will reserve the right, in its sole discretion, to select another attorney or law firm to represent it in a particular matter if a conflict is not resolved to the satisfaction of MHACY. Conflicts may arise not only from attorneys named on the Contract but also from the representation of parties to transactions involving MHACY by any other member of the firm, regardless of whether that attorney is in the S311le office or a branch office.

The Offeror shall describe in detail its existing system for identifying conflicts of interest in unde1iaking new representation. The description should include information about who maintains the central records, how often information is updated, and at what stage of representation the check is made. The Offeror shall provide a copy of its written conflicts policy or explain in detail why there is no written policy. The Offeror shall indicate whether or not it has discussed conflict of interest issues with its malpractice insurance carrier and the date it was done, whether orally or **in** writing, and with whom in the firm.

The Offeror shall identify any conflicts of interest which may arise if the Offeror serves as MHACY's counsel and shall describe how it proposes to avoid such conflicts. The Contract will require the Offeror to notify MHACY immediately of filly potential conflicts of interest and to undertake immediate action to elin1inate the source of the potential conflict. MHACY will reserve the right to make the Offeror aware of situations which may present a conflict of interest and require the Offeror to promptly remedy the situation to the satisfaction of MHACY.

7.3 Basis of Proposal

The successful Offeror(s) will be expected to execute a standard professional service contract with MHACY based on the proposal submitted and the requirements of this RFP and filly future addenda thereto. Services paid for with HUD funds will be subject to the engagement agreement addendum contained in HUD Notice PIH 2003-24 (attached).

Offerors are advised to check that all parts of this RFP package have been received. Offerors shall be responsible for informing themselves with respect to all conditions, which might in filly way affect the cost or performance of any of the work. Failure to do so shall be at the sole risk of the Offeror fil1d no relief shall be given for errors or omissions by the Offeror.

Partial or incomplete proposals will be unacceptable. An authorized representative of the Offeror must sign proposals.

7.4 Validity of Proposals

Proposals must be open and not subject to unilateral withdrawal or modification for ninety (90) days after the proposal due date.

Offerors are requested to submit proposals based on the exact requirements specified in this RFP.

All costs incurred in preparing and submitting proposals and in supplying

supplementary information shall be borne by Offerors. MHACY will not defray any costs incurred in connection therewith.

8.0 PROPOSAL EVALUATION CRITERIA

Selection of a successful Offeror(s) will be at the sole discretion of MHACY. If a contract is awarded, it will be awarded to the responsible firm or individual whose qualifications, price and other factors are deemed most advantageous to MHACY and its affiliates. Additionally, MHACY shall have the right to reject any and all proposals at its discretion.

An MHACY evaluation team will be established to review Offeror responses to this RFP. Proposals will be evaluated by, the following criteria:

8.1 GENERAL COUNSEL

Evaluation Criteria	Maximum Points
1. Offeror's compliance with all specifications and/or other requirements contained in this RFP.	10
2. HUD, LIHTC, Development, Public Housing and RAD relevant experience and qualifications.	60
3. Reasonableness of contract price. 4. MWBE	5 5
5. Offeror's experience with affordable/public housing legal issues including applicable State of New York and Federal affordable/public housing regulations.	20
Total Points	**100**

During proposal evaluation, MHACY reserves the right to call for supplementary information from Offerors and to meet with all or any one of them to clarify points of uncertainty or ambiguity. Offerors agree to cooperate fully and promptly in providing such supplementary information or meeting requirements. Proposals will be evaluated and ranked according to points received. MHACY, in its sole discretion, may invite selected Offerors for an interview. Offerors should be prepared to discuss the proposed scope of work, including the availability of equipment and staffing, accounting and payment procedures, schedules, qualification of subcontractors proposed for po1iions of the work, and such other items as are directly related to the proposal.

MHACY also reserves the right to obtain clarification of any point in an Offeror's proposal or to obtain additional information necessary to properly evaluate a particular proposal. Failure of an Offeror to respond to such a request for additional information

or clarification could result in rejection of the Offeror's proposal.

All selected Offerors will be invited to negotiate all aspects of the fee proposal to arrive at a firm and reasonable cost as determined by MHACY.

9.0 CONTRACT TERM

The successful Offeror shall be expected to execute a standard professional service contract with MHACY.

The term of the contract, contingent on availability of funds, shall be effective when executed by MHACY and shall continue for two (2) years and may be renewed for three (3) additional one-year terms.

10.0 AVAILABILITY OF RECORDS

The U. S. Department of Housing and Urban Development, the U.S. Government Accounting Office, MIIACY, and any duly authorized representatives of each, shall have access to, and the right to examine any and all pertinent books, records, documents, invoices, papers, and the like, of the form(s) office or firm, which shall relate to the pe1fonnance of the services to be provided.

11.0 STANDARDS OF CONDUCT

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

12.0 SUPERVISION

The successful Offeror shall provide adequate competent supervision at all times during the performance of the contract. A qualified firm partner shall be designated in writing to MHACY prior to executing the contract. The firm partner or his/her designee must be readily available to meet with MHACY personnel. The successful Offeror shall provide the telephone number(s) where its representative can be reached.

13.0 CANCELLATION

Irrespective of any default herem1der, MHACY may at any time at its discretion cancel the contract in whole or in part, and in such event the firms shall be entitled to receive equitable compensation for all work completed and accepted, prior to such termination or cancellation.

14.0 AVAILABILITY OF FUNDS

In the event that funds necessary to finance this Professional Services Contract become unavailable, MHACY may cancel the contract by giving seven (7) days' notice in writing and the contract will thereafter be null and void. MHACY shall be the final authority to determine whether funds are not available.

15.0 CONFLICT OF INTEREST

No employee, officer or agent of MHACY shall participate directly or indirectly in the selection or in the award of any contract if a conflict, real or apparent, would be involved. Such conflict would arise when a financial or other interest in an agency

selected for the award is held by:

• an employee, officer or agent involved in making the award; or

• his/her relative including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, domestic partner, father-in-law, mother-in-law, son-in-law, daughter-in- law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister; or

• his/her business or professional partner; or

• An organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

16.0 CONDITIONS AND LIMITATIONS

This RFP does not represent a commitment or offer by MHACY to enter into a contract(s), or other agreement with a proposer. All costs incurred in the preparation of this proposal are to be borne by the proposer. The proposal and any information made a part of the proposal will become a part of MHACY's official files without any obligation on MHACY's part to return it to the individual proposer. This RFP and the selected firm's proposal will, by reference, become a part of any formal agreement between the firm and MHACY resulting from this solicitation.

MHACY reserves the right to waive any irregularities or formalities in any or all proposals or any part thereof. Failure to furnish all information requested may disqualify a proposer. MHACY reserves the right to request a clarification of proposal data without changing the terms of the proposal.

The Offeror shall not offer any gratuities, favors, or anything of monetary value to any official or employee of MHACY for the purpose of influencing consideration of a proposal.

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

17.0 MINORITY/WOMEN BUSINESS PARTICIPATION

The firm(s) awarded the contract agrees to use its best efforts to subcontract with minority business enterprises and/or women business enterprises, certified as such or recognized by MHACY as such.

USING BEST EFFORTS TO FULFILL MBE/WBE REQUIREMENTS

In the event MHACY has a reasonable belief that the Offeror will not use its best eff01ts to ensure MBE/WBE participation, MHACY reserves the right to pull work from the contract. Best efforts may be established by showing the Offeror has contracted at1d solicited bids/quotes from subcontractors in identifying MBE/WBEs.

AFFIRMATIVE ACTION

MHACY is an equal opportunity employer and requires all of its contractors to comply

with policies and regulations concerning equal employment opportunity.

18.0 PERTINENT FEDERAL REGULATIONS WITH REGARD TO NONDISCRIMINATION AND EQUAL OPPORTUNITY

18.1 To the extent required by law, the firm(s) selected shall comply with:

A. The requirements of Title VIII of the Civil Rights Act of 1968 at1d Title VI of the Civil Rights Act of 1964, relating to prohibitions against discrimination in housing and the benefits of federally funded programs because of race, color, religion, sex or national origin must be met by the Offeror.

B. Federal regulations prohibiting discrimination on the basis of age under the Age Discrimination Act of 1975, and prohibiting discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 and the Americans With Disabilities Act of 1990.

C. The requirements of Executive Order 11246, relating to equal employment opportunity in connection with federally funded programs.

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

19.0 HUD AND MHACY GUIDELINES

This procurement of services is being made in compliance with HUD Notice PIH 2003-24 (HA) dated September 26, 2003. A copy of this Notice is attached. Engagement letters for legal services to be paid with funds received from HUD will contain the addendum language contained in the Notice. In addition, legal services provided will be subject to MHACY's Legal Guidelines and Billing Policies for Outside Counsel to the Municipal Housing Authority for the City of Yonkers, a copy of which is also attached.

20.0 DECLARATION - {REQUIRED SUBMITTAL)

Your submission must include, as a required exhibit, the following Declaration:

Declaration

The undersigned, as Offeror, declares that the only persons interested in this Response are named herein, that no other person has any interest in this proposal, that this proposal is made without connection or arrangement with any other person, and that this proposal is in every respect fair, in good faith, and without collusion or fraud.

The Offeror further declares that he/she has complied in every respect with all of the instructions of Offerors, and has read all addenda, if any, has satisfied himself or herself fully relative to all matters mid conditions with respect to the proposal.

The Offeror agrees, if this proposal is accepted, to execute such agreement as appropriate for the purpose of establishing a formal contractual relationship between the Offeror and MHACY for the performance of all requirements to which the proposal pertains.

The Offeror states that this proposal is based upon the proposal documents and amendments, if any.

Persons Interested in this Response:

	Name:	Identity of Interest
1.	_____	_____
2.	_____	_____
3.	_____	_____

_____ _____

NAME OF ATTORNEY OR FIRM SIGNATURE/ TITLE

DATE: _____2018

ATTACHMENT "A"

FORM OF NON-COLLUSIVE AFFIDAVIT

STATE OF NEW YORK

COUNTY OF WESTCHESTER

_____, being first duly sworn, deposes and says that he is

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

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

MUNICIPAL HOUSING AUTHORITY FOR THE CITY OF YONKERS

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

_____

Signature of Proposer, if Proposer is an Individual

_____

Signature of Proposer, if Proposer is a Partnership

_____

Signature of Officer, if Proposer is a Corporation

Subscribed and sworn to before me this _____ day of _____, 2013

Notary Public

My Commission expires _____

ATTACHMENT B

M/WBE PARTICIPATION

M/WBE PARTICIPATION: The Offeror agrees to use his/her best efforts to subcontract or joint venture with minority business enterprises and/or women business enterprises (herein called M/WBE) certified as such or recognized by MHACY as a certified M/WBE.

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

NOTIFICATION OF M/WBE PARTICIPATION: Offeror agrees to promptly complete and return all M/WBE Confirmation of Participation and M/WBE Confirmation of Payment forms utilized by MHACY to confirm M/WBE subcontracting by submitting copies of checks made payable to the respective M/WBE subcontractor(s) signed by the Offeror.

_____ _____

OFFEROR **DATE**

Note: This form must bear a signature.

PROPOSER'S PROPOSED MBE/WBE PARTICIPATION FORM

Proposer proposes to work with the following MBE/WBE participants:

Name of Participant	MBE:/WBE	Certifying Entity (City/County/Etc.)	Percent of Total Work

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

Representations, Certifications, and Other Statements of Bidders

Public and Indian Housing Programs

Representations, Certifications, and Other Statements of Bidders

Public and Indian Housing Programs

Table of Contents

Clause		Page
1.	Certificate of Independent Price Determination	1
2.	Contingent Fee Representation and Agreement	1
3.	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions	1
4.	Organizational Conflicts of Interest Certification	2
5.	Bidder's Certification of Eligibility	2
6.	Minimum Bid Acceptance Period	2
7.	Small, Minority, Women-Owned Business Concern Representation	2
8.	Indian-Owned Economic Enterprise and Indian Organization Representation	2
9.	Certification of Eligibility Under the Davis-Bacon Act	3
10.	Certification of Nonsegregated Facilities	3
11.	Clean Air and Water Certification	3
12.	Previous Participation Certificate	3
13.	Bidder's Signature	3

1. Certificate of Independent Price Determination

(a) The bidder certifies that--

(1) The prices in this bid have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to (i) those prices, (ii) the intention to submit a bid, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this bid have not been and will not be knowingly disclosed by the bidder, directly or indirectly, to any other bidder or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a competitive proposal solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the bidder to induce any other concern to submit or not to submit a bid for the purpose of restricting competition.

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

(1) Is the person in the bidder'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)(I) 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)(I) through (a)(3) above.

_____ [insert full name of person(s) in the bidder's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder's organization];

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

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

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

[ ] [Contracting Officer check if following paragraph is applicable]

(d) Non-collusive affidavit. (applicable to contracts for construction and equipment exceeding $50,000)

(1) Each bidder shall execute, in the form provided by the PHA/IHA, an affidavit to the effect that he/she has not colluded with any other person, firm or corporation in regard to any bid submitted in response to this solicitation. If the successful bidder did not submit the affidavit with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the affidavit by that date may render the bid nonresponsive. No contract award will be made without a properly executed affidavit.

(2) A fully executed "Non-collusive Affidavit" [ ] is, [ ] is not included with the bid.

2. Contingent Fee Representation and Agreement

(a) Definitions. As used in this provision:

"Bona fide employee" means a person, employed by a bidder and subject to the bidder's supervision and control as to time, place, and manner of performance, who neither exerts, nor proposes to exert improper influence to solicit or obtain contracts nor holds out as being able to obtain any contract(s) through improper influence.

"Improper influence" means any influence that induces or tends to induce a PHA/IHA employee or officer to give consideration or to act regarding a PHA/IHA contract on any basis other than the merits of the matter.

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

(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.

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

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

3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (applicable to contracts exceeding $100,000)

(a) The definitions and prohibitions contained in Section 1352 of title 31, United States Code, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The bidder, by signing its bid, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989 that:

(1) No Federal appropriated funds have been paid or will be paid to 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 on his or her behalf in connection with the awarding of a contract resulting from this solicitation;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to 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 on his or her behalf in connection with this solicitation, the bidder shall complete and submit, with its bid, OMB standard form LLL, "Disclosure of Lobbying Activities;" and

(3) He or she will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of $100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than $10,000, and not more than $100,000, for each such failure.

(d) Indian tribes (except those chartered by States) and Indian organizations as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) are exempt from the requirements of this provision.

4. Organizational Conflicts of Interest Certification

The bidder certifies that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work to be performed under this proposed contract and the bidder's organizational, financial, contractual, or other interests may, without some restriction on future activities:

(a) Result in an unfair competitive advantage to the bidder; or,

(b) Impair the bidder's objectivity in performing the contract work.

[ ] In the absence of any actual or apparent conflict, I hereby certify that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement.

5. Bidder's Certification of Eligibility

(a) By the submission of this bid, the bidder certifies that to the best of its knowledge and belief, neither it, nor any person or firm which has an interest in the bidder's firm, nor any of the bidder's subcontractors, is ineligible to:

(1) Be awarded contracts by any agency of the United States Government, HUD, or the State in which this contract is to be performed; or,

(2) Participate in HUD programs pursuant to 24 CFR Part 24.

(b) The certification in paragraph (a) above is a material representation of fact upon which reliance was placed when making award. If it is later determined that the bidder knowingly rendered an erroneous certification, the contract may be terminated for default, and the bidder may be debarred or suspended from participation in HUD programs and other Federal contract programs.

6. Minimum Bid Acceptance Period

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the PHA/IHA for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The PHA/IHA requires a minimum acceptance period of [Contracting Officer insert time period] calendar days.

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the PHA's/IHA's minimum requirement. The bidder allows the following acceptance period: calendar days.

(e) A bid allowing less than the PHA's/IHA's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above or (2) any longer acceptance period stated in paragraph (d) above.

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

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

(a) [ ] is, [ ] is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) [ ] is, [ ] is not a women-owned business enterprise. "Women-owned business enterprise," as used in this provision, means a 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 business enterprise. "Minority business enterprise," as used in this provision, means a business which is at least 51 percent owned or controlled 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	[ ] Asian Pacific Americans
[ ] Hispanic Americans	[ ] Asian Indian Americans
[ ] Native Americans	[ ] Hasidic Jewish Americans

8. Indian-Owned Economic Enterprise and Indian Organization Representation (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

The bidder represents and certifies that it:

(a) [ ] is, [ ] is not an Indian-owned economic enterprise. "Economic enterprise," as used in this provision, means any commercial, industrial, or business activity established or organized for the purpose of profit, which is at least 51 percent Indian owned. "Indian," as used in this provision, means any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act.

(b) [ ] is, [ ] is not an Indian organization. "Indian organization," as used in this provision, means the governing body of any Indian tribe or entity established or recognized by such governing body. Indian "tribe" means any Indian tribe, band, group, pueblo, or

community including Native villages and Native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

9. Certification of Eligibility Under the Davis-Bacon Act (applicable to construction contracts exceeding $2,000)

(a) By the submission of this bid, the bidder certifies that neither it nor any person or firm who has an interest in the bidder's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of the contract resulting from this solicitation shall be subcontracted to any person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.

10. Certification of Nonsegregated Facilities (applicable to contracts exceeding $10,000)

(a) The bidder's attention is called to the clause entitled **Equal Employment Opportunity** of the General Conditions of the Contract for Construction.

(b) "Segregated facilities," as used in this provision, 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, that 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.

(c) By the submission of this bid, the bidder certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The bidder agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in the contract.

(d) The bidder further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) prior to entering into subcontracts which exceed $10,000 and are not exempt from the requirements of the Equal Employment Opportunity clause, it will:

(1) Obtain identical certifications from the proposed subcontractors;

(2) Retain the certifications in its files; and

(3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause of the prime contract. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

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

11. Clean Air and Water Certification (applicable to contracts exceeding $100,000)

The bidder certifies that:

(a) Any facility to be used in the performance of this contract [ ] is, [ ] is not listed on the Environmental Protection Agency List of Violating Facilities:

(b) The bidder will immediately notify the PHA/IHA Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the bidder proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and,

(c) The bidder will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

12. Previous Participation Certificate (applicable to construction and equipment contracts exceeding $50,000)

(a) The bidder shall complete and submit with his/her bid the Form HUD-2530, "Previous Participation Certificate." If the successful bidder does not submit the certificate with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the certificate by that date may render the bid nonresponsive. No contract award will be made without a properly executed certificate.

(b) A fully executed "Previous Participation Certificate"

[ ] is, [ ] is not included with the bid.

13. Bidder's Signature

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

_____
(Signature and Date)

_____
(Typed or Printed Name)

_____
(Title)

_____
(Company Name)

(Company Address)

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. 3/31/2020)

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

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

1) **Non-construction contracts** (*without* maintenance) **greater than $105,000 - use Section I;**
2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 968.105) **greater than $2,000 but not more than $150,000 - use Section II;** and
3) **Maintenance contracts** (including nonroutine maintenance), **greater than $150,000 – use Sections I and II.**

Section I - Clauses for All Non-Construction Contracts greater than $150,000

1. Definitions

The following definitions are applicable to this contract:

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

2. Changes

(a) The HA may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.
(b) If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the HA shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.
(c) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if the HA decides that the facts justify it, the HA may receive and act upon a proposal submitted before final payment of the contract.
(d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
(e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

3. Termination for Convenience and Default

(a) The HA may terminate this contract in whole, or from time to time in part, for the HA's convenience or the failure of the Contractor to fulfill the contract obligations (default). The HA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to the HA all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.
(b) If the termination is for the convenience of the HA, the HA shall be liable only for payment for services rendered before the effective date of the termination.
(c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (default), the HA may (i) require the Contractor to deliver to it, in the manner and to the extent directed by the HA, any work as described in subparagraph (a)(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.

4. Examination and Retention of Contractor's Records

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

(b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding $10,000.

(c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:
(i) appeals under the clause titled Disputes;
(ii) litigation or settlement of claims arising from the performance of this contract; or,
(iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

5. Rights in Data (Ownership and Proprietary Interest)

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

6. Energy Efficiency

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

7. Disputes

(a) All disputes arising under or relating to this contract, *except for disputes arising under clauses contained in Section III, Labor Standards Provisions*, including any claims for damages for the alleged breach there of which are not disposed of by agreement, shall be resolved under this clause.

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

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

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

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

8. Contract Termination; Debarment

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

9. Assignment of Contract

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

10. Certificate and Release

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

11. Organizational Conflicts of Interest

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

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

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

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

12. Inspection and Acceptance

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

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

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

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

13. Interest of Members of Congress

No member 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 before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

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

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

(i) An individual who is appointed to a position in the Government under title 5, U.S.C., including a position under a temporary appointment;

(ii) A member of the uniformed services as defined in section 202, title 18, U.S.C.;

(iii) A special Government employee as defined in section 202, title 18, U.S.C.; and,

(iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, appendix 2.

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

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

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

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

(b) Prohibition.

(i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

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

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

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

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

(iii) Selling activities by independent sales representatives.

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

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

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

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

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

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

16. Equal Employment Opportunity

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

(a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to (1) employment; (2) upgrading; (3) demotion; (4) transfer; (5) recruitment or recruitment advertising; (6) layoff or termination; (7) rates of pay or other forms of compensation; and (8) selection for training, including apprenticeship.

(c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

17. Dissemination or Disclosure of Information

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

18. Contractor's Status

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

19. Other Contractors

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

20. Liens

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

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

(a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of

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

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

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

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

22. Procurement of Recovered Materials

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

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

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

Special Attention of:	NOTICE PIH 2003-24 (HA)
Public Housing Agencies; Regional Directors; Regional Counsel; State/Area Coordinators; Public Housing Directors; FO Counsel	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]

Attachment G

THE MUNICIPAL HOUSING AUTHORITY

FOR THE CITY OF YONKERS

MEMORANDUM

TO: **OUTSIDE COUNSEL**

FROM: **THE BOARD OF COMMISSIONERS**

DATE: **FEBRUARY 14, 2006**

RE: **LEGAL GUIDELINES AND BILLING POLICIES FOR OUTSIDE COUNSEL TO THE MUNICIPAL HOUSING AUTHORITY FOR THE CITY OF YONKERS**

Effective immediately, the Board of Commissioners of the Municipal Housing Authority for the City of Yonkers ("MHACY") adopts the following Legal Guidelines and Billing Policies (hereinafter "Guidelines") for Outside Counsel. The failure of outside counsel to accept or comply with the following Guidelines will subject outside counsel to the restriction or termination of the counsel's provision of legal services to MHACY on current and/or future matters.

Billing Practices and Invoices

All invoices are subject to the review and approval of MHACY. Please see **Exhibit A** for specific guidance on the format and content of legal fee invoices.

Unless otherwise agreed, your invoices should be submitted on a monthly basis. Additionally, the invoice balance due shall reflect only those fees and expenses incurred for the current billing period. However, the invoice should also summarize the total amount billed for the current calendar year and the total amount billed from the inception of the particular matter.

PRIOR BALANCES SHOULD NOT BE ADDED TO THE AMOUNTS REFLECTED ON ANY INVOICE. Statements for past due invoices must be forwarded separately with a copy of the invoice. **Disbursements and Out-of-Pocket Expenses** All invoices must contain itemized and specifically delineated expenses. Please see **Exhibit B** hereto for approved and disapproved expenses. MHACY will only pay for documented, reasonable and actual out of pocket expenses incurred by your firm or paid to third party vendors. COPIES OF BACK UP AND SUPPORT FOR OUT-OFPOCKET EXPENSES ARE TO BE ATTACHED TO ALL INVOICES SUBMITTED TO MHACY. MHACY will not pay for expenses in excess of the actual documented cost to your firm for such item nor accept any markups or surcharges on such amounts. However, certain routine expense items as described in Attachment B attached hereto are included in your overhead and will be covered by the firm's hourly rate for professional services rendered. **Finance and Development Transactions** **Exhibit C** lists additional guidelines which apply to financing and development transactions

Exhibit A

All legal fee invoices must be consistent with and must comply with the following requirements:

1. MHACY will generally not pay for coordination and consultation between firm attorneys on the same matter. However, MHACY recognizes that consultation from time to time may be necessary to develop strategy or to receive specialized knowledge which would not be expected to be a competency of the assigned counsel. Such conferences are highly discouraged, to the extent MHACY is billed for them. If MHACY is billed for such conferences, support for the need of the conferences should be included with the invoice.
2. MHACY expects the firm to scrutinize with special care the time spent and charged to MHACY on matters such as internal conferences; legal research on basic, general legal or recurring principles or issues; and the attendance of multiple attorneys at meetings, depositions and hearings. MHACY will not pay for the attendance of more than one attorney present at regular and special Board meetings, conferences and meetings with staff or board members. MHACY will not pay for conferences between firm attorneys and their legal assistants for generalized case reviews to familiarize attorneys and legal assistants with a particular file, for review of newly received pleadings or discovery by more than one attorney.
3. All invoices must be itemized, detailing the attorney or legal assistant performing the task, the date of the task, a description of the task and the hours billed for the task in one-tenth hour increments.
4. Each narrative entry for any service performed must be specific and include the topic and the individual client representative. For example, "Attend to Correspondence on committee agenda" is unacceptable. Narrative entries should be sufficiently complete as to adequately advise MHACY of the service performed, i.e. "Draft response to Plaintiff's Motion to Compel based upon request for production seeking correspondence by Board members".
5. A summary of the invoice showing total amounts billed and hourly rates for each attorney and/or legal assistant should appear at the end of each invoice.

Exhibit B

Reimbursables and Out-of-Pocket expenses which **may** be billed to MHACY:

1. Filing and recording fees
2. Prior approved court reporter fees
3. Prior approved expert witness fees
4. Prior approved computer legal research; no overhead cost will be reimbursed.
5. Coach airfare
6. Reasonable travel expenses, when necessary.
7. Long distance telephone charges for voice or fax at the actual rate incurred by the firm
8. Prior approved outside copying, binding and printing expenses. A copy of the invoice submitted by the service must be attached to substantiate the expense.
9. Air freight, express mail, overnight courier and messenger expenses, when reasonable, necessary and unexpected. MHACY will not pay for such expenses due to failure to manage the firm's time or resources.
10. Bond fees and premiums
11. Parking expenses

Reimbursables and Out-of-Pocket expenses that may **not** be billed to MHACY:

1. Word processing and laser printing expenses
2. Overtime charges, including secretarial overtime
3. facsimile charges, except for long distance charges
4. Unsupported copy expenses
5. Expenses for local transportation (i.e. taxi, limousine, transportation to and from home or to and from the office)

6. Storage charges
7. expenses for local postage
8. expenses for office supplies
9. expenses for books or subscriptions
10. local telephone or mobile telephone charges
11. In-house photocopying expenses; MHACY will pay for in-house copies, not to exceed 10 cents/page.
12. Courier service
13. meals (except for litigation matters)
14. time spent traveling
15. alcoholic beverages
☐16. While traveling, the following are also not reimbursable:
☐a. cleaning or other personal grooming
☐b. flight and car rental insurance
☐c. entertainment and sporting event expenses (including private mini-bar purchases, premium channel movies, personal telephone calls, and
☐d. personal automobile mileage to and from the airport

Exhibit C

Financing and Development Transactions

Each financing or development transaction for which MHACY or its affiliates may be liable shall be subject to a separate engagement letter setting out the terms of the representation. In a financing transaction, such engagement letter will provide that MHACY or its affiliate will only pay any outstanding invoices upon the conclusion of the matter, whether successful or unsuccessful. However, firms will be expected to submit monthly statements for information purposes so that potential costs may be reviewed and tracked on a timely basis. All such invoices may be paid at the time of closing of a financing transaction if approved by the Executive Director of MHACY.

All statements shall otherwise comply with these legal guidelines and billing policies.

(SAMPLE)

PART I - AGREEMENT

LEGAL SERVICES

THIS AGREEMENT, made the ____ day of _____, by and between the **MUNICIPAL HOUSING AUTHORITY FOR THE CITY OF YONKERS ("MHACY")**, a public body, corporate and politic, created and existing under the laws of the State of New York, whose address is 1511 Central Park Avenue, Yonkers, N.Y., 10710, and_____ ("Attorney"), organized and existing under the laws of_____ , whose address is _____

WITNESSETH:

WHEREAS, MHACY desires to retain the services of Attorney and Attorney desires to provide such services to MHACY; and

WHEREAS, MHACY has entered into an Annual Contributions Contract with the Secretary of Housing and Urban Development ("HUD") pursuant to the U.S. Housing Act of 1937, 42 U.S.C. § 1437, which contract, in conjunction with applicable regulations, governs the operations of MHACY; and

WHEREAS, MHACY has complied with the appropriate method of procurement of professional legal consultation and litigation services consistent with 24 C.F.R. Part 85, HUD Litigation Handbook 1530.1 REV-4 and State law, to solicit Attorney; and

WHEREAS, by Resolution the MHACY Board of Commissioners authorized this Contract for Legal Services; and

WHEREAS, contract award is made for all work under the base contract

NOW, THEREFORE, the parties mutually agree as follows:

1. **Acceptance of Terms**. MHACY hereby engages Attorney as legal counsel and Attorney accepts this Contract under the terms and conditions hereinafter set forth. Attorney remains an independent contractor. This Contract does not create an employer-employee relationship and does not entitle Attorney to employee benefits.

2. **Scope of Services**. Attorney shall perform all services necessary on behalf of MHACY in providing MHACY legal services more fully described in Part III (attached) of this Contract ("Scope of Work"), and as described in Attorney's proposal as accepted by MHACY.

Services performed by a joint venturer under this contract shall be performed in accordance with all the terms and conditions of this Contract, including but not limited to Part III and Part V of this Contract.

3. **Time for Performance**. This Contract shall be effective the date the first legal services are rendered by the Attorney in connection with the first case or matter assigned under this Contract or on the date of this Contract, whichever occurs first. This Contract shall be for an initial contract term of two years and may be renewed for three (3) additional one year terms.

4. **Compensation and Fees**. This is an indefinite quantity, time and materials contract, funded in accordance with Section 5 below. Attorney must notify MHACY when seventy-five percent (75%) of the funded amount has been used. MHACY will thereupon determine whether to provide additional funding to this contract Attorney exceeds the funded amount at his, her or their own risk. The funded amount includes allowable lees, costs and expenses, in accordance with Part I and Part V of this Contract. The allowable hourly rates for professional and paraprofessional legal services shall be as follows:

(a) Principal Attorney (Partner): $_____ per hour;

(b) Staff Attorney (Senior Associate, Associate): $_____ per hour; and

(c) Paralegal/Law Clerk: $_____ per hour.

Appropriate personnel at the above hourly rates shall perform all legal services provided by Attorney under this Contract. Assignments to attorneys in Attorney's firm shall depend on the complexity of the work and whether novel issues are presented. MHACY work shall not be assigned to summer clerks, contract attorneys working for the firm on an hourly basis, or other like temporary personnel. The terms and conditions hereunder shall be binding upon any joint-venturer who enters into an agreement with Attorney after approval by MHACY. MHACY reserves the right to disallow charges for services and any expense that it deems to be unreasonable or unnecessary (or both). In the event of a dispute over any charge for services, or item of expense, such dispute shall be resolved pursuant to Section 9 below.

5. **Certification of Available Funds**. Attorney acknowledges that payments under the Contract may not exceed the amount that the MHACY Finance Department certifies as available for the Contract. A copy of the form signed by the Finance Department showing the amount of currently available funds will be attached to the fully executed Contract returned to Attorney. During the term of the Contract, MHACY reserves the right to fund the balance of the Contract amount in varying

amounts from time to time as funds become available, not to exceed in total the maximum amount stated in the Contract. Attorney agrees that MHACY shall not be obligated to fund the Contract except out of funds certified by the Finance Department as currently available, even if those funds are less than the maximum amount stated in the Contract. If sufficient funds are not available at any time, MHACY may exercise its options described in Section 5.1, entitled "Unavailability of Funds."

5.1 **Unavailability of Funds**. If funding for this Contract from any source is not obtained and continued at any aggregate level sufficient to allow for payment for the services and expenses under this Contract, MHACY may exercise one of the following options without liability or penalty to PHA.

(a) Terminate the Contract effective upon a date specified in a Termination Notice; or

(b) Continue the Contract by reducing, through written notice to the Attorney, the amount of the Contract and the services to be rendered and the expenses to be incurred consistent with the nature, amount and circumstances of available funding.

MHACY's exercise of either option under this Section shall not affect any obligation or liabilities of either party accruing prior to such termination or reduction of services or expenses. Attorney shall be compensated in accordance with the terms of the Contract for services and expenses satisfactorily performed and reasonably incurred prior to such termination under this Section.

5.2 **Maximum Contract Amount**. It is expressly understood and agreed that in no event will the aggregate total compensation and reimbursement to be paid hereunder exceed the maximum contract amount of $_____ for all services and expenses satisfactorily rendered and reasonably incurred. Attorney, through MHACY, may submit to HUD a written request containing a statement of circumstances, reasons, and legal justification in support of any request for an increase in the amount of the aforementioned maximum fund reservation.

6. **Litigation Expenses and Travel**. Attorney shall be reimbursed for such out-of-pocket expenses as travel expenses, filing fees, witness fees as set by judicial jurisdiction, printing expenses, long distance telephone calls, and similar expenses relating to the consultation or litigation as defined by 'Part V- Guidelines for Outside Counsel"; provided that such expenses shall not include normal

office operating expenses and shall otherwise be necessary and reasonable. Reimbursement for travel expenses shall be limited to the amount allowed in accordance with travel standards of MHACY. Reimbursement for private messenger services without prior MHACY approval is not allowed. Attorney shall follow Part III and Part V of this Contract for specific guidance regarding billing practices.

7. **Billing**. As a condition precedent to any payment to Attorney under this Contract, Attorney shall submit to MHACY a bill or invoice that sets forth a general description of the matter; the Contract number the dates (year, month, day) of performance; a detailed description of each unit of work; the name and title of the person who performed the work; and the time appropriately charged thereto to the nearest tenth of an hour (0.10). Such bill or invoice shall be submitted in accordance with Parts III and V of this Contract. Attorney shall follow Part III and Part V of this Contract for specific guidance regarding billing practices,

8. **Approval of Payments by the Government**. Pursuant to HUD Litigation Handbook 1530.1 REV-4, concurrence of the HUD) Assistant General Counsel in the HUD office with jurisdiction over MHACY ("Assistant General Counsel") may be required prior to payment of compensation under this Contract.

9. **Contract Claims/Disputes**.

(a) All claims by Attorney relating to performance of this Contract shall be submitted in writing to the Contracting Officer of designee for a written decision. The Attorney may request a conference on the claim. The parties authorize the Contracting Officer to decide all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Contract and his decision shall be conclusive, final and binding on the parties. The Contracting Officer's decision shall inform the Attorney of its appeal rights to a higher level in the MHACY, such as the Executive Director, or a designated Board member, or the Board of Commissioners. If the Attorney wishes to protest the determination of the Contracting Officer further, the Attorney may commence a lawsuit under Article 78 of the New York Civil Practice Law and Rules, it being understood the review of the court shall be limited to the question of whether or not the Contracting Officer's decision is arbitrary, capricious or grossly erroneous to evidence bad faith.

(b) Attorney shall proceed diligently with performance of this Contract, pending final resolution of any request for relief, claim, appeal, or action arising under this Contract, and comply with the decision of MHACY.

10. **Indemnification**. Attorney shall indemnify, defend and hold harmless MHACY, its officers, employees and agents from and against any and all losses, expenses (including, but not limited to, litigation and settlement expenses and counsel fees), claims, suits, actions, damages, liability and expenses, occasioned wholly or in part by Attorney's act or omission or negligence or fault or the act or omission or negligence or fault of Attorney's agents, joint venture partners, subcontractors, suppliers, employees or servants in connection with the Contract, including, but not limited to, those in connection with loss of life, bodily injury, personal injury, damage to property; contamination or adverse effects on the environment; intentional acts; failure to pay such agents, joint venturers, subcontractors, suppliers, employees or servants; any breach of the Contract; and any infringement or violation of any proprietary right (including but not limited to, patent, copyright, trademark, service mark and trade secret).

11. **Submission of Papers and Documents.** During the course of any litigation assigned under this Contract, Attorney shall submit to the HUD Assistant General Counsel, or other HUD Counsel designated by the Assistant General Counsel, and MHACY's Responsible Attorney ("RA") a copy of all pleadings and case-dispositive motions, orders, briefs, legal opinions or memoranda for which fees are charged. Attorney shall follow Parts III and V of this Contract for specific guidance regarding preparation of correspondence, pleadings and documents.

12. **Settlement**. No settlement offer arising out of the litigation shall be made or accepted by MHACY or Attorney without the prior concurrence of HUD), as required by HUD) Handbook (Litigation Handbook) 1530.1 REV-4. All written settlement offers to opposing counsel shall so state. The terms of any settlement offer shall be communicated by Attorney to HUD's Assistant Genera) Counsel, or designated other HUD) Counsel, through FHA's Legal Department.

13. **Appeals**. MHACY or Attorney shall not undertake an appeal or cross-appeal from a judgment without prior concurrence of HUD. A recommendation for, or against, an appeal or cross-appeal shall be communicated to HUD's Assistant General Counsel, in accordance with HUD Handbook (Litigation Handbook) 1530.1 REV-4, through which communication shall set forth the facts, the legal considerations and other arguments upon which the recommendations are based. The last day to file a notice of appeal shall be clearly indicated.

14. **Termination and Assignment of Agreement.**

14.1. **Termination for Convenience.** In addition to its rights set forth above and below this subsection, MHACY shall have the right to terminate this Contract at any time during the term of the Contract for any reason, including without limitation, its own convenience. If the Contract is terminated solely for the MHACY's convenience, the MHACY shall issue a written Termination Notice which shall set forth the effective date of the termination.

(a) MHACY may terminate and cancel this Contract upon written notice of ___ days to Attorney- Notice shall be deemed given upon posting in the U.S. mail. Notwithstanding the foregoing provision, Attorney must continue to represent the Authority until MHACY obtains substitute representation- In the event of termination, Attorney shall be entitled to receive compensation as specified herein for all work completed and accepted prior to such termination or cancellation, and for all services provided up to the date of cancellation. In addition, in the event any substantial amount of work or services has been performed by Attorney prior to the date of such termination or cancellation, which work or services shill be necessary to the operation and management of MHACY, but which work or services has not yet been accepted by MHACY, an equitable adjustment shall be made as to compensation for such work or services; and

(b) Attorney shall not assign this Contract or subcontract any of the work under this Contract without the consent of MHACY.

14.2. **Responsibilities upon Termination.**

(a) Upon receipt of a Termination Notice under any Article or Section of this Contract, Attorney and its agents, employees and subcontractors, shall:

(1) Take immediate, orderly action to discontinue services.

(2) Collect, assemble and transmit to MHACY the Attorney's flies on cases assigned under this Contract. All such files shall be clearly labeled and indexed to the satisfaction of the General Counsel and delivered to the General Counsel by the Attorney on or before the date set forth in the Termination Notice for delivery of the

files or, if no such date is set forth in the Termination Notice, then before the effective date of termination set forth in the Termination Notice. There will be no retaining or charging liens or the like in favor of the Attorney.

(b) Termination of the Contract shall not affect any obligation or liability of either party accruing prior to such termination.

(c) There shall be no liability, cost or penalty to MHACY for termination of the Contract.

14.3. **Payment of Attorney upon Termination**

(a) Upon termination of Attorney by MHACY for an Event of Default, Attorney shall be entitled to payment of an amount, to be determined by MHACY and subject to audit, as shall compensate Attorney for the work satisfactorily performed prior to the termination date; provided, however, that:

(1) No allowance shall be included for termination expenses, anticipated profits, unabsorbed or underabsorbed overhead, or unperformed services; and

(2) MHACY shall deduct from any amount due and payable to Attorney prior to the termination date, but withheld or not paid, the total amount of additional expenses incurred by MHACY in order to satisfactorily complete the work required to be performed by Attorney under this Contract, including the expense of engaging another Attorney for this purpose, and such other damages, expenses, losses and expenses of MHACY as may be incurred or result from such termination for default.

(b) In the event of termination of Attorney by MHACY for MHACY's convenience, Attorney shall be paid an amount as shall compensate Attorney for the portion of the services satisfactorily performed and expenses reasonably incurred prior to the dale of termination. No amount will be allowed for termination expenses, anticipated profits, unabsorbed or underabsorbed overhead, or unperformed services.

15. **Compliance with MHACY and other HUD and Federal**. Requirements. Attorney agrees to comply with applicable HUD and Federal requirements including;

(a) The Annual Contributions Contract between MHACY and HUD, HUD Handbook (Litigation Handbook) 1530.1 REV-4, Part II — HUD Terms and Conditions, HUD

Handbook (Procurement Handbook) 7460.8 (REV-1), and successor issuances and conditions of any of the foregoing HUD) requirements;

(b) All applicable terms and conditions required by MHACY and State law, more fully described in Part IV of this Contract ("MHACY General Conditions" attached hereto and made a part hereof as if set forth at length), and successor issuances and conditions;

(c) All applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. § 1857(h)), section 508 of the Clean Water Act, (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R. § 15); and

(d) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P. L. 94-163);

16. **Non-Disclosure**. During the term of this Contract and thereafter, except with the prior written consent of MHACY, Attorney will not;

(a) Issue, publish or divulge any materials developed or used in the performance of the services under this Contract in any public statement, thesis, writing, lecture or other verbal communication; or

(b) Disclose, or use to its advantage or gain, confidential information of any nature acquired from MHACY or acquired as a result of Attorney's activities in connection with this Contract.

17. **Conflict of Interest**.

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

(b) 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 benefits which may arise therefrom.

18. **Breach of Agreement**. None of the provisions of this Contract, nor the exercise of any of the provisions of this Contract regarding MHACY's rights and remedies, shall affect or abrogate any other right or remedy (both at law or in equity) which may be available to MHACY in the event of a breach.

18.1 **Events of Default**. Each of the following shall be an Event of Default under this Contract:

(a) Failure by Attorney to comply with any provision of the Contract.

(b) Occurrence of an Event of Insolvency with respect to Attorney.

(c) Falseness or inaccuracy of any warranty or representation of Attorney contained in the Contract or in any other document submitted to MHACY by Attorney.

(d) Misappropriation by Attorney of any funds provided under the Contract or failure by Attorney to notify MHACY upon discovery of any misappropriation.

(e) A violation of law which results in a guilty pica or a plea of *nolo contendere* by, or results in a conviction of, Attorney, its employees, or agents (I) directly or indirectly relating to the Contract or the services provided or expenses incurred, whether or not such offense is ultimately adjudged to have occurred; or (2) which adversely affects the performance of the Contract.

(f) Indictment of, or issuance of charges against, Attorney, its employees or agents for any criminal offense or any other violation of applicable law directly relating to the Contract, or which adversely affects the performance of the Contract in accordance with its terms, whether or not such office or violation is ultimately adjudged to have occurred.

18.2. **Notice and Grace**. MHACY agrees that it will not exercise any right or remedy provided because of any Event of Default unless it shall have (1) given written notice of the Event of Default to Attorney, and (2) Attorney, within a period often days thereafter, or such additional period for cure as MHACY may authorize, shall have failed to correct the Event of Default; provided, however, that no such notice from MHACY shall be required nor shall MHACY permit any period for cure if:

(a) Attorney has temporarily or permanently ceased providing services and incurring expenses related to performance under this Contract;

(b) The Event of Default creates an emergency that requires, in MHACY's sole discretion, immediate exercise of P1-lA's rights or remedies;

(c) MHACY has previously notified the Attorney in the preceding twelve-month period of any Event of Default under the Contract;

(d) An Event of Default occurs as described in Subsections 18.1(e) or 18.1(f) of this Part of the Contract; or

(e) Attorney has failed to obtain or maintain the insurance required under the Contract.

Nothing contained in this section shall limit MHACY's rights or remedies under this Contract.

19. **MHACY's Remedies**.

(a) In the event Attorney has committed or permitted an Event of Default and has been notified thereof, then MHACY may, but shall not be obligated to, without further notice to or demand on Attorney, and without waiving or releasing Attorney from any of its obligations under the Contract:

(1) Perform (or cause a third party to perform) the Contract, in whole or in part, including, without limitation, obtaining or paying for any required insurance or performing other acts capable of performance by MHACY Attorney shall be liable to MHACY for all sums paid by MHACY and all expenses incurred by MHACY, together with interest at the highest legal rate permitted in the Commonwealth of Pennsylvania thereon from the date of MHACY incurring such expenses. In any event, MHACY shall not be liable for inconvenience, expenses or other damages incurred by Attorney by reason of such performance or paying such expense or expenses, and the obligations of Attorney under the Contract shall not be altered or affected in any manner by MHACY's exercise of its rights under this section.

(2) Withhold or offset against any hinds payable to, or for the benefit of, Attorney;

(3) Collect, foreclose or realize upon any bond, collateral, security or insurance provided by or on behalf of Attorney; or

(4) Exercise any other right it has or may have at law, in equity, or under the Contract.

(b) If Attorney has committed or permitted an Event of Default and has been notified thereof, then MHACY may, but shall not be obligated to, without waiving or releasing Attorney from any of its obligations under the Contract, terminate the Contract in whole or in part, in accordance with this Contract. If the Contract is partially terminated, Attorney shall continue the performance of this Contract to the extent not terminated. If the Contract is wholly terminated, MHACY shall issue a written Termination Notice which shall set forth the effective date of the termination.

(c) The services purchased from Attorney are unique and not readily available. Accordingly, Attorney acknowledges that, in addition to all other remedies to which P1-IA is entitled, MHACY shall have the right, to the fullest extent permitted under applicable law, to enforce the terms of this Contract without limitation, by a decree of specific performance or by injunction restraining a violation, or attempted or threatened violation, of any provision of the Contract

20. **Access to Document Pertinent to Agreement**. Attorney shall provide MHACY, HUD, the Comptroller General of the United States, or any of their duly authorized representatives access to any books, documents, papers, and records of the Attorney which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcriptions.

21. **Retention of Records**. Attorney shall retain all required records in accordance with MHACY's policy regarding retention of records, a copy of which is maintained by MHACY's Contracting Officer for Procurement.

22. **Nondiscrimination**. Attorney shall comply with the requirements of the regulations of the Department of Housing and Urban Development, 24 C.F.R. Subtitle A, Part 1, § *1.1 et seq.*, issued under Title VI of the Civil Rights Act of 1964, or any successor legislation or regulation. Attorney's agreement to comply inures to the benefit of the United States, HUD) and MHACY, any of whom shall be entitled to invoke any remedy available by law to redress any breach of those regulations, or to compel compliance with those regulations, by Attorney.

23. **Certification**. The undersigned certify, to the best of their knowledge and belief, that:

(a) No appropriated federal 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 any 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;

(b) 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 any 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; and

(c) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients 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, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000.00 and not more than $ 100,000.00 for each such failure.

24. **Governing Law.** This Contract shall be governed by the laws of the State of New York, and all actions hereunder shall be brought in New York.

25. **Contract Composition.** The following documents are hereby incorporated by reference, and constitute the Contract. Attorney acknowledges receipt of all listed documents. Any conflict among the documents that constitute this Contract shall be resolved in the following order of precedence:

(a) Part I - Agreement, entitled "RFP- Legal Services"; Part II, entitled "HUE) Terms and Conditions"; Part III, entitled "Statement of Work"; Part IV, entitled "MHACY General Conditions"; and Part V, "Guidelines for Outside Counsel."

(b) Solicitation, dated _____ and entitled _____

(c) Addendum Number _____, dated, Addendum Number _____, dated _____

(d) Attorney's proposal as accepted by MHACY, including any best and final offer and any joint venture agreement, approved by P1-IA, between Attorney and a joint-venture attorney.

(e) Instructions to Proposers.

(f) Affirmative Action Requirements.

26. **Prior Agreement Superseded**. This Contract constitutes the entire agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hand and seals the date first mentioned above.

ATTEST: THE MUNICIPAL HOUSING AUTHORITY FOR THE CITY OF YONKERS

_____ BY:_____(SEAL)

WITNESS: LAW FIRM

_____ BY:_____(SEAL)