

Credit & Criminal Background Check Services

Request for Proposals (RFP)

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Credit & Criminal Background Check Services
REQUEST FOR PROPOSALS (RFP)
INSTRUCTIONS

I. GENERAL INFORMATION

A. Introduction

Charleston-Kanawha Housing Authority (CKHA) is a Public Housing Agency established in 1939. The agency's main office is located at 1525 Washington Street West, Charleston, WV 25387. CKHA's mission is to provide every resident with a decent, safe, affordable place to live while linking or providing programs that will assist them on their journey to self-sufficiency. Through the combined Public Housing and HCV programs, the agency assists nearly 4,500 families in the Greater Kanawha Valley with an annual budget in excess of \$25 million.

For more information on CKHA and its rental assistance programs, please visit the Housing Authority website at www.ckha.com.

B. Scope of Services

Charleston-Kanawha Housing Authority (CKHA) is seeking Proposals from qualified consultants and firms provide Tenant Screening Services and other information to help CKHA staff determine whether applicants for housing are suitable for residence in CKHA owned and/or managed communities, or participation in the Housing Choice Voucher (HCV) program administered by CKHA. On an as-needed basis other HA departments may also require tenant screening services for other reasons such as home-ownership programs or to investigate alleged fraudulent activity by program participants.

Bidders submitting proposals to the RFP must not be debarred, suspended or otherwise prohibited from professional practice by any federal, state or local agency.

Bidders will be expected to provide Tenant Background Checks as outlined in Scope of Work Exhibit A.

C. General Requirements

- Proposals submitted must remain open for a period of 90 days from the date of the opening of proposals.
- All blanks and certification in the RFP packet must be completed and the authorized representative must sign the proposal.
- All proposal prices shall be itemized and be on a firm fixed price and are not subject to adjustment based on cost incurred.
- Contractors must carefully study the "Instructions of Offerors, NonConstruction" contained in form HUD-5369-B attached hereto. Contractors are required to comply with the said instructions.

- Form HUD-5369-C attached hereto contains “Certification and Representation of Offerors, Non-Construction Contract”. Contractors are required to sign Form HUD-5369C, to certify that the information contained in the Certifications and Representations is current, accurate and complete.
- Contractors are required to execute all forms in the RFP package.
- Contractor shall demonstrate professional qualifications of the firm/company and evidence of the ability to perform the work, as indicated by staff profiles, client lists and references.
- Contractor shall obtain and pay for all permits, certificates and licenses required and necessary for the performance of the work specified herein, shall post notices required by law and shall comply with all laws, ordinances and regulations bearing on the conduct of the work.

D. Questions from Prospective Bidders

Any prospective Bidder desiring an explanation or interpretation of the RFP, statement of work, etc., must request it in writing. Oral explanations or instructions will not be binding. Any information given to a perspective Bidder concerning a RFP will be posted on the CKHA website as an addendum to the RFP.

All questions regarding this RFP should be directed in writing to Clifton Clark no later than 3:00 p.m. on July 1, 2015. Inquiries may be delivered by fax at 304.348.6455, or via email to cclark@ckha.com. All addendums will be placed on CKHA’s website at www.ckha.com by close of business day on July 1, 2015.

E. CKHA’s Reservation of Rights

Right to reject, waive, or terminate the RFP. CKHA reserves the right to reject any or all proposals, to waive any informality in the RFP process, or to terminate the RFP process at any time, in its sole and absolute discretion if deemed by CKHA to be in its best interests.

1. Right to Not Award. CKHA reserves the right not to award a contract pursuant to this RFP.
2. Right to Terminate. CKHA reserves the right to terminate a contract awarded pursuant to this RFP, at any time for its convenience upon five (5) days written notice to the successful Bidder(s).
3. Right to Determine Time and Location. CKHA reserves the right to determine the days, hours and locations that the successful Bidder(s) shall provide the services called for in this RFP.
4. Right to Determine Financial Responsibility and Viability. CKHA reserves the right to require of Bidder information regarding financial responsibility and viability or such other information as CKHA determines is necessary to ascertain whether a proposal is in fact the lowest responsive and responsible proposal submitted.
5. Right to Retain Written Proposals. CKHA reserves the right to retain all written proposals submitted to CKHA by all Bidders in response to this RFP, and not permit withdrawal of same for a period of 60 calendar days subsequent to the deadline for receiving said proposals. CKHA may permit the withdrawal of proposals when requested in writing by the Bidder and such request is approved in writing by the CKHA Chief Executive Officer (CEO) in his/her sole and absolute discretion.

6. Right to Reject Any Proposal. CKHA reserves the right to reject and not consider any proposal that does not meet the requirements of this RFP, including but not limited to incomplete proposals and/or proposals offering alternate or non-requested services.
7. No Obligation to Compensate. CKHA shall have no obligation to compensate any Bidder for any costs incurred in responding to this RFP.
8. Right to Prohibit. CKHA shall reserve the right to at any time during the RFP or contract process to prohibit any further participation by a Bidder or reject any proposal submitted that does not conform to any of the requirements detailed herein.

In no event will CKHA permit modification to a Proposal after submission.

II. APPLICATION PROCESSING

A. Organization of Submitted Materials

All proposals submitted in response to this solicitation must conform to all of the entire requirements and specifications outlined within the RFP document and any designated attachments in their entirety. All questions within the application must be answered. Questions must be answered on a separate sheet of paper tabbed separately. If any questions are left blank the application will be considered deficient and ineligible to compete in the RFP process.

Applicants must submit one (1) original and three (3) additional copies of the entire packet, including all attachments. At least a twelve (12) point font must be used. All applications and accompanying documents must be paper copies. The information should be 8.5" x 11" format bound by a single staple in the top left-hand corner or a three-ring / spiral binder. A numbered or lettered tab shall separate each section. All proposals must be addressed to Charleston-Kanawha Housing Authority in an envelope(s) clearly marked "RFP for Credit & Criminal Background Check Services." Where possible, copies should be submitted as two-sided copies in order to conserve paper. **No electronic versions of the application will be accepted.**

All documents submitted as part of the proposal will become property of CKHA. Any material submitted that is confidential must be clearly marked as such, and may be subject to disclosure pursuant to applicable law.

B. Submittal Deadline

All proposals MUST be received no later than 2:00 p.m. on Tuesday, July 7, 2015. Proposals may be submitted by mail or hand delivered to:

Attn: Clifton Clark, Accounting Supervisor
Charleston-Kanawha Housing Authority
1525 Washington Street West, Charleston, WV 25387.

CKHA will date and time stamp all applications upon receipt. Under the competitive proposal selection process, submissions are not opened publicly.

Proposals submitted after the deadline indicated above will not be accepted. Delays in mail service or other methods of delivery will not excuse a late proposal delivery.

C. Proposal Review

The Selection Panel appointed by CKHA's Accounting Supervisor will review, evaluate, rank, and select the applications according to the scoring criteria outlined in the RFP and CKHA policy.

D. Award

Proposals that meet the program requirements outlined in the RFP packet will be evaluated and ranked according to the selection criteria factors described in Section VI. A. of this RFP. A Ranking List will be prepared according to points awarded to each proposal. The evaluation will be completed within ten (10) business days of the proposal deadline. Bidders will be notified by letter of the acceptance or rejection of their proposal.

E. Proposal Cost

All costs incurred in the preparation and presentation of the proposal shall be completely absorbed by the applicant.

F. Affirmative Action

CKHA promotes competitive solicitations and does not discriminate on the basis of race, color, religion, creed, national origin, sex, disability, age or sexual orientation.

G. Proposals Open to Public

Subsequent to the award of the contract, all information submitted as part of, or in support of the proposal will be available for public inspection in compliance with state and federal laws.

III. CONTRACT AWARD

A. Contract Terms and Conditions

The following provisions are considered mandatory conditions of any contract award made by the CKHA pursuant to this RFP:

1. Contract Form: The CKHA will not execute a contract on the successful Bidders's form--contracts will only be executed on the CKHA form, or any other form substantially approved as to form and substance by CKHA and by submitting a proposal in response to this RFP, the successful Bidder agrees to do so (please note that the CKHA reserves the right to amend this form as the CKHA deems necessary).

2. Unauthorized Sub-Contracting Prohibited: The successful Bidder shall not have the right to , assign any right, nor delegate any duty for the work proposed pursuant to this RFP (including, but not limited to, selling or transferring the contract) without the prior written consent of the CKHA CEO or designee, in his/her sole and absolute discretion. Any purported assignment of interest or delegation of duty, without the prior written consent of the CKHA CEO or designee shall be void and may result in the cancellation of the contract with the CKHA, or may result in the full or partial forfeiture of funds paid to the successful Bidder as a result of the proposed contract; either as determined by the CKHA CEO or designee.
3. CKHA intends to execute a contract with the selected contractor for a period of one (1) year. Upon expiration of the initial term, agreement shall automatically renew each year, for a maximum of three (3) years, unless within thirty (30) days of expiration period of current term, customer notifies contractor in writing of decision to terminate agreement.

IV. RANKING CRITERIA AND PROPOSAL STRUCTURE

Following the proposal receipt deadline, an evaluation will be made of all proposals. The scoring criteria will be used by CKHA to rank and select applications. Each criterion is comprised of several components with an associated point value. The total points awarded to an application will be the aggregate of the component subtotals for each factor. Proposals will be ranked based on price and their overall percentage of points received.

At any time the CKHA may issue changes to this RFP in the form of an addendum. All addendums will be placed on the CKHA's website at www.ckha.com by close of business day on July 1, 2015. It is the applicant's sole responsibility to check the website for any addendums.

A. Ranking Criteria

1. Table of Contents (no points)

Proposers should demonstrate qualifications for work to be performed. In evaluating the proposals CKHA will use the following criteria and points system:

2. Report Content & Appearance (20 points):

The three (3) actual tenant screening and/or background reports will be evaluated based upon the following technical elements:

- a. Proper spelling and grammar;
- b. Professional appearance with appropriate use of white space;
- c. Comprehensible and use industry standard terms and measurements;
- d. Reports are well organized with a logical flow and grouping of information and content elements clearly labeled.

3. **Communication and transmission of information (15 points):**

- a. Consultant has demonstrated satisfactory evidence that their web site is secure; mechanisms are in place to ensure security of information posted to, archived with, and retrieved from the web site as well as during transmission between CKHA and the Consultant; adequate mechanisms are in place if first line security measures fail; and an adequate back-up system is in place to ensure that work flow is not interrupted as a result of a primary security system failure.
- b. Consultant has demonstrated that adequate practices and protections are in place to ensure that confidential information is handled appropriately.
- c. Consultant has demonstrated that the secure web site has adequate capacity to accommodate CKHA's limited duration archival needs as indicated in the Scope of Work.
- d. Consultant has demonstrated capacity to provide approximately 1,300 tenant screening and/or background reports annually, 90% or more of which are complete and provided to CKHA within two (2) business days.

4. **Customer Service (20 points):**

Consultant has demonstrated capacity to accommodate the customer service expectations stated in the Scope of Work including availability of supervisory and screening staff during regular business hours to respond to client inquiries and issues; capacity to provide training to CKHA staff; and a stated position regarding response to complaints, disputed information and requests for information.

3. **Cost of Proposed Services (30 points):**

The credit and criminal background check services fee, as a package and also individual fees per each service.

Maximum Total Points - 85

Based on its evaluation, the panel may:

- 1. Make a recommendation to CKHA's CEO and Board of Commissioners and request authority to negotiate a contract with one (1) or more Consultants; or
- 2. Request additional information from the Consultant whose responses appear to have the greatest likelihood of success; or
- 3. Invite one (1) or more Consultants whose responses may appear to be the lowest responsible bidder to attend an interview/presentation to discuss their proposal.

V. PAYMENT

Invoices must be fully itemized (unless a flat fee contract), and provide sufficient information for approving payment (itemized by program) and audit.

VI. IDENTIFICATION AND INSURANCE REQUIREMENTS

Upon award the successful proposer will be required to provide:

A. Indemnification

Contractor shall defend, hold harmless and indemnify CKHA, and its respective Board members, officers, agents, and employees of and from all claims, loss, damage, injury, actions, causes of liability of every kind, nature and description directly or indirectly arising out of or connected with the performance of this Contract and any of Contractor's operations or activities related thereto, excluding the willful misconduct or the gross negligence of the person or entity seeking to be defended, indemnified or held harmless.

B. Additional Named Insured

All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies, shall contain additional endorsements naming CKHA and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder.

C. Waiver of Subrogation Rights

The Contractor shall require the carriers of the above required coverages to waive all rights of subrogation against CKHA, its officers, employees, agents, volunteers, Contractors and subcontractors.

D. Policies Primary and Non-Contributory

All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by CKHA.

E. Proof of Coverage

The Contractor shall immediately furnish certificates of insurance to CKHA procurement Department administering the Contract evidencing the insurance coverage, including the endorsements above required, prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department. Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within sixty (60) days of the

commencement of this Agreement, the Contractor shall furnish certified copies of the policies and all endorsements

VII. ADMINISTRATIVE INFORMATION

1. **Minority-owned and Women-owned Business Enterprises:** CKHA strongly encourages minority-owned and women-owned businesses, socially and economically disadvantaged business enterprises, and small businesses to respond to this RFP, to participate as partners, or to participate in other business activity in response to this RFP.
2. **Section 3 Requirements:** Section 3 of the Housing and Urban Development Act of 1968 (hereinafter “S3”) requires CKHA to the greatest extent feasible to provide employment opportunities to S3 residents. S3 residents include residents of CKHA communities and other low-income residents of CKHA jurisdiction. Each Consultant is encouraged to submit with their submittal a 1) S3 Resident Employment Plan and a 2) S3 Business Certification that will result in hiring S3 residents to perform the work contemplated by this RFP.
3. **Basic Eligibility:** The successful Consultant must be licensed to do business in the State of West Virginia and must have a state Unified Business Identifier (UBI) number. In addition, the successful Consultant must not be debarred, suspended, or otherwise ineligible to contract with CKHA, and must not be included on the General Services Administration’s “List of Parties Excluded From Federal Procurement and Nonprocurement Programs” or the Department of Housing and Urban Development’s “Limited Denial of Participation” list.
4. **Payment Requirements:** Consultants should be aware that CKHA will only make payments on the contract issued under this RFP after the work being billed has been completed, and will pay reimbursable expenses to the Consultant only upon receipt of an invoice for the reimbursable expenses. No advance payments will be made to the Consultant, who must have the capacity to meet all project expenses in advance of payments by CKHA.
5. **Funding Availability:** By responding to this RFP, the Consultant acknowledges that any contract signed as a result of this RFP, the authority to proceed with the work is contingent upon the availability of funding.

VIII. PROCUREMENT SCHEDULE

Release/Advertisement of Request For Proposal	Dates
Pre-Bid Meeting	June 18, 2015
Questions Due Date	July 1, 2015
Proposals Due Date	July 7, 2015
Proposal Opening	July 7, 2015
Estimated Proposal Review Completion	July 21, 2015
Board Approval/Vote to award recommended proposer contract	July 27, 2015
Contract Start Date	August 1, 2015

EXHIBIT A

Criminal Background and Tenant Screening Services **Scope of Work**

SCOPE OF WORK

1. **Report Content Elements.** Tenant screening and other requested background reports will consist of designated combinations of the following informational elements:
 - a. Landlord/housing provider research covering the past five (5) years of applicant housing history regarding rent payment, unit care, peaceful enjoyment, and lease compliance.
 - b. Civil court activity to identify eviction actions, collections, judgments, and other liabilities related to housing history.
 - c. Integrated three (3) bureau industry-standard credit report and credit rating in compliance with the Fair Credit Reporting Act (FCRA) to assist in verification of applicant supplied income and asset information.
 - d. Personal address history from the applicant's credit report to identify addresses and localities where applicants have a history of financial activity.
 - e. Criminal history, to include sex offender searches; in all other states of record, as made known by applicant-provided housing history and by other information which surfaces in the credit and address history information. Report shall include description of charges, explanation and sentence for each citation.
 - f. Driver's license and/or state issued ID verification.
 - g. Social Security Number (SSN) verification.
 - h. Nationwide Criminal History report which includes Terrorist and Sex Offender searches. Report shall include description of charges, explanation and sentence for each citation.
 - i. Lifetime Sex Offender Registry reports (levels 1, 2, & 3).
2. **Report Format.** The Consultant will provide tenant screening and other requested background reports in a format that is mutually acceptable to the Consultant and CKHA, and will incorporate the following technical elements:
 - a. The report format may be subject to revision during the contractual period to accommodate administrative requirements. Such revisions will be communicated to the Consultant in writing at least ten (10) business days prior to implementation. A draft modified report will be provided to CKHA for review within five (5) business days of the revision request and a final, mutually accepted, revised report format will be ready at least 48 hours prior to implementation of the change(s).
 - b. The report must be available in an electronic format that is convertible to a printable format for imaging and reproduction purposes.
 - c. Housing history and criminal background information will be individually separated from the body of the report by page breaks in order to create a distinct and singular housing history and criminal background "sub-report" sections. References to an applicant's criminal background must not appear in other sections of the report.

- d. The report will have a professional appearance, using correct grammar and spelling, with appropriate use of white space to facilitate readability.
 - e. The report will be well organized with logical groupings of individual topics and information flow containing industry-standard terms and measurements.
 - f. The reports must be kept on file and stored electronically at the Consultant's site for reference and future retrieval for 12 months from the original request date.
3. **Customization Options.** The Consultant must have capacity to provide customized reports as requested by CKHA comprised of designated combinations of the nine (9) report content elements listed in the Scope of Work in the interest of economy, expense and time, as needed. Specifically:
- a. Full report, as defined by the Scope of Work.
 - b. Criminal background only, including sex offender check, driver's license (or state issued ID) and SSN validation.
 - c. Credit report only.
4. **Methods of Communication and Report Submission.**
- a. Consultant must operate a secure web site at all times with mechanisms in place to secure information posted to, archived within, and retrieved from the web site as well as during transmission via the Internet between CKHA and the Consultant.
 - b. Consultant must have capacity for CKHA staff to transmit application information to the Consultant by using a Consultant supplied and maintained web-based secure form and by facsimile using a Consultant provided hard-copy application and release of information form in the event that the Internet based system is experiencing technical difficulties.
 - c. Consultant must have practices and protections in place to ensure that confidential information is handled appropriately from the point at which a request is submitted by CKHA staff to receipt of the final report by CKHA staff. The Consultant cannot be held responsible for inappropriate use of information after the report has been received and reproduced.
 - d. Completed tenant screening and background reports will be posted by the Consultant on their secure web site to be accessed by designated CKHA staff.
 - e. The Consultant will immediately notify CKHA staff by e-mail using a standard format once completed reports have been posted to the Consultant's web site.
 - f. The Consultant's web site will have capacity to archive information for limited future retrieval (up to 120 days).
5. **Professional Service Expectations.**
- a. The Consultant will have staffing capacity to process approximately 2,000 tenants screening and background reports annually, 750 credit reports annually. The average monthly screenings are 100 per month for the HCV program and 100 - 125 per month for the public housing program. There may be additional screenings conducted for or to investigate alleged fraudulent activity by program participants, which are not included in the totals

above. The actual number of reports may vary significantly and CKHA cannot commit to or guarantee specific volume.

- b. The Consultant will endeavor to post completed tenant screening and background reports on its web site within two (2) business days of CKHA's report request submission. The two (2) day timeline is intended to be a general timeframe and should not result in limiting or mitigating the quality of information in the individual background reports which may on occasion require a longer timeframe to accurately complete. Delays will be communicated to CKHA staff as quickly as possible. For the purpose of any contract issued as a result of this RFP, fewer than 10% of reports submitted in excess of two (2) business days will be considered acceptable performance.
- c. The Consultant will be accessible during regular business hours from 9:00 a.m. to 4:30 p.m. (Eastern Time), Monday through Friday, to positively resolve problems and engage CKHA staff in building and maintaining a productive working relationship.
- d. The Consultant will provide on-site training to CKHA staff in the use of the Consultant's web site interface at the CKHA Programs Office located at 1525 Washington Street West, Charleston, WV 25387. Training will be provided one (1) time, for a minimum of three (3) hours to the CKHA staff.
- e. The Consultant will provide written information to CKHA staff regarding the interpretation of tenant screening and background reports including industry standard terminology, measurements, and concepts.
- f. The Consultant will have a stated position on the ethical obligations associated with the background-reporting industry which acknowledges the Consultant's obligations under law, states the Consultant's position on the accuracy of reported information, and outlines how the Consultant will respond to inquiries and complaints.
- g. The Consultant will provide qualified personnel (available free-of-charge upon referral from CKHA staff) to advise applicants who request clarification, who may dispute the information that the Consultant has reported about them, or who may simply desire advice about how to manage the problems in their credit report.

EXHIBIT B

Information To Be Provided In Submittals

To be considered responsive to this RFP and to facilitate evaluation, submittals should be organized in the order of the outline given below and include the information listed. Please refer to the section of this RFP on Submission Requirements for information on required number of copies. Effort should be made to keep submittals concise.

1. Report Content

Consultants should provide a temporary user name and password, valid for 120 days from the due date for proposals in order for CKHA staff to log in to the system. The log-in information should be sent by e-mail no later than the due date for proposals, to Clifton Clark, Accounting Supervisor at cclark@ckha.com. Written instructions for log-in and retrieval should be included. Each CKHA evaluator will access the web site in order to individually evaluate three (3) actual reports for the purpose of evaluating the Consultant's ability to comply with the stated Scope of Work and the Report Content evaluation criterion identified in this RFP.

2. Sample Report Format Customized to Meet CKHA Scope of Work

- a. Sample report that incorporates all nine (9) report content elements listed in the Scope of Work and is in compliance with the stated Report Format, clearly identifying the various sections of the report. The information provided may be fictitious. The purpose is to provide CKHA with an opportunity to learn what the Consultant's reports may look like.
- b. Clearly identify how the Consultant will electronically provide report request forms, completed tenant screening, and background reports to CKHA including the technical name of the web site platform/software to support it.

3. Customized Reports: List the Fees for the Following Examples of Possible Customized Reports

- a. Full report, as defined by the Scope of Work.
- b. Criminal background only, including sex offender check, driver's license (or state issued ID) and SSN validation.
- c. Credit report only

4. Methods of Communication and Transmission of Information

- a. Provide a statement regarding Consultant's web site security and describe the specific security measures that are in place to ensure the safety of information that will be posted to, archived within, and retrieved from the web site, as well as during transmission via the Internet between CKHA and the Consultant.
 - i. Describe what happens when security measures fail.
 - ii. Describe the back-up mechanisms in place to secure the web site.
 - iii. Describe what back-up mechanisms are in place in the event of a security breach that will ensure reports will continue to be securely sent, tenant screening will continue without interruption, and reports are posted for CKHA access in a timely manner.

- b. Describe how the Consultant's practices and protections ensure that confidential information is handled appropriately.
- c. Information management and security: For each of the items below describe how the Consultant ensures confidentiality as identified above.
 - i. Consultant's preferred method for receiving report requests.
 - ii. Alternative report request methods that can be used if necessary.
 - iii. Web based archiving and limited duration information retrieval.
 - iv. E-mail notifications for CKHA staff.

5. **Professional Service Expectations**

- a. Describe the business processes in place that allow the Consultant to accommodate the two (2) business day report turnaround expectation.
- b. Describe the Consultant's customer service philosophy by addressing the following issues as described in the Scope of Work.
 - i. Routine staffing levels to accommodate inquiries from clients.
 - ii. Client training curriculum and staff training which may be in excess of the training described in the Scope of Work.
 - iii. Client resource materials as described in the Scope of Work.
 - iv. Consultant's ability to address and correct if necessary, disputed information that has been reported about an applicant.
 - v. Describe the Consultant's position on ethical obligations associated with the consumer issues associated with the credit and background reporting industry.

6. **Handling of Sex Offender Information**

Provide a written narrative on how your organization obtains Sex Offender information and include the turnaround time.

7. **Attachments**

The following attachments must be reviewed. The attachments requiring signatures must be enclosed with your proposal, or the proposal will be returned as ineligible:

- 1. Non-Collusion Affidavit – **signature required**.
- 2. Form HUD-5369-B, Instructions to Offerors – Non-Construction.
- 3. Form HUD-5369-C, Certifications and Representations of Offerors – Non-Construction Contract – **signature required**.
- 4. Form HUD-5370-C, General Conditions for Non-Construction Contracts.

ATTACHMENTS

Instructions to Offerors Non-Construction

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



- 03291 -

1. Preparation of Offers

(a) Offerors are expected to examine the statement of work, the proposed contract terms and conditions, and all instructions. Failure to do so will be at the offeror's risk.

(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the cover sheet and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the HA.

(c) Offers for services other than those specified will not be considered.

2. Submission of Offers

(a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation, and (2) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice.

(c) Facsimile offers, modifications or withdrawals will not be considered unless authorized by the solicitation.

3. Amendments to Solicitations

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Offerors shall acknowledge receipt of any amendments to this solicitation by

- (1) signing and returning the amendment;
- (2) identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer,
- (3) letter or telegram, or
- (4) facsimile, if facsimile offers are authorized in the solicitation. The HA/HUD must receive the acknowledgment by the time specified for receipt of offers.

4. Explanation to Prospective Offerors

Any prospective offeror desiring an explanation or interpretation of the solicitation, statement of work, etc., must request it in writing soon enough to allow a reply to reach all prospective offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offerors.

5. Responsibility of Prospective Contractor

(a) The HA shall award a contract only to a responsible prospective contractor who is able to perform successfully under the terms and conditions of the proposed contract. To be determined responsible, a prospective contractor must -

- (1) Have adequate financial resources to perform the contract, or the ability to obtain them;

- (2) Have a satisfactory performance record;
- (3) Have a satisfactory record of integrity and business ethics;
- (4) Have a satisfactory record of compliance with public policy (e.g., Equal Employment Opportunity); and
- (5) Not have been suspended, debarred, or otherwise determined to be ineligible for award of contracts by the Department of Housing and Urban Development or any other agency of the U.S. Government. Current lists of ineligible contractors are available for inspection at the HA/HUD.

(b) Before an offer is considered for award, the offeror may be requested by the HA to submit a statement or other documentation regarding any of the foregoing requirements. Failure by the offeror to provide such additional information may render the offeror ineligible for award.

6. Late Submissions, Modifications, and Withdrawal of Offers

(a) Any offer received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it -

- (1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
- (2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the HA/ HUD that the late receipt was due solely to mishandling by the HA/ HUD after receipt at the HA;
- (3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays; or
- (4) Is the only offer received.

(b) Any modification of an offer, except a modification resulting from the HA's request for "best and final" offer (if this solicitation is a request for proposals), is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.

(c) A modification resulting from the HA's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the HA after receipt at the HA.

(d) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the HA is the time/date stamp of HA on the offer wrapper or other documentary evidence of receipt maintained by the HA.

(f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the HA will be considered at any time it is received and may be accepted.

(h) If this solicitation is a request for proposals, proposals may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before award. Proposals may be withdrawn in person by a offeror or its authorized representative if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award. If this solicitation is an invitation for bids, bids may be withdrawn at any time prior to bid opening.

7. Contract Award

(a) The HA will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the HA, cost or price and other factors, specified elsewhere in this solicitation, considered.

(b) The HA may

- (1) reject any or all offers if such action is in the HA's interest,
- (2) accept other than the lowest offer,
- (3) waive informalities and minor irregularities in offers received, and (4) award more than one contract for all or part of the requirements stated.

(c) If this solicitation is a request for proposals, the HA may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

(d) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. If this solicitation is a request for proposals, before the offer's specified expiration time, the HA may accept an offer, whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the HA.

(e) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract.

8. Service of Protest

Any protest against the award of a contract pursuant to this solicitation shall be served on the HA by obtaining written and dated acknowledgment of receipt from the HA at the address shown on the cover of this solicitation. The determination of the HA with regard to such protest or to proceed to award notwithstanding such protest shall be final unless appealed by the protestor.

9. Offer Submission

Offers shall be submitted as follows and shall be enclosed in a sealed envelope and addressed to the office specified in the solicitation. The proposal shall show **the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror, on the face of the envelope.**

It is very important that the offer be properly identified on the face of the envelope as set forth above in order to insure that the date and time of receipt is stamped on the face of the offer envelope. Receiving procedures are: date and time stamp those envelopes identified as proposals and deliver them immediately to the appropriate contracting official, and only date stamp those envelopes which do not contain identification of the contents and deliver them to the appropriate procuring activity only through the routine mail delivery procedure.

[Describe bid or proposal preparation instructions here:]

Certifications and Representations of Offerors

Non-Construction Contract

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This form includes clauses required by OMB's common rule on bidding/offering procedures, implemented by HUD in 24 CFR 85.36, and those requirements set forth in Executive Order 11625 for small, minority, women-owned businesses, and certifications for independent price determination, and conflict of interest. The form is required for nonconstruction contracts awarded by Housing Agencies (HAs). The form is used by bidders/offerors to certify to the HA's Contracting Officer for contract compliance. If the form were not used, HAs would be unable to enforce their contracts. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

1. Contingent Fee Representation and Agreement

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

(1) ☐ has, ☐ has not employed or retained any person or company to solicit or obtain this contract; and

(2) ☐ has, ☐ has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

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

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

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

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

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

(b) ☐ is, ☐ is not a women-owned small business concern. "Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

(c) ☐ is, ☐ is not a minority enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals.

For the purpose of this definition, minority group members are:

(Check the block applicable to you)

- | | |
|---|---|
| <input type="checkbox"/> Black Americans | <input type="checkbox"/> Asian Pacific Americans |
| <input type="checkbox"/> Hispanic Americans | <input type="checkbox"/> Asian Indian Americans |
| <input type="checkbox"/> Native Americans | <input type="checkbox"/> Hasidic Jewish Americans |

3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

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

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

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

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

(1) Is the person in the bidder/offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above (insert full name of person(s) in the bidder/offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offeror's organization);

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

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

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

4. Organizational Conflicts of Interest Certification

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed contract and a prospective contractor's organizational, financial, contractual or other interest are such that:

- (i) Award of the contract may result in an unfair competitive advantage;
- (ii) The Contractor's objectivity in performing the contract work may be impaired; or
- (iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.

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

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

- (d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

5. Authorized Negotiators (RFPs only)

The offeror represents that the following persons are authorized to negotiate on its behalf with the PHA in connection with this request for proposals: (list names, titles, and telephone numbers of the authorized negotiators):

6. Conflict of Interest

In the absence of any actual or apparent conflict, the offeror, by submission of a proposal, hereby warrants that to the best of its knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement, as described in the clause in this solicitation titled "Organizational Conflict of Interest."

7. Offeror's Signature

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

Signature & Date:

Typed or Printed Name:

Title:

General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 1/01/2014)

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

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

- 1) **Non-construction contracts** (*without* maintenance) **greater than \$100,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 968.105) **greater than \$2,000 but not more than \$100,000 - use Section II; and**
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$100,000 – use Sections I and II.**

Section I - Clauses for All Non-Construction Contracts greater than \$100,000

1. Definitions

The following definitions are applicable to this contract:

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

2. Changes

- (a) The HA may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.
- (b) If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the HA shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if the HA decides that the facts justify it, the HA may receive and act upon a

proposal submitted before final payment of the contract.

- (d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

3. Termination for Convenience and Default

- (a) The HA may terminate this contract in whole, or from time to time in part, for the HA's convenience or the failure of the Contractor to fulfill the contract obligations (default). The HA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to the HA all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.
- (b) If the termination is for the convenience of the HA, the HA shall be liable only for payment for services rendered before the effective date of the termination.
- (c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (default), the HA may (i) require the Contractor to deliver to it, in the manner and to the extent directed by the HA, any work as described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause, paragraph 2, above; (ii) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the HA; (iii) withhold any payments to the Contractor, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the HA by the Contractor.
- (d) If, after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the HA, and the Contractor shall be entitled to payment as described in paragraph (b) above.
- (e) Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

4. Examination and Retention of Contractor's Records

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

- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
- (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:
 - (i) appeals under the clause titled Disputes;
 - (ii) litigation or settlement of claims arising from the performance of this contract; or,
 - (iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

5. Rights in Data (Ownership and Proprietary Interest)

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

6. Energy Efficiency

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

7. Disputes

- (a) All disputes arising under or relating to this contract, except for disputes arising under clauses contained in Section III, Labor Standards Provisions, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.
- (b) All claims by the Contractor shall be made in writing and submitted to the HA. A claim by the HA against the Contractor shall be subject to a written decision by the HA.
- (c) The HA shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HA's decision, shall notify the HA in writing that it takes exception to such decision, the decision shall be final and conclusive.
- (d) Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against the HA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HA that it submit a final voucher and release, whichever is earlier, then the HA's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.
- (e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the HA.

8. Contract Termination; Debarment

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

9. Assignment of Contract

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

10. Certificate and Release

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

11. Organizational Conflicts of Interest

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this contract and a contractor's organizational, financial, contractual or other interests are such that:
 - (i) Award of the contract may result in an unfair competitive advantage; or
 - (ii) The Contractor's objectivity in performing the contract work may be impaired.
- (b) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract or any task/delivery order under the contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The HA may, however, terminate the contract or task/delivery order for the convenience of the HA if it would be in the best interest of the HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the HA may terminate the contract for default.
- (d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

12. Inspection and Acceptance

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

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

- (b) The Contractor shall make any required corrections promptly at no additional charge and return a revised copy of the product to the HA within 7 days of notification or a later date if extended by the HA.
- (c) Failure by the Contractor to proceed with reasonable promptness to make necessary corrections shall be a default. If the Contractor's submission of corrected work remains unacceptable, the HA may terminate this contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

13. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit to arise there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

14. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

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

15. Limitation on Payments to Influence Certain Federal Transactions

- (a) Definitions. As used in this clause:

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal Action" means any of the following Federal actions:

- (i) The awarding of any Federal contract;
- (ii) The making of any Federal grant;
- (iii) The making of any Federal loan;
- (iv) The entering into of any cooperative agreement; and,
- (v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

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

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

- (i) An individual who is appointed to a position in the Government under title 5, U.S.C., including a position under a temporary appointment;
- (ii) A member of the uniformed services as defined in section 202, title 18, U.S.C.;
- (iii) A special Government employee as defined in section 202, title 18, U.S.C.; and,
- (iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, appendix 2.

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

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

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

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

- (b) Prohibition.

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

- (ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

(ii) Any reasonable payment to a person, other than an officer or employee of a

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

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

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

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

(iii) Selling activities by independent sales representatives.

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

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

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

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

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

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

16. Equal Employment Opportunity

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

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to (1) employment; (2) upgrading; (3) demotion; (4) transfer; (5) recruitment or recruitment advertising; (6) layoff or termination; (7) rates of pay or other forms of compensation; and (8) selection for training, including apprenticeship.
- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the

Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

17. Dissemination or Disclosure of Information

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

18. Contractor's Status

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

19. Other Contractors

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

20. Liens

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

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

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of

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

- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

22. Procurement of Recovered Materials

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

NON-COLLUSION AFFIDAVIT

The undersigned bidder or agent, being duly sworn on oath, says that he/she has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting nor to prevent any person from bidding nor to include anyone to refrain from bidding, and that this bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding.

He/She further says that no person or persons, firms, or corporation has, have or will receive directly or indirectly, any rebate, fee gift, commission or thing of value on account of such sale.

OATH AND AFFIRMATION

I HEREBY AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FACTS AND INFORMATION CONTAINED IN THE FOREGOING BID FOR PUBLIC WORKS ARE TRUE AND CORRECT.

Dated this ____ day of _____, _____

(Name of Organization)

(Title of Person Signing)

(Signature)

ACKNOWLEDGEMENT

STATE OF _____)

) ss

COUNTY OF _____)

Before me, a Notary Public, personally appeared the above named and swore that the statements contained in the foregoing document are true and correct.

Subscribed and sworn to me this _____ day of _____, _____.

Notary Public Signature

My Commission Expires: _____