

**REQUEST FOR PROPOSAL  
ROOSEVELT RESIDENCES  
LEGAL SERVICES**

**DUE DATE: MARCH 21, 2016**

**Municipal Housing Authority of the City of Utica, New York  
509 Second Street  
Utica, New York 13501  
(315) 735-5246  
Fax: (315) 735-3366  
[www.uticamha.org](http://www.uticamha.org)**

RFP INFORMATION AT A GLANCE

RFP Summary	REQUEST FOR PROPOSALS FOR ROOSEVELT RESIDENCES LEGAL SERVICES - RFP UMHA 1-2016. The UMHA is soliciting Request for Proposals from experienced law firms and solo practitioners to represent the UMHA in the Roosevelt Residences affordable housing development transaction.
ISSUE DATE	March 4, 2015
UMHA CONTACT PERSON FOR TECHNICAL INQUIRIES	John Furman, Telephone [315-982-3731], <a href="mailto:jfurman@uticamha.org">jfurman@uticamha.org</a>
HOW TO OBTAIN THE RFP DOCUMENTS ON THE APPLICABLE INTERNET SITE	1. Access <a href="http://www.uticamha.org">www.uticamha.org</a> . 2. You can download the RFP and related documents on the home page.
HOW TO OBTAIN COPIES OF THE RFP DOCUMENTS	1. Send an email with the subject line -Roosevelt Residences RFP - to: <a href="mailto:jfurman@uticamha.org">jfurman@uticamha.org</a> . Copies may be obtained in person at 509 Second Street, Utica, New York 13501.
DEADLINE FOR TECHNICAL INQUIRIES	March 14, 2016; 4:30 p.m. Questions may be sent to <a href="mailto:jfurman@uticamha.org">jfurman@uticamha.org</a> . Emails should have the subject line: "Roosevelt Residences RFP Questions." Questions and answers will be posted to the UMHA website soon thereafter.
HOW TO FULLY RESPOND TO THIS RFP BY SUBMITTING A PROPOSAL	Submit an original and three copies of your proposal to Roosevelt Residences Legal Services RFP; Robert R. Calli, Executive Director; Municipal Housing Authority of the City of Utica, New York; 509 Second Street; STE 1; Utica, New York 13501
PROPOSAL SUBMITTAL RETURN & DEADLINE	March 21, 2016 An original and three copies of the proposal must be received at the UMHA offices located at 509 Second Street, STE. 1, Utica, New York and time-stamped by the UMHA by no later than 4:30 p.m. on this date.
ANTICIPATED APPROVAL BY UMHA	March 28, 2016
Expected Service Start Date	April 1, 2016
Expected Contract Duration	One Year Period

## SUMMARY

The Municipal Housing Authority of the City of Utica, New York (hereinafter, "UMHA") invites proposals for legal consulting services to be performed under a contract with UMHA by a firm with experience in providing legal services for public housing as well as affordable and supportive services multifamily developments. The selected applicant, which may be an attorney or a firm licensed to practice in the State of New York, shall provide legal representation services with respect to Roosevelt Residences, a 50 unit affordable housing scattered site project to be constructed in the City of Utica in summer 2016.

The Consultant should have demonstrated experience negotiating agreements between public housing authorities and their development partners. The Consultant should also have demonstrated experience with the interaction of housing authorities with the U.S. Department of Housing and Urban Development (HUD) and New York State agencies, as well as with regulations and requirements relating to affordable housing development. The Consultant must demonstrate experience with the legal requirements related to conventional financing, the use of Low-Income Housing Tax Credits (LIHTC), tax-exempt debt financing, project-basing of Housing Choice Vouchers, other public and private funding mechanisms. The selected Consultant must have, at a minimum, qualifications and experience necessary to perform the scope of work as described herein.

Consisting of 50 units, the Roosevelt Residence involves no public housing units, but will have 25 Project-Based Section 8 units to be provided by the UMHA. The financing for this project will be 4 percent tax credit equity, HUD HOME funds, NYS Housing Trust Fund, Housing for Working Families, New York State Energy Research and Development, Homeless Housing and Assistance Program (applied), and a Housing Finance Agency permanent loan. Financing for the project is all in place except for the Homeless Housing and Assistance Program which will be making its decision this spring. Closing for the project is expected in June 2016 with construction to begin in July 2016. The actual date for construction will be contingent upon approval of all financing. The developer of the project is Norstar Development USA, L.P.

The Request for Proposals will be available beginning March 4, 2016. Request for Proposals may be obtained at our offices located at 509 Second Street, Suite 1, Utica, New York 13501. Request for Proposals will be available for viewing and downloading on the UMHA website ([www.uticamha.org](http://www.uticamha.org)). RFPs may also be emailed by sending a request to [jfurman@uticamha.org](mailto:jfurman@uticamha.org). Request for Proposals are returnable to the office of the UMHA, 509 Second Street, Suite 1 Utica, New York 13501 by 4:30 p.m., March 21, 2016. The Municipal Housing Authority of the City of Utica, New York (UMHA) reserves the right to modify this schedule at our discretion.

The UMHA will not accept retainer agreement proposals. The contract will list performance milestones which must be completed in order for the Proposer to receive payment. The UMHA encourages applicants to provide cost effective services at lowest cost to the taxpayers under this program. There is a limited amount budgeted for legal services for this project and we are unable to exceed the budgeted amount of \$25,000 for this solicitation.

The UMHA encourages applications from certified minority and women business enterprises as well as Section 3 firms.

Services provided under these contracts must be summarized in monthly written reports with detailed itemization of units of services delivered as well as types of services performed. Services must be billed at least once a month. Services not billed after 90 days of the expiration of the contract will not be considered for payment. Firms should be aware that UMHA will only make payments on the contract issued under this RFP after the work being billed has been completed, and will pay reimbursable expenses only upon receipt of an

invoice for the reimbursable expenses. No advance payments will be made to the firm, who must have the capacity to meet all project expenses in advance of payments by UMHA.

The UMHA encourages applications from Minority/Women Business Enterprises (M/WBEs), and Section 3 firms. We also encourage law firms to partner with these types of entities to provide employment opportunities to the disadvantaged. It is the policy of the UMHA to encourage Minority and Women Business Enterprises as well as Section 3 firm participation in this program by contractors, subcontractors, and suppliers, and all Proposers are expected to cooperate in implementing this policy. The UMHA reserves the right to waive any or all informalities, and to reject any or all proposals, or any proposal that is incomplete, conditional, obscure, or which contains irregularities of any kind, or any or all proposals not deemed to be in the best interest of UMHA.

The proposal must be submitted in conformance with the requirements of this Request for Proposals. All the forms are attached to this RFP. As a general requirement, the RFP specifies that all work is to be performed in accordance with professional standards, HUD regulations, requirements and criteria and local codes, regulations, ordinances and statutes. It will be the UMHA's full expectation and a contractual requirement that the successful Proposer fully and routinely meet the above requirements. The selected Proposer(s) will only perform work which is authorized by the UMHA.

Prior to issuance of the notice to proceed, the selected Proposer must provide a certificate of insurance listing the UMHA as additional insured entities for general liability insurance covering bodily injury and personal injury of at least \$1,000,000.

#### **ABOUT THE UMHA**

The UMHA was established in 1937 as one of the first public housing authorities in the nation. The UMHA has a long and successful history of implementing and managing multiple HUD initiatives including, but not limited to, HOPE VI, the Housing Choice rental assistance program, Project Based Section 8 vouchers, supportive special needs housing, etc. The housing authority is considered to be a high performer public housing agency by HUD.

The UMHA owns, manages, and supervises a total of 1,020 units. Of that number, 891 are public housing units, 36 are HOPE VI Stand Alone Tax Credit units, and 93 are Project-Based Section 8 (New York State Public Housing) units. The UMHA has available 316 Section 8 (Housing Choice) Voucher units. The UMHA houses 1,894 persons in its LIPH units.

#### **SCOPE OF WORK**

Under UMHA's direction, the successful firm will be responsible for assisting the UMHA with the negotiation and evaluation of agreements with its private developer partner, including the development/joint venture agreement, Operating Agreements, Property Management Agreement, Low Income Housing Tax Credit, and Section 8 Project Based Rental Assistance documents. The Legal Consultant will provide legal opinions and/or recommendations that will enable UMHA to achieve its program goals. The Legal Consultant will also be responsible for analyzing and evaluating documents; analyzing the legal implications of finance options; conveying to UMHA the likely legal implications of the developer's proposals; and assisting UMHA in protecting its interests and resources.

The Legal Consultant will not be responsible for drafting any documents with respect to the tax credit transaction. The scope of services will not include representation with respect to land use matters including subdivision or land use issues, the real estate transfer, title and/or survey review, preparation of bid documents, obtaining IRS special rulings, development of affiliated entities, representation on any environmental concerns, litigation, leasing or resolution of construction contract disputes.

Developer's counsel will be responsible for drafting all of the joint venture documents as well as handling all real property/land use matters on behalf of the project. There will also be tax credit counsel involved to represent the investors in the limited partnership entity for the project.

The Consultant will be a direct advisor to the UMHA and its staff throughout the development process. Additionally, with UMHA's approval, the Legal Consultant will be expected to work in partnership with the development team consisting of the developer partner, UMHA staff and Commissioners, HUD, the City of Utica, the State, and other key stakeholders.

Legal scope of services includes (but is not limited to):

- A. Advise the UMHA on local, state, and federal statutory and regulatory matters relative to implementation of the project;
- B. Provide comprehensive representation of the UMHA in negotiations with the Developer, investors, other agencies, and lenders as necessary;
- D. Represent the UMHA in connection with tax credit syndication and issuance of tax exempt bonds;
- E. Provide guidance on the Project Based Section 8 vouchers to be used as rental subsidies for the project;
- F. Assist the UMHA to negotiate a development agreement with the Developer;
- D. Assist the UMHA with the structure and terms of any partnership agreement(s) into which the UMHA may enter with an equity investor with the Developer;
- E. Facilitate approval by HUD of Project Based Section 8 vouchers;
- F. Develop legal mechanisms for transferring ownership and management of properties to the UMHA after certain regulatory and financing periods have lapsed.

#### **MAXIMUM CONTRACT AMOUNT**

The maximum amount for the contract to be executed based on this solicitation is \$25,000.

#### **SCHEDULE**

Work will need to start immediately following selection and execution of a contract.

#### **PROPOSAL FORMAT**

Proposals must include the following:

1. Letter of Interest, discussing the firm's approach to the scope of services. The letter must list the proposer's team members and identify the primary contact person. Please include telephone number, facsimile number, and e-mail address. The letter must be signed by an authorized principal of the proposer's firm and include a statement that the proposal will remain valid for not less than 90 days from the date of submission.
2. Narrative Proposal
  - A. Project Approach:
    - 1) Provide a narrative which explains the proposed method for implementing the legal services as well as coordinating and communicating with the UMHA, its private developer, and funders.
    - 2) Legal Analysis: Provide a brief narrative summary (no more than one page) describing the legal issues anticipated based on the proposed Roosevelt project.

- 3) Statement of availability to deliver legal services immediately upon execution of the contract.

**B. Organizational Experience**

- 1) The firm's knowledge and relevant experience in providing legal services with regards to affordable housing development including:
    - i. Reviewing and negotiating affordable transaction documents.
    - ii. Meeting HUD/New York State requirements.
    - iii. Providing realistic legal options and/or recommendations to achieve program goals.
    - iv. Providing legal services on Low-Income Housing Tax Credit transactions.
    - v. Providing legal services on project-based Section 8 developments.
    - vi. Reviewing, negotiating development and property management
  - 2) Key personnel listing and resumes.
  - 3) A list of all engagements similar in nature to the Roosevelt Project for which the firm has provided legal advice and a brief description of the closed transactions. Include experience with closing mixed-finance transactions. Also include experience with project-basing Section 8 vouchers.
  - 4) Recommendations and references (minimum of 3).
3. Hourly rates and fee schedule.
4. Section 3 and M/WBE Statement of Commitment  
Please indicate that your firm is committed to ensuring equal opportunity in your business practices and promoting the use of minority/female business enterprises as well as Section 3 firms. In addition, explain how you will promote the utilization of Section 3 and M/WBE firms in the implementation of this contract. Examples of how firms may assist with fulfilling Section 3 and equal employment opportunities are: 1) purchasing supplies from certified M/WBEs; 2) providing educational and job development opportunities for low-income residents of the City of Utica.
5. HUD Forms (five in all): 1) HUD Form 5369-A – Representations, Certifications, and other Statements of Proposers; 2) HUD Form 5369-B Instruction to Offerors 3) HUD Form 5370-C –General Contract Conditions Non-Construction Section 1; 4) Non-Collusive Affidavit; 5) HUD Form 2992 - Certification Regarding Debarment and Suspension. These five forms are attached to the Application. The Forms must be fully completed, executed where provided thereon and submitted under this section as a part of the proposal submittal. This section of this submission does not receive a point rating; however, this section must be completed and submitted in order for the proposal to receive consideration. All of the signatures on the forms referenced above must be submitted as originals and signed in black or blue ink.

**PROPOSAL EVALUATION**

Evaluation Factors: The evaluation criteria with a point system of relative importance with an aggregate total of one hundred points will be utilized to evaluate each proposal. The following factors will be utilized by the UMHA to evaluate each proposal submittal received; award of points for each listed factor will be based upon the documentation that the proposer submits within his/her proposal submittal:

No.	Criteria	Points
1.	Proposed method for implementing the proposed legal services, coordinating with the various partners, addressing anticipated legal issues, and commencing legal services immediately upon award of contract.	25
2.	Evidence of the respondent's experience, knowledge and expertise of closing transactions and providing legal guidance with respect to projects involving the Low Income Housing Tax Credit Program, HUD and New York State funding, Project-Based Section 8, and other mixed finance sources.	30
3.	Utilization and/or employment of (1) Section 3 residents in this project, and (2) the involvement and use of MBE/WBE enterprises in this project.	5
4.	Fee schedule and hourly billing rates of proposed staff.	40
	Total	100

**MINIMUM QUALIFICATIONS OF PROPOSERS**

The selected Consultant must have, at a minimum, qualifications and experience necessary to perform the scope of work as described as follows:

- a) Firm members representing the UMHA must be admitted to practice in the State of New York and in good standing;
- b) Familiarity with public housing and affordable housing development legal issues including the governing New York State Statutes and Federal Public Housing Code and related HUD regulations;
- e) Proof of professional liability insurance;
- f) Confirmation that the firm consistently runs conflicts checks and that the firm is free from potential conflicting interests from business foreseeably conducted by the firm;
- g) The selected Proposer must comply with the Federal Drug-Free Work Place Act;
- h) The selected Proposer and all its subcontractors shall comply with Executive Order 11246, as amended by Executive Order 11375, and as supplemented in the Department of Labor Regulations (41 CFR Part 60);
- i) The selected Proposer and all its subcontractors shall comply with the Copeland "Anti-Kickback Act" (18 U.S.C. 276c) as supplemented in U. S. Department of Labor Regulations (29 CFR, Part 3). This Act provides that each contract subcontractor shall be prohibited for inducing, by any means, any person employed in the construction, completion, or repair of public works, to give up any part of the compensation to which he is otherwise entitled. The selected Proposer and all its subcontractors shall report all suspected or reported

violations to the UMHA.

### **PROPOSAL SUBMISSION**

All proposals must be submitted and time-stamped received in the designated UMHA office by no later than the submittal deadline stated herein (or within any ensuing addendum). A total of 1 original signature copy (marked "ORIGINAL") and 2 exact copies of the proposal submittal shall be placed unfolded in a sealed package and addressed to:

Roosevelt Residences Legal Services RFP  
Mr. Robert Calli, Executive Director  
Municipal Housing Authority of the City of Utica, New York  
509 Second Street; STE 1  
Utica, New York 13501

The package exterior must clearly denote the above noted RFP name and must have the proposer's name and return address. Proposals received after the published deadline will not be accepted.

Proposals must be received in completed form at the UMHA offices no later than the proposal submission time and date. Proposals submitted after the designated date and hour will not be accepted for any reason and will be returned unopened to the proposer. Faxed or E-mailed submissions will not be accepted. All timely submissions become the property of the UMHA, and will not be returned.

The UMHA reserves the right to accept or reject any or all proposals, issue addenda, take exception to these RFP specifications or to waive any formalities.

### **PROPOSAL TERMS AND CONDITIONS**

The selected Proposer shall at all times guarantee access by the UMHA, HUD, Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the selected Proposer which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts and transcriptions.

The selected Proposer shall be required to retain all pertinent records for a period not less than five (5) years after final payment has been made and all pending matters closed.

In submitting a response, the Proposer acknowledges that the UMHA shall not compensate the Proposer for any submission or contract negotiation costs, including costs of preparation, appearances for interviews, and/or travel expenses. It is essential that the Proposer selected will have the necessary knowledge, skills and experience to implement all aspects of the work. All work is to be performed with the highest degree of professional standards, in compliance with HUD regulations, UMHA policies and procedures, criteria and requirements, and State and local laws and regulations.

Proposers are requested and advised to be as complete as possible in their response. The UMHA reserves the right to 1) contact any proposer to clarify any response; 2) contact any current users of the proposer's services; 3) solicit information from any available source concerning any aspect of the proposal; 4) check references; 5) conduct credit and Lexus Nexus checks; and, 6) seek and review any other information deemed pertinent to the evaluation process.

The UMHA 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 that such cancellation or rejection is in the best interest of RFP. The UMHA further reserves the right to waive any minor informalities or the failure of any Proposer to comply therewith, if it is in the public interest to do so. Finally, the UMHA reserves the right to terminate the RFP process at any time, if deemed by the UMHA to be in its best interests.

The UMHA reserves the right to reject and not consider any proposal that does not meet the requirements of this RFP, including but not necessarily limited to incomplete proposals and/or proposals offering alternate or non-requested services.

The UMHA reserves the right to cancel this RFP or contracts resulting from the project in the event of the unavailability of funding or any other reason.

The UMHA reserves the right not to award a contract pursuant to this RFP. Proposals which appear unrealistic in the terms of management commitments or are indicative of failure to comprehend the complexity of this RFP and subsequent contracts may be rejected.

The UMHA reserves the right to terminate a contract awarded pursuant to this RFP, at any time for its convenience upon 10 days written notice to the successful proposer(s).

This request does not commit the UMHA to award a contract or to pay for any costs incurred in the preparation of any proposal to this request. The Proposer assumes all responsibility for submission of proposal and meeting of required deadlines.

The UMHA reserves the right to negotiate the fees proposed by the proposer entity.

The UMHA reserves the right to accept or reject any or all of the proposals received. It also reserves the right to negotiate with all qualified and approved proposers or to cancel all or any part of this request for proposal. Proposers may be required to participate in negotiations that could result in revisions to the proposal.

The UMHA reserves the right to retain all proposals submitted and not permit withdrawal for a period of 60 days subsequent to the deadline for receiving proposals without the written consent of the UMHA Contracting Officer (CO).

The UMHA may award a contract based solely on the proposal received without further discussion with the proposer. Therefore, proposals received should reflect the most favorable terms from a cost/benefit standpoint. The UMHA may request additional data, discussion or a presentation of the proposal.

The UMHA will reject the proposal of any Proposer who is debarred by the U. S. Department of Housing and Urban Development (HUD) from providing services to public housing authorities and other HUD grantees, and reserves the right to reject the proposal of any Proposer who UMHAs previously failed to perform any contract properly for the UMHA.

The determination of the criteria and process whereby proposals are evaluated and the decision as to who shall receive a contract award, or whether or not an award shall be made as a result of this RFP shall be at the sole and absolute discretion of the UMHA.

The purpose of this RFP is to solicit meaningful proposals so that the UMHA may select, from among a range of proposals that which best meets its needs and requirements. It is further desired that the RFP process will ensure cost-competitiveness among Proposers. The UMHA urges all interested Proposers to carefully review the

requirements of this RFP. Written proposals containing the requested information will serve as the primary basis for final selection, supplemented by other means as described below.

All proposals will be reviewed by the UMHA based on the evaluation criteria contained in this RFP. The UMHA will select the top proposer based upon our evaluation of the proposal, and the fee proposal (not necessarily the lowest pricing). The specific evaluation criteria and respective weighting are detailed in this proposal. The UMHA reserves the right to include interviews by telephone or in person if it determines this is necessary.

The UMHA expects to enter into contract negotiations with the top ranked individual, during which the UMHA and the proposer will resolve any necessary issues that need to be addressed prior to entering into a contract. If, in the sole judgment of the UMHA, these negotiations are not successful, we reserve the right to enter into negotiations with other individuals, proceeding in the order of their initial ranking.

Proposals may be withdrawn by written request prior to award.

Due care and diligence has been used in preparation of this information, and it is believed to be substantially correct. However, the responsibility for determining the full extent of the exposure and the verification of all information presented herein shall rest solely with the proposer. The UMHA and its representatives will not be responsible for any errors or omissions in these specifications, nor for the failure on the part of the proposer to determine the full extent of the exposures.

The successful Proposer may not assign their rights and duties under an award without the written consent of the UMHA. Such consent shall not relieve the assignor of liability in the event of default by the assignee.

The UMHA is committed to promoting participation in our contracts by businesses owned and operated by minorities and women and Section 3 Business Concerns. It is the policy of the UMHA to use best good faith efforts, consistent with applicable federal regulations, to fully promote participation and utilization of these firms in all areas of contracting. Selected Proposers are expected to demonstrate diligence to achieve participation and utilization.

Upon award, the selected Proposer will be required to enter into a confidentiality agreement to safeguard client data and protect proprietary information.

The UMHA reserves the right to determine the days, hours and locations that the successful proposer(s) shall provide the services called for in this RFP.

Proposer will ensure that it and persons working on its behalf do not undertake any representation or other relationship that places it in an actual or potential conflict of interest position with any other entity. The UMHA requires the proposer to disclose the conflict in writing to the Executive Director. The UMHA's consent and waiver to the conflict must be obtained in writing.

The selected proposer shall furnish the UMHA original Certificates of Insurance evidencing the required coverage on the effective date of the Agreement(s) resulting from this RFP.

The proposer shall give the UMHA permission to perform credit check and Lexus Nexus check during the course of evaluating proposal.

The UMHA retains the right of final approval of any sub-contractor of the selected individual or firm who must inform all sub-contractors of this provision.

All documents produced under contract to the UMHA must be submitted to the UMHA both in hard copy and a digital format that meets the UMHA's requirements, using Microsoft Word and other programs in a PC-compatible format. All documents and products created by the selected individual or firm and their sub-contractors shall become the exclusive property of the UMHA.

By responding to this RFP, the Proposer acknowledges that for any contract signed as a result of this RFP, the authority to proceed with the work is contingent upon the availability of funding.

The UMHA is committed to affirmatively further fair housing for all persons regardless of race, color, national origin, religion, sex, sexual orientation, or familial status. We comply with Title VIII of the Federal Civil Rights Act of 1968, also referred to as the "Fair Housing Act," which prohibits discrimination against occupants on the basis of race, color, religion, sex or national origin. The UMHA also adheres to the Federal Fair Housing Amendments Act of 1988 Section 504 of the federal Rehabilitation Act of 1973, the Americans with Disabilities Action (ADA) of 1990, the New York State Human Rights Law, and Section 602 of the New York State Private Housing Finance Law. The "Fair/Equal Housing Opportunity" logo must be displayed on any advertisements in connection with the project. All contractors retained for our projects must promote fair housing and comply with the Fair Housing Act and fair housing laws and regulations.

The contract may be terminated by either party upon written ten (10) days notice prior to cancellation.

The UMHA will award a contract according to the Evaluation Criteria contained herein, provided the Proposal is in the best interest of the UMHA. The proposer to whom an award is made will be notified at the earliest practicable date. No award may be made to a person who is on the list of entities ineligible to receive awards from UMHA, State of New York, or the United States, as furnished from time to time by HUD.

All costs incurred in the preparation and presentation of proposals shall be wholly borne by each proposer. All supporting documentation and manuals submitted with each proposal will become the property of the UMHA unless otherwise indicated by the proposer at the time of submission.

The UMHA is not liable for any costs incurred by any proposer prior to issuance of a Notice to Proceed.

Any materials submitted by the Proposer that are to be considered as confidential must be clearly marked as such.

### **SUBMISSION CONDITIONS**

DO NOT FOLD OR MAKE ANY ADDITIONAL MARKS, NOTATIONS OR REQUIREMENTS ON THE DOCUMENTS TO BE SUBMITTED! Proposers are not allowed to change any requirements or forms contained herein, either by making or entering onto these documents or the documents submitted any revisions or additions; and if any such additional marks, notations or requirements are entered on any of the documents that are submitted to the UMHA by the proposer, such may invalidate that proposal. If, after accepting such a proposal, the UMHA decides that any such entry has not changed the intent of the proposal that the UMHA intended to receive, the UMHA may accept the proposal and the proposal shall be considered by the UMHA as if those additional marks, notations or requirements were not entered on such. By submitting a proposal, the proposer is thereby agreeing to abide by all terms and conditions published herein and by addendum pertaining to this RFP.

### **SUBMISSION RESPONSIBILITIES**

It shall be the responsibility of each proposer to be aware of and to abide by all dates, times, conditions, requirements and specifications set forth within all applicable documents issued by the UMHA, including the RFP document, and any addenda and required attachments submitted by the proposer. By virtue of completing, signing and submitting the completed documents, the Proposer is stating his/her agreement to comply with all conditions and requirements set forth within those documents. Written notice from the Proposer not authorized in writing by the Contracting Officer to exclude any of the UMHA requirements contained within the documents may cause that Proposer to not be considered for award.

### **PROPOSER'S RESPONSIBILITIES--CONTACT WITH THE UMHA**

It is the responsibility of the Proposer to address all communication and correspondence pertaining to this RFP process to the Contact person listed only. Proposers must not make inquiry or communicate with any other UMHA staff member or official (including members of the Board of Commissioners) pertaining to this RFP. Failure to abide by this requirement may be cause for the UMHA to not consider a proposal submittal received from any proposer who has not abided by this directive.

### **ADDENDUMS**

All questions and requests for information must be addressed in writing to the contact person. The contact person will respond to all such inquiries in writing by addendum to all prospective Proposers (i.e. firms or individuals that have obtained the RFP Documents). During the RFP solicitation process, the contact person will NOT conduct any *ex parte* (a substantive conversation—"substantive" meaning, when decisions pertaining to the RFP are made—between the UMHA and a prospective Proposer when other prospective Proposers are not present) conversations that may give one prospective Proposer an advantage over other prospective Proposers. This does not mean that prospective Proposers that may not call the contact person—it simply means that, other than making replies to direct the prospective Proposer where his/her answer has already been issued within the solicitation documents, the contact person may not respond to the prospective Proposer's inquiries but will direct him/her to submit such inquiry in writing so that the contact person may more fairly respond to all prospective Proposers in writing by addendum.

### **TECHNICAL INQUIRIES**

All technical questions will be sent via email to [jfurman@uticamha.org](mailto:jfurman@uticamha.org). The deadline for submitting all written questions via email is March 14, 2016; 4:30 p.m. Responses to written questions will be sent to interested parties by fax or email. Questions and answers will be posted to the UMHA website soon thereafter: [www.uticamha.org](http://www.uticamha.org)

If in the opinion of the UMHA additional material or interpretation is needed, it will be provided as an Addendum to the RFP. Proposers wishing to receive the addendum should send a notification to the above email address. Answers will be provided as written addenda to this RFP, issued by fax or E-mail to all persons who have requested the RFP. It will also be posted on the UMHA website.

Such Addendum will have the same binding effect as though contained in the original RFP.

Oral information concerning the specifications of the project given out by UMHA employees or Proposers to prospective Proposers shall not bind the UMHA.

Notice: Any prospective Proposer who received this document from a source other than the Issuing Office should immediately advise the Issuing Office of its name and fax/email address, so that amendments to the RFP and other communications can be sent to them.

The UMHA will endeavor to provide copies of addenda to all potential Proposers to whom this RFP has been mailed, but it will be the responsibility of each Proposer to make inquiry as to the existence and content of addenda, as the same shall become part of this RFP and all Proposers will be bound thereby, whether or not the addenda are actually received by the Proposer.

**RFP CONTACT PERSON:**

Mr. John J. Furman  
Municipal Housing Authority of the City of Utica, NY  
509 Second Street  
Utica, New York 13501  
Ph. (315) 982-3731  
Fax: (315) 735-3366  
jfurman@uticamha.org

**CONTRACT AWARD**

**Contract Award Procedure:** If a contract is awarded pursuant to this RFP, the following detailed procedures will be followed:

By completing, executing and submitting the Proposal Application Form, the proposer is thereby agreeing to abide by all terms and conditions pertaining to this RFP as issued by the UMHA, including the contract clauses found in the HUD forms. Accordingly, the UMHA has no responsibility to conduct after the submittal deadline any negotiations pertaining to the contract clauses already published.

**Contract Conditions:** The following provisions are considered mandatory conditions of any contract award made by the UMHA pursuant to this RFP:

**Assignment of Personnel:** The UMHA shall retain the right to demand and receive a change in personnel assigned to the work if the UMHA believes that such change is in the best interest of the UMHA and the completion of the contracted work.

**Unauthorized Sub-Contracting Prohibited:** The successful proposer shall not 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 CO. Any purported assignment of interest or delegation of duty, without the prior written consent of the CO shall be void and may result in the cancellation of the contract with the UMHA, or may result in the full or partial forfeiture of funds paid to the successful proposer as a result of the proposed contract; either as determined by the CO.

**Contract Period:** The UMHA anticipates that the contract will be for a period of one year.

**LICENSING AND INSURANCE REQUIREMENTS**

Prior to award (but not as a part of the proposal submission) the *successful Proposer* will be required to provide:

Professional Liability containing errors and omissions coverage in amounts not less than \$1,000,000 (One Million Dollars).

Workers' Compensation and Employees Liability, in accordance with New York State Compensation laws.

Commercial General Liability with a combined single limit for bodily injury and property damage of not less than \$1,000,000 (One Million Dollars) per occurrence to protect the UMHA against claims for bodily injury or death and damage, loss, or theft of equipment and property of others. This shall cover the use of all equipment and vehicles not covered by Automobile Liability. This shall include premises and/or operations; independent Proposers; products and completed operations and contractual liability.

Automobile Liability Insurance (Primary or Umbrella). When any motor vehicles (owned, non-owned and hired) are used in connection with Proposer's performance under the Contract, the Proposer shall provide Comprehensive expiration date. In addition, there shall be a 30-day notification to UMHA in the event of cancellation or modification of any stipulated insurance coverage.

Certificates of insurance, in form and with insurers satisfactory to UMHA, evidencing coverage above shall be furnished to the UMHA before commencing any work under this Agreement, with complete copies of policies upon UMHA request.

Approval of insurance by the UMHA shall not relieve or decrease the liability of Proposer hereunder. Automobile Insurance with limits of not less than the amount set by the Contracting Officer at the execution of the Contract per occurrence combined single limit, for bodily injury and property damage. The UMHA shall be named as additional insured on a primary contributory basis.

If any such insurance is due to expire during the contract period, the Proposer shall not permit the coverage to lapse and shall furnish evidence of coverage to the UMHA. All certificates of insurance, as evidence of coverage, shall provide that no coverage may be canceled by the insurance company until at least 30 days prior written notice has been given to the UMHA.

The UMHA is to be listed as Additional Insured and Certificate Holder on liability policies.

The UMHA requires a valid, up to date copy of your policy to be maintained on file with our Procurement Office during the duration of any service or particular project.

### **RIGHT TO NEGOTIATE FINAL FEES**

The UMHA retains the right to negotiate the amount of fees that are paid to the successful Proposer, meaning the fees proposed by the top-rated Proposer may, at the UMHA's options, be the basis for the beginning of negotiations. Such negotiations shall begin after the UMHA has chosen a top-rated Proposer. If such negotiations are not, in the opinion of the CO successfully concluded within 5 business days, the UMHA shall retain the right to end such negotiations and begin negotiations with the next-rated Proposer. The UMHA also retains the right to negotiate with and make an award to more than one Proposer, as long as such negotiation(s) and/or award(s) are addressed in the above manner (i.e. top-rated first, then next-rated following until a successful negotiation is reached).

### **Contract Service Standards**

All work performed pursuant to this RFP must conform and comply with all applicable local, state and federal codes, statutes, laws and regulations.

### **SECTION 3 POLICY**

**What is Section 3?**

It is a means by which HUD fosters local economic development, neighborhood economic improvement, and individual self-sufficiency. Section 3 is the legal basis for providing jobs for residents and awarding contracts to businesses in areas receiving certain types of HUD financial assistance.

Under Section 3 of the HUD Act of 1968, wherever HUD financial assistance is expended for housing or community development, to the greatest extent feasible, economic opportunities will be given to Section 3 residents and businesses in that area.

**Section 3 Policy**

Congress established the Section 3 policy to guarantee that the employment and other economic opportunities created by Federal financial assistance for housing and community development programs should, if possible, be directed toward low- and very-low income persons, particularly those who are recipients of government assistance for housing.

**Who are Section 3 residents?**

Section 3 residents are:

- Public housing residents
- Low and very-low income persons who live in the metropolitan area or non-metropolitan county where a HUD-assisted project for housing or community development is located.

**Determining Income Levels**

- Low income is defined as 80% or below the median income of that area
- Very low income is defined as 50% or below the median income of that area.

**What is a Section 3 business & what types of economic opportunities are available under Section 3?**

A business:

- That is at least 51 percent or more owned by Section 3 residents,
- Whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents, or
- That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to a Section 3 business concern.

Types of Opportunities:

- Job training
- Employment
- Contracts

Examples include:

Administrative/ Management	Services	Construction
accounting payroll	appliance repair florists	architecture bricklaying

research	marketing	carpentry
bookkeeping	carpet installation	cement/masonry
purchasing	janitorial	demolition
word processing	photography	drywall
	catering	electrical
	landscaping	elevator construction
	printing	engineering
	computer/information	fencing
	manufacturing	heating
	transportation	iron works
	legal services	machine operation
		painting
		plastering
		plumbing
		surveying
		tile setting

**Who will award the economic opportunities?**

Recipients of HUD financial assistance and their contractors and subcontractors are required to provide economic opportunities, to the greatest extent possible, consistent with existing Federal, State, and local laws and regulations.

**Who receives priority under Section 3?**

For training and employment:

- Persons in public and assisted housing
- Persons in the area where the HUD financial assistance is expended
- Participants in HUD Youthbuild programs
- Homeless persons

For contracting:

Businesses that meet the definition of a [Section 3 business concern](#)

**How can businesses find Section 3 residents to work for them?**

Businesses can recruit in the neighborhood and public housing developments to inform residents about available training and job opportunities. Distributing flyers, posting signs, placing ads, and contacting resident organizations and local community development and employment agencies to locate potential workers are effective ways of acquiring jobs.

**Are recipients, contractors and subcontractors required to provide long-term employment opportunities, and not simply seasonal or temporary employment?**

Recipients are required, to the greatest extent feasible, to provide all types of employment opportunities to low and very low-income persons, including seasonal and temporary employment, as well as long-term jobs.

Employment goals are based on "new hires", which are defined as full-time employees for permanent, temporary, or seasonal employment opportunities.

Recipients and Proposers are encouraged to provide long-term employment. At least 30 percent of the permanent, full-time employees hired should be Section 3 residents. After a Section 3 employee has been employed for 3 years, the employee may no longer be counted as a Section 3 employee to meet the 30 percent requirement. This requires recipients to continue hiring Section 3 residents when employment opportunities are available.

**MINORITY AND WOMEN'S BUSINESS ENTERPRISE GUIDELINES FOR HUD FUNDED  
PROJECTS WITH  
SUBCONTRACTING OPPORTUNITIES**

**Definitions of Terms**

**MBE** - *Minority Business Enterprise* - As defined by the Small Business Administration, includes male and female business owners who are African-American, Hispanic-American, Native-American, Asian-Pacific American, Asian-Indian American and members of other groups designated from time to time by the SBA. Minority business status requires 51% or greater ownership by minorities as well as management and control of daily business operations, with experience or technical expertise directly related to the primary product or service of the business.

**WBE** - *Women's Business Enterprise* - non-minority women who own 51% or more of the business as well as management, control and technical expertise as stated above.

The Utica Municipal Housing Authority and Rebuild Mohawk Valley, Inc. are committed to offering contracting opportunities to area firms. And as a major recipient of federal funds, the Agency further makes these opportunities available to businesses owned by low-income residents and minority or women owned businesses.

We are pleased to help contractors and others conduct outreach to minority/women's business enterprises (**M/WBE**) as required by federal regulations. The Housing Authority/Rebuild Mohawk Valley's commitment to this process also means that we are always available to help contractors as well as community members realize contracting opportunities.

**M/WBE PROGRAM REQUIREMENTS**

The U.S Department of Housing and Urban Development funding has Minority Business Enterprise ("MBE") and Women's Business Enterprise ("WBE") **requirements**. Depending on the type of project and funding source the specific federal **requirements** are found at 24 CFR 85.36(e) or at 24 CFR 84.44(b).

**CERTIFICATION**

A MBE or WBE designated in the bid must, upon request, certify that the firm is owned and controlled by a woman or women or a member of a minority group or groups.

The UMHA may certify firms as M/WBE and Section 3. It is important to note that other agencies such as DHCR and New York State Empire State Development have a certification program for these types of firms.

**DEMONSTRATING GOOD FAITH EFFORTS**

The Proposer has the responsibility of demonstrating that its efforts were reasonably designed to maximize the use of minority and women's businesses.

Contractors and subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, gender, age, disability or marital status. For these purposes,

affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

The Proposer will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, gender, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce on the contract.

The Proposer shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, gender, age, disability or marital status.

Contractors are also required to undertake good faith efforts to subcontract with M/WBE's with which it may subcontract or from which it may obtain supplies (and or equipment, commodities, etc.) for this offering as well as the dollar amount, if known, of any such subcontract or purchase.

In order to assist prospective Proposers in their attempts to demonstrate effective affirmative action efforts, the Authority suggests Proposers consider any or all of the following steps while developing their responses to this RFP:

1. Contact all known M/WBEs that may appropriately serve as a subcontractor(s) or a vendor(s) under the contract.
2. Keep a "contact" list of M/WBEs contacted for this particular RFP along with the name of your contact and the result of the contact(s).
3. Use the M/WBEs contacted as a possible resource for additional contacts. In the event your firm did not obtain the desired results from steps 1-3 above, the Agency suggests that prospective Proposers consider these additional steps (and keep a contact record of the same):
4. *Contact area Minority Business Associations, Proposers Associations, Purchase Councils or Professional Organizations serving the area in which the contract will be performed.*
5. *Contact the New York State Department of Economic Development at (518) 292-5100 or Web Site [www.empire.state.ny.us](http://www.empire.state.ny.us) for assistance.*
6. *Contact area community-based organizations that serve the minority community and local elected, appointed, religious or other acknowledged leaders who also may serve as resources.*

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

**Representations, Certifications,  
and Other Statements of Bidders**  
**Public and Indian Housing Programs**

# Representations, Certifications, and Other Statements of Bidders

## Public and Indian Housing Programs

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### 1. Certificate of Independent Price Determination

(a) The bidder certifies that--

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

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

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

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

(1) Is the person in the bidder'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's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder'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 deletes or modifies subparagraph (a)2 above, the bidder must furnish with its bid a signed statement setting forth in detail the circumstances of the disclosure.

[ ] [Contracting Officer check if following paragraph is applicable]

(d) Non-collusive affidavit. (applicable to contracts for construction and equipment exceeding \$50,000)

(1) Each bidder shall execute, in the form provided by the PHA/IHA, an affidavit to the effect that he/she has not colluded with any other person, firm or corporation in regard to any bid submitted in response to this solicitation. If the successful bidder did not submit the affidavit with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the affidavit by that date may render the bid nonresponsive. No contract award will be made without a properly executed affidavit.

(2) A fully executed "Non-collusive Affidavit" [ ] is, [ ] is not included with the bid.

### 2. Contingent Fee Representation and Agreement

(a) Definitions. As used in this provision:

"Bona fide employee" means a person, employed by a bidder and subject to the bidder's supervision and control as to time, place, and manner of performance, who neither exerts, nor proposes to exert improper influence to solicit or obtain contracts nor holds out as being able to obtain any contract(s) through improper influence.

"Improper influence" means any influence that induces or tends to induce a PHA/IHA employee or officer to give consideration or to act regarding a PHA/IHA contract on any basis other than the merits of the matter.

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

(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.

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

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

### 3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (applicable to contracts exceeding \$100,000)

(a) The definitions and prohibitions contained in Section 1352 of title 31, United States Code, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The bidder, by signing its bid, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989 that:

(1) No Federal appropriated funds have been paid or will be paid to 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 on his or her behalf in connection with the awarding of a contract resulting from this solicitation;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to 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 on his or her behalf in connection with this solicitation, the bidder shall complete and submit, with its bid, OMB standard form LLL, "Disclosure of Lobbying Activities;" and

(3) He or she will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(d) Indian tribes (except those chartered by States) and Indian organizations as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) are exempt from the requirements of this provision.

#### 4. Organizational Conflicts of Interest Certification

The bidder certifies that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work to be performed under this proposed contract and the bidder's organizational, financial, contractual, or other interests may, without some restriction on future activities:

- (a) Result in an unfair competitive advantage to the bidder; or,
- (b) Impair the bidder's objectivity in performing the contract work.

[ ] In the absence of any actual or apparent conflict, I hereby certify that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement.

#### 5. Bidder's Certification of Eligibility

(a) By the submission of this bid, the bidder certifies that to the best of its knowledge and belief, neither it, nor any person or firm which has an interest in the bidder's firm, nor any of the bidder's subcontractors, is ineligible to:

(1) Be awarded contracts by any agency of the United States Government, HUD, or the State in which this contract is to be performed; or,

(2) Participate in HUD programs pursuant to 24 CFR Part 24.

(b) The certification in paragraph (a) above is a material representation of fact upon which reliance was placed when making award. If it is later determined that the bidder knowingly rendered an erroneous certification, the contract may be terminated for default, and the bidder may be debarred or suspended from participation in HUD programs and other Federal contract programs.

#### 6. Minimum Bid Acceptance Period

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the PHA/IHA for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The PHA/IHA requires a minimum acceptance period of [Contracting Officer insert time period] calendar days.

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the PHA's/IHA's minimum requirement. The bidder allows the following acceptance period: calendar days.

(e) A bid allowing less than the PHA's/IHA's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above or (2) any longer acceptance period stated in paragraph (d) above.

#### 7. Small, Minority, Women-Owned Business Concern Representation

The bidder 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 business enterprise. "Women-owned business enterprise," as used in this provision, means a 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 business enterprise. "Minority business enterprise," as used in this provision, means a business which is at least 51 percent owned or controlled 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)

- [ ] Black Americans
- [ ] Asian Pacific Americans
- [ ] Hispanic Americans
- [ ] Asian Indian Americans
- [ ] Native Americans
- [ ] Hasidic Jewish Americans

#### 8. Indian-Owned Economic Enterprise and Indian Organization Representation (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

The bidder represents and certifies that it:

(a) [ ] is, [ ] is not an Indian-owned economic enterprise. "Economic enterprise," as used in this provision, means any commercial, industrial, or business activity established or organized for the purpose of profit, which is at least 51 percent Indian owned. "Indian," as used in this provision, means any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act.

(b) [ ] is, [ ] is not an Indian organization. "Indian organization," as used in this provision, means the governing body of any Indian tribe or entity established or recognized by such governing body. Indian "tribe" means any Indian tribe, band, group, pueblo, or

community including Native villages and Native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

**9. Certification of Eligibility Under the Davis-Bacon Act** (applicable to construction contracts exceeding \$2,000)

(a) By the submission of this bid, the bidder certifies that neither it nor any person or firm who has an interest in the bidder's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of the contract resulting from this solicitation shall be subcontracted to any person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.

**10. Certification of Nonsegregated Facilities** (applicable to contracts exceeding \$10,000)

(a) The bidder's attention is called to the clause entitled **Equal Employment Opportunity** of the General Conditions of the Contract for Construction.

(b) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

(c) By the submission of this bid, the bidder certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The bidder agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in the contract.

(d) The bidder further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) prior to entering into subcontracts which exceed \$10,000 and are not exempt from the requirements of the Equal Employment Opportunity clause, it will:

- (1) Obtain identical certifications from the proposed subcontractors;
- (2) Retain the certifications in its files; and
- (3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

**Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities**

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause of the prime contract. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

**Note:** The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

**11. Clean Air and Water Certification** (applicable to contracts exceeding \$100,000)

The bidder certifies that:

(a) Any facility to be used in the performance of this contract [ ] is, [ ] is not listed on the Environmental Protection Agency List of Violating Facilities:

(b) The bidder will immediately notify the PHA/IHA Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the bidder proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and,

(c) The bidder will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

**12. Previous Participation Certificate** (applicable to construction and equipment contracts exceeding \$50,000)

(a) The bidder shall complete and submit with his/her bid the Form HUD-2530, "Previous Participation Certificate." If the successful bidder does not submit the certificate with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the certificate by that date may render the bid nonresponsive. No contract award will be made without a properly executed certificate.

(b) A fully executed "Previous Participation Certificate" [ ] is, [ ] is not included with the bid.

**13. Bidder's Signature**

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

\_\_\_\_\_  
(Signature and Date)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Company Address)

# 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:]

# 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. 1/31/2017)

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.

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- (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 there of 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.

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## 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

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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-COLLUSIVE AFFIDAVIT

By submission of this bid or proposal, the bidder certifies that:

- a) This bid or proposal has been independently arrived at without collusion with any other bidder or with any competitor or potential competitor;
- b) This bid or proposal has not been knowingly disclosed and will not be knowingly disclosed, prior to the opening of bids or proposals for this project, to any other bidder, competitor, or potential competitor;
- c) No attempt has been or will be made to induce any other person, partnership, or corporation to submit or not to submit a bid or proposal or to fix overhead, profit, or cost element of said bid price, or that of any other or to secure any advantage against the Housing Authority;
- d) The person, signing this bid or proposal certifies that he has fully informed himself regarding the accuracy of the statements contained in this certification, and under the penalties of perjury, affirms the truth thereof, such penalties being applicable to the bidder as well as to the person signing in its behalf;
- e) That attached hereto (if a corporate bidder) is a certified copy of the resolution authorizing the execution of this certificate by the signator of this bid or proposal in behalf of the corporate bidder.

\_\_\_\_\_, deposes and says that he is \_\_\_\_\_

the party making the foregoing proposal or bid for \_\_\_\_\_ (Project description), that such proposal or bid is genuine and not collusive and that all stats herein are true.

Signature:

\_\_\_\_\_

Bidder (if the bidder is an Individual

\_\_\_\_\_

Partner ( if the bidder is a Partnership)

\_\_\_\_\_

Officer (if the bidders is a Corporation)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_

Notary Public

(Seal)

# Certification Regarding Debarment and Suspension

## Certification A: Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief that its principals;

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal debarment or agency;

b. Have not within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

### Instructions for Certification (A)

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of these regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines this eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph (6) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

**Certification B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**Instructions for Certification (B)**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of these regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph (5) of these instructions, if a participant in a lower covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies including suspension and/or debarment.

Applicant		Date
Signature of Authorized Certifying Official		Title