REQUEST FOR PROPOSALS (RFP)

The Community Development Department is seeking proposals for Loan Portfolio Servicing for the affordable housing loan portfolio managed by the City of Durham Community Development Department (CDD).

Date of Issuance: November 4, 2019
Date Due: December 4, 2019

Contact Person:
Matthew Schnars
Planning and Performance Manager
Community Development Department
516 Rigsbee Avenue
Durham, North Carolina 27701
Matthew.Schnars@DurhamNC.gov
(919) 560-4570
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GENERAL INFORMATION

Request for Proposal (RFP): For Loan Portfolio Servicing of the affordable housing loan portfolio managed by the City of Durham Community Development Department (CDD).

10. Date of RFP: November 4, 2019

20. Contact Person with the City; Questions about this RFP.
Direct questions/concerns to CDD staff below:

Matthew Schnars
Planning and Performance Manager
City of Durham
Community Development Department
516 Rigsbee Avenue
Durham, North Carolina 27701

Phone: (919) 560-4570
Fax: (919) 560-4090
Matthew.Schnars@DurhamNC.gov

If you have concerns about this RFP that you believe are not being addressed by the Community Development Department staff, please contact:

Reginald J. Johnson, Director
Community Development Department
(919) 560-4570
Reginald.Johnson@DurhamNC.gov
DESCRIPTION OF PROJECT AND NATURE OF RFP

30. Project.
The work of the Community Development Department (CDD) involves receipt of federal entitlement allocations from the U.S. Department of Housing and Urban Development (HUD), taxpayer-funded Affordable Housing General Obligation Bond revenues, and taxpayer-funded General Funds. The City’s loan portfolio supports affordable housing activities through the provision of loans and grants under a variety of affordable housing programs. The loan portfolio funding sources include, but are not limited to, the following:

- Community Development Block Grant Funds (CDBG)
- HOME Investment Partnership Funds (HOME)
- Affordable Housing General Obligation Bond Revenue Funds (BOND)
- General Funds

Loan Portfolio Servicing:
These funding allocations are used to administer loans under a variety of affordable housing loan programs. The City’s existing portfolio (including all loan categories identified) totals 405 loans. This number represents active loans (including bankruptcies and delinquencies) that are currently being serviced externally. These loan terms are deferred, forgivable or amortized. A further breakdown is below:

<table>
<thead>
<tr>
<th>Project Name</th>
<th># of Loans</th>
<th>% of Loans</th>
<th>Principal Balance</th>
<th>% of Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Developer Loan Programs</td>
<td>73</td>
<td>18.02%</td>
<td>$19,323,660</td>
<td>80.73%</td>
</tr>
<tr>
<td>Housing Bond Funds</td>
<td>157</td>
<td>38.76%</td>
<td>$1,877,592</td>
<td>7.85%</td>
</tr>
<tr>
<td>Durham Annual Reduction Loans</td>
<td>42</td>
<td>10.37%</td>
<td>$744,449</td>
<td>3.11%</td>
</tr>
<tr>
<td>Community Development Block Grant Funds (CDBG)</td>
<td>24</td>
<td>5.93%</td>
<td>$545,509</td>
<td>2.28%</td>
</tr>
<tr>
<td>Home Investment Partnership Funds (HOME)</td>
<td>92</td>
<td>22.72%</td>
<td>$1,142,606</td>
<td>4.77%</td>
</tr>
<tr>
<td>General Funds</td>
<td>17</td>
<td>4.20%</td>
<td>$302,152</td>
<td>1.26%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>405</strong></td>
<td><strong>100.00%</strong></td>
<td><strong>$23,935,969</strong></td>
<td><strong>100.00%</strong></td>
</tr>
</tbody>
</table>
The City’s existing loan portfolio includes the following types of loans:

**Individual Residential Mortgage Loans (First and Subordinate)**

These loans account for 82% of the number of loans in the portfolio.

While the City currently does not offer first or subordinate mortgage loan programs, there are loans made under these programs in the portfolio. The first mortgage loans were traditionally provided as a recruitment and retention incentive to eligible police officers, sheriffs, and teachers. The major source of funding for the City’s first mortgage loans were Affordable Housing General Obligation Bond Revenue funds (BOND).

The City previously offered subordinate mortgage loans to eligible homebuyers for the purchase of a home. The eligible households must have been within the low to moderate income range and occupied the purchased property as their primary residence. These loans were made in the form of subordinate mortgage financing, and represented down payment assistance up to $20,000.00 or more for specific programs.

The City also made available subordinate mortgage financing to existing homeowners for the rehabilitation of their property.

**Developer Program Loans**

These loans account for 18% of the total number of loans in the portfolio.

These loans are typically made available to entities such as non-profit and for-profit housing developers, and/or quasi-governmental organizations for the development of single and multi-family housing. The single and multi-family housing provides both rental and homeownership opportunities.

The City has historically offered unconventional financing for residential and developer loans in an effort to meet the need to provide safe, decent and affordable housing of the very low, low, and moderate income residents. While the City no longer offers a variety of repayment structures, there are still loans made with some of these terms in its portfolio. Some of the variations include, but are not limited to, the following:

- Non-interest and interest bearing loans with no service fee paid by borrowers;
- Monthly service fee or interest payments based on a specified percentage of the annual declining principal balance, which requires the annual adjustment of the monthly principal and interest payment collected;
- Interest-only payment due and payment until balloon period;
- Forgivable monthly principal payment equal to amount of monthly principal payment due and payable; and
- Monthly principal only and principal and interest payments that are adjusted every 2-5 years.

The City currently offers development loans with more traditional terms with an interest rate between 0 - 2%.
40. Scope of Work.
This RFP seeks services for a distinct task for Loan Portfolio Servicing. Outlined below is the scope of services that the City of Durham is requesting candidates to provide.

Loan Portfolio Servicing
The Community Development Department is soliciting proposals for Loan Portfolio Servicing.

The goal of this project is to encourage and assist low and moderate income borrowers to keep their loans current, assist those borrowers who have fallen behind due to hardships, to maintain effective management of the loan portfolio, and ultimately, to maintain low portfolio delinquency rates.

The work will include, but not be limited to, the following services:

- Monthly Servicing
- Collections
- Delinquency Counseling, Repayment Plans, Loan Modifications and Forbearance Evaluations
- Technical Assistance
- New Loan Set-Ups, Loan Revisions and Loan Payoffs
- Foreclosure Services
- Bankruptcy Tracking
- Record Maintenance
- Imaged Documents

The contractor will be expected to perform the following tasks:

Monthly Servicing

1. Provide diligent and customary loan service functions.

2. Maintain a complete and accurate account of the borrower’s accounts and properly apply all sums collected from the borrower or through the partnering primary lending bank.

3. Deposit all payments received with respect to each loan into a demand deposit account in the name of the City of Durham; and remit to the City, on or before five (5) business days from the 20th of each month, the total receipt of all principal and/or interest payments paid by the borrower.

4. Provide default and delinquency monitoring.

5. Inspect and notify the City of all defaults and events of defaults by the borrower of which the contractor is aware. This may include sale, transfer, loss and/or damage to collateral used to secure loan, failure to provide adequate insurance coverage of
financed property, borrower’s misuse of financed property, and/or other violations by a borrower of his/her/their obligations under the executed loan documents.

6. Keep all records in connection with the loans at the contractor’s place of business and available, within one (1) business day notice, for inspection during regular business hours, by City representatives, or other examiners/person lawfully and appropriately authorized by the City other governmental authorities.

7. Provide automatic payment and pay by phone options to borrowers.

8. Provide insurance monitoring and forced place insurance as necessary.


10. Establish and monitor escrow and impound accounts, as necessary.

11. Report loans to no fewer than three (3) credit bureaus and respond to any disputed credit reports filed by borrowers.

**Collections**

1. Take all customary and appropriate action to collect all loans when due on a monthly basis.

2. Create delinquent/default letters, including demand letters to each borrower who is 15, 30, 45, 60 and 90 days past due, and a list of letter recipients to be sent to the City, see address below.

3. Make telephone calls to residential and developer loans beginning at 30 days delinquent and for economic/commercial loans, calls will be made at 15, 30 and 45 days delinquent.

4. Submit confirmation letters to follow up telephone calls and send a copy of each to the City.

**For All Residential and Developer Loans Only:** Upon the expiration of the 90-day demand letter the Contractor will contact the City for approval to move forward with further legal collection activities, including foreclosure. Copies of correspondence should be mailed to:

City of Durham  
Community Development Department  
516 Rigsbee Avenue  
Durham, NC 27701  
Attention: Loan Portfolio Administrator
Delinquency Counseling, Repayment Plans, Loan Modifications and Forbearance Evaluations

1. Work with borrowers to evaluate their financial situation, including budget and credit counseling, to formulate repayment plans or recommend loan modifications for borrowers more than ninety (90) days past due.

2. Work with borrowers to implement repayment plans for past due payments, generally no more than ninety (90) days past due and/or able to be brought current within 6-12 months. Send copies of letter agreements with borrowers to the City.

3. Prepare Forbearance Evaluations and work with borrowers who have encountered hardships to recommend loan modification actions.

Technical Assistance

Provide assistance to Community Development Department staff relative to current lending practices, policies and procedures which may be used in the development or modification of the City’s existing and future loan programs.

New Loan Set Ups, Loan Revisions and Loan Payoffs

1. From receipt of new loan information from the City, set-up of new loans should take no longer than ten (10) business days. Borrower shall be mailed a Welcome Letter and schedule of payment or coupon book within this time frame.

2. Upon request of the City, loan revisions of existing loans should be updated within one (1) business day.

3. Respond to payoff quote requests in a timely manner within one (1) business day.

Foreclosure Services

If the City consents to the initiation and completion of foreclosure on all collateral, including real and personal property, unless the City Manager or his/her designee has agreed otherwise, the servicing contractor shall notify the City at least fifteen (15) days before the filing of a petition to initiate any special proceeding. The City shall have the right to approve the attorney chosen by contractor to represent the City, which approval shall not be unreasonably withheld. With respect to collection, the City will be responsible for filing, service fees and other costs for which the beneficiary is customarily responsible.

Bankruptcy Tracking

1. Track Chapter 7 and Chapter 13 Bankruptcy Filings.

2. Upon request of the City, file Proof of Claim or Reaffirmation Agreement.
3. Track pre and post-petition payments and any other related tasks.

**Record Maintenance**

Maintain all records in a safe and secure environment.

**Imaged Documents**

All documents shall be imaged and accessible to the City at all times.

**Other Needs and Requirements**

The City will make payments based on a fee-for-service basis. Each billing must consist of an invoice and monthly activity summary with back-up documentation. No payment will be made until staff has approved the invoice.

**Loan Transfer**

In the event the City requires the Contractor to transition loans back to the City or to another Servicer, the Contractor will gather and package all loan files (hard-copy and/or electronic copy) for shipment within 90 days from the date of written notice. The Contractor will work with the City’s staff to electronically transmit servicing data in an agreed upon format.

**50. Compensation Amount and Schedule.**

No payment will be made until the contract is approved by the Durham City Council and has been fully executed by all parties. Under no conditions will the City be liable for the payment of any interest charges associated with the cost of the contract.

The City will make payments based on a negotiated payment schedule *(EXHIBIT B – Monthly Servicing Fee Schedule Template)*. Each monthly or quarterly billing must consist of an invoice and activity summary. No payment will be made until the City has approved the activity summary and invoice.

The contract term and work schedule set out herein represent the City's best estimate of the schedule that will be followed. If a component of this schedule, such as the opening date, is delayed, the rest of the schedule will likely be shifted by the same number of days.

The length of the contract shall be for a term of **thirty six (36) months.**

**60. Definitions in this RFP: City, RFP, Proposal, Candidate, Contractor, Should.**

Unless the context indicates otherwise – (a) the expressions “RFP,” “this RFP,” and “the RFP” refer to this document as it may be amended or updated. (b) “City” and “city” mean the City of Durham. (c) The “Proposal” or “proposal” is the response of a person, firm, or corporation proposing to provide the services sought by this RFP. (d) The word “Candidate” or “candidate” is the person, firm, or corporation that submits a proposal or that is considering submitting a proposal. (e) The word “Contractor” or “contractor” is the person, firm, or corporation with which the City enters into a contract to provide the
services sought by this RFP. That is, “Contractor” or “contractor” generally refers to a successful candidate that has obtained a fully executed contract with the City, while “candidate” is generally reserved to the stage before a contract has been signed. (f) The word “should” is used to tell candidates what the City thinks it wants and/or what the project manager thinks is best. Candidates that want to increase the likelihood of being selected will, in general, do what the RFP says candidates “should” do, but failure to comply with all “shoulds” will not necessarily and automatically result in rejection.

70. Contract.

The City anticipates that the conclusion of the RFP process will be a contract between the City and the successful candidate under which the successful candidate will provide the goods and services generally described in this RFP. It is the City’s intention to use the contract that is attached as Exhibit A – Model Services Contract Template, modified and filled in to reflect the RFP and the proposal. If a candidate objects to any of the contract, it should state the objections in its proposal.

80. Trade Secrets and Confidentiality.

As a general rule, all submissions to the City are available to any member of the public. However, if materials qualify as provided in this section, the City will take reasonable steps to keep trade secrets confidential.

Definitions

In this Trade Secrets and Confidentiality –

The term “candidate” includes the candidate as contractor (that is, after it is a party to a contract with the City).

The term “trade secret” means business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that:

  a. Derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and

  b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. The existence of a trade secret shall not be negated merely because the information comprising the trade secret has also been developed, used, or owned independently by more than one person, or licensed to other persons.

The term “record” means all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, received by the City of Durham in connection with the candidate’s proposal.

(a) Designation of Confidential Records. To the extent that the candidate
wishes to maintain the confidentiality of trade secrets contained in materials provided to the City, the candidate shall prominently designate the material with the words “trade secrets” at the time of its initial disclosure to the City. The candidate shall not designate any material provided to the City as trade secrets unless the candidate has a reasonable and good-faith belief that the material contains a trade secret. When requested by the City, the candidate shall promptly disclose to the City the candidate’s reasoning for designating material as trade secrets; the candidate may need to label parts of that reasoning as trade secrets. In providing materials to the City, the candidate shall make reasonable efforts to separate those designated as trade secrets from those not so designated, both to facilitate the City’s use of the materials and to minimize the opportunity for accidental disclosure. For instance, if only a sentence or paragraph on a page is a trade secret, the page must be marked clearly to communicate that distinction. To avoid mistake or confusion, it is generally best to have only trade secret information on a page and nothing else on that page.

To the extent authorized by applicable state and federal law, the City shall maintain the confidentiality of records designated ‘trade secrets’ in accordance with this section. Whenever the candidate ceases to have a good-faith belief that a particular record contains a trade secret, it shall promptly notify the City.

(b) Request by Public for Access to Record. When any person requests the City to provide access to a record designated as a trade secret in accordance with sub-section (a) above, the City may
1. Decline the request for access,
2. Notify the candidate of the request and that the City has provided, or intends to provide, the person access to the record because applicable law requires that the access be granted, or
3. Notify the candidate of the request and that the City intends to decline the request.

Before declining the request, the City may require the candidate to give further assurances so that the City can be certain that the candidate will comply with subsection (c) below.

(c) Defense of City. If the City declines the request for access to a record designated as trade secrets in accordance with subsection (a), then, in consideration of the promises in (b) above and for considering the candidate’s proposal, the candidate agrees that it shall defend, indemnify, and save harmless Indemnities from and against all Charges that arise in any manner from, in connection with, or out of the City’s non-disclosure of the records. In providing that defense, the candidate shall at its sole expense defend Indemnities with legal counsel. The legal counsel shall be limited to attorneys reasonably acceptable to the City Attorney.

Definitions: As used in this subsection (c), “Charges” means claims,
judgments, costs, damages, losses, demands, liabilities, fines, penalties, settlements, expenses, attorneys’ fees, and interest. “Indemnitees” means the City, and officers, officials, independent contractors, agents, and employees, of the City. “Indemnitees” does not include the candidate. The City may require the candidate to provide proof of the candidate’s ability to pay the amounts that may reasonably be expected to become monetary obligations of the candidate pursuant to this section. If the candidate fails to provide that proof in a timely manner, the City shall not be required to keep confidential the records whose non-disclosure gives rise to the potential monetary obligation. Nothing in this agreement shall require the City to require any person (including the City itself) to be placed in substantial risk of imprisonment, of being found by a court to be in contempt, or of being in violation of a court order. This subsection (c) is separate from and is to be construed separately from any other indemnification and warranty provisions in the contract between the City and the candidate.

90. Bonds.
No performance bond or payment bond is required for this contract.

100. Insurance.
Contractor agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Contract, the following applicable coverage’s and limits. The requirements contained herein, as well as City’s review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Contract.

Commercial General Liability, covering
- Premises/operations
- Products/completed operations
- Broad form property damages
- Explosion, collapse, and underground hazards if the hazards exist in the performance of this contract
- Contractual liability
- Independent contractors, if any are used in the performance of this contract City of Durham must be named additional insured.
- Combined single limit of no less than $1,000,000 each occurrence and $2,000,000 aggregate per year.
- Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability

Bankers E&O Insurance, covering
- Covering claims arising out appraisal work performed under this contract
- Self-insured retentions/deductibles in excess of $10,000.00 must be approved by the City Finance Director
- Coverage may be provided either by specific policy or as part of the Commercial General Liability Policy
- Combined single limit not less than $2,000,000.00 per occurrence; aggregate
limit not less than $2,000,000.00 per year; if coverage is only available on claims made basis, then additional coverage requirements may apply, subject to review of the City’s Risk Manager

**Automobile Liability**, covering
- Coverage shall include liability for Owned, Non-Owned and Hired automobiles.
- Employee’s vehicles, if used in performance of this contract
- Limits of not less than $1,000,000 Combined Single Limit.

**Umbrella or Excess Liability**, covering
- Contractor may satisfy the minimum liability limits required above under an Umbrella or Excess policy.
- No minimum Per Occurrence limit of liability under the Umbrella or Excess Liability, however, the Annual Aggregate limits shall not be less than the highest ‘Each Occurrence’ limit for required policies.
- Certificate shall be endorsed with the City of Durham as an 'Additional Insured' on the Umbrella or Excess Liability

**Worker’s Compensation & Employers Liability**, covering
- Maintain Worker’s Compensation Insurance in accordance with North Carolina General Statue Chapter 97 and with Employer Liability
- Limits of no less than $1,000,000 each accident, each employee and policy limit.
- Must include a Waiver of Subrogation.

**Financial Institution Bond**, covering
- Limit not less than $5,000,000.00

**Insuriorce shall be provided by:**
- Companies must be authorized to do business in the State of North Carolina
- Companies with a Best rating of A-VIII or better.

**Insurance shall be evidenced by a certificate:**
- Certificate shall be endorsed with the City of Durham as an Additional Insured on the Commercial General Liability. The Additional Insured shall read ‘City of Durham as its interest may appear’.
- Certificates shall be addressed to:

  City of Durham  
  Attention: Community Development Department  
  101 City Hall Plaza  
  Durham, North Carolina 27701

- Providing notice to the City of not less than thirty (30) days prior to cancellation or reduction of coverage
- Both the insurance certificate and the additional insured endorsement must be originals and must be approved by the City of Durham’s Risk Manager before
contractor can begin any work under this contract.

110. Discretion of the City.

A. The City of Durham reserves the right to reject any or all proposals.

B. NOTWITHSTANDING anything to the contrary in this document or in any addendums to this document, unless the contrary provision refers specifically to this provision, the City reserves the right (i) to negotiate changes of any nature with any candidate with respect to any term, condition, or provision in this document and/or in any proposals, whether or not something is stated to be mandatory and whether or not it is said that a proposal will be rejected if certain information or documentation is not submitted with it, and (ii) to enter into an agreement for some or all of the work with one or more persons, firms, or corporations that do not submit proposals. For example, all deadlines are for the administrative convenience or needs of the City and may be waived by the City in its discretion. This subparagraph B applies to the entire RFP, including the UBE portions.

C. Where the City asks or tells candidates to do stated things, such as that a proposal should follow a stated format or that the candidate should do stated things in seeking the contract, the City may reject a proposal because it does not comply with those requests, so the candidate is adding to its risk of rejection by non-compliance. Still, the City may, in its discretion, waive non-compliance. This subsection (C) does not limit subsections (A) and (B).

D. Of course, once a contract is signed, the parties to the contract may enforce the contract according to its terms as allowed by applicable law.
SCHEDULE

120. Schedule.
The approximate contract schedule is as follows:

[a] Issue RFP: **November 4, 2019**
[b] Pre-submittal conference/meeting: **November 19, 2019**
[c] Last day to receive proposals: **December 4, 2019**
[d] Proposal committee complete evaluations by: **January 17, 2020**
[e] Council Agenda Item Deadline: **April 21, 2020**
[e] Council Work Session: **May 7, 2020**
[f] Council Meeting and Approval: **May 18, 2020**
[g] Contract Start Date: **July 1, 2020**
[h] Contract End Date: **June 30, 2023**

130. Keeping Proposals Open.
All proposals will remain open and valid for the City to accept for a period of **90 days** after the deadline for submission of proposals. The Project Manager may release candidates from this obligation by a written letter that specifically refers to this paragraph if he or she determines that the candidate and/or the proposal will not meet the City’s needs.

140. Deadline to Submit Proposals.
Candidates should see that their proposals are received at the following address by **December 4, 2019 at 3:00 p.m.**

City of Durham
Community Development Department
Attn: Matthew Schnars
Planning and Performance Manager
516 Rigsbee Avenue
Durham, North Carolina 27701
RE: RFQ – Loan Portfolio Servicing

GETTING MORE INFORMATION ON THE PROJECT AND RFP PROCESS

150. Questions.
Questions about the RFP and the RFP process should be submitted to the specific contact person identified at the beginning of this RFP.
160. Pre-submittal conferences, meetings, and site visits.
The City will conduct a pre-submittal meeting at 1:00 p.m. on November 19, 2019 at the office of Community Development Department, 516 Rigsbee Avenue, Durham, North Carolina 27701.

If you are unable to attend but would like to participate in the meeting, please contact Community Development Department at (919) 560-4570 to request the Conference Call Dial-In Number no later than Monday, November 18, 2019 at 4:00 PM EST.

Attendees should already be familiar with this RFP.

170. Updates and revisions to RFP.
If you have supplied the Project Manager with your preferred method of contact (email, fax, etc.), updates to this RFP (“addendums” or “addenda”) will be sent to you in that manner. This RFP and addendums are normally posted on the City’s website, on the Purchasing Division’s webpage, at http://durhamnc.gov/bids.aspx. Check that webpage to see that you have received all addenda.

EVALUATION CRITERIA

If an award is made, it is expected that the City’s award will be to the candidate that agrees to meet the needs of the City. A number of relevant matters will be considered, including qualifications and cost. The Evaluation Criteria are intended to be used to make a recommendation to the entity or person (the City Manager or the City Council) who will award the contract, but who are not bound to use these criteria or to award on the basis of the recommendation. The City reserves the right to change the criteria and to otherwise vary from this procedure as it determines to be in the City’s interest.

190. Understanding of the Project— 5 points
Proposals will be evaluated against the questions set out below.
(a) How well has the candidate demonstrated a thorough understanding of the purpose and scope of the project?
(b) How well has the candidate identified issues and potential problems related to the project?
(c) How well has the candidate demonstrated that it understands the deliverables the City expects it to provide?
(d) How well has the candidate demonstrated that it understands the City’s schedule and can meet it?
(e) Adherence to the City’s UBE program.

200. Methodology Used for the Project— 15 points
Proposals will be evaluated against the questions set out below.
(a) How well does the methodology depict a logical approach to fulfilling the requirements of the RFP?
(b) How well does the methodology match and contribute to achieving the
objectives set out in the RFP?
(c) How well does the methodology interface with the schedule in the RFP?

210. Management Plan for the Project — 15 points
Proposals will be evaluated against the questions set out below.
(a) How well does the management plan support all of the project requirements and logically lead to the deliverables required in the RFP?
(b) How well is accountability completely and clearly defined?
(c) Is the organization of the project team clear?
(d) How well does the management plan illustrate the lines of authority and communication?
(e) To what extent does the candidate already have the hardware, equipment, and licenses necessary to perform the contract?
(f) Does it appear that the candidate can meet the schedule set out in the RFP?
(g) Has the candidate offered alternate deliverables and gone beyond the minimum tasks necessary to meet the objectives of the RFP?
(h) Is the proposal practical, feasible, and within budget?
(i) How well have potential problems been identified?
(j) Is the proposal responsive to all material requirements in the RFP?

220. Experience and Qualifications— 15 points
Proposals will be evaluated against the questions set out below.

Questions regarding the personnel:
(a) Do the individuals assigned to the project have experience on similar projects?
(b) Are resumes complete and do they demonstrate backgrounds that are desirable for individuals engaged in the work the project requires?
(c) How extensive are the applicable education and experience of the personnel designated to work on the project?
(d) How knowledgeable are the candidate's personnel of the local area and how many individuals have worked in the area previously?

Questions regarding the candidate:
(e) How well has the candidate demonstrated experience in completing similar projects on time and within budget?
(f) How successful is the general history of the candidate regarding timely and successful completion of projects?
(g) Has the candidate provided letters of reference from clients?
(h) How reasonable are the candidate's cost estimates?
(i) If subcontractors will perform work on the contract, how well do they measure up to the evaluation used for the candidate?

230. Contract Cost— 40 points
The lowest cost proposal will receive the maximum number of points allocated to cost. Cost is one of a number of factors, so a candidate with the lowest cost cannot count on being selected.
CONTENTS OF PROPOSAL

240. Contents of Proposal.
The proposal should include sections, numbered as follows:

240.1 Contact information.
Include the candidate’s name and address, and the contact information (name, mailing
address, email address, fax number, and telephone number) of the person whom the City
should contact regarding the proposal.

240.2 Legal Status of the Candidate and Signers.
State the full, exact name of the candidate. State whether the candidate is an
individual, corporation, limited partnership, general partnership, limited liability company,
professional corporation, professional association, etc. If it is anything other than an
individual or a general partnership, specify the State under which the entity is organized.
If the State under which the entity is organized is not North Carolina, specify whether
the candidate has received a Certificate of Authority from the N.C. Secretary of State to
transact business in North Carolina. State whether the entity is in existence at the time
the proposal is submitted, and if not, whether and when the candidate intends to
officially form the entity. State the names and titles of the individuals who will sign
the contract with the City.

240.3 Qualifications, References and Licenses.
This part should include the candidate’s experience on similar projects and include
references and how to contact them.

Provide a brief company history including how long the company has been in business
providing loan servicing.

An organizational chart specific to the personnel assigned to accomplish the work called
for in this RFP. Illustrate the lines of authority and, designate the individual’s responsible
and accountable for the completion of each component and deliverable of the RFP.

Provide a narrative description of the organization of the project team.

Provide a personnel roster that identifies each person who will actually work on the
contract and provide the following information about each person listed:

(a) Title,
(b) Resume,
(c) Location (s) where work will be performed; and
(d) Itemize the total cost and the number of estimated hours for each
individual named above.

Provide reference names and phone numbers for similar projects your firm has
completed. Information should include: list of services provided, address, telephone and
fax numbers, length of implementation, name of client reference, and name of Project
Manager.
Provide a copy of the firm's most recent Audited Financial Statement

List the candidate’s current licenses that are pertinent to this project.

The City may reject proposals from any candidate that does not hold licenses required by N.C. laws to perform the contemplated work. or If a N.C. license or other approval by a N.C. State agency is required to perform the work and a candidate lacks such a license when it submits its proposal, the City may consider that circumstance in making the award.

240.4 Project Team, Location of Work and Subcontracting.
State the names and qualifications of the individuals who will have responsibility for this project.

The City WILL NOT provide workspace for the contractor. The contractor must provide its own workspace. Preference will be given to Candidates within a five hour driving radius.

Subcontractors

Subcontractors may be used to perform work under this contract. If a candidate intends to use subcontractors, the candidate must identify in their proposal the names of the subcontractors and the portions of the work the subcontractors will perform.

If a proposal with subcontractors is selected, the candidate must provide the following information concerning each prospective subcontractor within five working days from the date of the City's request:

(a) Complete name of the subcontractor,
(b) Complete address of the subcontractor,
(c) Type of work the subcontractor will be performing,
(d) Percentage of work the subcontractor will be providing,
(e) Evidence, as set out in the relevant section of this RFP, that the subcontractor holds a valid business license,
(f) A written Statement, signed by each proposed sub-contractor that clearly verifies that the subcontractor is committed to render the services required by the contract.
(g) Documentation requested from the contractor in Section 240.3 Qualifications, References and Licenses of this RFP.

A candidate's failure to provide this information within the time set may cause the City to consider their proposal non-responsive and reject the proposal.

The substitution of one subcontractor for another may be made only at the discretion of and with prior written approval from the director of the Community Development Department.
240.5 Methods and Procedures.
Candidates must provide a comprehensive narrative statement that sets out the methodology they intend to employ and illustrates how their methodology will serve to accomplish the work and meet the City's service schedule. The candidates should provide a detailed plan for implementing the services.

Candidates must provide a comprehensive narrative statement that sets out the management plan they intend to follow and illustrates how their plan will serve to accomplish the work:

- Service delivery standards
- Problem reporting and resolution procedures

240.6 Compensation.
See Section 50. Compensation Amount and Schedule above. Include a completed Monthly Servicing Fee Schedule using EXHIBIT B - Monthly Servicing Fee Schedule template.

240.7 Assumptions regarding City of Durham Actions and Participation.
If your proposal assumes that the City will take certain actions, provide facilities, or do anything else, you should state these assumptions explicitly.

240.8 EQUAL BUSINESS OPPORTUNITY PROGRAM
It is the policy of the City to provide equal opportunities for City contracting for underutilized firms owned by minorities and women doing business in the City's Contracting Marketplace. It is further the policy of the City to prohibit discrimination against any firm in pursuit of these opportunities, to conduct its contracting activities so as to prevent such discrimination, to correct present effects of past discrimination and to resolve complaints of discrimination. This policy applies to all professional services categories.

While there are no UBE participation goals for this project, in accordance with the Ordinance, all proposers are required to provide the Participation Documentation and the Employee Breakdown form. In lieu of the Employee Breakdown contractors may submit a copy of the current EEO-1 form (corporate basis). Proposals that do not contain the Participation Documentation form and the Employee Breakdown may be deemed non-responsive and ineligible for consideration. The Letter of Intent to Perform as a Sub-consultant form included with the Exhibit C - Equal Business Opportunity Program Professional Services forms should be completed only if an UBE firm will be utilized. These forms must be submitted with the proposal. The 'UBE Goals Not Met/Documentation of Good Faith Efforts' form and the 'Post Proposal Submission Deviation' form are not applicable at this time.

The Equity and Inclusion Department is responsible for the Equal Business Opportunity Program. All questions about Professional Services Forms should be referred to Deborah Giles or other department staff at (919) 560-4180.
240.9 Financial Condition, Insurance, Bonds and Taxes.
See Sections 90 and 100 above on Bonds and Insurance. The City may reject proposals from candidates that are overdue on City property taxes.

240.10 Conflict of Interest.
If the candidate has any grounds to believe there could be a conflict of interest, such as that a City employee who is involved in awarding the contract has a connection with the candidate, please explain.
240.11 Non-collusion.
Sign the following and include it with your response:

NON-COLLUSION AFFIDAVIT
By executing this proposal, I certify that this proposal is submitted to the City of Durham competitively and without collusion. I am authorized to represent the candidate both in submitting this bid and in making this Non-collusion Affidavit. To the best of my knowledge and belief, (1) the candidate has not violated N. C. General Statute section 133-24 in connection with the proposal, (2) the candidate has not entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with its proposal, and (3) the candidate intends to do the work with its own bona fide employees or subcontractors and is not bidding for the benefit of another contractor. The neuter includes the masculine and the feminine. The candidate to whom this Non-Collusion Affidavit refers is:

__________________________
(Insert name of candidate)

__________________________
(Signature of individual)

ACKNOWLEDGMENT
Type or print name of the individual who signed the affidavit:

__________________________

Type or print the name of Notary Public signing this acknowledgment:

__________________________

Place where acknowledgment occurred: County of______________________________, State of

__________________________

Notary’s residence: County of______________________________, State of

__________________________

I, the Notary Public named above, certify (1) the individual named above personally appeared before me this day, (2) I have personal knowledge, or satisfactory evidence, of the individual’s identity; and (3) the individual acknowledged signing the foregoing affidavit.
This the ___________ day of ________________________, 20__________.

__________________________
Notary Public

My commission expires:

__________________________
COVER LETTER WITH PROPOSAL

250. Cover letter.
The proposal should contain a cover letter, signed by a principal of the candidate. The cover letter should contain the following statement:

The undersigned, whose title and position with the candidate are stated next to or beneath his or her signature, has the authority to submit this proposal (including this cover letter) on behalf of the candidate in response to the City of Durham’s Request for Proposals.

Unless otherwise clearly stated in this response to the RFP, our proposal accepts the terms and conditions stated in the RFP, including the description of services to be performed and the provisions of the contract to be signed.

The cover letter should contain one of the following two paragraphs A or B. If (i) the cover letter lacks paragraph A and paragraph B, or (ii) the cover letter contains paragraph A but fails to comply with the instructions in the section of the RFP titled “Trade Secrets and Confidentiality,” the City may treat everything it receives from the candidate as NOT trade secret or confidential, and the City may disclose to the public everything it receives from the candidate.

A. With respect to all trade secrets that the candidate may submit to the City in connection with this proposal or the contract, if the contract is awarded to the candidate, the candidate shall comply with the section of the RFP titled ‘Trade Secrets and Confidentiality’, including all of its sub-sections, including the subsection titled ‘Defense of City’. The candidate acknowledges that the City will rely on the preceding sentence.

or

B. The candidate is not submitting any trade secrets to the City in connection with this proposal or the contract; if the contract is awarded to the candidate, the candidate will not submit any trade secrets to the City in connection with this proposal or the contract. The candidate acknowledge that the City will rely on the preceding sentence.

260. Addendums.
The cover letter should list the last addendum that the City issues for this RFP, with a statement such as:

The undersigned candidate has read all the addendums issued by the City for this RFP, through and including Addendum No. ________. In that blank the candidate should list the number of the last addendum.
HOW TO SUBMIT A PROPOSAL

270. How to submit a proposal.
Candidates should submit their proposals in a sealed envelope. The envelope should be addressed for delivery to the Contact Person at the address shown in the “Contact Person with City” section at the beginning of this RFP.

Write the following prominently on the outside of the envelope:

City of Durham
Community Development Department
Attn: Matthew Schnars
Planning and Performance Manager
516 Rigsbee Avenue
Durham, North Carolina 27701
RE: RFQ – Loan Portfolio Servicing

Proposals are to be received no later than 3:00 p.m. on December 4, 2019. Proposals should not be made by email or fax.

280. Format.
Candidates must submit one (1) original and six (6) copies of their proposal for the loan servicing in writing, to the Community Development Department in a sealed envelope. The original copy must be signed by an officer who is authorized to bind the candidate contractually. Also, the name and title of the individual who signed the proposal should be typed immediately below the signature.

290. Alternative Proposals.
If a candidate wishes to submit a proposal that does not comply with the City’s standards and expectations, consider submitting two proposals: a proposal that complies, plus a proposal that does not comply, so that your “non-compliant” version can be considered as an alternative if the City is interested. This will allow your compliant version to be considered if the City remains steadfast on applying the standards and expectations.

300. Candidate to Bear Expense; No Claims against City.
No candidate will have any claims or rights against the City arising out of the participation by a candidate in the proposal process. No candidate will have any claims or rights against the City for the City’s failure to award a contract to it or for awarding a contract to another person, firm, or corporation, regardless of whether the other person, firm, or corporation participated in the RFP process or did not submit a proposal that complied with the RFP. A notice of award will not constitute acceptance by the City; the City’s only method of acceptance is the City’s execution of a formal contract in accordance with law.

310. State Treasurer’s lists regarding Iran and Boycott of Israel.
If the value of the contract is $1,000 or more, the following applies unless the candidate otherwise states in its proposal: the candidate affirms (by submitting a proposal) that (1) its name does not appear on the list of companies that are engaged in a boycott of Israel developed by the N. C. State Treasurer under N.C.G.S. 147 86.81(a)(1) or on a list
created by the Treasurer pursuant to N.C.G.S. 147 86.58 as a company engaging in investment activities in Iran, and (2) it has no reason to expect that its name will appear on either of those lists. Take notice that a contract between a company named on either list and the City may be void.

320. Notice under the Americans with Disabilities Act.
A person with a disability may receive an auxiliary aid or service to effectively participate in city government activities by contacting the ADA Coordinator, voice (919) 560-4197, fax 560-4196, TTY (919) 560-1200, or ADA@durhamnc.gov, as soon as possible but no later than 48 hours before the event or deadline date.

Aviso bajo el Acto de Americanos Discapacitados – Una persona con una discapacidad puede recibir asistencia o servicio auxiliar para participar efectivamente en actividades del gobierno de la ciudad con ponerse en contacto con el Coordinador de ADA, buzón de voz (919) 560-4197, fax (919) 560-4196, TTY (919) 560-1200, o ADA@durhamnc.gov, lo más antes posible pero no menos de 48 horas antes del evento o fecha indicada.

330. Values of City of Durham regarding Treatment of Employees of Contractors

A. Statement of City EEO Policy. The City of Durham opposes discrimination in employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Therefore, it desires that firms doing business with the City:
   1. not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.
   2. take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. This action includes employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
   3. state, in solicitations or advertisement for employees, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.
   4. include this Statement of City EEO Policy in every purchase order for goods to be used in performing City contracts and in every subcontract related to City contracts.

B. Livable Wage. The City of Durham desires that firms doing business with the City pay their workers a livable wage rate while working on City contracts. The livable wage rate is $14.15 per hour through June 30, 2018, and $15.00 per hour for July 1, 2018 – June 30, 2019. The City will re-set the rate for the period after June 30, 2019.
EXHIBIT A

Model Services Contract Template
This contract is dated, made, and entered into as of the _____ day of ______________________, 20____, by the City of Durham (“City”), a N. C. municipal corporation, and Agency Name (“Contractor”), a corporation organized and existing under the laws of North Carolina.

Sec. 1. Background and Purpose.
Sec. 2. Services and Scope to be Performed. Presumption that Duty is Contractor’s. The Contractor shall state services and scope. In this contract, “Work” means the services that the Contractor is required to perform pursuant to this contract and all of the Contractor’s duties to the City that arise out of this contract. Unless the context requires otherwise, if this contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Contractor.
Sec. 3. Reserved.
Sec. 4. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 5. Contractor’s Billings to City. Compensation. The Contract amount is $ . The Contractor shall send invoices to the City on a monthly basis for the amounts to be paid pursuant to this contract. Each invoice shall document, to the reasonable satisfaction of the City: such information as may be reasonably requested by the City. Add any special instructions. Within twenty days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.

The City shall pay the Contractor for the Work as follows: describe timing of payments. The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section.

Sec. 6. Prompt Payment to Subcontractors. (a) Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all Subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the Subcontractor interest, beginning on the 8th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Contractor, but not against the City of Durham.

(b) If the individual assigned to administer this contract for the City (in this section, titled “Prompt Payment to Subcontractors,” he or she will be referred to as the “Project Manager”) determines that it is appropriate to enforce subsection (a) in this manner, the City may withhold from progress or final payments to the Contractor the sums estimated by the Project Manager to be

(i) the amount of interest due to the Subcontractor under subsection (a), and/or
(ii) the amounts past-due under subsection (a) to the Subcontractor but not exceeding 5% of the payment(s) due from the City to the Contractor.

This subsection (b) does not limit any other rights to withhold payments that the City may have.

(c) Nothing in this section (titled “Prompt Payment to Subcontractors”) shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%.

(d) The Project Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any Subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

Sec. 7. Insurance. Contractor agrees to maintain, on a primary basis and at is sole expense, at all times during the life of this Contract the following applicable coverage’s and limits. The requirements contained herein, as well as City’s review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Contract.

**Commercial General Liability** – Combined single limit of no less than $1,000,000 each occurrence and $2,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.

**Automobile Liability** – Limits of no less than $1,000,000 Combined Single Limit. Coverage shall include liability for Owned, Non-Owned and Hired automobiles. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Auto Liability policy. Automobile coverage is only necessary if vehicles are used in the provision of services under this Contract and/or are brought on a City of Durham site.

**Umbrella or Excess Liability** – Contractor may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability, however, the Annual Aggregate limits shall not be less than the highest ‘Each Occurrence’ limit for required policies. Contractor agrees to endorse City of Durham as an ‘Additional Insured’ on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a ‘Follow-Form’ basis.

**Worker’s Compensation & Employers Liability** – Contractor agrees to maintain Worker’s Compensation Insurance in accordance with North Carolina General Statute Chapter 97 and with Employer Liability limits of no less than $1,000,000 each accident, each employee and policy limit. This policy must include a Waiver of Subrogation.
Additional Insured – Contractor agrees to endorse the City as an Additional Insured on the Commercial General Liability. The Additional Insured shall read ‘City of Durham as its interest may appear’.

Certificate of Insurance – Contractor agrees to provide City of Durham a Certificate of Insurance evidencing that all coverage’s, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Contractor’s insurer. If Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify the City within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder address should read:

City of Durham
Attn: (Insert Name of Department maintaining the Contract)
101 City Hall Plaza
Durham, NC 27701

All insurance companies must be authorized to do business in North Carolina and be acceptable to the City of Durham’s Risk Manager.

Sec. 8. Performance of Work by City. If the Contractor fails to perform the Work in accordance with the Scope of Work required by this contract, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City’s rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 9. Exhibits. The following exhibits are made a part of this contract: state any exhibits. State "none" if none

In case of conflict between an exhibit and the text of this contract excluding the exhibit, the text of this contract shall control.

Sec. 10. Notice. (a) This subsection (a) pertains to all notices related to or asserting default, breach of contract, claim for damages, suspension or termination of performance, suspension or termination of contract, and extension or renewal of the term. All such notices shall be given by personal delivery, fax, UPS, Federal Express, a designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2), or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.
To the City:
Director,
Community Development Department
516 Rigsbee Avenue
Durham, NC 27701
919-560-4570 (phone)
919-560-4090 (fax)

To the Contractor:
Name, Title
Agency Name
Street Address
City, State Zip
(phone)
(fax)

(b) Change of Address. Date Notice Deemed Given. A change of address, email address, fax number, or person to receive notices under subsection (a) shall be made by notice given pursuant to subsection (a). All notices and other communications related to or under this contract shall be deemed given and sent at the time of actual delivery, if personally delivered or sent by fax, personal delivery, UPS, Federal Express, or a designated delivery service. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs. If the notice is undeliverable because the information given to the City under this section is incorrect, incomplete, or out of date, the notice will be deemed given and sent on the date that the City attempted to deliver by fax, or the date the City placed the notice in the custody of UPS, Federal Express, a designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2), or the U. S. Postal Service for certified United States mail, return receipt requested.

Sec. 11. Indemnification. (a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection “a,” the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections “a” above and “c” below -- “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within “Charges” are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). “Indemnitees” means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor.
(c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. (e) Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection “a” above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 12. Termination for Convenience (“TFC”). (a) Procedure. Without limiting any party’s right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice. (b) Obligations. Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City’s instructions as to which subcontracts to terminate. (c) Payment. The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City’s decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor one hundred dollars as a TFC fee and shall pay the Contractor for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.


E-Verify Requirements. (A) If this contract is awarded pursuant to North Carolina General Statutes (NCGS) 143-129 – (i) the contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the NCGS; (ii) the words "contractor," "contractor’s subcontractors," and "comply" as used in this subsection (A) shall have the meanings intended by NCGS 143-129(j); and (iii) the City is relying on this subsection (A) in entering into this contract. (B) If this contract is subject to NCGS 143-133.3, the contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.

Sec. 14. Miscellaneous

(a) Choice of Law and Forum; Service of Process. (i) This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in
accordance with the law of North Carolina and not the United Nations Convention on Contracts for the International Sale of Goods. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (i) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. (ii) If the Contractor is not a natural person (for instance, the Contractor is a corporation or limited liability company), this subsection (ii) applies. “Agent for Service of Process” means every person now or hereafter appointed by the Contractor to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Contractor will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Contractor. This subsection (ii) does not apply while the Contractor maintains a registered agent in North Carolina with the office of the N. C. Secretary of State and such registered agent can be found with due diligence at the registered office.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment. Successors and Assigns. Without the City’s written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City’s defenses and shall be liable for all of the Contractor’s duties that arise out of this contract and all of the City’s claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(g) Notice of City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) EBOP. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or
other appropriate remedies in accordance with the provisions of that article, this contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Contractor. Section 18-59(f) of that article provides, in part, “If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies.” It is stipulated and agreed that those two quoted sentences apply only to the Contractor’s alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor’s alleged violations of other obligations.

(i) **No Third Party Rights Created.** This contract is intended for the benefit of the City and the Contractor and not any other person.

(j) **Principles of Interpretation and Definitions.** (1) The singular includes the plural and the plural the singular. The pronouns “it” and “its” include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words “include,” “including,” etc. mean include, including, etc. without limitation. (2) References to a “Section” or “section” shall mean a section of this contract. (3) “Contract” and “Agreement,” whether or not capitalized, refer to this instrument. (4) “Duties” includes obligations. (5) The word “person” includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word “shall” is mandatory. (7) The word “day” means calendar day. (8) The word “Work” is defined in Section 2. (9) A definition in this contract will not apply to the extent the context requires otherwise.

(k) **Modifications. Entire Agreement.** A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a City department director. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(l) **City’s Manager’s Authority.** To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor’s services under this contract, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.
Agency Name

By:_________________________________ (SEAL)
   Name, Title

ATTEST:   Agency Name

By:____________________________   ____________
   Title          (date)

(Affix corporate seal here)

North Carolina
Durham County

I, __________________________, a notary public in and for the aforesaid county and state, certify that _______________________________________________________ personally appeared before me this day and stated that he or she is

(strike through the inapplicable:) chairperson/ president/ chief executive officer/ vice-president/ assistant vice-president/ treasurer/ chief financial officer of Agency Name, a corporation, and that by authority duly given and as the act of the corporation, he or she signed, under seal, the foregoing contract or agreement with the City of Durham. This the _____ day of ___________________, 20______.

My commission expires: ________________________________________
________________________ Notary Public
IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

ATTEST:  

_____________________________  

By:______________________________

_____________________________  

preaudit certificate, if applicable __________________________

______
EXHIBIT B

Monthly Servicing Fee Schedule Template
CITY OF DURHAM
MORTGAGE LOAN SERVING RFP

Contract Period:
JULY 1, 2020 - JUNE 30, 2023

<table>
<thead>
<tr>
<th>Mortgage Loan Servicing</th>
<th>Monthly Fee Per Item</th>
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<tbody>
<tr>
<td>Account Maintenance Fee (If less than 1,000 Loans)</td>
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<tr>
<td>New Loan Set-up Fee</td>
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<td>Residential Loans:</td>
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EXHIBIT C

Equal Business Opportunity Program Professional Services Forms
EQUAL BUSINESS OPPORTUNITY PROGRAM

PROFESSIONAL SERVICES FORMS

Updated 08/19
**Policy Statement**

It is the policy of the City to provide equal opportunities for City contracting to underutilized businesses owned by minorities and women doing business in the City’s Contracting Marketplace. It is further the policy of the City to prohibit discrimination against any firm in pursuit of these opportunities, to conduct its contracting activities so as to prevent such discrimination, to correct the present effects of past discrimination and to resolve complaints of discrimination.

**Goals**

To increase the dollar value of all City contracts for goods and services awarded to minority and women business enterprises, it is a desire of the City that the contractor will voluntarily undertake efforts to increase the participation of minority and women individuals at higher skill and responsibility levels within non-minority firms engaged in contracting and subcontracting with the City.

The Equity & Inclusion Director shall determine participation goals based upon the availability of minority and women business enterprises (MWBEs) within the defined scope of contracting, and the goals established for the contracting category.
Equal Business Opportunity Program UBE Participation Documentation

If applicable information is not submitted with your proposal, your proposal may be deemed non-responsive.

**UBE Participation Documentation** must be used to document participation of an underutilized business enterprise (UBE) on Professional Services projects. All UBEs must be certified by the State of North Carolina as a historically underutilized business, the North Carolina Department of Transportation as a minority-owned or women-owned business or the U.S. Small Business Administration’s 8(a) Business Development Program prior to the submission date. If a business listed has not been certified, the amount of participation will be reduced from the total utilization.

**Employee Breakdown** must be completed and submitted for the location providing the service/commodity. If the parent company will be involved in providing the service/commodity on the City contract, a consolidated employment breakdown must be submitted.

**Letter of Intent to Perform as a Sub-consultant/Subcontractor** must be completed for UBEs proposed to perform on a contract. This form must be submitted with the proposal.

**Post Proposal Submission UBE Deviation**

Post proposal submission UBE deviation participation documentation must be used to report any deviation from UBE participation either prior to or subsequent to startup of the project. The Equity & Inclusion Department must be notified if the proposed sub-consultant/subcontractor is unable to perform and for what reasons. Substitutions of sub-consultants/subcontractor, both prior to and after awarding of a contract, are subject to City approval.

**UBE Goals Not Met/Documentation of Good Faith Efforts**

It is the responsibility of consultants/contractors to make good faith efforts. Good Faith Efforts means the sum total of efforts by a particular business to provide equitable participation of minority-owned and women-owned individuals or businesses as sub-consultants/subcontractors.

Whenever contract alternatives, amendments or extra work orders are made individually or in the aggregate, which increase the total value of the original contract, the consultant must make a good faith effort to increase UBE participation such that the amounts subcontracted are consistent with the established goals.
SELECTION OF CONSULTANTS/CONTRACTORS FOR
ARCHITECTURAL/ENGINEERING
AND OTHER PROFESSIONAL SERVICES

Goal

The purpose is to provide underutilized business enterprises owned by minorities and women with equal opportunities for participation on City of Durham contracts.

Definition of the Scope of the Selection Policy

The Equity & Inclusion Director shall determine UBE participation goals for each contracting category to be awarded by the City. Goals for each project or contract will be based upon the availability of underutilized business enterprises (UBE’s) within the defined scope of work, delineated into percentages of the total value of the work.

The City of Durham will consider a formal certification of the State of North Carolina’s Historically Underutilized Businesses (HUB) Office, North Carolina Department of Transportation (N.C. DOT) minority and women businesses and the United States Small Business Administration (U.S. SBA) 8(a) Development Program as meeting the requirements of the Equal Business Opportunity Program, provided there is evidence that the firm is currently certified by one of the stated entities.

Underutilized Business Proposal Requirements

The prime consultant/contractor shall submit a proposal in accordance with the City of Durham’s request for Proposal. In addition, the prime consultant/contractor must submit all required Professional Services Forms.

Selection Committee for Professional Services

A selection committee shall be established and may be composed of the following: City Manager or a designated representative of this office; Director of Finance or a designated representative of this office; department head responsible for the project; City Engineer if engineering services are involved; the Equity & Inclusion Director or designee and Purchasing Manager or designee. Other representatives shall be called upon as needed based on their areas of expertise.

The committee shall screen the proposals based on the following criteria:

1. Firms; interest in the project;
2. Current work in progress by firm;
3. Past experience with similar projects;
4. General proposal for carrying out the required work;
5. Designation of key personnel who will handle the project, with resume for each;
6. Proposed associate consultants/contractors, UBE subconsultants;
7. Indication of capability for handling project;
8. Familiarity with the project;
9. Fees that have been charged for recent comparable projects;
10. References;
11. UBE Participation; and
12. Documentation of Good Faith efforts should UBE participation requirements not be met.
After ranking the firms presenting proposals based on the above criteria, interviews will be conducted by the selection committee with the top ranked firms (3-5). The contracting department will make the final recommendation, prepare contracts for review by the City Attorney, and prepare the recommendation for the City Council including the following:

1. Description and scope of the project;
2. Recommended firm;
3. Contract cost;
4. Time limits;
5. Basis for selection;
6. Source for funding;
7. Equal Business Opportunity Ordinance compliance; and
8. Recommendation that the contract be approved by the City Council.

**Contract Award**

A provision must be written in each contract with an architect or engineer requiring them to work with Equity & Inclusion Department in creating and identifying separate work.

**Project Evaluation**

An evaluation shall be made of each contract after its completion to be used in consideration of future professional services contracts. The evaluation shall cover appropriate items from the check list for ranking applicants. A copy of the evaluation shall be given to the consultant, and any comment he/she cares to make shall be included in the files.
<table>
<thead>
<tr>
<th>Names of all firms (including prime and subconsultants/subcontractors)</th>
<th>Location</th>
<th>UBE Firm Yes/No</th>
<th>Nature of Participation</th>
<th>% of Project Work</th>
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TOTAL __________________

Name - Authorized Officer of Prime Consultant/Contractor Firm (Print/Type)

Signature - Authorized Officer of Prime Consultant/Contractor Firm

Date
COMPLETE THIS FORM OR SUBMIT AN EEO-1 REPORT

EMPLOYEE BREAKDOWN

Part A – Employee Statistics for the Primary Location

<table>
<thead>
<tr>
<th>Employment Category</th>
<th>Total Employees</th>
<th>Total Males</th>
<th>Total Females</th>
<th>Total White</th>
<th>Total Black</th>
<th>Total Hispanic</th>
<th>Total Asian or Pacific Islander</th>
<th>Total Indian or Alaskan Native</th>
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<td>Project Manager</td>
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Part B – Employee Statistics for the Consolidated Company (See instructions for this form on whether this part is required.)

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<tr>
<th>Employment Category</th>
<th>Total Employees</th>
<th>Total Males</th>
<th>Total Females</th>
<th>Total White</th>
<th>Total Black</th>
<th>Total Hispanic</th>
<th>Total Asian or Pacific Islander</th>
<th>Total Indian or Alaskan Native</th>
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It is in the City’s interest to collect accurate data on the makeup of the business owners that contract with the City. Your response to the follow questions is optional, although the City would appreciate your response:

Are you (the business owner for this bid/proposal) certified as a minority or woman firm with the N.C. HUB Office, N.C. Dept. of Transportation or Small Business Administration 8(a) Program? Yes________ No______

If NOT, please put an X beside any of the following with which more than 50% of the ownership identifies: _______White/Non-Hispanic _______Black _______Hispanic _______Asian _______American Indian _______Woman

I certify that the information provided is true and correct at this time.

__________________________    ______________________________
Date                         Authorized Signature/ Name of Firm
Letter of Intent to Perform as a Sub-Consultant

The undersigned intends to perform work in connection with the above project as a UBE: Minority (African American, American Indian, Asian or Hispanic) Woman

The UBE status of the undersigned is certified if identified as HUB certified by the N.C Department of Administration HUB Office, minority or women certified by the N.C. Department of Transportation and 8(a) certified by the U.S. Small Business Administration.

The undersigned is prepared to perform the following described work in connection with the above project (specify in detail particular work items or parts thereof to be performed):

You have projected the following commencement date for such work, and the undersigned is projecting completion of such work as follows:

<table>
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<tr>
<th>ITEMS</th>
<th>PROJECTED COMMENCEMENT DATE</th>
<th>PROJECTED COMPLETION DATE</th>
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</table>

The consultant will subcontract ____________% of the dollar value of this contract to UBE sub-consultant.

The undersigned will enter into a formal agreement in the amount of $____________________ for the above work with you, conditioned upon your execution of a contract with the City of Durham.

Name_________________________ Title_________________________
Company_________________________ Telephone_________________________
Address_____________________________________________________________________
Signature________________________________________________________________________
REQUEST TO CHANGE UBE PARTICIPATION

Project: _____________________________________________________________

Name of bidder or consultant: __________________________________________

Name and title of representative of bidder or consultant: ____________________________

Address: __________________________________________ Zip Code: _______________
Telephone No: __________________ Fax Number: __________________

Email address: ___________________________________________________________

Total amount of original contract, before any change orders or amendments: ______________

Total amount of the contract, including all approved change orders and amendments to date, but not counting the changes proposed in this form: ______________

Dollar amount of changes proposed in this form: ______________

The proposed change (check one) ☐ increases ☐ decreases the dollar amount of the bidder's/consultant's contract with the City.

Does the proposed change decrease the UBE participation? (check one) ☐ yes ☐ no

If the answer is yes, complete the following:

BOX A. For the subcontract proposed to be changed (increased, reduced, or eliminated): Name of sub-consultant ________________________________________________

Goods and services to be provided before the proposed change: ___________________________________________________________

Is it proposed to eliminate this subcontract? ☐ yes ☐ no

If the subcontract is to be increased or reduced, describe the nature of the change (such as adding $5,000 in environmental work and deleting $7,000 in architectural):

______________________________________________________________________________

Dollar amount of this subcontract before this proposed change: __________________________

Dollar amount of this subcontract after this proposed change: __________________________

This subcontractor is (check one):
☐ 1. Minority-owned UBE
☐ 2. Women-Owned UBE
☐ 3. Not a UBE
BOX B. Proposed subcontracts other than the subcontract described in Box A above (continued)

Name of sub-consultant for the new work: ________________________________

Goods and Services to be provided by this proposed subcontract: ________________________________

Dollar amount proposed of this proposed subcontract: This sub-consultant is:

☐ 1. Minority-owned UBE
☐ 2. Women-Owned UBE
☐ 3. Not a UBE

Add additional sheets as necessary.
UBE GOALS NOT HAVING BEEN MET. The following information must be presented by the consultant concerning good faith efforts taken.

It is the responsibility of consultants to make good faith efforts. Any act or omission by the City shall not relieve them of this responsibility. For future efforts, it shall be comprised of such efforts which are proposed to allow equitable participation of socially and economically disadvantaged employees and sub-consultants/subcontractors. The City Manager shall apply the following criteria, with due consideration of the quality, quantity, intensity and timeliness of efforts of consultants/subcontractors, in determining good faith efforts to engage UBEs along with other criteria that the City Manager deems proper:

Name of Bidder: ___________________________

If you find it helpful, feel free to attach pages to explain your answers. How many pages is your firm attaching to this questionnaire? ___________

(Don’t count the 2 pages of this)

If a yes or no answer is not appropriate, please explain the facts. All of the answers to these questions relate only to the time before your firm submitted its bid or proposal to the City. In other words, actions that your firm took after it submitted the bid or proposal to the City cannot be mentioned or used in any answers.

1. SOLICITING UBEs.

(a) Did your firm solicit, through all reasonable and available means, the interest of all UBEs in the list provided by the City in the scope of work of the contract?  □ yes □ no

In such soliciting, did your firm advertise?  □ yes □ no Are you attaching copies to this questionnaire, indicating the dates and names of newspaper or other publication for each ad if that information is not already on the ads?  □ yes □ no

(b) In such soliciting, did your firm send written (including electronic) notices or letters? Are you attaching one or more sample notices or letters?  □ yes □ no

(c) Did your firm attend the pre-bid conference?  □ yes □ no

(d) Did your firm provide interested UBEs with timely, adequate information about the plans, specifications, and requirements of the contract?  □ yes □ no

(e) Did your firm follow up with UBEs that showed interest?  □ yes □ no

(f) With reference to the UBEs that your firm notified of the type of work to be subcontracted, did your firm tell them:

(i) the specific work your firm was considering for subcontracting? □ yes □ no

(ii) that their interest in the contract is being solicited? □ yes □ no

(iii) how to obtain and inspect the applicable plans and specifications and descriptions of items to be purchased? □ yes □ no
2. BREAKING DOWN THE WORK.

(a) Did your firm select portions of the work to be performed by UBEs in order to increase the likelihood that the goals would be reached? □ yes □ no

(b) If yes, please describe the portions selected. ANSWER:

3. NEGOTIATION. In your answers to 3, you may omit information regarding UBEs for which you are providing a Letter of Intent.

(a) What are the names, addresses, and telephone numbers of UBEs that you contacted? ANSWER:

(b) Describe the information that you provided to the UBEs regarding the plans and specifications for the work selected for potential subcontracting. ANSWER:

(c) Why could your firm not reach agreements with the UBEs that your firm made contact with? Be specific. ANSWER:

4. ASSISTANCE TO UBEs ON BONDING, CREDIT, AND INSURANCE.

(a) Did your firm or the City require any subcontractors to have bonds, lines of credit, or insurance? □ yes □ no (Note: In most projects, the City has no such requirement for subcontractors.)

(b) If the answer to (a) is yes, did your firm make efforts to assist UBEs to obtain bonds, lines of credit, or insurance? □ yes □ no If yes, describe your firm’s efforts. ANSWER:

(c) Did your firm provide alternatives to bonding or insurance for potential subcontractors? □ yes □ no If yes, describe. ANSWER:

5. GOODS AND SERVICES. What efforts did your firm make to help interested UBEs to obtain goods or services relevant to the proposed subcontracting work? ANSWER:

6. USING OTHER SERVICES.

(a) Did your firm use the services of the City to help solicit UBEs for the work? □ yes □ no Please explain. ANSWER:

(b) Did your firm use the services of available minority/women community organizations, minority and women contractors’ groups, government-sponsored minority/women business assistance agencies, and other appropriate organizations to help solicit UBEs for the work? □ yes □ no Please explain. ANSWER: