

**RFP 2023-4003 Legal Services
For Construction, Real Estate, and Development Activities**



ATTACHMENT A: SCOPE OF WORK

1.0 Background

The Cincinnati Metropolitan Housing Authority (CMHA) is seeking proposals from qualified law firms with experience in providing legal services for construction, development, and real estate activities.

As of the issuance of this solicitation, CMHA manages approximately 1,617 high-rise units, 1,875 family development units, and 1,221 scattered sites totaling approximately 4,900 Asset Management units; administers approximately 11,300 vouchers under the Housing Choice Vouchers; and operates 300 Affordable Housing units.

In addition to the provision of housing and housing assistance to low income families, CMHA acting through instrumentalities and single asset entities opted to expand, redevelop and sustain public housing assets via HUD's Rental Assistance Demonstration program (RAD) conversion and public/private partnerships. The instrumentalities are established not-for-profit enterprises and the single asset entities are considered affiliates. Both CMHA and the not-for-profit enterprises have been used for acquisition and development of affordable housing units.

The vision of CMHA, its affiliates and instrumentalities (hereinafter, jointly referred to as "CMHA") is: *"To shape our future by utilizing sustainable funding models to develop quality, affordable housing solutions in partnership with our community stakeholders."*

CMHA plans on converting public housing units to Project Based Rental Assistance under HUD's Rental Assistance Demonstration (RAD). In the RAD program, Public Housing Authorities may apply to convert the type of assistance currently being received at one or more specific properties to a long-term, Section 8 Housing Assistance Payment (HAP) contract. A primary provision of RAD is to provide PHAs with access to debt financing and other capital markets to address a particular property's immediate and long-term capital needs through rehabilitation. CMHA anticipates the Public Housing sites will be converted to Project Based Vouchers for the Rental Assistance Demonstration program with 4% Low Income Housing Tax Credits if necessary, 9% Low Income Housing Tax Credits if feasible, and FHA loans.

2.0 Scope for Development Legal Services

The Firm(s) selected to provide the legal services described in this RFP (the "Services") shall provide legal services on behalf of CMHA or any subsidiaries, instrumentalities, or any affiliates which may include but are not limited to the following:

- 2.1** Negotiate, prepare and review of contracts, agreements, evidentiaries, opinions, documents and other writings necessary to implement development-related work.

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Examples of such materials include documents such as ground leases, regulatory and operating agreements, declarations of trust and restrictive covenants, management agreements, development agreements, partnership agreements, mixed finance amendments to the ACC, program income agreements, loan documents, and documents utilized and required in connection with RAD transactions.

- 2.2 Draft and/or review organizational documents as required for the reorganization and/or formation of any CMHA subsidiary or entity to act as an ownership, development or lending entity, relative to development projects. The services may also include, but not be limited to, legal assistance with tax matters for the entity.
- 2.3 Identify regulatory, statutory and other legal concerns or issues that must be addressed with regard to the development projects and all real estate related activities.
- 2.4 Assist with matters related to application for funds, layering of funds, facilitation of mixed finance closings, and issues related to the administration of funds in a manner that protects the legal and fiscal interests of CMHA.
- 2.5 Draft and review legal documents related to mixed finance and tax credit developments.
- 2.6 Verify compliance with applicable funder rules and regulations (such as HUD, the IRS and others) within the financing, organizational structure and agreements for a subject development.
- 2.7 Facilitate the processes related to mixed finance and tax credit development.
- 2.8 Prepare and implement any alternative funding proposals or agreements, including but not limited to Low-Income Housing Tax Credit (LIHTC) proposals and tax exempt bond funding.
- 2.9 Negotiate agreements, draft contracts and/or review agreements related to any non-residential development on-site or off-site in the development projects' impact areas.
- 2.10 Assist with real estate acquisition and real estate disposition matters involving public and private real estate opportunities and other property related issues, i.e., title clearance, condemnation, environmental mitigation, etc.
- 2.11 Assist with residential real estate mortgage loan closings, mixed finance closings, and in legal matters involving HUD, OHFA, and other alternative funding agencies' regulations, rules, and procedures including, but not limited to, LIHTC and all relevant HUD funded programs.
- 2.12 Draft and/or review development incentives program applications for development tax credits, loan, grant programs, and New Markets Tax Credits, historic tax credits, and other funding opportunities.
- 2.13 Represent CMHA before federal, state and local administrative agencies and departments regarding funding applications, zoning, obtaining licenses and permits, and other matters related to development and redevelopment.
- 2.14 Assist in the preparation of documents related to RAD conversions including the RAD Conversion Commitment, RAD Use Agreement, Housing Assistance Payment Contract and RAD riders to applicable documents.
- 2.15 Provide services related to the development of a mixed income housing component as well as non-residential components of the projects if needed.

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3.0 Scope for Construction Legal Services

The Firm(s) selected to provide the legal services described in this RFP (the “Services”) shall provide legal services on behalf of CMHA or any subsidiaries or any affiliates which may include but are not limited to the following:

- 3.1** Provide advice to CMHA upon the award of public contracts and potential liability for claims asserted by contractors, subcontractor, materialmen, and sureties;
- 3.2** Represent CMHA in disputes or litigation in which it is a party arising out of construction contracts
- 3.3** Advise upon the validity of liens claimed upon the public funds of CMHA;
- 3.4** Advise upon and defend CMHA in claims arising under public works contracting, and Federal and State procurement procedures.
- 3.5** Advise on Davis-Bacon prevailing wage rates, construction law, and other related laws.

4.0 Scope for Real Estate Legal Services

The Firm(s) selected to provide the legal services described in this RFP (the “Services”) shall provide legal services on behalf of CMHA or any subsidiaries or any affiliates which may include but are not limited to the following:

- 4.1** Participate in settlement and litigation of lawsuits or disputes as requested by CMHA.
- 4.2** Represent CMHA in matters involving interface with the municipal governing bodies and with state and federal agencies.
- 4.3** Review and complete real estate transactions, including acquisitions and dispositions involving, e.g., easements, rights-of-way, leases, licenses, and fee transfers with respect to land, buildings, and electric facilities;
- 4.4** Resolve issues or disputes over property rights and related responsibilities; and
- 4.5** Analyze and advise on property tax and PILOT tax matters, zoning, land use, cooperation agreements and other local matters and/or requirements.
- 4.6** Develop easements, declarations of trusts, closing document and other matters attendant to real estate property title searches
- 4.7** Perform the activities associated with real estate transfers and title services, which include providing a preliminary title report, title commitment(s), title insurance policy(s), the recordation of warranty deed(s), and deeds of trust for improved and unimproved property sold or purchased by CMHA and perform settlement closing proceedings for each property.
- 4.8** Order a preliminary title report on the subject property and examine the public records affecting the real property and issue a preliminary title report and title commitment(s), title insurance policy(s) and record the warranty deed(s).

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- 4.9 Title searches will be for a sufficient period of time for the title company to insure the title without objectionable exceptions, and will determine all owners of record, outstanding mortgages, liens, judgments or pending suits, outstanding tax claims, easements or rights of ways of any type, whether oil, gas, and mineral interests have been severed, and any other exceptions that may cloud the title.
- 4.10 Discuss the title examination with CMHA and provide recommendations based on the evaluation of the title to the real estate. The Contractor will need to know whether there are certain restrictions to the property use, easements, encroachments or whether the title is marketable and clear for the seller to transfer to purchaser. The closing attorney and agent will identify any existing mortgages against the real estate.
- 4.11 Prepare the escrow instructions and required documents in accordance with the term of the sale.
- 4.12 Determine the requirements and documents needed to complete the transaction and advise CMHA.
- 4.13 Receive in escrow: preliminary report, payoff or assumptions statements and other related documents.
- 4.14 Determine when the transaction will be in a position to close and advise all parties.
- 4.15 Present the documents, statements, estimated closing statements and other related documents to the principal(s) for approval and signature.
- 4.16 Review the proceeds of the transactions from the buyer(s) and close the escrow by preparing the final settlement statements, disbursing the proceeds to the Seller, paying off the existing encumbrances and other obligations.
- 4.17 Review and approve the signed documents, releases and the order for title insurance, prior to the closing date.
- 4.18 Deliver the appropriate statements, funds and documents to the CMHA.
- 4.19 Act as the impartial “stakeholder” or depository, in a fiduciary capacity, for all documents and monies required to complete the transaction per written instructions of all principals.
- 4.20 Agree to discuss and clarify Contractor’s observations and that these discussions will not be considered conferences and that no additional compensation shall be expected. If after such discussions, revisions are warranted, the Contractor agrees that the revisions shall be furnished at no additional charge.

5.0 General Requirements

The contractor shall:

- 5.1 Utilize approved HUD forms or formatting when applicable.
- 5.2 Provide other related legal services necessary for construction, development and redevelopment, and real estate that may not be contained in this RFP.
- 5.3 Have fully qualified and licensed staff fully experienced in the requirements as specified in this RFP assigned to CMHA for the duration of the contract. CMHA reserves the right to accept or reject any proposed personnel assigned to it under

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this RFP or any resulting contract at any time. CMHA will notify the Proposer in writing if it requires the removal and replacement of any personnel.

- 5.4** Represent CMHA in regards to related issues. Related issues could include federal, state, or local governments or governmental entities.

6.0 Pool of Contractors

- 6.1** The Authority intends to create an inventory (or “pool”) of Firms to provide legal services for construction, development, and real estate activities. The Pool will consist of various Firms which will be available on an as-needed basis to provide Services as requested by the Authority and the actual number of participants chosen will depend on the number of qualified proposals received.

6.1.1 Proposers selected to participate in the Pool will be assigned work at the discretion of the Authority taking into consideration the quality of work, availability, manpower, timelines and other items of importance. The Authority will attempt to match each assignment to the firm best suited for a given project, which will be determined at the sole discretion of the Authority. The Authority will also determine the number of projects any firm will be assigned at any given time or duration. Upon such determination, the Authority will negotiate the specific work to be performed and the not-to-exceed cost based on the hourly rates awarded. If a satisfactory negotiation cannot be reached, the Authority reserves the right to discontinue negotiation and negotiate the work with another qualified firm from the pool. Each firm will serve in the Pool for a period of one (1) year with the option, at the Authority’s sole discretion, to extend the contract for up to an additional four years for a maximum total of five years. The firm(s) selected by the Authority will be required to follow the Authority policies as specified in this RFP, the Performance Based Contract and subsequent task orders.

6.1.2 Assignment of Work

6.1.2.1 Services will be requested of the selected Firm(s) by CMHA on a Purchase Order basis. Purchase Orders are specific work assignments performed by the selected Firms(s) awarded a contract based on this RFP. The work assignments will cover one or more areas as outlined above.

6.1.2.2 CMHA may request that the successful proposer(s) and CMHA agree on a defined Scope of Work, a schedule, and an estimate of legal fees and expenses anticipated to be incurred in connection with particular assignments. CMHA may require the Firm to perform certain work on the basis of such Scopes of Work, schedules, and estimates, and to seek CMHA approval to perform work beyond such estimated based upon adequate justification. In appropriate

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circumstances, CMHA may request a written strategic proposal. Such proposals may include a description of the options and alternatives with an assessment of their worth, the major steps likely to be involved, their timing and sequence, and the projected costs associated with each step. Once proposals are agreed upon by CMHA and the Firm, any material variance from the estimate or proposal must be approved in advance by CMHA.

6.1.2.3 All Purchase Orders are subject to the terms and conditions of the resultant contract. In the event of a conflict between a Task Order and the contract, the contract shall prevail.

7.0 Performance Standards

7.1 See Attachment D.

7.2 Failure to comply with all of the requirements in the resulting contract and/or the requirements in the purchase order may result in a reduction of the consultant’s fee by 10% for that service

7.3 Invoices are to be submitted within two weeks after completion of the service (see *Invoicing* in the General Terms and Conditions) except for development deals. If invoices are submitted late, the amount to be paid shall be reduced:

Number of days to submit invoice to CMHA after completion of work or receipt by CMHA in Yardi (whichever is later)	Performance Deduction from Invoice
<30	0%
>30	30%
>60	50%
>90	75%
>120	100% (No payment)

4.1 CMHA may waive the fee reductions at their discretion after discussing extenuating circumstances with the Contractor. Such waiver shall be in writing at the time of the service and may be considered by CMHA in the award of future work under this contract and award of future contracts.

5.0 The Authority’s Motto and Gold Performance Standards



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In 2012, the Authority implemented its motto “Being an Asset to Hamilton County” in addition to establishing Gold Performance Standards which consist of the principles and values by which the Agency performs and how our partners, vendors, contractors and consultants are measured. The Gold Performance Standards are:

<i>Respect</i>	<i>Timely</i>	<i>Exceptional</i>	<i>Initiative</i>
<i>Excellent</i>	<i>Quality</i>	<i>Accurate</i>	<i>Integrity</i>
<i>Value</i>	<i>Creativity</i>	<i>Accountability</i>	<i>Professionalism</i>

It is the Authority’s intent that the contractor will also adhere to these standards.

6.0 Contract Terms

6.1 Contract Term

6.1.1 The Authority intends to enter into a one year contract with the option, at the Authority’s sole discretion, to extend four one-year contracts with the successful offeror(s) selected to provide the services. However, if a firm is assigned a development deal, the assignment shall continue until the financial closing of the development deal. Note that for development deals, legal fees will be paid at the financial closing of the deal.

6.2 Indefinite Quantities Contract (IQC) CMHA does not guarantee any minimum or maximum amount of work as a result of any award ensuing from this RFP, but will reserve the right to award work on an as-needed basis.

6.2.1 Guaranteed Contract Minimum Amount and Not-to-exceed Maximum Amount: As may be further detailed herein, as the ensuing contract will be an Indefinite Quantities Contract (IQC), which, pursuant to HUD regulation, requires CMHA to award the responsive and responsible contractor a Guaranteed Contract Minimum Amount (GCMA) and Not-to-exceed Maximum Contract Amount (NMCA) of work, those required minimum and maximum contract levels are: (a) GCMA: \$100; (b) NMCA: \$100,000 annually for work under \$100,000 per assignment. Any assigned development deal will not exceed \$350,000 per deal and will be paid by the development deal at financial closing after approval by the Board of Commissioners CMHA reserves the right to adjust these amounts, if in its best interest to do so, prior to contract approval.