

**Department of Housing and Community Development
Low Income Housing Tax Credit Program Revision**

1.0 SUPPLIES OR SERVICES AND PRICE

The Department of Housing and Community Development (“DHCD”) is seeking consulting services from a law firm (“Contractor”) with (1) knowledge of and familiarity with DHCD’s functions, operations, and mission; (2) expertise in the areas of Low Income Housing Tax Credits (“LIHTC”) and New Markets Tax Credits (“NMTC”); (3) knowledge of and familiarity with the District’s Low Income Housing Tax Credit (“LIHTC”) program; and (4) prior experience drafting rules and/or regulations for the District or other government, in particular an agency whose mission is related to housing development.

The Contractor shall review, update, and rewrite as necessary, current LIHTC regulations and Qualified Allocation Plan (“QAP”) to conform with the enactment of and amendments to the Section 42 of the Internal Revenue Code, and propose and draft any necessary amendments to the QAP resulting from review of the LIHTC program. The Contractor shall provide consulting, opinions, and advisory services in the area of New Markets Tax Credits, particularly as it relates to real estate development, planning, finance and construction. Also, the Contractor shall have demonstrated an ability to successfully opine, advise and defend on the statutes, rules and regulations of the IRS on behalf of the District. The Contractor will be responsible for advising DHCD with regard to legal issues, strategic considerations and drafting concerns arising from the development, drafting, review and revision of rules and regulations.

1.1 Contract Type

The District anticipates award of a fixed price contract.

1.2 Price Schedule

1.2.1 Base Period of Performance (Date of Award – six (6) months thereafter)

Contract Line Item Number (CLIN)	Item Description	Price
0001	Review, update, and rewrite as necessary, current LIHTC regulations and Qualified Allocation Plan to conform with the enactment of and amendments to Section 42 of the Internal Revenue Code	\$ _____

2.0 SPECIFICATIONS/WORK STATEMENT

2.1 Scope

The Department of Housing and Community Development is seeking consulting services from a law firm to review, update, and rewrite as necessary, current LIHTC regulations and Qualified Allocation Plan (“QAP”) to conform with the enactment of and amendments to the Section 42 of the Internal Revenue Code, and propose and draft any necessary amendments to the QAP resulting from review of the LIHTC program.

2.1.1 Applicable Documents

Item No.	Document Type	Title	Version
1	Statute	Low Income Housing Tax Credit Program: http://www.dhcd.dc.gov/dhcd/frames.asp?doc=/dhcd/LIB/dhcd/info/pdf/qap102303.pdf	1986
2	Regulations	Section 42 of IRC: http://www.irs.gov/taxpros/article/0,,id=98137,00.html#irc	1986
3	Statute	New Markets Tax Credits Program: http://www.hud.gov/offices/cpd/economicdevelopment/programs/rc/about/newmarkets.cfm	2000

2.2 BACKGROUND

2.2.1 The **Low Income Housing Tax Credit (LIHTC)** is a tax credit created under the Tax Reform Act of 1986 that gives incentives for the utilization of private equity in the development of affordable housing. The LIHTC directly subsidizes the development costs of low-income housing, but through the use of private equity rather than government dollars. The credit is used to generate private equity prior to, or during, the construction of the project.

The **New Markets Tax Credit Program (“NMTC”)** was created in December 2000 by the Community Renewal Tax Relief Act of 2000 as a federal tax credit program designed to provide federal income tax credits to private equity investors in exchange for investments in economic development projects (retail/commercial) that will benefit low income communities. The program seeks to leverage capital from investors to spur economic development in urban and rural low-income communities.

DHCD is currently negotiating with City First Bank (“CFB”) (the recipient of a NMTC Allocation) and U.S. Bancorp (a NMTC Equity Investor) to pool up to \$10M in Community Development Block Grant (“CDBG”) funds with an additional \$3.5M in NMTC Equity. The CDBG funds (“Leveraged Loan”) and NMTC equity will then be lent out to community facilities eligible under the NMTC regulations. At the end of the 7 year compliance period the individual NMTC loans to community facilities will be assigned to DHCD.

2.3 REQUIREMENTS

2.3.1 The Department of Housing and Community Development is seeking consulting services from a law firm to review, update, and rewrite as necessary, current LIHTC regulations and Qualified Allocation Plan to conform with the enactment of and amendments to Section 42 of the Internal Revenue Code, and propose and draft any necessary amendments to the QAP resulting from review of the LIHTC program.

2.3.2 DHCD requires legal support with an expertise in NMTCs to review the DHCD loan documents that support the loan to the pool and the NMTC loan documents that support the loan to the individual community facilities. As well as specialized tax counsel competent in housing development, construction and finance with a particular knowledge of Section 42 of the Tax Code to provide legal advice, consult and issue tax opinion, as needed.

2.3.3 The Contractor shall provide consulting, opinions, and advisory services in the area of New Markets Tax Credits, particularly as it relates to real estate development, planning, finance and construction. Also, the Contractor shall have demonstrated an ability to successfully advise and defend on the statutes, rules and regulations of the IRS on behalf of the District. The Contractor, by and through its Key Personnel, will be responsible for advising DHCD with regard to legal issues, strategic considerations

and drafting concerns arising from the development, drafting, review and revision of any rules and regulations.

2.3.4 TECHNICAL CAPACITY

The Contractor shall provide the technical capacity as necessary to successfully perform the required services, including at a minimum the following:

2.3.5 Staff and Organization

The Contractor shall provide the staffing, organization, and expertise required to perform the required professional services.

2.3.6 Key Personnel

The Contractor shall provide and make available key personnel, including, at minimum, two (2) attorneys licensed by the D.C. Bar, one of which must be a Partner or Counsel (practicing attorney for at least 10 years) and one must be a Senior Associate (practicing attorney between 3 and 9 years) to perform the required legal services. Each attorney performing services for the District shall have (1) specific knowledge of and familiarity with DHCD's functions, operations, and mission; (2) specific knowledge of and familiarity with the District's Low Income Housing Tax Credit ("LIHTC") program; and (3) prior experience drafting rules and/or regulations for the District, in particular an agency whose mission is related to housing and economic development.

2.3.7 Organization

The Contractor shall have an organizational structure that establishes reporting lines and lines of accountability among the Contractor's staff and consultants, as applicable, and which facilitates an efficient and effective approach to the completion of the required services.

2.3.8 MONITORING OF SERVICES PROVIDED AND MAINTENANCE OF SUPPORTING DOCUMENTATION

2.3.9 The Contractor shall perform day-to-day inspection and monitoring of the services it provides and bills the DHCD.

2.3.10 The Contractor shall maintain detailed records that demonstrate that the services provided and billed to the District have been performed. Such records shall include, at a minimum, the names of the persons providing the services, a description of service and the dates that the services were provided monthly.

3.0 DELIVERIES AND PERFORMANCE

3.1 Term of the Contract

The term of the contract shall be for a period of six months from date of award.

3.3 Deliverables

The Contractor shall perform the required services and provide the COTR:

N0.	Deliverable	Qty/ Format/ Method of Delivery	Due Date
1	Review, update and rewrite, as necessary, regulations governing operations and requirements of the Low Income Housing Tax Credit Program administered by the DHCD	One (1) Electronic Copy and Three (3) Hard Copies of the deliverable	Two (2) Weeks from date of Award
2	Advise DHCD with regard to legal issues, strategic considerations and drafting concerns arising from the drafting, review or revision to the regulations	One (1) Electronic Copy and Three (3) Hard Copies of the deliverable	Two (2) Weeks from date of Award
3	Submit draft of the updated regulations - DHCD will review the draft and provide any comments and changes to the Contractor - incorporate any changes requested by DHCD and submit a final version of the regulations	One (1) Electronic Copy and Three (3) Hard Copies of the deliverable	Two (2) Weeks from date of Award
4	Propose and submit to DHCD draft amendments to the Qualified Allocation Plan and related compliance manuals to the LIHTC program that arise from review or revision to the regulations	One (1) Electronic Copy and Three (3) Hard Copies of the deliverable	Two (2) Weeks from date of Award
5	Provide legal support and review the loan documents that support a loan pool created between City First Bank (the recipient of a NMTC Allocation) and U.S. Bancorp (a NMTC Equity Investor)	One (1) Electronic Copy and Three (3) Hard Copies of the deliverable	Two (2) Weeks from date of Award
6	Review loan documents that will be drafted by CFB's attorney to enable DHCD to make a CDBG loan of up	One (1) Electronic Copy and Three (3)	Two (2) Weeks from date of Award

	to \$10M to the NMTC investment pool	Hard Copies of the deliverable	
7	Review the NMTC loan documents packages that support the loan to the individual community facilities to ensure that the District's interests are protected	One (1) Electronic Copy and Three (3) Hard Copies of the deliverable	Two (2) Weeks from date of Award
8	Issue a tax opinions and advice to and on behalf of the District	One (1) Electronic Copy and Three (3) Hard Copies of the deliverable	Two (2) Weeks from date of Award

4.0 CONTRACT ADMINISTRATION

4.1 Contracting Officer

Contracts will be entered into and signed on behalf of the District only by contracting officers. The name, address and telephone number of the Contracting Officer is:

James H. Marshall, Contracting Officer
441 4th Street, NW, #700 south
Washington, DC 20001
Telephone: 202-724-4197

4.2 Authorized Changes by the Contracting Officer

4.2.1 The Contracting Officer is the only person authorized to approve changes in any of the requirements of this contract.

4.2.2 The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the Contracting Officer.

4.2.3 In the event the Contractor effects any change at the instruction or request of any person other than the Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

4.3 Contracting Officer's Technical Representative (COTR)

4.3.1 The COTR is responsible for general administration of the contract and advising the Contracting Officer as to the Contractor's compliance or noncompliance with the contract. In addition, the COTR is responsible for the day-to-day monitoring and supervision of the contract, of ensuring that the work conforms to the requirements of this contract and such other responsibilities and authorities as may be specified in the contract. The COTR for this contract is:

Dena C. Reed
Assistant Attorney General
Chief, Economic Development Section
Commercial Division
Office of the Attorney General for the District of Columbia
801 N. Capitol Street, N.E., 7th Floor
Washington, D.C. 20002
(202) 442-7221 (direct line)
(202) 442-7098 (fax)

4.3.2 The COTR shall not have authority to make any changes in the specifications or scope of work or terms and conditions of the contract.

4.3.3 The Contractor may be held fully responsible for any changes not authorized in advance, in writing, by the Contracting Officer; may be denied compensation or other relief for any additional work performed that is not so authorized; and may also be required, at no additional cost to the District, to take all corrective action necessitated by reason of the unauthorized changes.

5.0 PAYMENT

5.1 Lump Sum Payment

The District will pay the full amount due the Contractor under this contract after:

- a) Completion and acceptance of all work; and
- b) Presentation of a properly executed invoice.

6.0 Instructions to Offerors

6.1 Award

The District intends to award a single contract resulting from this solicitation to the responsible Offeror whose offer conforming to the solicitation will be the most advantageous to the District, cost or price, technical and other factors, specified in Section 2.3 of this solicitation. A description of how the District will evaluate offers is found in Section 7.0.

6.2 Proposal Submission

Offerors shall provide and submit electronically a technical proposal and a price proposal under separate cover to teriquesmith@dc.gov no later than 2:00 pm Friday, December 12, 2008. The subject line of the e-mail shall state "Proposal in Response to Solicitation No. DCBD-2009-Q-0530 Department of Housing and Community Development Low Income Housing Tax Credit Program Revision."

6.3 PROPOSAL FORM AND ORGANIZATION

All proposals must be submitted on 8.5" by 11" bond paper and typewritten. Telephonic and telegraphic proposals will not be accepted. The Offeror's proposals shall be organized with the following parts in the following order:

- Part 1: Executive Summary
- Part 2: Technical Approach
- Part 3: Qualifications and Experience of the Offeror's Staff and Subcontractor Information
- Part 4: Past Performance
- Part 5: Conflict of Interest Certification

Part 6: Price Proposal

Detailed information about the requirements of each Part is provided below.

6.4 TECHNICAL PROPOSAL

Part 1 – Executive Summary

- 1) The Offeror shall provide a brief discussion of the history of the Offeror's firm, its organization, the number of employees, and a synopsis of services provided.
- 2) The Offeror shall include a signed Solicitation, Offer and Award Form (page 1 of the solicitation) and any signed amendments to the solicitation. The person signing the offer shall initial erasures or other changes. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the contracting officer. The Offeror shall set forth, in this Section, the name, title, telephone number, and address of the person authorized to negotiate in behalf of the Offeror and contractually bind the Offeror, if other than the person signing the proposal.

6.5 Part 2 – Technical Approach

- 1) The Offeror shall describe its approach to developing the regulations required and completing the work outlined in Section 2.0 Specifications/Work Statement and the deliverables in Section 3.0 Delivery or Performance. The Offeror shall agree to provide the services and abide by the requirements set forth in that Section.
- 2) The Offeror shall provide an organizational Chart that indicates the Offeror's staff, subcontractors, and consultants to provide services under this contract. The Offeror's organizational chart shall provide the Offeror's structure and reporting lines and lines of accountability for those to perform services under this contract.

6.6 Part 3 – Qualifications and Experience of Offeror's Staff

- 1) The Offeror shall demonstrate that the key personnel to be assigned to this project have the following, as described in Section 2.3:
 - a. Experience and expertise in complex real estate development matters as it relates to government supported development projects financed with New Market Tax Credit (NMTC) and Low Income Housing Tax Credit (LIHTC) funding;
 - b. Knowledge of residential real estate development agreements and financing agreements and instruments related to projects financed with NMTC and LIHTC funding;
 - c. Proven experience representing clients before the IRS on a variety of tax code issues, including projects financed with NMTC and LIHTC funding;
 - d. Familiarity with regulations governing equity and development participation of local small disadvantage business enterprises (LSDBE); and
- 2) The Offeror shall provide the following additional information for its proposed key personnel:

- a. Resume for each with full name, title and position with firm, areas of expertise, a description of duties and responsibilities, time with firm and years in practice and the affiliation (that is, staff or subcontractor);
- b. Education/Training;
- c. License or Certification as applicable;
- d. Details about any current or past related work experience; and
- e. Percentage of time that each will devote to the project in total and broken down by task.

6.7 Part 4 – Past Performance

- 1) The Offeror shall provide a list of contracts the Offeror has previously performed for similar legal services, including development of regulations, for the District, a city, county, municipality, the Federal government or any instrumentality or agency of any of the foregoing related to real estate development, planning, finance and construction projects. The Offeror shall provide the following for each contract:
 - a. Contract number and period of performance;
 - b. Contract amount;
 - c. Name of the Contracting Officer Technical Representative (COTR) as identified or program manager with verified phone number and e-mail address;
 - d. Specific description of services provided.
- 2) The Offeror shall have its client references complete the attached Past Performance Evaluation Form and return the signed form directly to Terique Smith, Contract Specialist, via fax at 202-727-0245 or via email at Terique.Smith@dc.gov on or before **Friday, December 12, 2008 at 2:00p.m.**

6.8 Part 5 – Conflict of Interest Certification

Offeror shall provide a list of any current or potential conflicts of interest. The Offeror's representation regarding conflicts of interest will be reviewed by the COTR to determine the Offeror's eligibility for award.

6.9 Part 6 – Price Proposal

The information requested in this section shall facilitate evaluation of the Offeror's Price Proposal described in Section 1.2.1 to perform the requirements of the solicitation as described in Section 2.0. The prices stated shall include all items to effectively conduct and complete the required service described in Section 2.0 – Statement of Work including, but not limited to, the cost of labor, travel, overhead, administrative charges, taxes, profit, insurance and other expense associated with the consulting service(s).

The Offeror's price proposal will be evaluated separately from the Technical Proposal.

7.0 EVALUATION FOR AWARD

The contract will be awarded to the responsible Offeror whose offer is most advantageous to the District and represents the best value. Award determination will be based upon the evaluation criteria specified below. Thus, while the points in the evaluation criteria indicate their relative importance, the total scores will not necessarily be determinative of the award. Rather, the total scores will guide the District in making an informed decision based upon the evaluation criteria.

7.1 TECHNICAL RATING

The Offeror's proposal response for each factor will be evaluated by the District and assigned a technical rating based on the quality of the Offeror's response. The Technical Rating Scale is provided below:

Numeric Rating	Adjective	Description
0	Unacceptable	Fails to meet minimum requirements, e.g., no demonstrated capacity, major deficiencies which are not correctable; Offeror did not address the factor.
1	Poor	Marginally meets minimum requirements; major deficiencies which may be correctable.
2	Minimally Acceptable	Marginally meets minimum requirements; minor deficiencies which may be correctable.
3	Acceptable	Meets requirements; no deficiencies
4	Good	Meets requirements and exceeds some requirements; no deficiencies
5	Excellent	Exceeds most, if not all requirements; no deficiencies.

For example, if a sub factor has a point evaluation of 0 to 6 points, and (using the Technical Rating Scale) the District evaluates as "good" the part of the proposal applicable to the sub factor, the score for the sub factor is 4.8 (4/5 of 6). The sub factor scores will be added together to determine the score for the factor level.

7.2 EVALUATION FACTORS

Proposals will be evaluated based on the following technical evaluation factors listed in descending order of importance.

7.3 Qualifications and Experience of Offeror's Staff (40 Points)

Offeror's proposed key personnel have the necessary qualification and experience to perform the District's requirements as described in the Scope of Work of this solicitation.

7.4 Technical Approach (30 Points)

Offeror has demonstrated its understanding of the federal and District requirements as described in Scope of Work and the Offeror's proposed strategies and theories to successfully perform the District's requirements.

7.5 Past Performance (20 points)

Offeror has satisfactorily provided similar legal services, including client representation before the US Internal Revenue Service and production of Letter Opinions and/or Opinions of Counsel on the subjects of NMTC or LIHTC.

7.6 Price (10 Points)

The price evaluation will be objective- price ceiling set. Hence, the Offeror with the lowest price will receive the maximum points. All other proposals will receive a proportionately lower total score.

Actual points assigned to each Offeror in this category will be based on the Offeror's total price and will be computed in accordance with the following formula.

$$\frac{\text{Lowest Price Proposal}}{\text{Price of Proposal}} \times (30) \text{ (Maximum Points)} = \text{Evaluated Price Score}$$

Being Evaluated

PAST PERFORMANCE EVALUATION FORM

(Check appropriate box)

Performance Elements	Excellent	Good	Acceptable	Poor	Unacceptable
Quality of Services/ Work					
Timeliness of Performance					
Cost Control					
Business Relations					
Customer Satisfaction					

1. Name & Title of Evaluator: _____
2. Signature of Evaluator: _____
3. Name of Organization: _____
4. Telephone Number of Evaluator: _____
5. State type of service received: _____
6. State Contract Number, Amount and period of Performance _____

7. Remarks on Excellent Performance: Provide data supporting this observation. Continue on separate sheet if needed)
8. Remarks on unacceptable performance: Provide data supporting this observation. (Continue on separate sheet if needed)

RATING GUIDELINES

Summarize Contractor performance in each of the rating areas. Assign each area a rating of 0 (Unacceptable), 1 (Poor), 2 (Acceptable), 3 (Good), 4(Excellent), or ++ (Plus). Use the following instructions a guidance in making these evaluations.

	Quality Product/Service	Cost Control	Timeless of Performance	Business Relations
	<ul style="list-style-type: none"> -Compliance with contract requirements -Accuracy of reports -Appropriateness of personnel -Technical excellence 	<ul style="list-style-type: none"> -Within budget (over/under target costs) -Current, accurate, and complete billings -Relationship of negated costs to actual -Cost efficiencies -Change order issue 	<ul style="list-style-type: none"> -Meet Interim milestones -Reliable -Responsive to technical directions -Completed on time, including wrap-up and contract administration -No liquidated damages assessed 	<ul style="list-style-type: none"> -Effective management -Businesslike correspondence -Responsive to contract requirements -Prompt notification of contract problems -Reasonable/cooperative -Flexible -Pro-active -effective contractor recommended solutions -Effective snail/small disadvantaged business Subcontracting program
0. Zero	Nonconformances are comprises the achievement of contract requirements, despite use of Agency resources	Cost issues are comprising performance of contract requirements.	Delays are comprising the achievement of contract requirements, Despite use of Agency resources.	Response to inquiries, technical/ service/administrative issues is not effective and responsive.
1, Unacceptable	Nonconformances require major Agency resources to ensure achievement of contract requirements.	Cost issues require major Agency resources to ensure achievement of contract requirements.	Delays require major Agency resources to ensure achievement of contract requirements.	response to inquiries, technical/ service/administrative issues is marginally effective and responsive.
2. Poor	Nonconformances require minor Agency resources to ensure achievement of contract requirements.	Costs issues require minor Agency resources to ensure achievement of contract requirements.	Delays require minor Agency resources to ensure achievement of contract requirements.	Responses to inquiries, technical/ service/administrative issues is somewhat effective and responsive.
3. Acceptable	Nonconformances do not impact achievement of contract requirements.	Cost issues do not impact achievement of contract requirements.	Delays do not impact achievement of contract requirements.	Responses to inquires, technical/ service/administrative issues is usually effective and responsive.
4. Good	There are no quality problems.	There are no cost issues.	There are not delays.	Responses to inquiries, technical/ service/administrative issues is effective and responsive,
5. Excellent	The contractor has demonstrated an exceptional performance level in some or all of the above categories.			