

# GREATER DAYTON PREMIER MANAGEMENT

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## Request for Proposal

RFP# 24-04

### Compliance, Inclusion, and Procurement Tracking Software

**Timeline is provided as a guideline only and is subject to change at the discretion of GDPM.**

<b>Issue Date</b>	Monday, April 29, 2024
<b>Pre-Bid Meeting</b>	Not Applicable
<b>Questions from Contractors Due</b>	Tuesday, May 7, 2024 by 5 :00 pm
<b>Responses from GDPM to Be Posted By</b>	Wednesday, May 8, 2024
<b>Proposals Due</b>	Wednesday, May 29, 2024 before 5:00pm
<b>Anticipated Award Announcement</b>	June 2024

*There is no obligation on the part of GDPM to select and award any submitting responder to any firm or individual submitting a response. **No work is guaranteed.***

**Pre-bid Meeting:** There is no scheduled pre-proposal meeting

**Bid-Opening:** There will *NOT* be a scheduled public bid opening. On or near the Anticipated Award Announcement date, GDPM will post the award announcement on it's website at the following link:

<https://www.gdpm.org/business-opportunities/request-for-proposals/>

#### How to Submit Bids:

**PROPOSALS MUST BE SUBMITTED ELECTRONICALLY TO:**

[ebid@dmha.org](mailto:ebid@dmha.org)

THE SUBJECT LINE MUST STATE: **RFP 24-04 Compliance, Inclusion, and Procurement Tracking Software**

*PLEASE REFER TO THE ENCLOSED INSTRUCTIONS FOR THE PROPOSAL PACKET FORMAT.*

**Questions about this Bid Shall be Submitted Electronically to:** [ebid@dmha.org](mailto:ebid@dmha.org)

Greater Dayton Premier Management reserves the right to reject any or all proposals, or waive any informality in the bidding. No proposals shall be withdrawn for a period of one hundred twenty days of submission.

GDPM seeks a one-year contract, with two renewable options, for a hosted, online software or application product (Product) that will help GDPM document, monitor, and report its compliance with the federal Davis-Bacon and Related Acts; the Department of Housing and Urban Development's (HUD's) maintenance wage requirements; GDPM's Minority-Owned Business Enterprise (MBE) and Women-Owned Business (WBE) Enterprise Program, and HUD's Section 3 requirements.

All awardees shall be required to meet Affirmative Action requirements and Equal Opportunity requirements and must insure that all employees and applicants for employment are not discriminated against because of race, color, religion, national origin, disability, age, ancestry, creed, or military status.

If you would like to submit a bid, you must complete the GDPM Quote Form. It must be signed. If the proposal section does not have enough room for your proposal, please write 'see attached' and attach your quote. If you are interested in working with GDPM and are not already registered, please visit <https://www.gdpm.org/business-opportunities/vendor-registration/> and complete a vendor registration packet. Once submitted, you will be notified of all contracting opportunities related to the areas you select when registering.

**The email date and time stamp shall serve as the official receipt and late submissions shall not be accepted. GDPM shall not be responsible or liable for any lost or misdirected responses. Submissions are the responsibility of the proposer.**

Questions received less than seven (7) days prior to solicitation due date may not be answered. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

**ADDENDUMS: All ADDENDUMS shall be placed on the GDPM website. Bidders will not be notified when an ADDENDUM is issued. It is the responsibility of the bidder to check the website for any ADDENDUMS.**

<https://www.gdpm.org/business-opportunities/requests-for-proposals/>

# Greater Dayton Premier Management

## RFP 24-04

### Compliance, Inclusion, and Procurement Tracking Software

#### Table of Contents

*The below items are part of the Bidder's Packet. Most of these items must either be completed or signed or both and submitted with your sealed bid. Please submit forms in order.*

Part 1	Professional Services Quote Form
Part 2	Scope of Work
Part 3	Evaluation Criteria and Submission
Part 4	GDPM Terms and Conditions
Part 5	Is Your Bid Packet Complete?
Part 6	Review/complete list of required documents listed under Compliance, Inclusion, and Procurement Tracking Software

<https://www.gdpm.org/business-opportunities/requests-for-proposals/>





## Compliance, Inclusion, and Procurement Tracking Software

### RFP 24-04

#### SCOPE OF WORK

GDPM seeks a one-year contract, with two renewable options, for a hosted, online software or application product (Product) that will help GDPM document, monitor, and report its compliance with the federal Davis-Bacon and Related Acts; the Department of Housing and Urban Development's (HUD's) maintenance wage requirements; GDPM's Minority-Owned Business Enterprise (MBE) and Women-Owned Business (WBE) Enterprise Program, and HUD's Section 3 requirements. In addition, the Product must automate the reporting, monitoring, and enforcement of the foregoing. The Product should have both public and private dimensions where external customers and vendors can access and submit information, and GDPM staff can input, conduct, and monitor a variety of project-management elements. A potential vendor can provide one or all of the services referenced in this RFP. The selected vendor should be capable of fully sustaining the service 24 hours a day, 7 days a week. GDPM's annual volume of purchases is approximately 200 plus contracts/orders totaling approximately \$20,000,000. GDPM is soliciting proposals for a Product that addresses the following key needs:

#### **A. Applications for Inclusion Certifications**

1. The Product should accept electronically-submitted applications for GDPM's variety of business inclusion certifications. Where signatures are needed, the Product should allow for electronic signatures.
2. The Product should allow applicants to upload supporting documents with each application or to mail hard copies.
3. Once applications are submitted, the Product should track submission dates and statuses. All applications and supporting documents should be maintained in electronic folders in the Product.
4. The Product should also generate (either manually or automatically) correspondence related to the application, such as confirmation receipts or renewal notices.
5. The Product should allow GDPM to approve applications and then automatically populate the relevant information to its online listing of certified vendors. This online listing should be sortable by a variety of criteria including name, trade, location, and certification.
6. The Responder's proposal should recommend how to transition from GDPM's current application and filing system to a complete electronic storage system via the Product.
7. The Product's application portal should allow applicants to complete their applications

electronically, regardless of whether they are on a computer or mobile device and be compatible with the most common operating systems (e.g., iOS or Android).

## **B. Vendor Management**

1. The Product should be capable of sending electronic communications to all or select GDPM's vendors. Those communications might relate to Requests for Proposals, Invitations to Bid, other solicitations, or notices of changes to GDPM policies.

2. The Product should allow for secure, confidential electronic bid submissions.

3. The Product should be capable of tracking vendor activity, such as their attendance at pre-bid conferences, proposals submitted, and contracts received.

4. The Product should allow GDPM to maintain written comments on vendors' current and/or previous performance.

## **C. Contract and Labor Compliance Management**

1. The Product must automate reporting, monitoring, and enforcement activities as they relate to labor compliance on GDPM contracts and projects.

2. The Product must have the ability to do the following, regardless of whether a contract is subject to the Davis-Bacon and Related Acts (DBRA):

a. Automatically upload most recent general wage decision numbers for Montgomery, County, Ohio;

b. Electronically receive, reconcile, sign, and certify weekly payroll reports (DOL Form WH-347) and automatically compare the reports against specific DBRA wages determinations;

c. Notify GDPM when certified payroll reports have been uploaded by vendors;

d. Produce electronic fringe benefits statement reports;

e. Validate apprentice certifications automatically;

f. Process data automatically for various accounting systems or

allow for exporting of data to a spreadsheet program (e.g., Excel);

g. Log payroll investigations (HUD Form 11) and document investigatory steps and results;

h. Classify certain employees as HUD Section 3 Workers or Targeted Section 3 Workers;

i. Track employees (including employees who qualify as HUD Section 3 Workers or Targeted Section 3 Workers) by project, wage rate, and work classification;

j. Correspond between/among GDPM, the contractors, and subcontracts on the project;

k. Enter, review, and track all contractual information;

l. Set alerts and receive notifications when performance milestones are not being met; and

m. Import and export data.

#### **D. Monitoring and Reporting**

The Product must have the ability to do the following, regardless of whether a contract is subject to the Davis-Bacon and Related Acts (DBRA):

1. Set, monitor, and run reports on GDPM's compliance goals;
2. Generate reports detailing the number of accepted payroll reports by an administrator during any given period of time;
3. Monitor prime contractors' inclusion commitments for sub-contracts;
4. Generate reports of resident workers' work history and skills report, with potential to upload or attach a resume;
5. Generate reports inclusive of all information required by HUD 4710 (Semi-Annual Labor Standards Enforcement Report – Local Contracting Agencies (HUD Programs))
6. Track contract compliance based on such parameters as: MBE participation, WBE participation, Section 3, and prevailing wage requirements;
7. Track spending by type of procurement, funding source, vendor demographic, dollar amount of procurement, aggregate dollar totals, prime

and subcontract awards, certifications, and vendor population; and

8. Customize and design other reports on collected data, as needed.

**E. Other**

1. All data and document storage must be secure.
2. The selected vendor must provide GDPM staff, vendors, contractors, and residents training.
3. The Product should provide GDPM and vendors access to on-demand training modules for commonly-used tasks or questions, plus access to a hosted, 24/7 help desk.
4. Vendors responding to this RFP should be prepared, at their own expense, to provide GDPM an on-site or virtual demonstration of the Product.
5. Responses to this RFP should include quotes broken down into the following categories, as appropriate:
  - a. One-time initial installation and setup fee;
  - b. Training fees;
  - c. Annual maintenance fees (including any changes to fees for option years);
  - d. Customer support service costs; and
  - e. Other applicable fees.
6. Responses to this RFP must include names and contact information for representatives from other public agencies currently using the Product.

The selected vendor must provide at least a 30-day trial period for GDPM to review the Product.

**PART 3  
EVALUATION AND  
SUBMITTAL SECTION**

The professional services selective process will involve the ranking of Contractor by the appointed GDPM evaluation committee. In no circumstance a proposer shall contact any members of the evaluation committee or any GDPM employee besides the Contact Person specified in this proposal; failure to do so will more than likely result in removal of the proposer from the evaluation process.

The evaluation criteria to be used in reviewing proposals and their respective weights are as follows:

<b>NO.</b>	<b>FACTOR</b>	<b>MAXIMUM POINTS</b>
<b>1</b>	<p><b>Fees:</b> The Respondent must provide a comprehensive Schedule of Fees that includes, at a minimum: initial installation and setup fees; training fees; annual maintenance fees (including changes to fees for option years); customer support/service costs; and all other applicable fees. The costs must be inclusive of all wage decisions and MBE/WBE and ACE Program requirements as described in this RFP.</p>	<b>25</b>
<b>2</b>	<p><b>Contractor Experience:</b> Respondent must have the capability and capacity to provide the product and services requested.</p>	<b>25</b>
<b>3</b>	<p><b>Proposed Scope of Work</b> The Respondent's proposal effectively fulfills the scope of work that will be carried out under this RFP as described in Appendix A (Scope of Work). The Respondent's proposed scope of work will effectively allow GDPM to manage its vendors and monitor and report its compliance with requirements of the Davis-Bacon and Related Acts; HUD maintenance wages; GDPM's MBE/WBE Program; and Section 3</p>	<b>25</b>
<b>4</b>	<p><b>Execution of the Work and Project Timeline</b> The Respondent must provide a proposed timeline that addresses: how quickly it will transition GDPM from its current software provider to the selected product; when it will train GDPM staff on use of the software; and when it will train outside vendors (as needed) on use of the software.</p>	<b>25</b>
	<b>TOTAL POINTS</b>	<b>100</b>

**Scoring. Committee members will score proposal based on the criteria listed below:**

<b>POINTS</b>	<b>STANDARD</b>	<b>DESCRIPTION</b>
20-25	Total Applicability	The proposal exceeds all the requirements of the RFP and specifications in a highly competent and superior manner.
15-19	Substantial Applicability	The proposal meets all the requirements of the RFP and specifications and, in some respects, exceeds them
14-18	Average Applicability	The proposal adequately meets most of the requirements of the RFP and specifications.
9-13	Limited Applicability	The proposal meets some of the requirements of the RFP and specifications but contains some deficiencies. The proposal accomplishes some, but not all of the purposes stated in the RFP and specifications
4-8	Minimum Responsiveness	The proposal scarcely meets the requirements of the RFP and contains many deficiencies. The required documentation is in many respects inadequate, methodologically unsound, or scarcely accomplishes the purpose stated in the RFP and specifications.
0-3	Non-Responsive	A zero value typically constitutes no response or an inability of the Respondent to meet the minimum requirements described in this RFP.

<b>Evaluation Method</b>	<b>DESCRIPTION</b>
<b>Evaluation Packet for Proposals</b>	Internally, GDPM will prepare for each committee member an evaluation packet that will include the following: <ul style="list-style-type: none"> <li>• Instructions to committee members;</li> <li>• Proposal electronic tabulation form; and</li> <li>• Copy of all relevant RFP documents</li> </ul>
<b>Potential “Competitive Range” or “Best and Final Negotiations”</b>	GDPM reserves the right, as detailed within Paragraphs 7.2.N. through 7.2.R. of HUD Procurement Handbook 7460.8 REV 2, to conduct a “Best and Final” negotiation, which may include oral interviews with all Respondents deemed to be in the competitive range. Such interviews are at GDPM’s sole discretion.
<b>Determination of Top-Ranked Respondent(s).</b>	The points awarded by the evaluation committee determine the final rankings. Contract negotiations may, at GDPM’s option, be conducted prior to or after the Board of Commissioner’s approval.

<b>Notice of Evaluation Results</b>	<p>If an award is completed, all Respondents will receive by e-mail a Notice of Results of Evaluation. Such notice will inform all Respondents of:</p> <ul style="list-style-type: none"> <li>• Which Respondent received the award and the contract price and</li> <li>• Each Respondent’s right to a debriefing and to protest.</li> </ul>
<b>Restrictions.</b>	<p>Those individuals with familial (including in-law) relationships, employment relationships (past or current), ownership interests, and/or contractual relationships with principals and/or employees of a Respondent will be excluded from participating in the evaluation committee.</p>

## ELECTRONIC PROPOSAL FORMAT

**Proposal Submittal.** GDPM intends to retain the successful Respondent pursuant to a “Best Value” basis, not a “Low Proposal” basis (“Best Value,” in that GDPM will, as detailed within **Evaluation and Submission Section**, consider factors other than just cost in awarding a contract). To allow GDPM to properly evaluate all proposals, they must be formatted as follows:

Each category must be separated and numbered and labeled with the corresponding Electronic Tab (E-Tab) reference noted in the table below.

None of the proposed services may conflict with any requirement GDPM has published herein or has issued by addendum.

The proposal must be signed by an official authorized to bind the Respondent and must contain a statement that the proposal is firm for 120 days from the proposal deadline.

<b>E-Tab</b>	<b>Form/Subject</b>	<b>Description</b>
<b>1</b>	<b>Proposed Services</b>	<p>Respondent should include the following information:</p> <ul style="list-style-type: none"> <li>• Company introduction, strategy, and deliverables</li> <li>• Respondent’s qualifications to provide the services</li> <li>• Description of Respondent’s background and current organization.</li> <li>• Contact person for both the RFP process and contract, including: <ul style="list-style-type: none"> <li>○ Email Address</li> <li>○ Phone Number</li> <li>○ Mailing Address</li> </ul> </li> </ul>

2	<b>Evaluation Factor No. 1</b>	<p>Respondent should include information about the following:</p> <p><b>Schedule of Fees</b>  Must be as comprehensive as possible. At minimum, it must include, at a minimum: initial installation and setup fees; training fees; annual maintenance fees (including changes to fees for option years); customer support/service costs; and all other applicable fees. The costs must be inclusive of all wage decisions, MBE/WBE, and Section 3 as described in this RFP.</p>
2	<b>Evaluation Factor No. 2</b>	<p>Respondent should include information about the following:</p> <p><b>Contractor Experience:</b>  Respondent must have the capability and capacity to provide the product and services requested.</p>
2	<b>Evaluation Factor No. 3</b>	<p>Respondent should include information about the following:</p> <p><b>Proposed Scope of Work</b>  The Respondent’s proposal effectively fulfills the scope of work that will be carried out under this RFP as described in Appendix A (Scope of Work). The Respondent’s proposed scope of work will effectively allow GDPM to manage its vendors and monitor and report its compliance with requirements of the Davis-Bacon and Related Acts; HUD maintenance wages; GDPM’s MBE/WBE Program; and Section 3</p>
2	<b>Evaluation Factor No. 4</b>	<p>Respondent should include information about the following:</p> <p><b>Execution of the Work and Project Timeline</b>  The Respondent must provide a proposed timeline that addresses: how quickly it will transition GDPM from its current software provider to the selected product; when it will train GDPM staff on use of the software; and when it will train outside vendors (as needed) on use of the software.</p>

**Submission Conditions**

Respondents must furnish all information needed to evaluate the proposal. GDPM may disqualify proposals that fail to meet mandatory requirements of the RFP. GDPM will not consider verbal information provided by the Respondent.

All proposals must be submitted and time-stamped as received no later than the deadline stated herein (or within any ensuing addendum). GDPM business hours are 8 a.m. to 5 p.m. Monday through Friday.

Respondent must submit electronically to [ebid@dmha.org](mailto:ebid@dmha.org) on the date and time requested list on page 1 of this document.

## GREATER DAYTON PREMIER MANAGEMENT

### *General Terms and Conditions*

This Professional Services Agreement (the "Agreement") is entered into between the Dayton Metropolitan Housing Authority d/b/a Greater Dayton Premier Management ("GDPM") a body corporate and politic, organized and existing under that laws of the State of Ohio and Contractor for the purposes of Contractor providing services to GDPM. Hereinafter, GDPM and Contractor are collectively referred to as the "Parties".

**NOW THEREFORE**, in exchange for mutual consideration the Parties agree to the following general terms and conditions:

1. **Services:** Contractor agrees to perform and carry out in a prompt, satisfactory, and professional manner all necessary services required to fulfill the obligations as set forth in the Scope of Work provided to Contractor. Additionally, the services, materials, and products provided by Contractor are limited to the services, materials, and products as set forth in the Scope of Work. The contents of the solicitation, Contractor's quotes amount and this Agreement will become contractual obligations if Contractor is awarded the Contract. Failure of Contractor to accept the terms and conditions contained herein may result in termination of this Agreement, may subject Contractor to the liquidated damages provision contained herein and Contractor may be removed from future GDPM contracting opportunities.
2. **Contract Term:**
  - 2.1. This Agreement shall become effective upon the date indicated by GDPM in its acceptance of quote/notification of contract award. If the notification and/or solicitation documents include an option to renew the contract, GDPM may, in its sole discretion, exercise said option(s) upon the expiration of this Agreement. However, at no time, may the term of this Agreement exceed five years.
  - 2.2. All Work will commence upon authorization of GDPM. All Work shall proceed in a timely manner without delays. The Contractor shall perform said Work in accordance to the terms and conditions provided for and agreed upon herein.
3. **Mandatory HUD Terms:** Parties acknowledge and agree that *Form HUD-5370-C General Conditions for Non-Construction Contracts Section 1* contains the mandatory terms prescribed by the United States Department of Housing and Urban Development and that said terms are incorporated into this Agreement, attached hereto, and may not be modified or amended. Any term hereinafter, including, without limitation, any provisions contained in Contractor's Solicitation Response and/or any other contract documents, even if signed by GDPM, that conflict with the terms set forth in *Form HUD-5370-C General Conditions for Non-Construction Contracts Section 1* is void and unenforceable.
4. **HUD Terms Design Services:** If the Work includes design services, *Form HUD-51915 Model Form of Agreement between Owner and Design Professional* and all provisions, terms, and conditions within are incorporated into this Agreement.
5. **Mandatory Housing Authority Terms:** Parties acknowledge and agree that this Agreement

contains *GDPM's Professional Services Agreement General Terms and Conditions* and contains mandatory terms as set-forth by GDPM and said terms shall not be modified or amended without the express written approval of GDPM's Contracting Officer and without such approval the terms as forth in this Agreement are in full force and effect. Any term(s) hereinafter including, without limitation, any provisions contained in Contractor's Solicitation Response and/or any other contract documents, that conflict with the terms as set forth in this Agreement is void and unenforceable. Any Provision(s) contained within the *GDPM Professional Services Agreement General Terms and Conditions* that is similar to any provision(s) or has the same or similar heading of any provision(s) of *Form HUD-5370-C General Conditions for Non-Construction Contracts Section 1* shall be considered supplemental provisions and are binding. Any Conflict in the language is unintentional and the HUD Provision(s) shall be applicable.

**6. Subject to Appropriation of Funds:** GDPM's funds are contingent upon the availability of lawful appropriations by the United States Congress and the United States Department of Housing and Urban Development. If the United States Congress and/or the United States Department of Housing and Urban Development fail at any time to continue funding for the payments or obligation due hereunder, the Work under this Contract that is affected by the lack of funding will terminate and GDPM will have no further obligation to make payments and will be released from its obligations on the date funding expires.

**7. Compensation and Payment:**

**7.1.** GDPM will pay Contractor directly at the rate specified in the Contractor's proposal in approximately thirty (30) days of receipt of a properly completed and accepted invoice. If Contractor fails to satisfactorily comply with any term or condition of this

Agreement, GDPM may, in its sole discretion, withhold payments claimed by Contractor for services rendered. No payment will be made for incomplete, inaccurate, or defective work. GDPM shall not pay any fees or payments that are putative in nature and/or are not contemplated in this Agreement, including, without limitation, one-time fees, recurring fees, staging fees, training fees, annual fee increases, early termination fees, late fees and/or additional miscellaneous fees.

**7.2.** Unless expressly specified in the Contract Documents, the unit prices reflected in the accepted Request for Quote Form shall remain firm with no provision for price increases during the term of the Contract.

**7.3.** Contractor must submit an original invoice to the office designated to Contractor by GDPM. To be a proper invoice, the invoice must include a description of services, an invoice number, a purchase order number and the date(s) services were provided.

**7.4.** GDPM shall not be obligated or be liable for any costs incurred prior to award of contract. All costs to submit and prepare a response to the solicitation documents shall be borne by the Proposer/Bidder.

**8. Warranties and Representations:** Contractor represents and warrants that its services and materials provided for under the terms of this Agreement will be of good quality and consistent with the professional skill and care ordinarily provided by professionals performing the same or similar service and such services and materials shall be provided in accordance with generally accepted industry standards. Additionally, Contractor represents and warrants the following:

- 8.1. Contractor has the right to enter into this Agreement.
- 8.2. All services, materials and products provided for under this Agreement are provided in accordance with the sound professional standards and the requirements of this Agreement and without any material defect.
- 8.3. No services or materials provided for by Contractor under this Agreement will infringe upon the intellectual property rights of any third party.
- 8.4. All services, materials and products provided for hereunder are merchantable and fit for the particular purpose described in this Agreement.
- 8.5. Contractor has the right and ability to grant the license for any materials and/or products in which title does not pass to GDPM.
- 8.6. Contractor will observe and abide by all applicable federal, state and local laws, rules, regulations, ordinances and codes and obtain any license(s), permit(s) or the like required to provide the services and materials under this Agreement.
- 8.7. Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Agreement.
- 8.8. Contractor warrants that all equipment, mechanical devices, hardware and software or other type of physical machinery ("equipment") fully complies with all governmental and environmental safety standards applicable to such equipment. The Contractor also warrants that the equipment will perform substantially in

accordance with its user manuals, technical materials, and related writings published by the manufacturer with respect to such equipment, and that such equipment will achieve any function described in such writings.

If any services of Contractor or any materials or products provided for by Contractor fail to comply with these representations and/or warranties, and Contractor is so notified in writing, Contractor shall either 1) correct such failure with all due speed, or 2) shall refund the amount of compensation paid for the services, materials or products. Contractor shall also indemnify GDPM for any direct damages and claims by third parties based upon a breach of these warranties.

9. **Non-Exclusivity:** This Agreement is a non-exclusive agreement. GDPM specifically reserves the right to contract with other entities for the services described in the Contract Documents or for similar services it deems, in its sole discretion, such action to be GDPM's best interest.
10. **Indemnity:** Contractor shall, to the fullest extent permitted by law, indemnify and hold harmless GDPM and its officers, employees and agents for any and all claims, damages, lawsuits, costs, judgments, expenses, and any other liabilities including all costs and expenses and fees of litigation that arise directly or indirectly from any acts or omissions related to this Contract performed or omitted by Contractor or its agents, and/or employees and includes, but it not limited to, privacy related claims.

Contractor will also indemnify GDPM and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any copyright, patent, trade secret, or similar intellectual property right based upon GDPM's proper use of any products or supplies under this Contract. This obligation of

indemnification will not apply where GDPM has modified or misused the products or supplies and the claim of infringement is based upon the modification or misuse. GDPM agrees to give Contractor notice of any such claim as soon as reasonably practicable and to give Contractor the authority to settle or otherwise defend any such claim upon consultation with and approval by GDPM's General Counsel. If a successful claim of infringement is made, or if Contractor reasonably believes that an infringement claim that is pending may succeed, Contractor shall take one of the following four actions:

- 10.1. Modify the service(s), material(s) and/or product(s) so that the service(s), materials(s), and/or product(s) are no longer infringing.
- 10.2. Replace material(s) and/or product(s) with an equivalent or better item.
- 10.3. Acquire the right for GDPM to use the infringing service(s), material(s) and/or product(s) as intended; or
- 10.4. Cease the related service(s) and/or remove the material(s) and/or product(s) and refund any amount GDPM paid for the service(s), material(s) and/or products(s) that required the availability of the infringing material(s) and/or product(s) for it to be useful to GDPM.

Nothing contained in this provision shall be construed to limit any indemnity obligations of Contractor as set forth within the provisions of the Contract Documents.

It is agreed and understood that in no event shall any GDPM official, officer, employee, or agent be held personally liable or responsible for any covenant or agreement whether expressed or implied.

It is acknowledged and agreed that GDPM has no authority to provide guarantees, indemnifications, rights of set off, or other pledges involving assets of any Public Housing Project as defined in the HUD Annual Contributions Contract between GDPM and HUD ("Annual Contributions Contract"), or other asset of GDPM, including any assets related to the federal programs administered by GDPM. Accordingly, except as approved by HUD in writing, it is acknowledged that there is no legal right of recourse against (1) any GDPM Public Housing Project; (2) any operating receipts, as the term operating receipts is defined in the Annual Contributions Contract, HCV receipts or GDPM Capital Funds; (3) any GDPM public housing operating reserve as reflected in GDPM's annual operating budget and required under the Annual Contributions Contract; or (4) any other asset of GDPM related to the U.S. Housing Act of 1937, as amended. Should any assets of GDPM be identified at a later date as meeting the criteria set forth above, any guarantees, indemnifications, rights of set off, or other pledges involving those assets will be deemed null, void, and unenforceable.

**11. Insurance: SEE REVISION LISTED ON PAGE 10**

~~11.1. Contractor shall obtain and maintain during the performance of any services under this Agreement the following insurance and the amount of such coverage shall be in an amount to cover all indemnity obligations and shall include, but not necessarily be limited to, the following:~~

~~11.1.1. Commercial general liability insurance, including a contractual liability endorsement, in an amount not less than: \$5,000,000 each occurrence; \$10,000,000 general aggregate; \$1,000,000 damage to premises and fire damage; and \$5,000,000 medical expenses for any one person.~~

~~11.1.2. Professional liability and/or "errors and omissions" coverage with a limit not less than \$1,000,000.~~

~~11.1.3. Automobile Liability Insurance with GDPM named as an additional insured with minimum limits as follows: \$2,000,000 combined single limit; \$50,000/\$100,000 for vehicles utilized during the contract when not owned by the Contractor; \$5,000 medical pay.~~

~~11.1.4. Workers' Compensation Insurance as required by state statute and Employer's Liability Insurance covering all of Contractor's employees acting within the course and scope of this Contract.~~

~~11.1.5. Excess Liability Insurance (Umbrella Policy); may compensate for a deficiency in general liability or automobile insurance coverage limits.~~

~~11.2. The coverages provided to GDPM shall be primary and not contributing to or in excess of any existing GDPM insurance coverages.~~

~~11.3. The Insurance shall contain provisions preventing cancellation or non-renewal without at least 45 days' notice to GDPM and stating that the carrier will waive all rights of recovery, under subrogation or otherwise, against GDPM, its office, agents, employees or Board of Commissioners.~~

~~11.4. Contractor shall provide certificates evidencing the coverage required herein to GDPM upon execution of this Agreement and annually, thereafter, evidencing renewals thereof. At any time during the term of this Agreement, GDPM may request, in writing, and the Contractor shall thereupon, within 10 days, supply to GDPM evidence satisfactory of its compliance.~~

**12. Limitation of Liability:** Notwithstanding any limitation provisions contained in the Contract Documents and materials incorporated by reference, the Parties Agree as follows, unless specified otherwise in this Agreement:

**12.1.** In no event shall GDPM be liable for any indirect, incidental, or consequential loss or damage of any kind, including but not necessarily limited to loss of profits or anticipated profits and loss of data, arising from, or in connection with, its use, performance or nonperformance, even if GDPM had been advised, knew or should have known of the possibility of such damages.

**13. Amendments:** No oral representations will be made as to the meaning of the Contract Documents. No amendment or modification of this Agreement will be effective unless it is in writing, on GDPM letterhead and signed by both Parties. At no time shall an amendment or modification be effective that conflicts with any mandatory provision set forth in *Form HUD-5370-C General Conditions for Non-Construction Contracts Section I*.

**14. Confidentiality:** Contractor will be privy to sensitive information, documents, data, records, or other material that is confidential under this Agreement. Contractor may not disclose any information obtained by it as a result of this Agreement without the express written permission of GDPM. Contractor shall assume that all information, documents, data, records, or other material provided for under this Agreement is confidential.

**14.1.** The Contractor will be liable for the disclosure of any confidential information. The Parties agree that the disclosure of confidential information obtained under this Agreement may cause GDPM and/or its officers and/or employees irreparable damage for which remedies other than injunctive relief may be inadequate, and the Contractor agrees that in the event of such breach, GDPM shall be entitled to temporary and permanent injunctive relief to enforce this provision without the

necessity of proving actual damages. This provision shall not, however, diminish or alter any right to assert claims and/or to recover damages.

**14.2.** When applicable, Contractor agrees to complete with the Privacy Act of 1974 and all rules and regulations issued under the Privacy Act of 1974.

**15. Ohio Public Records Law:** Correspondence, materials and documents received or produced pursuant to the work related to this Agreement/Solicitation may become public records subject to the provisions of Ohio Public Records access law.

**16. Publicity:** Contractor agrees to submit to GDPM all advertising and publicity related matter relating to this Agreement wherein GDPM's name is mentioned or language used from which the connection of GDPM's name may, in GDPM's judgment, be inferred or implied. Contractor shall not publish or use such advertising and publicity matters without prior express written consent of GDPM.

**17. Non-Waiver of Rights:** If either party does not seek compensation for breach or insist upon strict performance of any provision of this Agreement, that Party is not prevented from seeking compensation or insisting upon strict performance for a future breach of the same or similar provision. Failure of GDPM to take any action or to assert any right hereunder shall not be deemed a waiver of such right.

**18. Taxes:** GDPM is exempt from state and local sales tax and does not agree to pay any taxes.

**19. Remedies:** GDPM may pursue any remedy available under law, including, but not necessarily limited to the following:

**19.1. Actual Damages:** Contractor is liable to GDPM for all actual and direct damages caused by Contractor's default. In the event

Contractor fails to provide services or material as provided for in the Contract Documents, GDPM may substitute the services and/or material from a third party. GDPM may recover the costs associated with acquiring substitute services and/or materials, less any expense or costs saved by Contractor's default, from Contractor.

**19.2. Liquidated Damages:** If actual or direct damages are uncertain or difficult to determine, GDPM may recover liquidated damages in the amount of 1% of the total value of this Agreement as contemplated within the Contract Documents for every day that the default is not cured by the Contractor. Additionally, if the default is the result of a breach contemplated for in Provision 1 of this Agreement and such default leads to the necessity for GDPM, as determined by GDPM, to re-solicit for the services, materials, and/or products contemplated for under this Agreement, Contractor shall pay to GDPM the sum of \$2,200 for such costs related to the re-solicitation and procurement of another provider. Parties agree that this sum reasonably reflects the cost associated with the re-solicitation contemplated for under this Provision.

**19.3. Deduction of Damages from Contract Price:** Upon prior written notice being issued to the Contractor, GDPM may deduct all or any part of the damages resulting from Contractor's default from any part of the price still due on this Agreement.

**20. Contractor Suspension and Debarment:** If Contractor fails to perform any one of its obligations under the Contract Documents it will be in default and GDPM, at its sole discretion, may suspend rather than terminate this Agreement when GDPM believes that doing so would better serve its interest. In case of a suspension, the amount of compensation due to

Contractor will be determined in the same manner as provided for in the Termination provision(s) set forth in *Form HUD-5370-C General Conditions for Non-Construction Contracts Section 1* less any damage to GDPM resulting from Contractor's breach or other default.

Further, a contract award shall not be made available to parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., o.235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- 21. Contractor Performance Evaluation and Monitoring:** GDPM, with the cooperation of the Contractor, may complete periodic monitoring and evaluation activities. GDPM may evaluate the Contractor's Performance at any time including without limitation during the term of the contract, prior to exercising an option, and/or after completion of the Contract Work or Contract Term. GDPM will retain the evaluation. The Contractor may request a copy of the completed evaluation(s). If the Contractor wishes to comment or take exception to any rating or remark, the Contractor shall send a response in writing to GDPM within 30 days of Contract Completion and/or Termination. GDPM may use the evaluation(s) in determining the responsibility of the Contractor for award of future contracts. Poor evaluations may lead to a determination that Contractor is not responsible, and therefore ineligible for award of future contracts for a period of not less than one year.

GDPM may request information from the Contractor for use in evaluating a subcontractor. If information is requested, the Contractor shall comply in a timely and responsive manner.

If a breach of the Contract is committed by the Contractor or is attributable to a Subcontractor, that breach may be used in the responsibility analysis of the Contractor and/or Subcontractor (where applicable) for future contracts or subcontracts for a period of 5 years after the date of the breach unless said breach results in Contractor being placed on debarment list, then for the period provided therein.

- 22. Additional Services/Purchases by Other Public Agencies ("Piggy-Back"):** Contractor acknowledges that other Public Agencies may seek to "Piggy-Back" under the same terms and conditions, during the effective period of Agreement. The services and/or purchases being offered in the Contract Documents, Fee Submission and/or Best and Final Offer and for the same prices and/or terms proposed therein. Contractor has the option to agree or disagree to allow contract Piggy-Backs on a case-by-case basis. Before GDPM permits another Public Agency to Piggy-Back any contract, GDPM shall first obtain the awarded Contractor's approval. Without the Contractor's approval, GDPM cannot permit the requesting Public Agency the right to Piggy-Back. In the event the awarded Contractor allows another Public Agency to join the GDPM Contract, it is expressly understood that GDPM shall in no way be liable for the joining Public Agency obligations to the awarded Contractor in any manner whatsoever.
- 23. Survivorship:** All provisions hereunder relating to payment, confidentiality, warranties, limitations on damages, publicity, choice of law, and indemnity shall survive the termination of this Agreement.
- 24. Governing Law:** This Agreement shall be governed and construed exclusively by its terms

and by the laws of the State of Ohio, and the venue for any disputes will be exclusively with the court of appropriate jurisdiction in Montgomery County, Ohio.

- 25. Federal Requirements:** The Work to be performed under this Agreement will be paid for in part by federal funds and therefore is subject to federal statutes, rules, regulations, laws, orders and directives applicable to work paid for by federal funds. In the event an applicable federal requirement conflicts with any provision of the Contract Documents, the federal requirement shall prevail and take precedence over and against such conflicting provisions. Federal requirements may include, but is not limited to:
- 25.1.** Any applicable federal Drug-Free Workplace requirements,
  - 25.2.** Executive Order 11061, as amended which directs the Secretary of HUD to take all action necessary and appropriate to prevent discrimination by agencies that utilize federal funds;
  - 25.3.** The Civil Rights Act of 1964; as amended
  - 25.4.** The Age Discrimination Act of 1975, as amended;
  - 25.5.** Anti-Drug Abuse Act of 1988, as amended;
  - 25.6.** HUD Bulletin 909-23.
  - 25.7.** The American with Disabilities Act, as amended;
  - 25.8.** The Byrd-Anti-lobbying Act Amendment (31 U.S.C. 1352), as amended;
  - 25.9.** Section 3 of the Housing and Urban Development Act of 1968, as amended (24 CFR Part 135);
  - 25.10.** For prime construction contracts in excess of \$2,000, the Davis Bacon Act (40 U.S.C. 3141-3148), as amended and 29 CFR Part 5; and
  - 25.11.** The Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution control Act (33 U.S.C. 1251-1387), as amended.
- 26. State Requirements:** GDPM is an Ohio Political Subdivision and is subject to certain state

requirements. Therefore, the work to be performed under this Agreement may subject to state statutes, rules, regulations, laws, orders and directives applicable to public subdivisions. In the event an applicable state requirement conflicts with any provision of the Contract Documents, unless federal preemption applies, the state requirement shall prevail and take precedence over and against such conflicting provisions. State requirements may include, but are not limited to, any drug-free workplace requirements. Contractor agrees to abide by all State Requirements.

- 27. Force Majeure:** Neither party shall be liable for failure to perform if such failure is caused by conditions beyond its control including, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections, and delays in delivery of materials. In the event a Force Majeure occurs, the party injured by the other's inability to perform may suspend the Agreement, in whole or in part, for the duration of the Force Majeure events. The party experiencing the Force Majeure event shall cooperate with and assist the injured party in all reasonable ways to minimize the impact of the Force Majeure on the injured party, which may include locating and arranging substitute services if necessary. .
- 28. Severability:** If any provision of this Agreement is determined by a court having appropriate jurisdiction to be unenforceable to any extent, the rest of the provisions of this Agreement and the Contract Documents will remain enforceable to the fullest extent permitted by law.
- 29. Ownership and Use of Documents:** All documents, materials, data, and records generated as a result of this Agreement shall remain the property of GDPM. If this Agreement results in any material to be copyrighted, the author may copyright the work. However, GDPM and the United States Department of Housing and Urban Development will have the right to a royalty free, nonexclusive and irrevocable license to reproduce, publish, use and authorize others to use the work for government purposes.

**30. Entire Agreement & Order of Precedence:** This Agreement and the Contract Documents specified below and incorporated by reference constitute the entire agreement between the parties and supersede any prior understanding among them. The term “Contract Documents” shall include the documents listed in this Provision 27. Each of the Contract Documents is an essential part of the agreement between the Parties, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to provide for the entire agreement. In the event of any conflict among the Contract Documents, the order of precedence shall be:

- 30.1.** Applicable Federal and State of Ohio statutes and regulations including the mandatory contract provisions set forth in 2 CFR Part 200, Appendix II;
- 30.2.** If applicable, Form HUD-51915 Model Agreement between Owner and Design Professional;
- 30.3.** Form HUD-5370-C General Conditions for Non-Construction Contracts
- 30.4.** This Agreement
- 30.5.** Related GDPM purchase orders, GDPM notice of contract commencement/award and accompanying contract supplemental terms
- 30.6.** The Contractor’s Fee Submission and/or Best and Final Offer
- 30.7.** Contractor’s Proposal subject to any limitations set forth in this Agreement
- 30.8.** Contractor form of Agreement, if applicable
- 30.9.** Other Documents incorporated by reference (if applicable)

**31. Additional Terms and Conditions:** No additional terms and conditions included with Contractor’s Proposal that modify the order of precedence as listed above, and/or that impose additional liability(ies), obligation(s), or indemnity(ies) upon GDPM, and/or that limit the liability(ies), obligations, or indemnity(ies) of Contractor shall be evaluated or considered and any and all such additional terms and conditions shall have no force and effect and are inapplicable to this Agreement. If any additional term conflicts with the terms or intent of this Agreement, such term(s) is void and unenforceable. If additional

terms and conditions are submitted either purposefully through intent or design or inadvertently appearing separately in transmitting letters, specifications, boilerplate agreements, literature, price lists or warranties, it is understood and agreed the general terms and conditions in this Agreement are the only conditions applicable to this proposal and the Proposer’s authorized signature affixed to the proposal attests to this. If Contractor, in the ordinary course of its business, requires any type of or form of agreement that provides for Contractor’s general terms and conditions and such term(s) and condition(s) are contrary to or conflict with any term(s) or conditions(s) provided for herein, Parties unequivocally acknowledge and agree that the term(s) and condition(s) provided for herein shall take precedence and prevail including, but not limited to, instances when 1) the Contractor’s form of agreement is signed subsequent to Contractor’s Proposal submission and/or 2) the Contractor’s form of agreement expressly states that its terms and provisions take precedence and/or supersedes all other Contract Documents. Such terms and conditions will effectively be void and unenforceable. Although, such terms and conditions may remain in Contractor’s form of agreement, Parties acknowledge and agree that said terms and conditions have no effect, are void and are hereby expressly rejected.

**32. Contract Award/Commencement:** Upon submittal of its response to GDPM’s Solicitation, Contractor is accepting the terms of this Agreement. Unless expressly specified in GDPM’s acceptance of Contractor’s quote, upon issuance of award to Contractor GDPM is accepting Contractor’s offer contained in the quote/proposal form. No **other contractual documents will be necessary or accepted** unless specifically expressed in the notification of award.

## Greater Dayton Premier Management (GDPM) Insurance Requirements

### Insurance

#### a) Property Insurance

**Contractor** shall be responsible for procuring insurance coverage on **GDPM's** property to extent deemed necessary by Contractor to protect its interests. **Contractor** waives any and all rights of subrogation against **Client** for any loss or damage to **Contractor's** property.

#### b) Liability Insurance

At **Contractor's** sole expense, **Contractor** shall obtain and maintain at all times during the term of this contract, including any renewals thereof, the following insurance coverage with limits of liability not less than Two Million Dollars (\$2,000,000) per occurrence:

- Commercial General Liability including
  - \* Independent Contractors
  - \* Contractual Liability including defense
  - \* Products & Completed Operations
  - \* Ohio Stop Gap - \$500,000 minimum sublimit
  - \* Fire / Water Legal Liability - Real Property
  - \* Cyber Liability \$5,000,000

**Client's** insurance coverage shall be provided on an "occurrence" policy form basis with an insurance company authorized to operate in the State of Ohio and having an A.M. Best's Rating of not less than A-:VI unless expressly approved in writing by **Client**. Said insurance policies shall be endorsed to include **Client**, its employees, officials, etc. as additional insured without any cross liability exclusion for **Client's** interests.

**Contractor** agrees that if 50% of any aggregate policy limits are exhausted by either paid or reserved claims, **Contractor** will purchase additional insurance to at least replenish the aggregate limit(s).

#### c) Workers Compensation Insurance

**Contractor** shall obtain and maintain at all times during the term of this agreement, including any renewals thereof, Workers Compensation insurance in compliance with State of Ohio law.

#### d) Evidence of Coverage

**Contractor** shall provide **GDPM** with evidence of insurance coverage via certificates of insurance and if

requested by Client, complete copies of said policies (redacting any proprietary or confidential information) including any amendments or modifications of said policies during the term of this agreement.

#### e) Notice of Cancellation or Material Change

**Contractor** shall cause its insurance carrier to provide **GDPM** thirty (30) day notice of cancellation or material change in coverage and agrees to provide a copy of carrier notices of change in policy conditions as soon as **Contractor** receives from its carrier.

#### f) Acknowledgement

**Contractor** agrees and acknowledges these insurance requirements are the minimum the **GDPM** desires to protect **GDPM's** interests and that the insurance requirements are in no way represented as fully protecting the interests of the **Contractor**.

## Is your Request for Proposal Packet Complete?



### Are the following forms completed and in our Bid Packet?

1. **Professional Services Cover Sheet** – *must be completed & signed*
2. **Scope of Work Description**– *must be reviewed*
3. **Evaluation and Submission** - *must be completed*
4. **Vendor Registration & W9** – *must be completed, verify registration with [procurement@dmha.org](mailto:procurement@dmha.org)*
5. **Section 3 Forms** – *must be returned with proposal*
6. **Non-Collusive Affidavit** – *must be completed*
7. **Debarment Suspension Ineligibility Exclusion** – *must be returned with proposal*
8. **HUD 50070 Certification for a Drug-Free Workplace Form** – *must be returned with proposal*
9. **HUD-92010: Equal Employment Opportunity Certification Form** – *must be returned with proposal*
10. **HUD-5369-B: Equal Employment Opportunity Certification Form** – *must be reviewed*
11. **HUD-5369-C: Equal Employment Opportunity Certification Form** – *must be returned with proposal*
12. **GDPM General Terms and Conditions for Constructions Services** - *must be reviewed*
13. **Certificate of Insurance** – *Proof of required coverages listed within the GDPM Terms and Conditions*
14. **Decline to Bid** - *must be returned with proposal*