

REVERE HOUSING AUTHORITY



REQUEST FOR PROPOSALS CERTIFIED PUBLIC ACCOUNTING SERVICES

MARCH 7, 2023

REQUEST FOR PROPOSALS
CERTIFIED PUBLIC ACCOUNTING SERVICES

The Revere Housing Authority (RHA) is seeking proposals from certified public accountants for accounting services in connection with RHA public housing programs funded and administered in accordance with the Department of Housing & Community Development (DHCD) and the Department of Housing & Urban Development (HUD) regulations and guidelines. The successful candidate will have a minimum of five (5) years' experience with state and federal public housing authority programs. The RHA anticipates entering into a one (1) year contract for such services with an option to renew at the RHA's sole discretion, for a period of up to two (2) additional years at one-year intervals. The total contract duration including options to renew shall not exceed three (3) years, unless at the end of the contract term the RHA determines that a time extension is necessary to fulfill the RHA's obligations and requirements. The RFP may be obtained by emailing tduffy@revereha.com or by downloading it from the Revere Housing Authority's website at www.revereha.com under bidding opportunities. Responses to this RFP must be submitted in **digital pdf form** to both ctempesta@revereha.com and tduffy@revereha.com and received no later than 2:00 p.m. on Wednesday, April 26, 2023. Do not submit hard copies.

**REVERE HOUSING AUTHORITY
REQUEST FOR PROPOSALS
CERTIFIED PUBLIC ACCOUNTANT SERVICES**

The Revere Housing Authority (the “RHA”) is seeking proposals from certified public accountants (the “CPA” or “proposer”) for accounting services in connection with the RHA programs funded and administered in accordance with the Department of Housing & Community Development (DHCD) and the Department of Housing & Urban Development (HUD) regulations and guidelines. The successful candidate will have a minimum of five (5) years’ experience state and federal public housing authority programs. The RHA anticipates entering into a one (1) year contract for such services with two options to renew at the RHA’s sole discretion, at one-year intervals. The total contract duration, including options to renew shall not exceed three (3) years, unless at the end of the contract term the RHA determines that a time extension is necessary to fulfill the RHA’s obligations and requirements.

The RFP may be obtained by emailing tduffy@revereha.com or by downloading it from the RHA’s website at www.revereha.com under bidding opportunities.

Proposals must be submitted in **digital pdf form** to both ctempesta@revereha.com and tduffy@revereha.com and received no later than 2:00 p.m. on Wednesday, April 26, 2023 and must comply with the requirements of the RFP as set forth herein. Do not submit hard copies.

I. BACKGROUND

The RHA is a public housing authority established to provide decent, safe, and sanitary housing to low-income individuals and families. It owns and manages 900 conventional units and 586 rental vouchers. The RHA receives state and federal funding from the Department of Housing & Community Development (DHCD) and the Department of Housing & Urban Development (HUD) to implement these programs. The RHA

Federal programs include:

- 194 - Public Housing Units
- 470 - Housing Choice Vouchers
- Capital Fund Program (approximately \$525,000 per grant year)

State programs include:

- 245 - 667-C Units
- 106 - 667-6 Units
- 286 - 200-1 Units
- 69 - 705 Units
- 116 - MRVP/AHVP/DMH
- State Modernization

Also included is the Revolving Fund.

II. SCOPE OF SERVICES

The accountant shall perform all necessary accounting services required by the RHA in connection with the above programs. At least one certified public accountant shall provide on-site services. Quoted rates should be inclusive of all administrative, travel, copying, report preparation, computer services, etc.

During the first three months of the contract, services shall be provided twice per month weekly. Thereafter, services shall be provided at least monthly. The accountant shall attend board meetings annually to review financial statements and as necessary prepare and present budgets. Also, the accountant agrees to meet with DHCD, HUD and auditing staff, as may be required.

The specific accounting services sought include, but are not limited to:

1. Accounting format for financial reporting must conform to Generally Accepted Accounting Principles (GAAP), as required by the Commonwealth of Massachusetts.
2. Review distribution of cash receipts and cash disbursements in the books of original entry.
3. Review applicable journal entries for tenant rent changes, interest earned, financing.
4. Calculate PILOT payments.
5. Review tenants accounts receivables and reconcile tenants' accounts receivable General Ledger balances with the summarized tenant balance totals.
6. Prepare General Ledger.
7. Review preparation and posting of all applicable journal entries for rent charges, interest earned, revolving fund, and all other monthly entries. Prepare and post all quarterly, semi-annual, and annual journal entries and all financing journal entries consistent with DHCD guidelines.
8. Review DHCD fiscal agent correspondence and record appropriate journal entries for the transmittal of annual contributions to and by the fiscal agent and determine the correctness of the debt service accounts.
9. Review the books of account relative to all transactions of the purchase and maturity of investment securities and savings account deposits, withdrawals, and interest accruals.
10. Review preparation of federal and state tax reports.
11. Assist in preparing Salary Allocation Schedule.
12. Assist in reconciliation of disposition of assets (fixed and non-fixed).
13. Assist management with performing a physical inventory once every two years according to 24 CFR 85.32 and reconcile with property ledger.
14. Prepare quarterly, semi-annual, and annual financial statements for all programs and assure they are prepared and submitted to the reporting entities by the given deadline, including electronic submission of financial statements and VMS and REAC.
15. Assist management in the preparation of annual budgets and revisions for management and modernization programs, including meeting with Board of Commissioners for preparation and presentation of completed budgets.
16. Analyze and interpret financial statements and related accounting data. Review and discuss with the Executive Director relevant financial information for the purpose of communicating this information to responsible management personnel.

17. Serve as financial advisor and assist the RHA in financial matters involving HUD and DHCD.
18. Prepare a monthly budget-versus-actual reporting form for each project in management.
19. On an annual basis advise and assist the RHA staff in completing an internal control questionnaire and advise on the status of internal control systems in order for the RHA to comply with HUD and DHCD regulations for IPA purposes.
20. Prepare an interim financial statement, on a monthly basis consisting of a balance sheet and operating statement.
21. Prepare and/or review Section 8 Requisitions as required, on a timely basis, with the information provided by the RHA.
22. Monitor the Section 8 Program for full and accurate utilization of available funds and monitor units available for lease.
23. Prepare the Financial Data Summary (FDS) and analyze Operating Reserves for all programs on a quarterly basis.
24. Provide analysis of utility costs and consumption and assist in rebate incentives.
25. Prepare year-end breakdown of expenses by program.
26. All other duties that may be required from time to time to comply with HUD and DHCD accounting guidelines.
27. Must attend at least two board meetings per year, one to present the proposed operating budget and the second to present a mid-year progress report on budgeted expenditures vs. actual expenditures, or more often as agreed to by the board and accountant at the request of the Executive Director or RHA Board.

III. SUBMISSION INSTRUCTIONS

Proposals must be submitted electronically in **digital pdf form** to both ctempesta@revereha.com and tduffy@revereha.com. The RHA will not accept, or review proposals received after the designated submission deadline. The RHA reserves the right to extend the time for receipt of responses. **All submissions must include the following:**

- A resume that demonstrates knowledge and experience with public housing authorities and references for same.
- A work plan and firm's capacity that describes how the accounting will be performed each month include estimates of time for field work.
- Designation of key staff who would directly service the RHA.
- Pro-ration of total annual cost between programs, in addition to a breakdown of costs for extra services (and examples of such extra services).
- **Fee Schedule – Attachment A (include Attachments A(1), A(2) and A(3) for options to renew)**
- **Form of Non-Collusive Affidavit – Attachment B**
- **Debarment Certification -Attachment C**
- **REAP Certification – Attachment D**

The proposed Fee Schedule must include all programs delineated in Section I above. Interested CPAs are encouraged to visit the RHA to review copies of current general ledgers and journals. Solicitation of this RFP does not commit the RHA to pay any costs incurred in the preparation of a proposal submission. A proposer may be requested to attend an interview with the RHA Procurement Review Committee.

IV EVALUATION PROCESS FOR AWARD

RFP responses shall be reviewed by the RHA Procurement Review Committee. All proposals will be evaluated based on the evaluation criteria (see Paragraph A below) and will be rated using numerical rated categories. The proposal which best meets the needs and interests of the RHA, with price and all evaluation factors considered will be recommended to the RHA board of commissioners by the RHA Procurement Committee for contract award.

A. EVALUATION CRITERIA

Criteria items are listed in order of relative importance.

Experience: The firm principals must have a minimum of five years' experience working with local housing authorities. Must demonstrate knowledge and experience with DHCD and HUD regulations, programs, and practices. *(40 points)*

Work Plan and Firms Capacity: Provide a narrative work plan of firm's ability to perform the work as indicated, by profiles of the principles and staffs' professional competence and experience. *(35 points)*

References & Past Performance: Provide a minimum of three and a maximum of five references of local housing authorities of comparable size and provide principal contacts, including contact information. *(25 points)*

B. FEE PROPOSAL

While the fee proposal has no numerical weight, it is criterion in the overall evaluation of RFP responses. Furthermore, the fee proposal must be considered reasonable.

C. METHOD OF AWARD

The RHA will award this contract to the responsive, responsible proposer based on the evaluation criteria. The combined relative merit of the evaluation criteria above will be more significant than fee proposal in its selection. A contract may be awarded to a proposer who does not submit the lowest fee proposal.

V. GENERAL CONDITIONS OF THE RFP

A. ACCEPTANCE OF RFP AND CONTRACT TERMS

Proposals in response to this RFP shall constitute acceptance by the proposer of the terms and conditions of this RFP. If the proposer's submission is accepted for contract award, it agrees to enter into a contract with the RHA in a form substantially similar to the contract form attached hereto as **Exhibit A.**

B. CONTRACT AWARD

Subject to the rights reserved in Section IV of this RFP, the RHA will award the contract by written notice to the selected proposer (the "Contractor") no later than sixty (60) days after the date designated for receipt of proposals; the parties may extend the time for acceptance by mutual agreement. Award of the contract is subject to the approval of the RHA Procurement Review Committee and the RHA Board of Commissioners.

C. EXPENSE OF RFP SUBMISSION

All expenses incurred in the preparation and submission to the RHA's in response to this RFP shall be borne by the proposer.

D. RHA OPTIONS

The RHA reserves the right to cancel this RFP, or to reject, in whole or in part, any and all proposals received in response to this RFP, upon its determination further reserves the right to waive any minor informalities in any proposals received or allow the proposer to correct them, if it be in the public interest to do so. The determination of the criteria and process whereby proposals are evaluated, the decision as to who shall receive a contract award, or whether or not to award shall be at the sole and absolute discretion of the RHA.

A proposal may be corrected, modified, or withdrawn, provided that the correction, modification, or request for withdrawal is made by the proposer in writing and is received prior to the date and time designated in the RFP for receipt of proposals. After such date and time, the proposer may not change the proposal fee or any other provision of its proposal in a manner prejudicial to the interests of the RHA and/or fair competition.

If a mistake in the intended fee proposal is clearly evident on its face, the RHA shall correct the mistake to reflect the intended correct fee proposal and shall so notify the proposer in writing and the proposer may not withdraw its proposal. A proposer may withdraw its proposal if a mistake is clearly evident on its face, but the intended fee proposal is not similarly evident.

LIST OF ATTACHMENTS

- 1. Fee Schedule – Attachment A (*include Attachments A(1), A(2) and A(3) for options to renew*)**
- 2. Form of Non-Collusive Affidavit – Attachment B**
- 3. Debarment Certification -Attachment C**
- 4. REAP Certification – Attachment D**
- 5. Instruction to Offers – (HUD 5369-B (*Informational*))**
- 6. General Contract Conditions (HUD Form 5370-C (*Informational*))**
- 7. Sample Contract of Engagement (Exhibit A)**

PROPOSED FEE SCHEDULE**INITIAL ONE-YEAR BASE CONTRACT**

The undersigned proposes to furnish Accounting Services as identified in the RFP for the initial one-year base contract at the following rates.

FEDERAL PROGRAMS – 2023-2024

PROGRAM	UNITS	MONTHLY FEE	ANNUAL FEE
Public Housing Units	194		
Housing Choice Vouchers	470		
*Capital Fund Program			
TOTAL	664		

*Capital Fund Program Approximately \$525,000 per grant year

ADDITIONAL SERVICES:

(Not limited to the following: HUD/REAC Accounting and Internet Submissions for all programs; preparation and submission of Section 8 Quarterly Report Form 52681-B)

STATE PROGRAMS – 2023-2024

PROGRAM	UNITS	MONTHLY FEE	ANNUAL FEE
667-C	245		
667-6	106		
200-1	286		
705-C	69		
MRVP/AHVP/DMH	116		
State Modernization			
TOTAL	822		

ADDITIONAL SERVICES:

(Not limited to the following: Modernization, Grant Programs)

The undersigned certifies under the penalties of perjury that this fee proposal is in all respects bona fide, fair, and made without collusion or fraud with any other person.

Date: _____

Proposer (Name of Firm)

(Authorized Signature)

(Title)

FIRST YEAR OPTION TO RENEW
2024-2025

The undersigned proposes to furnish Accounting Services as identified in the RFP for the first option to renew for the period 2024 to 2025 at the following rates.

FEDERAL PROGRAMS

PROGRAM	UNITS	MONTHLY FEE	ANNUAL FEE
Public Housing Units	194		
Housing Choice Vouchers	470		
*Capital Fund Program			
TOTAL	664		

*Capital Fund Program Approximately \$525,000 per grant year

ADDITIONAL SERVICES:

(Not limited to the following: HUD/REAC Accounting and Internet Submissions for all programs; preparation and submission of Section 8 Quarterly Report Form 52681-B)

STATE PROGRAMS

PROGRAM	UNITS	MONTHLY FEE	ANNUAL FEE
667-C	245		
667-6	106		
200-1	286		
705-C	69		
MRVP/AHVP/DMH	116		
State Modernization			
TOTAL	822		

ADDITIONAL SERVICES:

(Not limited to the following: Modernization, Grant Programs)

The undersigned certifies under the penalties of perjury that this fee proposal is in all respects bona fide, fair, and made without collusion or fraud with any other person.

Date: _____

 Proposer (Name of Firm)

 (Authorized Signature)

 (Title)

SECOND YEAR OPTION TO RENEW
2025-2026

The undersigned proposes to furnish Accounting Services as identified in the RFP for the second option to renew for the period 2025 to 2026 at the following rates.

FEDERAL PROGRAMS

PROGRAM	UNITS	MONTHLY FEE	ANNUAL FEE
Public Housing Units	194		
Housing Choice Vouchers	470		
*Capital Fund Program			
TOTAL	664		

*Capital Fund Program Approximately \$525,000 per grant year

ADDITIONAL SERVICES:

(Not limited to the following: HUD/REAC Accounting and Internet Submissions for all programs; preparation and submission of Section 8 Quarterly Report Form 52681-B)

STATE PROGRAMS

PROGRAM	UNITS	MONTHLY FEE	ANNUAL FEE
667-C	245		
667-6	106		
200-1	286		
705-C	69		
MRVP/AHVP/DMH	116		
State Modernization			
TOTAL	822		

ADDITIONAL SERVICES:

(Not limited to the following: Modernization, Grant Programs)

The undersigned certifies under the penalties of perjury that this fee proposal is in all respects bona fide, fair, and made without collusion or fraud with any other person.

Date: _____

Proposer (Name of Firm)

(Authorized Signature)

(Title)

FORM OF NON-COLLUSIVE AFFIDAVIT

State of _____

County of _____

Being first sworn deposes and says:

That he/she is _____
(a partner or officer of the firm of, etc.)

the party making the foregoing proposal, that such proposal is genuine and not collusive or sham; that said Responder has not colluded, conspired, connived or agreed directly or indirectly, with any Responder or person, to put in a sham proposal or to refrain from proposing, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the proposal price or affiant or of any Responder, or to fix any overhead, profit or cost element of said bid price, or that of any other Responder, or secure any advantage against the Revere Housing Authority or any person interested in the proposed contract; and that all statements in said proposal are true.

Signature of:

Responder, if the Proposer is an individual.

Partner, if the Responder is a partnership.

Officer, if the Responder is a corporation.

Subscribed and sworn to before me.

This _____ day of _____, 2023

Notary Public

My commission expires: _____

Seal:

DEBARMENT CERTIFICATION

The undersigned, a Respondent to the Request for Proposals (RFP) issued by the Revere Housing Authority, hereby certifies to the Revere Housing Authority on behalf of itself and each member of Respondents development team, as follows:

In accordance with 24 CFR 85.35, Respondent certifies that neither Respondent, nor any member of the Respondent's development team is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal Assistance programs under Executive Order 12549 "Debarment and Suspension."

Date

Proposer (Name of Firm)

(Authorized Signature)

(Title)

**REAP CERTIFICATE
STATEMENT OF TAX COMPLIANCE**

Pursuant to MGL Chapter 62C, sec. 49A, the individual signing this Contract on behalf of the Contractor, hereby certifies under the penalties of perjury that to the best of his/her knowledge and belief the Contractor has complied with any and all applicable laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors and withholding and remitting of child support.

The business organization social security or Federal Identification Number is _____.

Signed under the pains and penalties of perjury.

Date

Proposer **(Name of Firm)**

(Authorized Signature)

(Title)

**CONTRACT FOR ENGAGEMENT
OF ACCOUNTING SERVICES**

THIS AGREEMENT made as of _____ day of _____, 2023 by and between the Revere Housing Authority, a public body politic and corporate, of Revere, Suffolk County, Massachusetts, hereinafter referred to as the "Authority" and _____, hereinafter referred to as the "Accountant" with its principal place of business located at _____.

Said Authority hereby retains the Accountant to perform accounting services hereinafter described during the entire term of this agreement in connection with and arising out of the operation and the maintenance of the Commonwealth of Massachusetts aided housing developments and programs under the jurisdiction of the Authority.

In consideration and terms, covenants, conditions, and agreements herein contained and respectively made by Accountant and Authority, the parties hereto agree to as follows:

I. SCOPE OF SERVICES

The Accountant shall perform all necessary accounting services required by the AUTHORITY in connection with the above programs. At least one certified public accountant shall provide on-site services. Quoted rates should be inclusive of all secretarial, travel, copying, report preparation, computer services, etc. During the first three months of the contract, services shall be provided twice per month weekly. Thereafter, services shall be provided at least monthly. Accountant shall attend Board meetings annually to review financial statements and as necessary to prepare and present budgets. Also, Accountant agrees to meet with HUD, DHCD and auditing staff, as necessary.

The specific fee accounting services sought include, but are not limited to:

1. Accounting format for financial reporting must conform to Generally Accepted Accounting Principles (GAAP), as required by the Commonwealth of Massachusetts.
2. Review distribution of cash receipts and cash disbursements in the books of original entry.
3. Review applicable journal entries for tenant rent changes, interest earned, financing.
4. Calculate PILOT payments.
5. Review tenants accounts receivables and reconcile tenants' accounts receivable General Ledger balances with the summarized tenant balance totals.
6. Prepare General Ledger.
7. Review preparation and posting of all applicable journal entries for rent charges, interest earned, revolving fund, and all other monthly entries. Prepare and post all quarterly, semi-annual, and annual journal entries and all financing journal entries consistent with DHCD guidelines.
8. Review DHCD fiscal agent correspondence and record appropriate journal entries for the transmittal of annual contributions to and by the fiscal agent and determine the correctness of the debt service accounts.

9. Review the books of account relative to all transactions of the purchase and maturity of investment securities and savings account deposits, withdrawals, and interest accruals.
10. Review preparation of federal and state tax reports.
11. Assist in preparing Salary Allocation Schedule.
12. Assist in reconciliation of disposition of assets (fixed and non-fixed).
13. Perform a physical inventory once every two years according to 24 CFR 85.32 and reconcile with property ledger.
14. Prepare quarterly, semi-annual, and annual financial statements for all programs and assure they are prepared and submitted to the reporting entities by the given deadline, including electronic submission of financial statements and VMS and REAC.
15. Assist management in the preparation of annual budgets and revisions for management and modernization programs, including meeting with Board of Commissioners for preparation and presentation of completed budgets.
16. Analyze and interpret the financial statements and related accounting and financial data and review and discuss with the Executive Director relevant financial information for the purpose of communicating this information to responsible management personnel.
17. Serve as financial advisor and assist the Authority in financial matters involving HUD and DHCD.
18. Prepare a monthly budget-versus-actual reporting form for each project in management.
19. On an annual basis advise and assist the Authority staff in completing an internal control questionnaire and advise on the status of internal control systems in order for the Authority to comply with HUD and DHCD regulations for IPA purposes.
20. Prepare an interim financial statement, on a monthly basis consisting of a balance sheet and operating statement.
21. Prepare and/or review Section 8 Requisitions as required, on a timely basis, with the information provided by the Authority.
22. Monitor the Section 8 Program for full and accurate utilization of available funds.
23. Monitor units available for lease.
24. Prepare the Financial Data Summary (FDS)
25. Analyze Operating Reserve for all programs on a quarterly basis.
26. Provide analysis of utility costs and consumption and assist in rebate incentives.
27. Prepare year-end breakdown of expenses by program.

28. All other duties that may be required from time to time to comply with HUD and DHCD accounting guidelines.
29. Must attend at least two board meetings per year, one to present the proposed operating budget and the second to present a mid-year progress report on budgeted expenditures vs. actual expenditures, or more often as agreed to by the board and fee accountant at the request of the Executive Director or RHA Board.

II. CONTRACT TERM

2.1 Term

Accountant shall commence its performance of Services under this Contract for a Base Contract Term of one (1) year from _____ to _____.

2.2 Extension of Term

The RHA, at its sole discretion, may exercise its option to renew this Contract upon the same terms for an additional two years at one-year intervals by notifying the Accountant no less than ten (10) days before expiration of base contract term.

III. COMPENSATION

1.1 Compensation for Services

For services listed in Section 1: Scope of Services, above, the RHA agrees to pay said Accountant the sum of _____ Dollars monthly at the rate of _____ Dollars each month.

For services listed in Section 1: Scope of Services, above, the RHA agrees to pay said Accountant at the rate of _____ Dollars for additional services.

1.2 Allowable Additional Costs Defined

Accountant shall be reimbursed for all necessary travel and subsistence expenses in connection with the performance of the duties of the Accountant. The RHA shall also reimburse the Accountant for expenses and disbursements incurred in connection with legal matters managed by the Accountant, such as court cost, filing fees, witness fees and purchasing of the Department of Housing and Development regulations and other relevant documents. No reimbursement will be due or payable by the RHA until documentation of such expenses has been submitted to and approved by the RHA.

1.3 Content of Invoices

Such invoices shall contain an itemized statement for each legal matter assigned of each task completed, the time spend on each such task, the name of the individual who performed such task, the hourly rate or portion thereof charged for such task, invoices, receipts, or other equivalent back-up and the total charge to date for each legal matter assigned. Where work on an assigned legal matter has been completed, the invoice shall reflect that it is the final charge.

IV. CONTRACT DOCUMENTS

4.1 The following, together with this Agreement form the Contract and all are as fully a part of the Contract as if attached to this Agreement or repeated herein: Request for Proposals, Offers Response, the Terms and Conditions of the Contract and any amendments or addenda issued prior to award and any modification agreed to after the award.

V. TERMINATION

5.1 The RHA may terminate services upon ten (10) days written notice to Accountant for any reason deemed by the RHA to be in the public interest. In the event of termination by the RHA prior to completion of services, Accountant shall be entitled to payment of services performed prior to the effective date of such termination. In the event of termination, payment shall be conditioned upon the delivery to the RHA by the Accountant all opinions, documents and other materials prepared by the accountant in the performance of services.

VI. MISCELLANEOUS PROVISIONS

6.1 Ownership of Documents

All opinions, documents and other materials prepared by Accountant in the performance of services hereunder shall be the property of the RHA. The RHA may use any and all such materials for such purposes and so often as the RHA desires, either in whole or in part, or in modified form, without further employment of the Accountant, or additional compensation, therefore. The accountant shall take no action in derogation of the rights of the RHA to ownership of such property and shall take reasonable actions necessary to protect such rights.

6.2 Compliance with Law

All opinions, documents and other materials prepared by Accountant in the performance of services hereunder shall be prepared so as not to violate any provisions of local, state, or federal law, regulation, or ordinance.

IN WITNESS WHEREOF, the Parties Hereto Cause this Agreement to be executed on the day and date first above written.

REVERE HOUSING AUTHORITY

CERTIFIED PUBLIC ACCOUNTANT

By: _____

By: _____

Title: Executive Director

Title: _____

Date: _____

Date: _____

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. 11/30/2023)

Public Reporting Burden for this collection of information is estimated to average one hour 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. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number.

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 \$150,000 - use Section I;
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 905.100) greater than \$2,000 but not more than \$150,000 - use Section II; and
- 3) **Maintenance contracts** (including nonroutine maintenance), greater than \$150,000 – use Sections I and II.

Section I - Clauses for All Non-Construction Contracts greater than \$150,000

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/Seller agrees as follows:

(a) The [contractor/seller] will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. The

[contractor/seller] will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The [contractor/seller] agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(b) The [contractor/seller] will, in all solicitations or advertisements for employees placed by or on behalf of the [contractor/seller], state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, disability, or national origin.

(c) The [contractor/seller] will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the [contractor/seller]'s legal duty to furnish information.

(d) The [contractor/seller] will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the [contractor/seller]'s commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) The [contractor/seller] will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(f) The [contractor/seller] will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(g) In the event of the [contractor/seller]'s non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the [contractor/seller] may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) In the event of the [contractor/seller]'s non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the [contractor/seller] may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) The [contractor/seller] will include the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub[contractor/seller] or vendor. The [contractor/seller] will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the [contractor/seller] becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the [contractor/seller] may request the United States to enter into such litigation to protect the interests of the United States.

17. Equal Opportunity for Workers with Disabilities

1. The [contractor/seller] will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The [contractor/seller] agrees to take affirmative action to employ and advance in employment individuals with disabilities, and to treat qualified individuals without discrimination on the basis of their physical or mental disability in all employment practices, including the following:

- i. Recruitment, advertising, and job application procedures;
- ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
- iii. Rates of pay or any other form of compensation and changes in compensation;
- iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- v. Leaves of absence, sick leave, or any other leave;
- vi. Fringe benefits available by virtue of employment, whether or not administered by the [contractor/seller];
- vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- viii. Activities sponsored by the [contractor/seller] including social or recreational programs; and
- ix. Any other term, condition, or privilege of employment.

2. The [contractor/seller] agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

3. In the event of the [contractor/seller] noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

4. The [contractor/seller] agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the [contractor/seller]'s obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities.

The [contractor/seller] must ensure that applicants or employees with disabilities are provided the notice in a form that is accessible and understandable to the individual applicant or employee (e.g., providing Braille or large print versions of the notice, or posting a copy of the notice at a lower height for easy viewing by a person using a wheelchair). With respect to employees who do not work at a physical location of the [contractor/seller], a [contractor/seller] will satisfy its posting obligations by posting such notices in an electronic format, provided that the [contractor/seller] provides computers, or access to computers, that can access the electronic posting to such employees, or the [contractor/seller] has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the [contractor/seller] to notify job applicants of their rights if the [contractor/seller] utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.

5. The [contractor/seller] will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the [contractor/seller] is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, individuals with physical or mental disabilities.

6. The [contractor/seller] will include the provisions of this clause in every subcontract or purchase order in excess of \$ 10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

7. The [contractor/seller] must, in all solicitations or advertisements for employees placed by or on behalf of the [contractor/seller], state that all qualified applicants will receive consideration for employment and will not be discriminated against on the basis of disability.

18. 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.

19. 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.

20. 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.

21. Liens

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

22. 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) 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.
- (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

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:]