



## REQUEST FOR PROPOSAL (RFP) # 2019- 14

### REQUEST FOR PROPOSALS AT PROPERTIES OWNED OR MANAGED BY THE MUNICIPAL HOUSING AUTHORITY FOR THE CITY OF YONKERS

The Municipal Housing Authority for the City of Yonkers (the “Authority” or “MHACY”), is soliciting proposals from qualified firms for Security Services for MHACY at various sites as specified in this Request for Proposals (“RFP”).

This RFP package contains submission requirements and terms and conditions and other pertinent information for submitting a proper and responsive proposal. This RFP is the only information provided to prospective bidders (hereinafter “Responders”) and is available online starting October 4, 2019 at [www.mhacy.org](http://www.mhacy.org).

The RFP questions deadline is October 16, 2019 at 4:00PM Eastern Standard Time (EST). Any and all questions must be emailed to Lakisha Collins- Bellamy, Esq. at [procurement@mhacy.org](mailto:procurement@mhacy.org) by the deadline. No telephone calls and/or written communication sent via mail will be accepted.

**Proposals must reach MHACY no later than 3:00 PM (EST) on November 6, 2019. Late submissions will be handled in accordance with the provisions in Form HUD-5369B.**

Proposals will be evaluated on the criteria stated in the RFP. Negotiations may be conducted with contractors who have a reasonable chance of being selected for the award. After evaluation of the proposal revision, if any, the contract will be awarded to the responsible firm(s) whose qualifications, price and other factors are considered to be the most advantageous to MHACY.

MHACY reserves the right to reject any and all proposals and waive any irregularities or informalities if it is in MHACY’s best interest to do so. MHACY 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 MHACY.

MHACY is an Equal Opportunity Employer and does not discriminate on the basis of race, sexual orientation, color, national origin, sex, religion, age, disability, or family status. MHACY solicits and encourages the participation of minorities and small businesses in procurement.

Contact, related to this procurement, with members of MHACY’s Board of Commissioners, or MHACY’s officers and/or employees other than the contact person show above, during the procurement process could result in disqualification of a proposal.

Joseph Shuldiner  
Executive Director  
Municipal Housing Authority for the City of Yonkers  
1511 Central Park Avenue  
Yonkers, New York 10710

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- Section 1: Instructions to Respondents
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### ATTACHMENTS:

- Attachment A: Respondent's Qualification Statement (Part 1) and Respondent's Certification (Part 2) (*signatures required*)
- Attachment B: HUD Form 5369b (Instructions to Respondents (Pre-award Terms))
- Attachment C: HUD Form 5369c (Representations, Certifications and other Statement) (*signature required*)
- Attachment D: HUD Form 5370C: (General Contract Conditions Non-Construction)
- Attachment E: Sample Contract
- Attachment F: HUD Form 5369-A (Includes Small, Minority, Women-Owned Business Concern Representation) (*signature required*)
- Attachment G: Section 3 Certification (*signature required*)
- Attachment H: Acknowledgement of Addenda (*if applicable, signature required*)

## **SECTION 1 INSTRUCTION TO RESPONDENTS**

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### **1.1. INTRODUCTION**

The Municipal Housing Authority for the City of Yonkers ("MHACY" or "Authority"), is seeking proposals from qualified and experienced firms to provide security guard services at various sites it owns or manages, as specified in this Request for Proposals ("RFP"). Specifically, the Authority is seeking to provide unarmed security guard services at four permanent (4) posts, along with one (1) Marked Mobile Patrol Supervisor post that will be responsible for the supervision of the security guard staff and assure the safety and security of the tenants and property at all MHACY owned and/or managed sites throughout the City of Yonkers. All posts are to be manned twenty-four (24) hours a day and all guards must be in uniform. A list of the sites is included in Exhibit A.

The intent of this RFP is to award a contract to the responsible firm whose qualifications, price and other factors considered, are the most advantageous to the Authority.

MHACY reserves the right to add/remove related services not specifically named in this RFP. MHACY may make multiple contract awards as a result of this RFP.

**Amendments.** Amendments (addenda) to this RFP shall be in writing and shall be posted onto the MHACY website [www.mhacy.org](http://www.mhacy.org). Amendments shall be posted with sufficient time to allow bidders to consider the amendments in preparing their bids. If necessary, the deadline for submission of bids will be extended by an amendment.

A written acknowledgment form shall be completed by the bidder and submitted with the bid as evidence of receipt of the amendment or shall be noted on the Bid Form.

The MHACY reserves the right to cancel this RFP at any time and for any reason.

Any bid may be rejected in whole or in part when it is in the interest of the MHACY to do so. The MHACY shall not be responsible for the payment of any costs incurred by the bidder in the preparation or submission of a bid.

The issuance of this RFP, the receipt of a bid or the selection of a bidder in no manner obligates the MHACY to the eventual purchase of services. This process is solely at the discretion of the MHACY and may be terminated without penalty or obligation at any time prior to the signing of a written contract.

**Contract Term.** The initial contract term for this RFP shall be for one (1) year with the option to renew for (1) additional one (1) year term. Changes in cost for subsequent year renewals will be based on mutual agreement between both parties. For any pricing increases the Contractor will need to provide written justification and documentation to support such request. MHACY shall provide the Contractor with written notice of its intent to extend the Contract at least one ninety (90) days prior to the expiration of the then current Contract term.

**Non-Exclusive Contract.** The Contract is a non-exclusive contract for the services described. Selection shall be made of one (1) or more Respondents deemed to be fully qualified and best suited among those submitting proposal.

## **1.2. PRE-PROPOSAL CONFERENCE**

A pre-proposal conference has not been scheduled and none is contemplated for this RFP. Interested firms may contact Mr. Nelson Rodriguez, MHACY Administrative Security Advisor, to schedule a visit to properties if it believes that will improve the quality of its proposal.

## **1.3 QUESTIONS AND COMMUNICATION**

All questions must be put in writing to the RFP Contact named below no later than **October 16, 2019**. The intent of this requirement is to assure that all Respondents are in receipt of the same information and to allow MHACY sufficient time to post questions and answers in an Addendum to this RFP. MHACY reserves the right to use its discretion in issuing Addenda for questions and answers; only those questions and answers which might materially affect a vendor's response will result in an Addendum. It is the responsibility of each Respondent to check MHACY's website: [www.mhacy.org](http://www.mhacy.org) for a copy of all Addenda issued for this RFP.

**NOTE: Any RFP or lobbying directed to any Authority staff or the Board of Commissioners is prohibited and is grounds for disqualification of Respondent's proposal.**

## **1.4. PROPOSAL DEADLINE AND DELIVERY**

All Respondents must deliver in a sealed package one (1) original, and two (2) copies of their response to the following location no later than **3:00 PM on November 6, 2019**. Deliver to:

The Municipal Housing Authority for the City of Yonkers  
Attention: Lakisha Collins-Bellamy, Esq.  
1511 Central Park Avenue  
Yonkers, NY 10710

To assure proper receipt and handling of responses, the outside of the package must be clearly marked with Respondent's Name and Address, and the words: ***RFP 2019-14 Bid for Security Services***

You must acknowledge any and all addenda issued and related to this RFP with your submission by executing the attached Acknowledgement of Addenda.

**Bid Modification.** A bid may be modified by a bidder prior to the deadline for submission of bids by delivery of a written modification to the above address. The sealed envelope shall be marked "**Modification to Proposal for Security Services**" and list the name and address of the bidder.

**Bid Withdrawal.** A bid may be withdrawn prior to the deadline for submission of bids by delivering written notification to Joseph Shuldiner, Executive Director, Attention: Lakisha Collins-Bellamy, Esq.

Bids will be opened publicly on **November 8, 2019** at 10:00 a.m. at the second-floor conference room at 1511 Central Park Avenue.

### **1.5. PROPOSAL FORMAT**

The following documents must be completed and returned by all Respondents:

**Executive Summary.** Submit a letter on your company letterhead, signed by an authorized agent for the company. The letter should summarize your proposal response and incorporate, the Attachments required by this RFP and all other documents required in Section 1.5 of the RFP.

The Executive Summary should:

1. Provide an overview and history of your company.
2. Describe your company's previous experience and capability of providing the requested services described under Section 2, Scope of Work.
3. Indicate the names and types of similar properties that your company currently services and in what locations.
4. State the names and locations of all federally assisted low-income housing agencies (if any) your company currently services, as well as those your company has serviced over the past five (5) years.

### **Client References.**

Include three (3) references for which you have provided a similar scope of work.

Include a contact name, address, and phone number for each reference and provide a

description and value of the work performed.

**Organizational Chart.** Provide an organizational chart, highlighting credentials, and qualifications, and roles of key staff and subcontractors who will be involved in the work.

**Technical Proposal.** The proposal shall provide information necessary for MHACY to evaluate the qualifications, experience, and expertise of the proposing firm to provide Security Guard services. Contractors should submit a detailed response to RFP Section 2, Scope of Services.

**Fee Proposal.** Submit a complete Fee Proposal/Price Sheet indicating any and all costs associated with providing the services. Any and all costs not specifically provided for in the proposal response will be borne by each Contractor.

**Qualifications Statement.** Complete the Qualifications Statement (Attachment A, Parts 1 and 2) and provide all information requested therein. Resumes shall include each person's professional licenses and certifications. Provide attachments wherever more space is needed to respond to the question.

**HUD Form 5369c.** Complete and attach the Certifications and Representations of Respondents Non-Construction Contract (*Attachment C*).

**Preference and Certification for Disadvantaged Businesses** (*Attachment F, if applicable*)

**Acknowledgement of Addenda** (*Attachment H, if applicable*)

Elaborate proposals in the form of brochures or other presentations beyond that necessary to present a complete and effective proposal are not desired.

Attachments A-H (listed above)

## **1.6. RIGHT TO VERIFY INFORMATION**

MHACY reserves the right to verify any and all information provided in the Proposal. If there is evidence of misleading or false information, MHACY may, in its discretion, reject the Respondent's submittal.

## **1.7. EVALUATION OF PROPOSALS**

MHACY will assign an agent to review each proposal to determine if the proposal substantially complies with the requirements and procedures contained in this RFP. Respondents that are not in substantial compliance will not be considered further.

A selection committee will be convened to review responsive proposals.

**1.8. EVALUATION CRITERIA Bids will be evaluated upon the criteria set forth below, based upon a possible score of 100 points:**

- A. Experience providing security guard service to Housing Authorities **(25 points)**
- B. Past/Current performance and client reference **(25 points)**
- C. Senior staff/management staff credentials and security guard strategic methodology **(25 points)**
- D. Price and fees **(25 points)**

During proposal evaluation, MHACY reserves the right to call for supplementary information from Respondents and to meet with all or any one of them to clarify points of uncertainty or ambiguity. Respondents agree to cooperate fully and promptly in providing such supplementary information or meeting requirements.

Proposals will be evaluated and ranked according to points received. MHACY, in its sole discretion, may invite selected Respondents for an interview. Respondents should be prepared to discuss the proposed scope of work, including availability of equipment and staffing, accounting and payment procedures, schedules, qualification of subcontractors proposed for portions of the work, and such other items as are directly related to the proposal.

MHACY also reserves the right to obtain clarification of any point in a Respondent's proposal or to obtain additional information necessary to properly evaluate a particular proposal. Failure of a Respondent to respond to such a request for additional information or clarification could result in rejection of the Respondent's proposal.

All selected Respondents will be invited to negotiate all aspects of the fee proposal to arrive at a firm and reasonable cost as determined by MHACY.

### **1.9. INTERVIEWS**

A selection panel will interview the highest scoring Respondents (typically the highest 3 unless it is in MHACY's best interest to interview more).

Negotiations shall then be conducted with each of the Respondents so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each Respondent so selected, MHACY shall select the Respondent(s) which, in its opinion, have presented the best proposals, and shall award the contracts to those firms.

MHACY intends to permit multiple awards as a result of this RFP. Should MHACY determine in its sole discretion that only one (1) Respondent is fully qualified, or that one (1) Respondent is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Respondent.

### **1.10. AWARD**

An award will be made to the Respondent(s) whose proposal is/are deemed most advantageous to MHACY. MHACY reserves the right to make award to one or more Respondents whichever is deemed to be most advantageous to MHACY.

Once the selections have been made as to which Respondents will be awarded the contracts, the MHACY will a post Notice of Awards on the MHACY's website

The award documentation will subsequently be followed by contracts incorporating by reference all the requirements, terms and conditions of the RFP and the Respondent's proposal as negotiated.

MHACY reserves the right to administer the Contract in whatever way is most advantageous taking into consideration cost effectiveness, efficiency, and practicality. MHACY further reserves the right to make a "no award" on all or any part of this Request for Proposal and to negotiate the extent of services provided (upward or downward) in any Service Area.

**1.11. SOCIO ECONOMIC CONSIDERATION:** MHACY encourages and gives

preference to companies located in or owned by persons residing in a public housing development (commonly referred as Section 3 companies). MHACY's Affirmative Purchasing Policy also encourages bids from all small businesses including minority and woman owned businesses.

A section 3 Business is a New York business at least 51% or more owned by a Section 3 resident or

- The New York registered business must have at least 30% permanent full-time employees that are Section 3 residents or that within the past 3 years were section 3 residents
- A Section 3 resident is a public housing resident in Yonkers with an income no greater than 80% of the median income for Yonkers.

### **1.12. CONDITIONS OF CONTRACT**

This Request for Proposal, including all attachments, together with the Contractor's proposal response will form the entire agreement between the Contractor and MHACY. Any and all exceptions to the Sample Contract attached to this RFP should be noted in the Respondent's response to this RFP.

In the event additional services are required that have not been awarded, but are within the scope of the services described in this RFP, MHACY will have the sole and exclusive right to allocate the service to a firm under contract or seek the services on the open market, whichever is deemed to be in its best interest.

The person signing the proposal on behalf of the Respondent must be authorized to commit the Respondent in contractual matters and to conduct negotiations or on behalf of the Respondent.

## **SECTION 2 SCOPE OF SERVICES**

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The Municipal Housing Authority for the City of Yonkers is seeking Proposals from qualified and experienced firms to provide security guard services at various sites as specified in this RFP.

Please note that the Authority is requesting pricing and qualifications for unarmed guards. In order to be considered eligible for this RFP, each Respondent must be able to provide unarmed guards in accordance with the requirements contained in this RFP.

### **2.0 WORK, EQUIPMENT & PRICING**

The objective of these services will be to safeguard the property, residents, visitors and associates who enter the as property owned and/or managed by the Authority. The Respondent shall impress upon its personnel that their primary duty and responsibility is to safeguard the residents as well as property in and around the property as property owned and/or managed by the Authority.

Respondent is expected to furnish all uniforms, materials, equipment, and vehicles necessary to

satisfactorily perform security guard service in accordance to this RFP.

## **2.1. PROPOSAL PRICE SHEET:**

Respondent shall provide a price sheet with their proposal, as indicated in Section 1.5 of this RFP. The price sheet shall be in the Respondent's preferred format and includes hourly rates for the services described in the Scope of Work.

The Price Sheet must be signed. (See Section 4 of this RFP).

## **2.2. EQUIPMENT LIST:**

Offeror shall provide a full equipment list with appropriate cost for each as required above with their proposal.

Equipment list shall include details of the equipment, quantities of each piece of equipment, and the general work the equipment is used for.

## **2.3. WORK HOURS:**

Unless otherwise agreed, Respondent shall provide, at minimum, 24 hour a day Uniformed Security Guard coverage at four locations and one (1) Marked Mobile Patrol that will patrol 24 hours a day as described in this RFP.

## **2.4 SERVICE UNITS:**

### **Location-Calgagno Homes**

#### **Post #1**

Twenty-four (24) hour day coverage for one (1) Uniform Security Guard post to conduct access control and directional instruction to vehicle and pedestrian traffic for residents, MHACY staff, visitors, vendors, contractors and emergency personnel. The Guard must obtain check identification documentation for all visitors, vendors and contractors. Everyone entering the property must produce a physical identification card to the Guard to gain entry.

**ALL SECURITY PERSONAL:** Must Complete a Daily Activity Report (DAR). Each (DAR) is to have an hourly entry of Post Conditions and Safety concerns that will include but not be limited to weather, slippery walkways, and the location of lights that are out and/or missing.

**ALL SECURITY PERSONNEL:** Must complete an incident report when an incident accrues. Incident reports are to have ONLY specific details of incident to include but not be limited to Time of incident, Time of Supervisor Contact, Type of incident, Location of incident, Persons involved, Time of emergency contact and Time of MHACY contact.

**ALL SECURITY PERSONNEL: Must Be Trained and Certified in accordance to the New York State Security Act of 1992 and bi-annually certified in Fist Aid, CPR and the use of an AED.**

## **Post #2**

Twenty-four (24) hour day coverage for one (1) Uniform Security Guard post to conduct access control and directional instruction to vehicle and pedestrian traffic for residents, MHACY staff, visitors, vendors, contractors and emergency personnel. The Guard must obtain check identification documentation for all visitors, vendors and contractors. Everyone entering the property must produce a physical identification card to the Guard to gain entry.

## **Location- Palisade Towers formerly Schlobohm Houses**

### **Post #3**

Twenty-four (24) hour day coverage for one (1) Uniform Security Guard post to conduct access control and directional instruction to vehicle and pedestrian traffic for residents, MHACY staff, visitors, vendors, contractors and emergency personnel. The Guard must obtain check identification documentation for all visitors, vendors and contractors. Everyone entering the property must produce a physical identification card to the Guard to gain entry.

### **Post #4**

Twenty-four (24) hour day coverage for one (1) Uniform Security Guard post (to conduct access control and directional instruction to vehicle and pedestrian traffic for residents, MHACY staff, visitors, vendors, contractors and emergency personnel. The Guard must obtain check identification documentation for all visitors, vendors and contractors. Everyone entering the property must produce a physical identification card to the Guard to gain entry.

### **Marked Mobile Patrol Supervisor**

Twenty-four (24) hour day coverage for one (1) Marked Mobile Patrol Supervisor (MPS), to patrol ONLY MHACY owned or managed properties. The MPS must respond to all locations with security and safety issues and support all uniform guards regarding proper supply of reports, equipment such as 2-way Radios and uniforms.

MPS must assist property managers and/or escort managers on those occasions which require tenant notifications. The MPS must conduct and/or assist MHACY conduct code enforcement when requested. The MPS must report to MHACY's Security Director hourly via email (ie. 24 times a day) and contact the Security Director regarding any emergency events.

## **2.5 PERSONNEL**

The Contractor shall be responsible for having sufficient and adequately qualified personnel who have demonstrated expertise in unarmed security operations.

### **A. RESPONDENT/COMPANY RESPONSIBILITIES**

1. The Respondent shall provide appropriately equipped and trained personnel, with background inspections completed according to the Authority's specified eligibility criteria.

2. Must have sufficient security personnel to meet Authority's needs during scheduled hours.
3. Provide the Authority's designated representative with the names of all security guard personnel performing under the Contract and submit updated information as changes occur on a timely manner.
4. Provide documentation to the Authority's designated representative verifying that all guards assigned to Authority property meet or exceed the minimum requirements stipulated in this RFP.
5. Ensure that security guards are on time, properly attired and conduct themselves in a professional manner during their scheduled shift at the properties managed or owned by the Authority.

**B. SECURITY GUARDS' REQUIREMENTS**

1. Must be fluent in English and be able to communicate effectively both verbally and in writing.
2. Must be licensed as stipulated in this RFP.
3. Must be able to safely perform the duties assigned without posing a direct threat to the health and safety of others.
4. Must behave in a professional and respectful manner at all times.

**C. SECURITY GUARDS' RESPONSIBILITIES**

1. Circulate throughout the buildings and property to maintain an orderly atmosphere and perform related duties as required including protecting materials, equipment, residents, the public, and premises.
2. Prevent unauthorized access to restricted areas.
3. Provide appropriate information in response to inquiries from visitors or guests.
4. Act in a courteous and professional manner at all times.
5. Survey facilities for problems of security (including non-functioning light bulbs and vandalism) and hazardous conditions and report them to appropriate Authority staff for repair.
6. Intercept anyone activating electronic security system and discover reason for alarm.
7. Maintain up-to-date and continuous security inventory of facilities.
8. Maintain records of security matters, key logs, staffing schedules, and security checklists.
9. Enforce property rules, policies, and safety regulations and maintain order using good judgement and discretion.
10. Investigate any unusual or unauthorized activity, notify the police and prepare related report logs.
11. Use nonviolent crises intervention techniques to diplomatically confront unauthorized persons and immediately call police when necessary.

12. Expel unruly persons and call police for more serious offenders.
13. Communicate effectively with the public and Authority personnel.
14. Notify supervisors of possible emergency conditions.
15. Notify supervisors of incidents and prepare appropriate reports.
16. Exercise crowd control and prevent large crowds from forming.
17. Be neatly groomed in an approved uniform and properly equipped at all times.
18. Report to the designated location on time and will remain on duty until the end of the shift or until properly relieved.

#### **D. MINIMUM QUALIFICATION AND EXPERIENCE**

To be eligible to respond to this RFP, the Respondent must demonstrate that the firm has sufficient capabilities, resources and experience to provide the Services under this RFP. Any Respondent that fails to meet all the following minimum qualification requirements may be noted as “NON-RESPONSIVE”. Those qualifications are as follows:

1. The Respondent shall be licensed to do business in the State of New York.
2. All guards assigned to Authority facilities must have a valid NYS security guard license.
3. All guards assigned to Authority facilities must have, an unarmed security guard license and respondent must submit proof of such license for each guard assigned to the Authority.
4. References: The Respondent must submit at least three (3) references for clients which the Respondent has provided services similar to those requested by this RFP. If available, the Respondent should include references for similar services provided to public agencies.
5. Personnel may not be employed under this contract if they have ever been convicted of any felony sexual violation and/or lewd behavior charges, any felony convictions, or have had any military conduct resulting in dishonorable or bad conduct discharge and/or dismissal, including as a result of military court martial.

#### **2.6 SUBCONTRACTORS**

The Contractor shall not subcontract any portion of the services to be performed under the Contract without the prior written approval of the MHACY.

#### **2.7 SAFETY STANDARDS**

Respondent shall comply with all federal, state and local laws, regulations, permitting and safety standards.

#### **2.8 CONTACT PERSON**

The Respondent shall assign an individual as the Project Manager whose name and cell phone number

shall be required prior to commencement of any work activities. The Respondent's Project Manager shall be responsible for assigning and coordinating work, providing status reports of all outstanding work, and handling general contract performance issues.

The Respondent's Project Manager and at least one (1) crew member on each crew shall be capable of communicating (both verbally and in writing) and comprehending the English language. Respondent's Project Manager and the designated crew member shall be capable of communicating instructions to the other crew members.

Whenever there are changes to the Respondent's Project Manager, the Respondent shall submit a new name and cell phone number to the MHACY's Contract Administrator within twenty-four (24) hours. MHACY reserves the right to request a new Respondent's Project Manager be assigned to the project(s) at any time.

MHACY reserves the right to request a change in the Respondent representative responsible for performing work if at MHACY's discretion; the assigned representative is not adequately meeting the needs of MHACY.

### SECTION 3 QUALIFICATION STATEMENT

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**See Attachment A, Parts 1 and 2, which must be completed and included in your bid package.**

### SECTION 4 PRICE SHEET

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Respondents are required to provide a complete fee schedule inclusive of all potential costs associated with delivering the full range of services required on its Price Sheet. The Respondent shall provide a description of the equipment and process and methods that will be employed to provide the services described in the Scope of Work Section of this RFP.

Any and all costs not specifically provided for in the proposal response will be borne by the Contractor. **FEES TO REMAIN FIRM.** Fees must remain firm for the duration of the Contract. Any and all costs not specifically stipulated will be borne by the Respondent.

**ALL PRICE SHEETS MUST BE SIGNED AND CONTAIN THE FOLLOWING LANGUAGE:**

The Undersigned agrees to hold its offer open for 90 days from the date of RFP opening.

Signed by: \_\_\_\_\_ Print Name \_\_\_\_\_

Name of Company or Title  
\_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

## SECTION 5 GENERAL TERMS AND CONDITIONS

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1. **CONTRACT AGREEMENT:** This Request for Proposal, the Contractor's response to it and the Contract will constitute the entire agreement between the Contractor and MHACY unless mutually amended in writing. The Sample Contractual Agreement attached hereto will be used as the basis for negotiation between the Contractor and MHACY, therefore, any and all exceptions to the contract should be noted by each Respondent as part of his/her proposal response.
2. **SIGNED PROPOSAL CONSIDERED AN OFFER:** Receipt of a signed proposal is considered a binding offer by the Respondent which shall remain firm for a period of 90 days from the date of response opening. In the event of withdrawal after response opening, MHACY may take such action as it deems appropriate including legal action for damages or specific performance.
3. **PAYMENT TERMS:** All payments under the contract shall be pursuant to the detailed schedule of tasks and associated fees agreed to by the parties.
4. **CHANGES:** MHACY shall have the right, at any time, to increase or decrease the scope of work contained in this RFP to meet increased or decreased needs.
5. **AVAILABILITY OF FUNDS:** In the event that funds necessary to finance the contract become unavailable, MHACY may cancel the contract by giving seven (7) days' notice in writing and the contract will thereafter be null and void. MHACY shall be the final authority to determine whether funds are not available.
6. **NON-DISCRIMINATION:** The Contractor shall not discriminate against any individuals and will take proactive measures to assure compliance with all Federal and State and Authority requirements concerning fair employment, employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination based upon age, race, color, religion, sex, national origin or disability. If the Contractor is found not to be in compliance with these requirements during the term of the Contract, the Contractor shall take appropriate steps to correct the deficiencies.
7. **GOVERNING LAWS:** The contract is made under and shall be governed and construed in accordance with the laws of the State of New York.  
**ADVERTISING:** In submitting a proposal to MHACY, the Respondent agrees not to use the results of their proposal as a part of any commercial advertising without prior approval of MHACY.
8. **CONFIDENTIALITY OF PROPOSALS:** In submitting a proposal the Respondent agrees not to discuss or otherwise reveal the contents of the

proposal to any source outside of MHACY until after the award of the Contract. Respondents not in compliance with the provision may, at the option of MHACY, be disqualified from contract award. Only discussions authorized by the issuing agency are exempt from this provision.

9. **RETENTION OF RECORDS:** The Contractor shall provide MHACY access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purpose of conducting an audit or investigation into the work performed and/or charges made. The Contractor shall maintain detailed records that indicate the date, time and nature of the services rendered. The Contractor shall retain all required records for a period of three (3) years from the date they were generated. MHACY shall have the right to audit billings both before and after payment. Payment under the Contract shall not foreclose MHACY's right to recover excessive or illegal payments.

10. **COST FOR PROPOSAL PREPARATION:** Any costs incurred by Respondents in preparing or submitting proposals are the Respondents' sole responsibility. MHACY will not reimburse any Respondent for any costs incurred prior to award of the Contract.

11. **RIGHT TO SUBMITTED MATERIAL:** All responses, inquiries, or correspondence relating to or in reference to this Request for Proposals, and all other reports, charts, displays, schedules, exhibits, and other documentation submitted by the Respondents shall become the property of MHACY when received.

12. **COLLUSIVE BIDDING:** The Respondent's signature on the price proposal is a guarantee that the prices quoted have been arrived at without collusion with other eligible Respondents and without effort to preclude MHACY from obtaining the lowest possible competitive price.

13. **GENERAL INDEMNITY:** The Respondent shall save and hold harmless, pay on behalf of, protect, defend, and indemnify MHACY for the entire responsibility and liability for losses, expenses, demands, actions and claims in connection with or arising out of any injury, or alleged injury (including death) to any person, or damage, or alleged damage, to property of MHACY or others sustained or alleged to have been sustained in connection with or to have arisen out of or resulting from the performance or the intended performance of any work/service, outlined or resulting from this RFP, by the Respondent or their employees, including losses, expenses or damages sustained by MHACY officials from any and all such losses, expenses, damages, demands and claims. The Respondent further agrees to defend any suit or action brought against MHACY, (as outlined above) based on any such alleged injury or damage and to pay all damages, cost and expenses in connection therewith or resulting there from. The obligations of the Respondent pursuant to this paragraph shall not be limited in any way by any limitation in the amount or type of proceeds, damages, compensation, or benefits payable under any policy of insurance or self-insurance maintained by or for the use and benefit of the Respondent.

14. **CONFLICT OF INTEREST:** All Respondents must disclose in writing with their proposal the name of any owner, officer, director, or agent who is also an employee of MHACY. All Respondents must also disclose in writing with their proposal the name of any employee of MHACY who owns, directly or indirectly, an interest of five percent (5%) or more in the Respondent's firm or any of its branches or subsidiaries. By submitting a proposal, the Respondent certifies that there is no relationship between the Respondent and any person or entity which is or gives the appearance of a conflict of interest related to this RFP and warrants that the Respondent has no interest and shall not acquire any interest, direct or indirect, that does or would conflict in any manner or degree with the performance of services required under the Contract. The Respondent shall further warrants that the Contractor will not violate the provisions of City of Yonkers or State laws by entering into the Contract.

15. **ERRORS AND OMISSIONS:** The Respondent shall not take advantage of any errors or omissions in this RFP. The Respondent shall promptly notify MHACY of any omissions or errors found in this document.

16. **INDEPENDENT INVESTIGATIONS:** MHACY reserves the right to make independent investigations as to the qualifications of the Respondent. Such investigations may include contacting existing customers. MHACY reserves the unqualified right to accept or reject any and all proposals, and to waive any irregularities or deficiencies as may be permitted by law when it is deemed that such action will be in the best interest of MHACY.

17. **REFERENCE TO OTHER DATA:** Only information which is received in response to this Request for Proposals will be evaluated. Reference to information previously submitted shall not be evaluated.

18. **NOTIFICATION OF AWARD:** After all prerequisites and specifications have been met by the Respondent and the award has been made, the successful Respondent will be notified within ten (10) working days of this award. MHACY will notify the successful Respondent in writing, either by a Letter of Award or a Purchase Order or both. **VERBAL NOTIFICATION OF THE AWARD OF THE CONTRACT IS NOT CONSIDERED A RELIABLE MODE OF NOTIFICATION AND, THEREFORE, WILL NOT BE RECOGNIZED AS AN OFFICIAL NOTIFICATION.**

19. **TERMINATION FOR CAUSE:** MHACY reserves the right to terminate the Contract at any time for cause. The violation of any provision or condition contained in the Contract, or the refusal, failure, or inability to carry out any provisions of the Contract shall constitute sufficient grounds to terminate the Contract for cause. Should MHACY elect to terminate the Contract for cause, MHACY will notify the Contractor 30 days prior to the termination date and shall specify the cause for termination as well as the date the termination shall be effective. This termination notice will be issued via a written letter sent by certified U.S. mail. Immediate dismissals may be executed if deemed necessary by MHACY.

20. **TERMINATION WITHOUT CAUSE:** MHACY may terminate the Contract without cause. Written notice of termination must be sent via certified U.S. mail no later than thirty (30) days prior to the termination date.

21. **DRUG POLICY:** The Respondent certifies that it maintains a drug-free work place environment to ensure worker safety and workplace integrity. The Respondent further agrees their employees shall comply with MHACY's Drug-Free Workplace Policy.

22. **AUTHORIZED PERSONNEL:** While engaged in the performance of the services described herein, only authorized employees of the Contractor are allowed at MHACY locations where the work is being performed. During the performance of these services, the Contractor employees are not to be accompanied in the work area by acquaintances, family members, associates or any other person(s) who are not a current, authorized employee(s) of the Contractor.

23. **EMPLOYEE GUIDELINES:** The Contractor shall use only qualified personnel to provide the required services.

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24. **INSURANCE COVERAGE:** During the term of the contract the Contractor shall maintain in full force and effect Worker's Compensation Employers' Liability Insurance, Comprehensive General Liability Insurance and Comprehensive Automobile Liability insurance with such terms and limits as may be reasonably associated with the Contract. MHACY will require proof of such insurance prior to Contract execution and during the term of the Contract. The insurance policies shall be endorsed to provide the Municipal Housing Authority for the City of Yonkers, its Officers, Commissioners, Agents and Employees as Additional Insured.

25. **CONTINUANCE OF WORK:** In the event Contract term expires and Contractor has not completed assignments that are underway, MHACY may, at its discretion, allow Contractor to complete those assignments if the following conditions are met:

- a. Contractor requests to complete the assignments that are underway.
- b. The prices in Contract remain in effect until all work is completed.
- c. All other contractual obligations and conditions remain the same, including insurance requirements.

This provision does not apply to any continuance of work which would extend the Contract term (inclusive of any extensions by MHACY) beyond five years from the date of Contract award.

26. **STATUS OF CONTRACTOR.** The Contractor is an independent contractor performing services for the MHACY and is not an employee of the State of New York ("State"). The Contractor shall not accrue leave, retirement, insurance, bonding, use of MHACY vehicles or any other benefits afforded to employees of the MHACY by virtue of the Contract.

27. **ASSIGNMENT.** The Contractor shall not assign or transfer any

interest in the Contract or assign any claims for money due or to become due under the Contract without the prior written approval of the MHACY. An approved assignment or transfer shall include a provision that binds the assignee or transferee to all terms and conditions of the Contract.

28. **SUBCONTRACTING.** The Contractor shall not subcontract any portion of the services to be performed under the Contract without the prior written approval of the MHACY.

29. **RELEASE.** The Contractor shall, upon final payment of the amount due under the Contract, release the MHACY and, its employees from all liabilities, claims and obligations arising from or under the Contract.

30. **AUTHORITY.** The Contractor agrees not to purport to bind the MHACY to any obligation not assumed in the Contract by the MHACY, unless the Contractor has express written authority from the MHACY to do so, and then only within the strict limits of that authority.

31. **AMENDMENT.** The Contract shall not be altered, changed or amended except by an instrument in writing executed by the parties.

32. **MERGER.** The Contract shall incorporate all of the agreements, covenants and understandings between the parties concerning the subject matter. No prior agreement or understanding, verbal or otherwise, of the parties shall be valid or enforceable unless embodied in the Contract.

33. **NOTICE.** The MHACY Procurement Policy imposes civil and criminal penalties for its violation. In addition, the New York criminal statutes impose felony penalties for bribes, illegal gratuities and kickbacks.

34. **Minimum Wage Rate Determination.** Purposefully omitted.

**Exhibit A****Properties owned or managed by the Municipal Housing Authority of Yonkers**

Andrew Smith Townhomes, 101 Trenchard Street

Curran Homes, 4 Curran Court, Yonkers, NY

Raleigh Valentine Townhomes 162 Helena Avenue

Francis Reagan Townhomes 1157 Central Park Avenue

Lawrence Christopher Homes 350 Midland Avenue

James O'Rourke Townhomes 525 Shoreview Drive

Judge Albert Fiorillo Townhomes 1 Luring Avenue

Arthur J. Doran Townhomes 1171 Midland Avenue

James E. Hall Homes, 15 Dunbar Street

John E. Flynn Manor, 334 Riverdale Avenue

Joseph F Loehr Court 10 Western Avenue

Judge Albert Fiorillo Townhouses, 38 Clark Street

Kris Kristensen Homes, 45 Seymour Street

Martinelli Manor, 21 Ellison Avenue

Monsignor Cajetan J. Troy Manor, 200 Willow Street

Ross F. Calcagno Homes, 10 Brook Street

William A Schlobohm Houses, Schroeder Street

William A Walsh Homes, 75 Walsh Road

Cottage Place Gardens, 8 Cottage Place Gardens

## **Attachment A (Part 1)**

### **The Municipal Housing Authority for the City of Yonkers Respondent's Qualification Statement Security Services – Multiple Properties**

#### Instructions

This questionnaire will be used in assessing a Respondent's Qualification and will be used to determine if bid submitted is from a responsible bidder. MHACY procurement policy requires that contracts be awarded to the lowest responsible qualified bidder. Factors such as past performance, integrity of the bidder, conformity to the specifications, etc., will be used in evaluating bids.

This questionnaire must be completed by an officer who is knowledgeable about the past and present operation of the applicant. A response should be provided to each question. If a particular question does not apply, the response should state "NA" (not applicable). The completed questionnaire must be returned to the address below.

**Joseph Shuldiner, Executive Director  
The Municipal Housing Authority for the City of Yonkers  
1511 Central Park Avenue  
Yonkers, NY 10710**

Please answer all questions truthfully, fully and accurately. The company may expand on the answers given or the information submitted by attaching additional pages. Use 8 ½" x 11" paper, marking each page with the firm's name and Tax ID # (also known as the Employer Identification Number – EIN). Individual contractors that do not have a Tax ID# should enter its Social Security Number. **In the event of changes in ownership, address, circumstances, conditions of status of the firm that would require amending the answers to this questionnaire, the firm should notify the above in writing of such changes within one month after the change has occurred.**

## General Identification

Company Name \_\_\_\_\_

Address \_\_\_\_\_

Street Address

Suite #

City

State

Zip Code

Home Phone ( ) \_\_\_\_\_

Fax Number ( ) \_\_\_\_\_

E-mail

Address \_\_\_\_\_

Tax ID # or Social Security # \_\_\_\_\_

1. Has the Company had a change of address in the past five years?

( ) Yes

( ) No

2. Has the Company operated under any other name(s) in the past five years?

( ) Yes

( ) No

3. Does the Company have offices, plants or warehouses at other addresses?

( ) Yes

( ) No

If "yes" to questions 1-3, please provide details below:

Name	Address	From (mo/yr)	To (mo/yr)

### Business Organization and History

1. Date the Company was formed \_\_\_/\_\_\_/\_\_\_

2. Corporate Structure

a. State in which incorporated: \_\_\_\_\_

b. Number of shares authorized to the corporation: \_\_\_\_\_

Number of shares issued to individuals or entities: \_\_\_\_\_

c. Registered Agent (Lawyer/Incorporator) and date of Incorporation if different than date the Company was formed: \_\_\_\_\_

3. Was the Company purchased as an existing business by its present owners(s)?

( ) Yes ( ) No

Date purchased \_\_\_\_/\_\_\_\_/\_\_\_\_

Previous Owner(s) Name(s): \_\_\_\_\_

4. Does the Company own, rent or lease any of its facilities?

( ) Own ( ) Lease/Rent

If leased or rented, provide Owner's Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Address: \_\_\_\_\_

5. Does the company share office space, staff, or equipment (including telephone exchanges) with any other business organization?

( ) Yes, list below ( ) No

Tax #	Firm Name	Address/Nature of Shared Facilities

6. Identify all Key People – Complete all required information on all present and past key people for the past five years. Key people include:

- a. Principals, directors, officers
- b. Shareholders of 5% or more of the Company issued stock
- c. Any manager or individual who participates in overall policy-making or financial decisions for the company.
- d. Any person in a position to control and direct the firm's overall operations.
- e. Signatories to bank accounts and any debt instruments, whether or not otherwise considered key people.

“Shareholders” are owners of stock or other securities that can be converted to stock that, if exercised, would constitute 5% of the company issued stock. Other securities include stock options, secured or unsecured bonds, warrants and rights.

Be sure to include all those who fit the definition of key people for the past five years whether

or not they are currently with the company. Copy the table if more space is required.

\* Provide current proper legal name and specify any name change, including maiden or married names or aliases. Each current key person of the company must file a **notarized** certification on the form attached as Exhibit A.

KEY PEOPLE TABLE – Complete all blank areas

	Person #1	Person #2	Person #3
* Name			
Home Address			
Date of Birth			
SS #			
Title			
From (date)			
To (date)			
% of Ownership			
# of Shares Owned			
How Shares Were Acquired			

7. Number of employees (not including key people): \_\_\_\_\_

8. At present or during the past five years:

9.

At present or during the past five years:	Yes/No
Has the company been a subsidiary of any other firm?	( ) Yes ( ) No
Has the company consisted of a partnership in which one or more partners are from other firms?	( ) Yes ( ) No
Has any other person or firm owned 5% or more of the company?	( ) Yes ( ) No
Has the company joint ventured with any other firms?	( ) Yes ( ) No

If “yes” to any of the above questions, list the other firms below and indicate the percent of stock, if any, owned in the company.

	Firm # 1	Firm # 2
Tax ID #		
Firm Name		
Address		
Relationship to the company (co-owner, partner, etc.)		
% of the company owned		
From (date)		
To (date)		
Representative name/title		

10. At present or during the past five years:

At present or during the past five years:	Yes/No
Has the company had any subsidiaries?	( ) Yes ( ) No
Has the company owned 5% or more of any other firm?	( ) Yes ( ) No

If “yes” to any of the above questions, list the other firms below and indicate the percent of stock, if any, owned in the company.

Tax ID #	Firm Name	Address	% Owned By the Company	Dates of Ownership From/To

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11. At present or during the past five years have any of the key people of the company served as a key person (see definition on page 3) or owned 5% or more of any other firm (including firms that are inactive or have been dissolved)?

Yes

No

If yes, list below:

Firm Name	Address	Tax ID #	Key Person

**All firms listed in questions 8-10 will be referred to in the following questions as "Affiliate Firms"**

12. Are any key people associated with MHACY:

Are any key people associated with MHACY:	Yes/No
Past or present employees of MHACY?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Related by kinship or marriage to any present or past employee of the MHACY	<input type="checkbox"/> Yes <input type="checkbox"/> No

If yes to either question, provide names of such individuals(s) and indicate relationship to the current/former MHACY employee:

Name of Individual	Relationship

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### Financial Information

13. At present or in the past five years:

a. Has the company been indebted to an individual or entity other than a commercial lending institution in the cumulative amount of \$50,000 or more?

Yes  No

b. Have any of the company's key people been indebted to an individual or entity other than a commercial lending institution in the cumulative amount of \$50,000 or more, for the benefit of the company?

Yes  No

c. Has the company pledge any of its stock to guarantee any of the above obligations?

Yes  No  N/A

d. Has any individual or the company been a guarantor, so-maker or co-signer of any of these obligations on behalf of the company?

Yes  No  N/A

If yes to any portion of question 11, provide details below:

Name of Creditor	Name of Borrower	Amount of Loan & Balance Remaining	Terms of Pledge or Loan	Name of Guarantor,

e. Have monies generated by the company in the cumulative amount of \$50,000 or more been loaned to another firm or individual by the company or its key people? If yes, please provide details below:

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

f. Has the company or any of its affiliates or key people paid commissions or finders fees to obtain contracts or work to anyone other than its own key people?

Yes  No

If yes, please explain: \_\_\_\_\_

14. Has the company, or its affiliates or key people paid commissions or finders fees to obtain contracts or work to anyone other than its own key people paid commissions or finders fees to obtain contracts or work to anyone other than its own key people?

( ) Yes            ( ) No

If yes, please provide details below:

Caption	Date	Docket #	Court	County

15. During the past five years, has the company ever:

Been the subject of a lien, judgment or litigated claim of \$25,000 or more by a subcontractor, supplier or other creditor?	( ) Yes ( ) No
Failed to complete a contract for a commercial or private owner or government agency?	( ) Yes ( ) No
Had, or does it currently have, any delinquent local, city, state or federal taxes outstanding?  <b>If yes, please explain and submit documentation of any repayment plans.</b>	( ) Yes ( ) No

If yes to any of the above questions, supply details below

Agency/Owner	Contract #	Description of Circumstances and Current Status	Date of Events	Name/Phone Number of Contact Person

## Experience/Performance

16. On the following table summarize the services provided by the company for the last three years:

Fiscal Year End	Services Provided	Total Income
Prior Year		
Prior Year 2		
Prior Year 3		

17. Has the company or any of its officer, owners or managers had any business-related licenses, certificates or certifications revoked in the past 5 years?

Yes                       No

If yes, please explain

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## Compliance Information

18. In the past five years has the company or any of its affiliate firms been the subject of any of the following actions by any government agency:  
(Government agencies include city, state, federal public agencies, quasi-public agencies, authorities and corporations, public development corporations and local development corporations.)

Been suspended, debarred, disqualified, had it's prequalification revoked or otherwise been declared ineligible to bid or to perform work?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Been barred from bidding or denied a contract as a result of refusal key people to testify before a grand jury or administrative board?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Been denied a contract despite being the low bidder for any other reason?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Been defaulted on a contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Had a contract terminated, for either "cause" or "convenience"	<input type="checkbox"/> Yes <input type="checkbox"/> No
Been given a final unsatisfactory performance determination or deemed a poor	<input type="checkbox"/> Yes <input type="checkbox"/> No

performer (by letter or formal proceedings)?	
Been prevented, or barred from bidding for any other reason?	( ) Yes ( ) No
Been denied a contract for failure to obtain surety or otherwise provide required security?	( ) Yes ( ) No
Had liquidated damages assessed against it upon completion of a contract or failure to complete a contract	( ) Yes ( ) No

Matters under appeal must be disclosed. If yes to any portion or question 19, please supply details below:

Agency	Contract #	Date of Action	Describe Action	Name/Phone # of Agency or Owner Contact Person

19. In the past five years, has the company or any current or past key people or affiliate firms been a plaintiff or defendant in any lawsuits arising out of the company's operations?

( ) Yes ( ) No

If yes to question 20, supply details below and submit documentation if applicable. Indicate in P/D column whether the company's key people or key firms were plaintiffs (P) or defendants (D).

Caption or Action	P/D	Index/Docket No.	Date	Status

20. In the past ten years has the company or any of its current or past key people or affiliate firms:

a. Been under investigation involving any alleged violation of criminal law relating to business activities:

( ) Yes ( ) No

An INVESTIGATION includes an appearance before a grand jury by representatives of a business

entity, any oral or written inquiry or review of the entity's documents by a public agency, temporary commission or other investigative body including, but not limited to; subpoenas and/or search warrants, or questioning of employees concerning the general operation of a specific project or activities of such business entity.

Had records in its or his/her control, custody or ownership subpoenaed by any law enforcement agency?	( ) Yes ( ) No
Been questioned by any officer or agent of a law enforcement agency regarding any practices or conduct relating to the providing of construction related services?	( ) Yes ( ) No
Been advised of being the target or subject of an investigation involving any violation of criminal law?	( ) Yes ( ) No
Been notified of being the subject of court ordered electronic surveillance?	( ) Yes ( ) No
Been arrested or indicted or otherwise named as an unindicted co-conspirator in any indictment or other accusatory instrument?	( ) Yes ( ) No
Been convicted, after trial or by plea, of any felony under state or federal law?	( ) Yes ( ) No
Been convicted of any misdemeanor involving business-related crimes?	( ) Yes ( ) No
Entered a plea of nolo contendere to a charge of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or a violation of the antitrust law?	( ) Yes ( ) No
Entered into a consent decree?	( ) Yes ( ) No
Been granted immunity from prosecution for any business-related conduct constituting a crime under state or federal law?	( ) Yes ( ) No
Taken the Fifth Amendment in testimony regarding a business-related crime?	( ) Yes ( ) No

If yes to any portion of question 21, supply details below and submit documentation.

Agency or Court	Nature of Charges	Key Person Named	Date of Charges

21. In the past ten years has the company or any of its current or past key people or affiliate firms engaged in any of the following practices:

Filed with a government agency or submitted to a government employee a written instrument which the company or any of its key people or affiliate firms knew contained a false statement or false information?	( ) Yes ( ) No
Falsified business records?	( ) Yes ( ) No
Given, or offered to give money, gifts or anything of value or any other benefit to a labor official or public servant with intent to influence that labor official or public servant with respect to any of his or her official acts, duties or decision as a labor official or public servant?	( ) Yes ( ) No
Given or offered to give money, gifts or anything of value or any other benefit to a labor official or public servant for any reason?	( ) Yes ( ) No
Given or offered to give money or other benefit to an official or employee of a private business with intent to induce that official or employee to engage in unethical or illegal business practices?	( ) Yes ( ) No
Agreed with another to bid below prevailing market rate?	( ) Yes ( ) No
Agreed with another to submit identical or complementary bids or otherwise not to bid competitively or agree to withdraw or abstain from bidding?	( ) Yes ( ) No
Agreed with another not to submit competitive bids in another's territory established either by geography or customers?	( ) Yes ( ) No
Agreed with another to take turns in obtaining contracts by pre-determining which firm shall submit the lowest bid?	( ) Yes ( ) No

This document was prepared by:

\_\_\_\_\_

\_\_\_\_\_

Title

\_\_\_\_\_

Date

**ATTACHMENT A**

(Part 2)

RESPONDENT'S CERTIFICATION

This certification must be completed by each current key person of the company identified in response to question 6 in Respondent's Qualification Statement and by a representative of each firm that is currently an owner or affiliate of the company identified in response to questions 8-10 in Respondent's Qualification Statement. Certification must be notarized when signed.

I \_\_\_\_\_ being duly sworn, state that I am \_\_\_\_\_  
(name) (title)

of the company, and that I have read and understood the questions contained in the attached representations and warranties statement and its appendices.

I certify that to the best of my knowledge the information given in response to each question and the appendices is full, complete and truthful as of this date hereof and as of the date of closing.

I acknowledge that the MHACY or its designee may, by means it deems appropriate, determine the accuracy and truth of the statements made in the application.

I recognize that all the information submitted is for the express purpose of inducing the MHACY or its designee to enter contract or do business with company or its affiliates.

I agree and warrant that truthfully answering the questions in connection with these representations and warranties is an event entirely within my control.

I authorize the MHACY or its designee to contact any entity named in the attached representations and warranties for purposes of verifying the information supplied by the company.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2019

\_\_\_\_\_  
Notary Public

# 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 an offeror or its authorized representative if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award. If this solicitation is an invitation for bids, bids may be withdrawn at any time prior to bid opening.

#### **7. Contract Award**

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

(b) The HA may

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

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

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

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

#### **8. Service of Protest**

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

#### **9. Offer Submission**

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

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

[Describe bid or proposal preparation instructions here:]

# Certifications and Representations of Offerors Non-Construction Contract

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

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

## 1. Contingent Fee Representation and Agreement

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

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

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

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

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

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

- (a)  is,  is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.
- (b)  is,  is not a women-owned small business concern. "Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.
- (c)  is,  is not a minority enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals.

For the purpose of this definition, minority group members are:  
(Check the block applicable to you)

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

## 3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

- (1) The prices in this bid/offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder/offeror or competitor relating to (i) those prices, (ii) the intention to submit a bid/offer, or (iii) the methods or factors used to calculate the prices offered;
  - (2) The prices in this bid/offer have not been and will not be knowingly disclosed by the bidder/offeror, directly or indirectly, to any other bidder/offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
  - (3) No attempt has been made or will be made by the bidder/offeror to induce any other concern to submit or not to submit a bid/offer for the purpose of restricting competition.
- (b) Each signature on the bid/offer is considered to be a certification by the signatory that the signatory:
- (1) Is the person in the bidder/offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
  - (2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above (insert full name of person(s) in the bidder/offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offeror's organization);  
(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

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

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

#### 4. Organizational Conflicts of Interest Certification

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

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

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

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

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

#### 5. Authorized Negotiators (RFPs only)

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

#### 6. Conflict of Interest

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

#### 7. Offeror's Signature

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

\_\_\_\_\_  
Signature & Date:

\_\_\_\_\_  
Typed or Printed Name:

\_\_\_\_\_  
Title:



**Municipal Housing Authority for the City of Yonkers  
Special Conditions for Non-Construction Contracts  
[Greater than \$100,000, *without* maintenance]**

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## 1. Contract

- (a) The Municipal Housing Authority for the City of Yonkers (“MHACY”) that first appears in the documents listed below, governs:
- (i) the main contract document incorporating these special conditions;
  - (ii) HUD-5370-C;
  - (iii) these special conditions;
  - (iv) any HA *Request for Proposals*, with amendments (“RFP”); then
  - (v) Contractor’s proposal response to the RFP.

## 2. Definitions

- (a) Terms not defined in these special conditions are found in the HUD-5370-C or the main contract document incorporating these special conditions.
- (b) “Contractor” includes contractor’s officers, employees, agents, and subcontractors.

## Term and Termination

### 3. Contract Term

- (a) Contractor shall begin performance on the date of this contract.
- (b) HA may extend the term of this contract at its sole discretion if Contractor’s service is essential to a project’s completion.
- (c) Compensation

### 4. Performance Standard

Contractor shall make its best effort to provide its service using the highest professional skill and competence.

### 5. Payments

On a quarterly basis Contractor shall pay MHACY the identified \$25.00 per tow administrative fee for all services done to HA’s satisfaction, within 30 days of the close of each calendar quarter.

- 6. Establishment and Maintenance of Records** Contractor shall establish and maintain fiscal control and accounting procedures that assure proper accounting for all funds paid by towed owners to Contractor.

### 7. Status Reports

Contractor shall furnish MHACY with such information and reports concerning the progress and management of this contract as MHACY may require from time to time.

### 8 Insurance

Contractor shall maintain insurance applicable for any one occurrence, and \$1,000,000 for all property damage sustained as a result of any one occurrence, or a limit of not less than \$3,000,000 Combined Single Limit (CSL).

- (ii) *Fidelity/Crime Insurance*. Limits of not less than \$1,000,000 per occurrence, which covers claims incurred as a result of Contractor’s employees’ dishonesty, burglary, theft, fraud, or destruction of property.
- (iii) *Automobile Liability Insurance*. Limits not less than \$1,000,000 for all damages for any bodily injury sustained by each person as a result of any occurrence, and \$1,000,000 for damage because of bodily injury sustained by two or more persons as the result of any occurrence, and \$100,000 for property damage sustained as the result of any one occurrence, or a limit of not less than \$1,250,000 Combined Single Limit (CSL).

## **9. Worker's Compensation Insurance**

Contractor shall maintain Worker's Compensation Insurance for its employees in accordance with New York law or in accordance with the statutes of Contractor's home state.

## **10. Insurance Conditions**

- (a) Contractor shall purchase insurance coverage from an insurance company licensed to conduct business in New York or a company approved by the Authority.
- (b) Contractor shall ensure all required insurance policies provide occurrence-based coverage.
- (c) MHACY may review the insurance requirements and coverages from time to time. Contractor agrees to comply with MHACY's reasonable new or modified insurance requirements.
- (d) Contractor shall pay all insurance deductibles, if any, or indemnify MHACY from paying Contractor's insurance deductibles, or both.
- (e) Contractor agrees that the amount of insurance required does not, in any way, limit the liability of Contractor by virtue of its obligation to indemnify MHACY, so that all claims resulting in a settlement or judgment or other claim-related payment in excess of the coverage amounts required, if any, are the sole responsibility of Contractor to pay, to indemnify MHACY from paying, or both.
- (f) Contractor shall ensure that following phrase is placed by its insurer in the ACORD Certificate of Insurance form's comments section: "The Municipal Housing Authority for the City of Yonkers is named as an Additional Insured."
- (g) Contractor shall furnish MHACY all insurance renewal certificates at least thirty (30) days prior to policy expiration.
- (h) Contractor shall maintain insurance coverage in full force for the duration of this contract, including extensions or renewals. Contractor's cancellation or termination of insurance policies required by this contract without immediate replacement is a default. HA may cure such a default by procuring insurance on behalf of Contractor, at Contractor's expense.
- (i) Contractor shall ensure that Contractor's insurer will provide HA 30-days' notice before cancellation or decrease in coverage, of any insurance policy required.

## **11. MHACY Indemnification**

- (a) In this section, the following definitions apply:
    - "Litigation Expense" means any reasonable out of pocket expense incurred in defending a Proceeding or in any related investigation or negotiation, including court filing fees, court costs, arbitration fees, witness fees, and attorneys' and other professionals' fees and disbursements.
    - "Losses" means any amount awarded in, or paid in settlement of, any Proceeding, including any interest and any Litigation Expenses.
    - "Proceeding" means any judicial, administrative, or arbitration action, suit, claim, investigation, or proceeding.
  - (b) Contractor shall indemnify the MHACY against all Losses arising out of a Proceeding against the MHACY by a non-party to this contract ("Claim"), except to the extent that MHACY negligently or intentionally caused those Losses.
  - (c) MHACY must promptly notify Contractor of that Claim and deliver to Contractor a copy of all legal pleadings with respect to the Claim.
  - (d) To assume the defense of a Claim, Contractor must notify MHACY that it is doing so. Promptly thereafter, Contractor shall retain to represent it in the Claim, independent legal counsel that is reasonably acceptable to MHACY.
  - (e) HA is entitled to participate in the defense of a Claim. MHACY may defend a Claim with counsel of its own choosing and without Contractor participating if (1) Contractor notifies HA that it does not wish to defend the Claim, (2) by midnight at the end of the tenth business day after HA notifies Contractor of the
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- Claim Contractor fails to notify HA that it wishes to defend the Claim, or (3) representation of Contractor and MHACY by the same counsel would, in the opinion of that counsel, constitute a conflict of interest.
- (f) Contractor shall pay any Litigation Expenses that HA incurs in connection with defense of the Claim before Contractor assumes the defense of that Claim, except with respect to any period during which MHACY fails to timely notify Contractor of that Claim. Contractor will not be liable for any Litigation Expenses that MHACY incurs in connection with defense of a Claim after Contractor assumes the defense of that Claim, other than Litigation Expenses that HA incurs in employing counsel in accordance with subsection (d), which Litigation Expenses Contractor shall pay promptly as they are incurred.
- (g) After Contractor assumes the defense of a Claim, Contractor may contest, pay, settle, or compromise the Claim at its discretion, except that it may not compromise or settle the Claim without the consent of MHACY unless that compromise or settlement (1) does not entail any admission on the part of MHACY that it violated any law or infringed the rights of any Person, (2) has no effect on any other claim that may be brought against HA, (3) provides as the claimant's sole relief monetary damages that are paid in full by Contractor, and (4) requires that the claimant release MHACY from all liability in respect of the Claim.

## **Default and Remedies**

### **12. Additional Defaults**

- (a) Default includes, in addition to those stated elsewhere in this contract:
- (i) a competent authority, such as a government official or a Certified Public Accountant, determines that Contractor's management of, or any accounting for, its funding, as relates to this contract, is improper, inadequate, or illegal; and
  - (ii) a court having jurisdiction enters a decree or order adjudging Contractor bankrupt or insolvent, or approving as properly filed Contractor's petition seeking reorganization, readjustment, arrangement, composition, or similar relief for Contractor under federal bankruptcy laws, or any other similar applicable law.
- (b) MHACY may waive any default. MHACY's waiver as to a particular default does not constitute a waiver of any other default, whether of the same or different type, and whether preceding or succeeding the waived default. MHACY's waiver of a default is not effective unless written and signed by its Executive Director.

### **13. Remedies**

- (a) MHACY may elect to pursue any one or more of the following remedies, in any combination or sequence, for any default not waived by MHACY:
- (i) any action as MHACY deems necessary, including the temporary withholding or reduction of payment;
  - (ii) suspend program operation;
  - (iii) require Contractor to cure such default to MHACY's satisfaction; and
  - (iv) terminate this contract.
- (b) MHACY's selected remedy does not prohibit HA from pursuing any other remedy and does not constitute a waiver by MHACY of any other right or remedy.

## **Hiring**

### **Conflicts of Interest**

### **18. Family Conflicts**

- (a) Contractor represents that it has disclosed to MHACY any immediate family member (parent, parent-in-law, spouse, child, brother, sister, brother-in law, sister-inlaw, or stepparent) of any of its employees, agents, or subcontractors, who is employed by MHACY.

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## **19. Communications**

- (a) Both parties agree to write all notices, including demands, requests, instructions, approvals, proposals, and claims.
- (b) MHACY will deliver all notices to Contractor by delivering them to Contractor's registered business address or by mailing them in sealed, postage-paid envelopes, addressed to Contractor's registered mailing address.
- (c) Contractor may specify a different address for notices by delivering an address change notice to MHACY.
- (d) Contractor will deliver all notices to MHACY by delivering them to Contracting Officer at MHACY's main office or by mailing them in sealed, postage-paid envelopes, addressed to Contracting Officer at the Authority's main office.
- (e) MHACY may specify a different address for notices by delivering an address change notice to Contractor.

## **20. Licenses**

Contractor and all subcontractors shall hold, at all times, all licenses required by the State of New York and the City of Yonkers, if any.

## **21. Sales Tax**

MHACY shall provide Contractor the necessary tax-exempt information when required.

## **22. Entire Agreement**

- (a) This contract constitutes the final agreement between the parties. It is the complete and exclusive expression of the parties' agreement on the matters contained in this contract. All prior and contemporaneous negotiations and agreements between the parties on matters contain in this contract are expressly merged into and superseded by this contract. The provisions of this contract may not be explained, supplemented, or qualified through evidence of trade usage or a prior course of dealings.
- (b) In entering into this contract, neither party has relied upon any statement, representation, or agreement of the other party, except for those expressly contained in this contract.

## **23. Choice of Law**

- (a) The laws of the State of New York, without giving effect to its conflicts of law principles, govern all matters arising out of or relating to the contract, including its validity, interpretation, construction, performance, and enforcement.

## **24. Forum & Venue**

- (a) Any party bringing a legal action or proceeding against any other party arising out of or relating to this contract may bring the legal action or proceeding in the United States District Court for the District of New York or in any court of the State of New York sitting in Yonkers.
- (b) Each party waives, to the fullest extent permitted by law:
  - (i) any objection which it may now or later have to the laying of venue of any legal action or proceeding arising out of or relating to this contract brought in the United States District Court for the District of New York or in any court of the State of New York sitting in Yonkers; and
  - (ii) any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum.
- (c) For the purposes of all legal actions and proceedings arising out of or relating to this contract, each party to this contract submits to the nonexclusive jurisdiction of any court of:
  - (i) the United States District Court for the District of New York and its appellate courts; and
  - (ii) the State of New York sitting in Yonkers and its appellate courts.

# General Conditions for Non-Construction Contracts

## Section I – (With or without Maintenance Work)

### U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

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

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

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

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

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

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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 therefrom, 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 n.

- (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 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.

# General Conditions for Non-Construction Contracts

## Section II – (With Maintenance Work)

### U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

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

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

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

in the classification under this Contract from the first day on which work is performed in the classification.

- 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.

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**Section II – Labor Standard Provisions for all Maintenance Contracts greater than \$2,000**  
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### 1. Minimum Wages

- (a) All maintenance laborers and mechanics employed under this Contract in the operation of the project(s) shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development which is attached hereto and made a part hereof. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination, including any additional classifications and wage rates approved by HUD under subparagraph 1(b), shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- (b) (i) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate only when the following criteria have been met:
  - (1) The work to be performed by the classification required is not performed by a classification in the wage determination;
  - (2) The classification is utilized in the area by the industry; and
  - (3) The proposed wage rate bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) The wage rate determined pursuant to this paragraph shall be paid to all workers performing work

### 2. Withholding of funds

The Contracting Officer, upon his/her own action or upon request of HUD, shall withhold or cause to be withheld from the Contractor under this Contract or any other contract subject to HUD-determined wage rates, with the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor the full amount of wages required by this clause. In the event of failure to pay any laborer or mechanic employed under this Contract all or part of the wages required under this Contract, the Contracting Officer or HUD may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment or advance until such violations have ceased. The Public Housing Agency or HUD may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

### 3. Records

- (a) The Contractor and each subcontractor shall make and maintain for three (3) years from the completion of the work records containing the following for each laborer and mechanic:
  - (i) Name, address and Social Security Number;
  - (ii) Correct work classification or classifications;
  - (iii) Hourly rate or rates of monetary wages paid;
  - (iv) Rate or rates of any fringe benefits provided;
  - (v) Number of daily and weekly hours worked;
  - (vi) Gross wages earned;
  - (vii) Any deductions made; and
  - (viii) Actual wages paid.
- (b) The Contractor and each subcontractor shall make the records required under paragraph 3(a) available for inspection, copying, or transcription by authorized representatives of HUD or the HA and shall permit such representatives to interview employees during working hours on the job. If the Contractor or any subcontractor fails to make the required records available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds.

### 4. Apprentices and Trainees

- (a) Apprentices and trainees will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in:
  - (i) A bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration (ETA), Office of

- Apprenticeship Training, Employer and Labor Services (OATELS), or with a state apprenticeship agency recognized by OATELS, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice;
- (ii) A trainee program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, ETA; or
  - (iii) A training/trainee program that has received prior approval by HUD.
- (b) Each apprentice or trainee must be paid at not less than the rate specified in the registered or approved program for the apprentice's/trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices and trainees shall be paid fringe benefits in accordance with the provisions of the registered or approved program. If the program does not specify fringe benefits, apprentices/trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.
  - (c) The allowable ratio of apprentices or trainees to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the employer as to the entire work force under the approved program.
  - (d) Any worker employed at an apprentice or trainee wage rate who is not registered in an approved program, and any apprentice or trainee performing work on the job site in excess of the ratio permitted under the approved program, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.
  - (e) In the event OATELS, a state apprenticeship agency recognized by OATELS or ETA, or HUD, withdraws approval of an apprenticeship or trainee program, the employer will no longer be permitted to utilize apprentices/trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

## 5. Disputes concerning labor standards

- (a) Disputes arising out of the labor standards provisions contained in Section II of this form HUD-5370-C, other than those in Paragraph 6, shall be subject to the following procedures. Disputes within the meaning of this paragraph include disputes between the Contractor (or any of its subcontractors) and the HA, or HUD, or the employees or their representatives, concerning payment of prevailing wage rates or proper classification. The procedures in this section may be initiated upon HUD's own motion, upon referral of the HA, or upon request of the Contractor or subcontractor(s).
  - (i) A Contractor and/or subcontractor or other interested party desiring reconsideration of findings of violation by the HA or HUD relating to the payment of straight-time prevailing wages or classification of work shall request such reconsideration by letter postmarked within 30 calendar days of the date of notice of findings issued by the HA or HUD. The request shall set

forth those findings that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The request shall be directed to the appropriate HA or HUD official in accordance with instructions contained in the notice of findings or, if the notice does not specify to whom a request should be made, to the Regional Labor Relations Officer (HUD).

- (ii) The HA or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations.

- (iii) The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.

- (b) Disputes arising out of the labor standards provisions of paragraph 6 shall not be subject to paragraph 5(a) of this form HUD-5370C. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this paragraph 5(b) include disputes between the Contractor (or any of its subcontractors) and the HA, HUD, the U.S. Department of Labor, or the employees or their representatives.

## 6. Contract Work Hours and Safety Standards Act

The provisions of this paragraph 6 are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" includes watchmen and guards.

- (a) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in paragraph 6(a), the Contractor and any

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subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to the District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) **Withholding for unpaid wages and liquidated damages.**

HUD or its designee shall upon its own action or upon written request of an authorized representative of the U.S. Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Contract or any federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

**7. Subcontracts**

The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this Section II and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the provisions contained in these clauses.

**8. Non-Federal Prevailing Wage Rates**

Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under state law to be prevailing, with respect to any employee in any trade or position employed under the Contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

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

OMB Approval No. 2577-0015 (exp.7/31/98)

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**Model Form of Agreement Between  
Owner and Design Professional**

# Model Form of Agreement Between Owner and Design Professional

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

OMB Approval No. 2577-0015 (exp. 7/31/98)

**Public reporting burden** for this collection of information is estimated to average 0.25 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, Paperwork Reduction Project (2577-0015), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

**Do not send this form to the above address.**

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## Introduction to Agreement

**Agreement** made as of the                      day of                      in the year of

Between the **Owner** (Name & Address)

and the **Design Professional** (Name, Address and Discipline)

For the following **Project** (Include detailed description of Project, Location, Address, Scope and Program Designation)

The Owner and Design Professional agree as set forth below.

---

## Article A: Services

### A 1.0 Design Professional's Basic Services

A. 1.1 Areas of Professional's Basic Services. Unless revised in a written addendum or amendment to this Agreement, in planning, designing and administering construction or rehabilitation of the Project, the Design Professional shall provide the Owner with professional services in the following areas:

- Architecture
- Site Planning
- Structural Engineering
- Mechanical Engineering
- Electrical Engineering
- Civil Engineering
- Landscape Architecture
- Cost Estimating
- Construction Contract Administration

### A 1.2 Phases and Descriptions of Basic Services.

A. 1.2.1 Schematic Design/Preliminary Study Phase. After receipt of a Notice to Proceed from the Owner, the Design Professional shall prepare and deliver Schematic Design/Preliminary Study Documents. These documents shall consist of a presentation of the complete concept of the Project, including all major elements of the building(s), and site design(s), planned to promote economy both in construction and in administration and to comply with current program and cost limitations. The Design Professional shall revise these documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval. Additionally, the Design Professional shall make an independent assessment of the accuracy of the information provided by the Owner concerning existing conditions. Documents in this phase shall include:

- Site plan(s)
- Schedule of building types, unit distribution and bedroom count
- Scale plan of all buildings, and typical dwelling units
- Wall sections and elevations
- Outline specifications
- Preliminary construction cost estimates
- Project specific analysis of codes, ordinances and regulations
- Three dimensional line drawings

A. 1.2.2 Design Development Phase. After receipt of written approval of Schematic Design/Preliminary Study Documents, the Design Professional shall prepare and submit to the Owner Design Development Documents. The Design Professional shall revise these documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval. These documents shall include the following:

- Drawings sufficient to fix and illustrate project scope and character in all essential design elements
- Outline specifications
- Cost estimates and analysis
- Recommendations for phasing of construction
- Site plan(s)
- Landscape plan
- Floor plans
- Elevations, building and wall sections
- Updated three dimensional line drawings
- Engineering drawings

A. 1.2.3 Bidding, Construction and Contract Document Phase. After receipt of the Owner's written approval of Design Development Documents, the Design Professional shall prepare Construction Documents. After consultation with the Owner and Owner's attorney, if requested by the owner, the Design Professional shall also prepare and assemble all bidding and contract documents. The Design Professional shall revise these Bidding, Construction and Contract documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval. They shall, include in a detailed, manner all work to be performed; all material; workmanship; finishes and equipment required for the architectural, structural, mechanical, electrical, and site work; survey maps furnished by Owner; and direct reproduction of any logs and subsurface soil investigations. These documents shall include:

- Solicitation for Bids
- Form of Contract
- Special Conditions
- General Conditions
- Technical Specifications
- Plans and drawings
- Updated cost estimates

A. 1.2.4 Bidding and Award Phase. After written approval of Bidding, Construction and Contract Documents from the Owner, the Design Professional shall assist in administering the bidding and award of the Construction Contract. This shall include:

- Responding to inquires
- Drafting and issuing addendum approved by Owner
- Attending prebid conference(s)
- Attending public bid openings
- Reviewing and tabulating bids
- Recommending list of eligible bids
- Recommending award
- Altering drawings and specifications as often as required to award within the Estimated Construction Contract Cost

A. 1.2.5 Construction Phase. After execution of the Construction Contract, the Design Professional shall in a prompt and timely manner administer the Construction Contract and all work required by the Bidding, Construction and Contract Documents. The Design Professional shall endeavor to protect the Owner against defects and deficiencies in the execution and performance of the work. The Design Professional shall:

- Administer the Construction Contract.
- Conduct pre-construction conference and attend dispute resolution conferences and other meetings when requested by the Owner.
- Review and approve contractor's shop drawings and other submittals for conformance to the requirements of the contract documents.
- At the Owner's written request, and as Additional Service, procure testing from qualified parties.
- Monitor the quality and progress of the work and furnish a written field report  weekly,  semi monthly,  monthly, or  \_\_\_\_\_. This service shall be limited to a period amounting to 110% of the construction period as originally established under the construction contract unless construction has been delayed due to the Design professional's failure to properly perform its duties and responsibilities. The Owner may direct additional monitoring but only as Additional Services.
- Require any sub-consultant to provide the services listed in this section where and as applicable and to visit the Project during the time that construction is occurring on the portion of the work related to its discipline and report in writing to the Design Professional.
- Review, approve and submit to Owner the Contractor Requests for Payment.
- Conduct all job meetings and record action in a set of minutes which are to be provided to the Owner.
- Make modifications to Construction Contract Documents to correct errors, clarify intent or to accommodate change orders.
- Make recommendations to Owner for solutions to special problems or changes necessitated by conditions encountered in the course of construction.
- Promptly notify Owner in writing of any defects or deficiencies in the work or of any matter of dispute with the Contractor.
- Negotiate, prepare cost or price analysis for and countersign change orders.
- Prepare written punch list, certificates of completion and other necessary construction close out documents.
- Prepare a set of reproducible record prints of Drawings showing significant changes in the work made during construction, including the locations of underground utilities and appurtenances referenced to permanent surface improvements, based on marked-up prints, drawings and other data furnished by the contractor to the Design Professional.

A. 1.2.6 Post Completion/Warranty Phase. After execution of the Certificate of Completion by the Owner, the Design Professional shall:

- Consult with and make recommendations to Owner during warranties regarding construction, and equipment warranties.
- Perform an inspection of construction work, material, systems and equipment no earlier than nine months and no later than ten months after completion of the construction contract and make a written report to the Owner. At the Owner's request, and by Amendment to the Additional Services section of this contract, conduct additional warranty inspections as Additional Services.
- Advise and assist Owner in construction matters for a period up to eighteen months after completion of the project, but such assistance is not to exceed forty hours of service and one nonwarranty trip away from the place of business of the Design Professional.

A. 1.3 Time of Performance. The Design Professional's schedule for preparing, delivering and obtaining Owner's approval for Basic Services shall be as follows:

- Schematic Design/Preliminary Study Documents within \_\_\_\_\_ calendar days for the date of the receipt of a Notice to Proceed.
- Design Development Documents within \_\_\_\_\_ calendar days from the date of receipt of written approval by the Owner of Schematic Design/Preliminary Study documents.
- Bidding, Construction and Contract Documents within \_\_\_\_\_ calendar days from the date of receipt of written approval by the Owner of Design Development Documents.

A. 2.0 Design Professional's Additional Services

A. 2.1 Description of Additional Services. Additional Services are all those services provided by the Design Professional on the Project for the Owner that are not defined as Basic Services in Article A, Section 1.2 or otherwise required to be performed by the Design Professional under this Agreement. They include major revisions in the scope of work of previously approved drawings, specifications and other documents due to causes beyond the control of the Design Professional and not due to any errors, omissions, or failures on the part of the Design Professional to carry out obligations otherwise set out in this Agreement.

A. 2.2 Written Addendum or Contract Amendment. All additional services not already expressly required by this agreement shall be agreed to through either a written addendum or amendment to this Agreement.

## Article B: Compensation and Payment

B. 1.0 Basic Services

B. 1.1 Fixed Fee for Basic Services. The Owner will pay the Design Professional for Basic Services performed as defined by A.1.2, a Fixed Fee (stipulated sum) of \$ \_\_\_\_\_ plus Reimbursable Expenses identified in Article B.2.0. Such payment shall be compensation for all Basic Services required, performed, or accepted under this Contract.

B. 1.2 Payment Schedule. Progress payments for Basic Services for each phase of work shall be made in proportion to services performed as follows:

Phase	Amount
Schematic Design/Preliminary Study Phase	\$ _____
Design Development Phase	\$ _____
Bidding, Construction & Contract Document Phase	\$ _____
Bidding & Award Phase	\$ _____
Construction Phase	\$ _____
Post Completion/ Warranty Phase	\$ _____
Total Basic Services	\$ _____

**B. 2.0 Reimbursables**

B. 2.1 Reimbursable Expenses. The Owner will pay the Design Professional for the Reimbursable Expenses listed below up to a Maximum Amount of \$ \_\_\_\_\_. Reimbursable Expenses are in addition to the Fixed Fee for Basic Services and are for certain actual expenses incurred by the Design Professional in connection with the Project as enumerated below.

B. 2.1.1 Travel Costs. The reasonable expense of travel costs incurred by the Design Professional when requested by Owner to travel to a location that lies outside of a 45 mile radius of either the Project site, Design Professional’s office (s), and Owner’s office.

B. 2.1.2 Long Distance Telephone Costs. Long distance telephone calls and long distance telefax costs.

B. 2.1.3 Delivery Costs. Courier services and overnight delivery costs.

B. 2.1.4 Reproduction Costs. Reproduction and postage costs of required drawings, specifications, Bidding and Contract documents, excluding the cost of reproductions for the Design Professional or Subcontractor’s own use.

B. 2.1.5 Additional Reimbursables. The Design Professional and Owner may agree in an addendum or amendment to this Agreement to include certain other expenses not enumerated above as Reimbursable Expenses. These Reimbursables shall not be limited by the Maximum Amount agreed to above. A separate Maximum Amount for these Reimbursables shall be established.

**B. 3.0 Additional Services**

B. 3.1 Payment for Additional Services. The Owner will pay the Design Professional only for Additional Services agreed to in an addendum or amendment to this Agreement executed by the Owner and the Design Professional pursuant to A.2. Payment for all such Additional Services shall be in an amount and upon the terms set out in such amendment or addendum and agreed upon by the parties. Each such amendment or addendum shall provide for a fixed price or, where payment for such Additional Services is to be on an hourly basis or other unit pricing method, for a maximum amount; each such amendment or addendum shall also provide for a method of payment, including, at a minimum, whether payment will be made in partial payments or in lump sum and whether it will be based upon percentage of completion or services billed for.

**B. 4.0 Invoicing and Payments**

B. 4.1 Invoices. All payments shall require a written invoice from the Design Professional. Invoices shall be made no more frequently than on a monthly basis. Payments for Basic Services shall be in proportion to services completed within each phase of work. When requesting such payment, the invoice shall identify the phase and the portion completed. All invoices shall state the Agreement, name and address to which payment shall be made, the services completed and the dates of completion, and whether the invoice requests payment for Basic Services, Reimbursable or Additional Services. Invoices seeking payment for Reimbursable or Additional Services must provide detailed documentation.

B. 4.2 Time of Payment. Upon the Design Professional’s proper submission of invoices for work performed or reimbursable expenses, the Owner shall review and, if the work is in conformance with the terms of the Agreement, make payment within thirty days of the Owner’s receipt of the invoice.

**Article C: Responsibilities**

**C. 1.0 Design Professional's Responsibilities**

C. 1.1 Basic Services. The Design Professionals shall provide the Basic Service set out in Article A.1.0.

C. 1.2 Additional Services. When required under this Agreement or agreed to as set out in A.2.0, the Design Professional shall provide Additional Services on the Project.

C. 1.3 General Responsibilities. The Design Professional shall be responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other services, furnished by the Design Professional under this Agreement. The Owner’s review, approval, acceptance of, or payment for Design Professional services shall not be construed as a waiver of any rights under this Agreement or of any cause of action for damages caused by Design Professional’s negligent performance under this Agreement. Furthermore, this Agreement does not restrict or limit any rights or remedies otherwise afforded the Owner or Design Professional by law.

C. 1.4 Designing Within Funding Limitations. The Design Professional shall perform services required under this Contract in such a manner so as to cause an award of a Construction Contract(s) that does not exceed (1) \$ \_\_\_\_\_ or (2) an amount to be provided by the Owner in writing to the Design Professional prior to the commencement of Design Professional services. This fixed limit shall be called the Maximum Construction Contract Cost. The amount may be increased by the Owner, but only with written notice to the Design Professional. If the increase results in a change to the scope of work, an amendment to this Agreement will be required. The Design Professional and the Owner may mutually agree to decrease the Maximum Construction Contract Cost, but only by signing a written amendment to this Agreement. Should bids for the Construction Contract(s) exceed the Maximum Construction Contract Cost, the Owner has the right to require the Design Professional to perform redesigns, rebids and other services necessary to cause an award of the Construction Contract within the Maximum Construction Contract Cost without additional compensation or reimbursement.

C. 1.5 Compliance with Laws, Codes, Ordinances and Regulations. The Design Professional shall perform services that conform to all applicable Federal, State and local laws, codes, ordinances and regulations except as modified by any waivers which may be obtained with the approval of the Owner. If the Project is within an Indian reservation, tribal laws, codes and regulations shall be substituted for state and local laws, codes, ordinances and regulations. However, on such a Native American Projects, the Owner may additionally designate that some or all state and local codes shall apply. In some of these circumstances, a model national building code may be selected by the Indian or Native American Owner. The Design Professional shall certify that Contract Documents will conform to all applicable laws, codes, ordinances and regulations. The Design Professional shall prepare all construction documents required for approval by all governmental agencies having jurisdiction over the project. The Design professional shall make all changes in the Bidding and Construction Documents necessary to obtain governmental approval without additional compensation or reimbursement, except in the following situations. If subsequent to the date the Owner issues a notice to proceed, revisions are made to applicable codes or non-federal regulations, the Design Professional shall be entitled to additional compensation and reimbursements for any additional cost resulting from such changes. The Design Professional, however, is obligated to notify the Owner of all significant code or regulatory changes within sixty (60) days of their change, and such notification shall be required in order for the Design Professional to be entitled to any additional compensation or reimbursement.

C. 1.6 Seal. Licensed Design Professionals shall affix their seals and signatures to drawings and specifications produced under this Agreement when required by law or when the project is located on an Indian Reservation.

C. 1.7 Attendance at Conferences. The Design Professional or designated representative shall attend project conferences and meetings involving matters related to basic services covered under this contract. Attendance at community wide meetings shall be considered an additional service.

#### C. 2.0 Owner's Responsibilities

C. 2.1 Information. The Owner shall provide information regarding requirements for the project, including a program that shall set forth the Owner's objectives and schedule. The Owner shall also establish and update the Maximum Construction Cost. This shall include the Owner's giving notice of work to be performed by the Owner or others and not included in the Construction Contract for the Project. The Design Professional, however, shall be responsible to ascertain and know federal requirements and limitations placed on the Project.

C. 2.2 Notice of Defects. If the Owner observes or otherwise becomes aware of any fault or defect in the construction of the project or nonconformance with the Construction Contract, the Owner shall give prompt written notice of those faults, defects or nonconformance to the Design Professional.

C.2.3 Contract Officer. The Owner shall designate a Contract Officer authorized to act on its behalf with respect to the design and construction of the Project. The Contract Officer shall examine documents submitted by the Design Professional and shall promptly render decisions pertaining to those documents so as to avoid unreasonably delaying the progress of the Design Professional's work.

C. 2.4 Duties to Furnish. The Owner shall provide the Design Professional the items listed below.

C. 2.4.1 Survey and Property Restrictions. The Owner shall furnish topographic, property line and utility information as and where required. The Owner may at its election require the Design Professional to furnish any of these items as an Additional Service.

C. 2.4.2 Existing Conditions. The Owner shall provide the Design Professional any available "as built" drawings of buildings or properties, architect surveys, test reports, and any other written information that it may have in its possession and that it might reasonably assume affects the work.

C. 2.4.3 Waivers. The Owner shall provide the Design Professional information it may have obtained on any waivers of local codes, ordinances, or regulations or standards affecting the design of the Project.

C. 2.4.4 Minimum Wage Rates. The Owner shall furnish the Design Professional the schedule of minimum wage rates approved by the U.S. Secretary of Labor for inclusion in the solicitation and Contract Documents.

C. 2.4.5 Tests. When expressly agreed to in writing by both the Owner and the Design Professional, the Owner shall furnish the Design Professional all necessary structural, mechanical, chemical or other laboratory tests, inspections and reports required for the Project.

C. 2.4.6 Contract Terms. The Owner or its legal counsel may provide the Design Professional text to be incorporated into Bidding and Construction Contract Documents.

#### Article D: Contract Administration

D. 1.0 Prohibition of Assignment. The Design Professional shall not assign, subcontract, or transfer any services, obligations, or interest in this Agreement without the prior written consent of the Owner. Such consent shall not unreasonably be withheld when such assignment is for financing the Design Professional's performance.

D. 1.1 Ownership of Documents. All drawings, specifications, studies and other materials prepared under this contract shall be the property of the Owner and at the termination or completion of the Design Professional's services shall be promptly delivered to the Owner. The Design Professional shall have no claim for further employment or additional compensation as a result of exercise by the Owner of its full rights of ownership. It is understood, however, that the Design Professional does not represent such data to be suitable for re-use on any other project or for any other purpose. If the Owner re-uses the subject data without the Design Professional's written verification, such re-use will be at the sole risk of the Owner without liability to the Design Professional.

D. 1.2 Substitutions.

A. The Design Professional shall identify in writing principals and professional level employees and shall not substitute or replace principals or professional level employees without the prior approval of the Owner which shall not unreasonably be withheld.

B. The Design Professional's personnel identified below are considered to be essential to the work effort. Prior to diverting or substituting any of the specified individuals, the Design Professional shall notify the Owner reasonably in advance and shall

submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact on the contract. No diversion or substitution of such key personnel shall be made by the Design professional without the prior written consent of the Owner.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

D. 1.3 Suspension. The Owner may give written notice to the Design Professional to suspend work on the project or any part thereof. The Owner shall not be obligated to consider a claim for additional compensation if the Design Professional is given written notice to resume work within 120 calendar days. If notice to resume work is not given within 120 calendar days, the Design Professional shall be entitled to an equitable adjustment in compensation.

D. 1.4 Subcontracts. The Design Professional will cause all applicable provisions of this Agreement to be inserted in all its subcontracts.

D. 1.5 Disputes. In the event of a dispute arising under this Agreement, the Design Professional shall notify the Owner promptly in writing and submit its claim in a timely manner. The Owner shall respond to the claim in writing in a timely manner. The Design Professional shall proceed with its work hereunder in compliance with the instructions of the Owner, but such compliance shall not be a waiver of the Design Professional's rights to make such a claim. Any dispute not resolved by this procedure may be determined by a court of competent jurisdiction or by consent of the Owner and Design Professional by other dispute resolution methods.

D. 1.6 Termination. The Owner may terminate this Agreement for the Owner's convenience or for failure of the Design Professional to fulfill contract obligations. The Owner shall terminate by delivering to the Design Professional a Notice of Termination specifying the reason therefore and the effective date of termination. Upon receipt of such notice, the Design Professional shall immediately discontinue all services affected and deliver to the Owner all information, reports, papers, and other materials accumulated or generated in performing this contract whether completed or in process. If the termination is for convenience of the Owner, the Owner shall be liable only for payment for accepted services rendered before the effective date of termination.

D. 1.7 Insurance. The Design professional shall carry Commercial or Comprehensive General Liability Insurance, Professional Liability Insurance (for a period extending two years past the date of completion of construction), and other insurance as are required by law, all in minimum amounts as set forth below. The Design Professional shall furnish the Owner certificates of insurance and they shall state that a thirty day notice of prior cancellation or change will be provided to the Owner. Additionally, the Owner shall be an additional insured on all Commercial or Comprehensive General liability policies.

Insurance	Limits or Amount
_____	_____
_____	_____
_____	_____

D. 1.8 Retention of Rights. Neither the Owner's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the Design Professional shall be and remain liable to the Owner in accordance with the applicable law for all damages to the Owner caused by the Design professional 's negligent performance of any of the services furnished under this contract.

**Article E: Additional Requirements**

E. 1.0 Contract Provisions Required by Federal Law or Owner Contract with the U.S. Department of Housing and Urban Development (HUD).

E. 1.1 Contract Adjustments. Notwithstanding any other term or condition of this Agreement, any settlement or equitable adjustment due to termination, suspension or delays by the Owner shall be negotiated based on the cost principles stated at 48 CFR Subpart 31.2 and conform to the Contract pricing provisions of 24 CFR 85.36 (f).

E. 1.2 Additional Services. The Owner shall perform a cost or price analysis as required by 24 CFR 85.36 (f) prior to the issuance of a contract modification/amendment for Additional Services. Such Additional Services shall be within the general scope of services covered by this Agreement. The Design Professional shall provide supporting cost information in sufficient detail to permit the Owner to perform the required cost or price analysis.

E. 1.3 Restrictive Drawings and Specifications. In accordance with 24 CFR 85.36(c)(3)(i) and contract agreements between the Owner and HUD, the Design Professional shall not require the use of materials, products, or services that unduly restrict competition.

E. 1.4 Design Certification. Where the Owner is required by federal regulations to provide HUD a Design Professional certification regarding the design of the Projects (24 CFR 968.235, 905.260 and 905.639), the Design Professional shall provide such a certification to the Owner.

E. 1.5 Retention and Inspection of Records. Pursuant to 24 CFR 85.26(i)(10) and (11), access shall be given by the Design Professional to the Owner, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the Design Professional which are directly pertinent to that specific Contract for the purpose of making an audit, examination, excerpts, and transcriptions. All required records shall be retained for three years after the Owner or Design Professional and other subgrantees make final payments and all other pending matters are closed.

E. 1.6 Copyrights and Rights in Data. HUD has no regulations pertaining to copyrights or rights in data as provided in 24 CFR 85.36. HUD requirements, Article 45 of the General Conditions to the Contract for Construction (form HUD-5370) requires that contractors pay all royalties and license fees. All drawings and specifications prepared by the Design Professional pursuant to this contract will identify any applicable patents to enable the general contractor to fulfil the requirements of the construction contract.

E. 1.7 Conflicts of Interest. Based in part on federal regulations (24 CFR 85.36(b)) and Contract agreement between the Owner and HUD, no employee, officer, or agent of the Owner (HUD grantee) shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when:

- (i) The employee, officer or agent,
- (ii) Any member of his or her immediate family,
- (iii) His or her partner, or
- (iv) An organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from Contractors, or parties to sub-agreements. Grantees and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents or by Contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

Neither the Owner nor any of its contractors or their subcontractors shall enter into any Contract, subcontract, or agreement, in connection with any Project or any property included or planned to be included in any Project, in which any member, officer, or employee of the Owner, or any member of the governing body of the locality in which the Project is situated, or any member of the governing body of the locality in which the Owner was activated, or in any other public official of such locality or localities who exercises any responsibilities or functions with respect to the Project during his/her tenure or for one year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee of the Owner, or any such governing body member or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of his/her tenure any such interest, and if such interest is immediately disclosed to the Owner and such disclosure is entered upon the minutes of the Owner, the Owner, with the prior approval of the Government, may waive the prohibition contained in this subsection: Provided, That any such present member, officer, or employee of the Owner shall not participate in any action by the Owner relating to such contract, subcontract, or arrangement.

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

E. 1.8 Disputes. In part because of HUD regulations (24 CFR 85.36(i)(1)), this Design Professional Agreement, unless it is a small purchase contract, has administrative, contractual, or legal remedies for instances where the Design Professional violates or breaches Agreement terms, and provide for such sanctions and penalties as may be appropriate.

E. 1.9 Termination. In part because of HUD regulations (24 CFR 85.36(i)(2)), this Design Professional Agreement, unless it is for an amount of \$10,000 or less, has requirements regarding termination by the Owner when for cause or convenience. These include the manner by which the termination will be effected and basis for settlement.

E. 1.10 Interest of Members of Congress. Because of Contract agreement between the Owner and HUD, 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 from it.

E. 1.11 Limitation of Payments to Influence Certain Federal Transaction. The Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions Act, Section 1352 of Title 31 U.S.C., provides in part that no appropriated funds may be expended by recipient of a federal contract, grant, loan, or cooperative agreement to pay any person, including the Design Professional, for influencing or attempting to influence an officer or employee 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.

E. 1.12 Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

H. Pursuant to 24 CFR 905.170(b), compliance with Section 3 requirements shall be to the maximum extent consistent with, but not in derogation of compliance with section 7(b) of the Indian Self-Determination and Education Assistance, 25 U.S.C. section 450e(b) when this law is applicable.

E. 1.13 Indian Preference in Indian Housing Authority Contracts. Pursuant to 24 CFR section 905.165 and Federal law, the Design Professional shall provide Indian Preference in its contracting, training, and employment practices when this contract is with an Indian Housing Authority and shall incorporate the following language into all of its subcontracts:

(i) The work to be performed under this contract is on a project subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises.

(ii) The parties to this contract shall comply with the provisions of said section 7(b) of the Indian Self-determination and Education Assistance Act (25 U.S.C. 450e(b)) and all HUD requirements adopted pursuant to section 7(b).

(iii) In connection with this contract, the parties shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned Economic Enterprises, and preferences and opportunities for training and employment to Indians.

(iv) This section 7(b) clause shall be incorporated into every subcontract in connection with the project.

(v) Upon a finding by the IHA or HUD that any party to the contract is in violation of the section 7(b) clause, said party shall at the direction of the IHA, take appropriate remedial action pursuant to the contract.

E. 1.14 Clean Air and Water. (Applicable to contracts in excess of \$100,000). Because of 24 CFR 85.36(i)(12) and Federal law, the Design Professional shall comply with applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 1857h-4 transferred to 42 USC § 7607, section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15), on all contracts, subcontracts, and subgrants of amounts in excess of \$100,000.

E. 1.15 Energy Efficiency. Pursuant to Federal regulations (24 C.F.R. 85.36(i)(13)) and Federal law, except when working on an Indian housing authority Project on an Indian reservation, the Design Professional shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163 codified at 42 U.S.C.A. § 6321 et. seq.).

E. 1.16 Prevailing Wages. In accordance with Section 12 of the U.S. Housing Act of 1937 (42 U.S.C. 1437j) the Design Professional shall pay not less than the wages prevailing in the locality, as determined by or adopted (subsequent to a determination under applicable State or local law) by the Secretary of HUD, to all architects, technical engineers, draftsmen, and technicians.

E. 1.17 Non-applicability of Fair Housing Requirements in Indian Housing Authority Contracts. Pursuant to 24 CFR section 905.115(b) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, and the Fair Housing Act (42 U.S.C. 3601-3620), which prohibits discrimination based on race, color, religion, sex, national origin, handicap, or familial status in the sale or rental of housing do not apply to Indian Housing Authorities established by exercise of a Tribe's powers of self-government.

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E. 1.18 Prohibition Against Liens. The Design professional is Prohibited from placing a lien on the Owner's property. This prohibition shall be placed in all design professional subcontracts.

**Article F: Other Owner Requirements** (if any)

(Continue on additional pages as necessary)

---

This Agreement is entered into as of the day and year first written above.

Owner

Design Professional

\_\_\_\_\_  
(Housing Authority)

\_\_\_\_\_  
(Firm)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

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

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

---

Addendum (If any)  
(Additional Services and other modifications)

This is an Addendum to a Standard Form of Agreement between Owner and Design Professional signed and dated the \_\_\_\_ day of \_\_\_\_\_ in the year of \_\_\_\_ between the Owner, \_\_\_\_\_, and Design Professional \_\_\_\_\_ on Project \_\_\_\_\_.

The parties to that Agreement agree to modify the Agreement by the above delineated Additional Services and modifications. This Addendum is dated this \_\_\_\_ day of \_\_\_\_\_ in the year of \_\_\_\_.

Owner

Design Professional

\_\_\_\_\_  
(Housing Authority)

\_\_\_\_\_  
(Firm)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

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

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

# 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)

## **SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968**

### Operational Plan Summary:

The Municipal Housing Authority for the City of Yonkers (the “Authority”), is committed in assisting the residents of its housing developments and voucher participants to achieve self-sufficiency by providing opportunities for training and employment. The Authority provides employment opportunities on construction projects by encouraging its contractors to hire qualified residents of Authority housing, refers and connects residents to job training and placement opportunities, and provides coordination that facilitates these efforts. The Authority provides employment opportunities by hiring qualified residents of Authority public housing to fill available Authority positions.

- The Authority will formalize recruiting and hiring policies and practices that commit to a goal that allows at least 30% of the aggregate number of new hires each year at the Authority to be qualifying public housing residents.
- The Authority requires all contractors and subcontractors to commit to a goal to hire qualifying Authority residents for at least 30% of the new positions created as a result of contracts with Authority in the amount of \$25,000.00 or more.
- The Authority commits to a goal that at least 10% of the total dollar amount of contracts for construction, repair and rehabilitation be awarded to qualifying Section 3 business concerns and that at least 3% of the total dollar amount of all other Authority contracts are awarded to qualifying Section 3 business concerns.
- The Authority refers and informs the residents of public housing of available job training, education, and personal development programs in order to establish a potential qualifying list of job applicants. In order to assist residents in these efforts, the Authority will direct residents towards any additional support services required for participation.

### Implementation:

Lakisha Collins-Bellamy, Esq., is charged with the overall responsibility of Section 3 implementation and maintaining all pertinent information and records as required. To be effective and responsive in this endeavor this office works closely with the office/department of Administration, Modernization, Maintenance, Finance, and Resident Services.

In order to comply with the Section 3 mandate, the Authority undertakes activities such as:

- Overall outreach and recruitment to residents;
- Publicizing the availability of job opportunities;
- Providing information and referral to residents relevant to training and educational programs in order to promote job readiness;
- Making provisions in all contracts relevant to resident hiring;
- Maintaining lists of Section 3 business concerns and their specialties;
- Assisting Section 3 business concerns in areas as requested to make them eligible for participation with Authority activities.

By undertaking this contract, vendor certifies to the Authority that the inspectors and any persons entering residents' apartments and/or cellars have not been convicted of any crimes against persons or property and/or other criminal acts that would adversely affect the health, safety or welfare of residents.

Contractors shall be responsible for the actions of its inspectors and other personnel performing services on this contract and shall indemnify the Authority in the event any claims should arise from the acts or omissions of such inspectors or personnel.

---

Name, Title

---

Date

---

Name of Business

**MUNICIPAL HOUSING AUTHORITY FOR THE CITY OF YONKERS**

**ACKNOWLEDGEMENT OF ADDENDA FORM**

Bidder has received the following Addenda, the receipt of which is hereby acknowledged:

Addendum Number _____	Date Received: _____
Addendum Number _____	Date Received: _____
Addendum Number _____	Date Received: _____
Addendum Number _____	Date Received: _____
Addendum Number _____	Date Received: _____

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

\_\_\_\_\_  
(Signature)

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