



August 13, 2024

SUBJECT: RFP #HACM-RFP-2024-02

**Housing Quality Standards (HQS) Inspection Services for
The Housing Choice Voucher (HCV) program**

The Housing Authority of the County of Monterey ("HACM") invites proposals from qualified firms interested in providing all Housing Quality Standards Inspection Services for the Housing Choice Voucher program.

Proposals will be accepted by mail or by email until 3:00 p.m., (PST), on September 12, 2024.

Proposals received after 3:00p.m. on September 12, 2024, will be rejected without consideration.

Questions of a procedural nature may be
directed to Delayna Cambunga at
dcambunga@hamonterey.org

We look forward to receiving your proposal.



**REQUEST FOR PROPOSALS
HACM-RFP-2024-02**

**Housing Quality Standards (HQS)
Inspection Services for
The Housing Choice Voucher Program**

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| RFP Issued: | August 13, 2024 |
| Pre-Proposal Conference, Mandatory Via Zoom | August 28, 2024 at 1:30PM (Pacific Time) Details of the Zoom meeting log in info will be provided upon request by emailing Delayna at dcambunga@hamonterey.org |
| Questions Due | August 21, 2024 by 10:00 AM (Pacific Time) |
| Email Questions To: | dcambunga@hamonterey.org (Indicate above HACM-RFP-2024-02 in "Subject") |
| Proposal Due: | September 12, 2024 @ 3:00 PM (Pacific Time) |

Contact person for the above RFP: Delayna Cambunga
Procurement and Contracts Manager
Email: dcambunga@hamonterey.org

Proposals will be accepted by mail or email at
dcambunga@hamonterey.org until
3:00PM (PST) on September 12, 2024

INTRODUCTION

The Housing Authority of the County of Monterey (hereinafter, "HACM") is a public entity that provides federally subsidized housing and housing assistance to low-income families within the County of Monterey. HACM is headed by an Executive Director (ED) and is subject to the requirements of the Code of Federal Regulations (hereinafter, "CFR") and HACM's procurement policy.

HACM is a public body corporate and politic created pursuant to California statutes. The Authority's primary responsibilities include the administration of approximately 5,000 Housing Choice Vouchers (Section 8). It is overseen by a Board of Commissioners, most of whom are appointed by one of the Supervisors County Board of Supervisors.

In keeping with its mandate to provide efficient and effective services, HACM is now soliciting a Request for Proposal (RFP) from qualified, licensed, and insured entities to provide services to HACM as listed below. All bids submitted in response to this solicitation must conform to all of the requirements and specifications outlined within this document and any designated attachments in its entirety.

General Information

1.0 HACM'S RESERVATION OF RIGHTS:

- a) HACM reserves the right in its sole discretion to reject any or all proposals, to accept and/or reject any portion of a proposal, to waive any informality in the RFP process, or to terminate the RFP process at any time, if deemed by HACM to be in its best interests.
- b) HACM reserves the right not to award a contract pursuant to this RFP.
- c) HACM reserves the right to terminate a contract awarded pursuant to this RFP, at any time for its convenience upon 10 days written notice to the successful proposer(s).
- d) HACM reserves the right to determine the days, hours and locations that the successful proposer(s) shall provide the services called for in this RFP.
- e) HACM reserves the right to retain all proposals submitted and not permit withdrawal for a period of 60 days subsequent to the deadline for receiving proposals without the written consent of HACM Purchasing Agent (PA).
- f) HACM reserves the right to negotiate the fees proposed by the proposer entity.
- g) HACM reserves the right to reject and not consider any proposal that does not meet the requirements of this RFP, including but not necessarily limited to incomplete proposals and/or proposals offering alternate or non-requested services.
- h) HACM shall have no obligation to compensate any proposer for any costs incurred in responding to this RFP.
- i) HACM shall reserve the right to at any time during the RFP or contract process to prohibit any further participation by a proposer or reject any proposal submitted that does not conform to any of the requirements detailed herein. The prospective bidder further agrees that he/she will inform HACM in writing within 5 days of the discovery of any item listed

herein or of any item that is issued thereafter by HACM that he/she feels needs to be addressed. Failure to abide by this time frame shall relieve HACM, but not the prospective proposer, of any responsibility pertaining to such an issue.

2.0 SCOPE OF SERVICES:

The intent of the RFP is to establish the general Scope of Services needed, and to provide prospective Proposers with sufficient information to enable them to provide an acceptable response to the RFP. Every effort has been made to outline requirements, and to provide information in a format that is clear and concise. HACM is seeking qualifications and proposals from firms interested in providing all Housing Quality Standards (HQS) Inspection Services for the Housing Choice Voucher (HCV) program. There will be approximately 1300 units annually. The residential units to be inspected are located throughout the County of Monterey California. The proposer must be able to provide a qualified representative that will be the main contact person for the inspection services and attend monthly owner meetings to discuss HQS protocols. While HACM has not adopted NSPIRE-V protocols, as of yet, The proposer must have familiarity of the NSPIRE-V program. The selected Proposer shall perform all the duties and responsibilities normally associated with conducting residential unit inspections in accordance with the standards set forth by the Housing Quality Standards Inspection Guidelines via 24 CFR 982, and 983 HACM's Administrative Plan and the HUD HQS manual. The selected firm shall provide the following general services:

- a) Proposers will be required to perform all initial Housing Quality Standards Inspections (HQS) for the Housing Choice Voucher (HCV) program and all HQS inspections of properties that are owned by HACM/HDC.
- b) Experienced Inspectors to complete HQS inspections according to HUD guidelines. All inspectors shall be field experienced. Each inspector provided under this contract shall have completed sensitivity and sexual harassment training, shall be HQS certified and HUD certified on Visual Lead Paint assessment. Proof of certifications will be required of each inspector prior to commencement of work. All contractor's field personnel, including any subcontractors, shall be required to submit to a criminal background investigation prior to being allowed to perform field work. Must ensure that all vehicles driven by inspectors are insured with minimum auto physical and liability insurance coverages.
- c) Perform documented HQS Inspections for HACM's rental assistance programs: HCV program. Must have the ability or willingness to learn to use Yardi to generate a list of units that require inspections to be completed within 60 days, schedule the inspections and optimize inspector driving routes.
- d) Schedule and reschedule appointments as necessary, using correspondence tools designed by HACM. This includes notifying the owner and tenants of scheduled inspections via US Mail, if necessary. Proposer must also maintain a phone line and email available to clients for scheduling purposes.
- e) Conduct inspections on electronic tablets, using inspection application provided and designed by HACM. Handwritten inspections on an inspection checklist will be acceptable if software application has not been implemented.
- f) Proposer's staff must upload inspection data from electronic tablets into YARDI (the

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software system used by HACM) on the day of the inspection, file appropriate paperwork, and send paperwork to HCV for electronic filing on a schedule detailed by the HACM. HACM may request certain results to be “called in” immediately following the inspection. HACM will provide an office area with computer and access to copiers and fax machines for Proposer to perform these duties. Data will be saved to HACM's electronic filing system. NO OVERNIGHT RETENTION OF INSPECTIONS DATA OR TABLETS WILL BE PERMITTED BY THE INSPECTION STAFF.

- g) Proposer’s staff must batch and add 50058 type 13’s weekly using Yardi’s Batch 50058 Action Type 13 function.
- h) As needed, schedule and conduct Initial, Special/Complaint or Emergency Inspections for assisted units. These may include but are not limited to the HCV program or the Home Ownership program. HACM may schedule these inspections or refer these inspections to the Proposer for scheduling and the Proposer shall conduct the inspections.
- i) Proposer shall schedule all inspections by notifying the tenant and owner of the inspection time and date between ten (10) and fifteen (15) calendar days before the scheduled inspection. The notice may provide no more than a four (4) hour window for the inspector's arrival. The Proposer must use the Yardi batch scheduler feature for annual and biennial inspection scheduling.
- j) Inspectors are required to contact clients via telephone and wait at unit at least fifteen (15) minutes prior to leaving the premises because of a "no-show". Inspectors must make two (2) attempts to complete the unit inspection on the scheduled day.
- k) Proposer’s staff must be trained to use the correct HACM provided letter for each inspection scenario.
- l) Inspectors shall verify that additional rooms, which were approved based on a reasonable accommodation (RA) for the family, are being used according to the RA request. When Inspectors determine there are violations of the RA request, the Inspector shall be required to take pictures of these rooms and attach the pictures to the electronic inspection record.
- m) HACM shall provide Proposer personnel with access to appropriate HACM inspection and supervisory single point of contact and the Proposer and the HACM team will be available to meet weekly to review ongoing duties and assignments.
- n) Proposer's contract administrator shall file schedules of inspections with HACM at the beginning of the day unless inspections are scheduled by HACM staff. In these cases, HACM shall provide Proposer with the inspection schedules. Inspectors will submit the completed schedules (“Drive Sheets”) to HACM at the end of each day for error reconciliation. The Proposer will be responsible for reconciling inspection data in Yardi with Drive Sheets.
- o) Proposer or HACM management may suggest appropriate technology solutions to save time for contracted or HACM administrative personnel, and such solutions shall be mutually agreed upon, in writing, thirty (30) days before implementation, unless waived by both

- parties.
- p) Proposer's services shall include management reports, billing accounts, communication, and coordination with HACM staff to address problems, seek improvements and enforcement of HUD regulations, and customer service to address problems or complaints from owners and tenants regarding inspections. Proposer shall ensure that all certifications and training of their inspectors are current and valid at all times. They shall also document all training they provide for their inspectors. Proposers must possess or be willing to obtain NSPIRE certification as mandated by HACM.
 - q) Proposer's management staff shall be responsible for conducting their own quality control inspections to ensure internal compliance with mandated standards/regulations and to evaluate staff performance. Reports on the QC inspections shall be provided to HACM as requested. Qualified HACM personnel will perform federally mandated quality control inspections throughout the year.
 - r) Any inspection missed or performed outside of the time window given by Proposer's inspectors will result in a fee reduction of \$50.00. Inspections outside of the restricted timeframes must be authorized and approved by HACM. The contractor may not "re-time" inspections on the day of the inspection, unless prior approval is granted by HACM's contract administrator for contract resulting from this RFP. All results must be entered into the Yardi form during the inspection, by selecting "Start Inspection" upon arrival at the unit and "Stop Inspection" upon leaving the unit.
 - s) Records must be maintained with respect to the equipment, contract agreements, and owners and tenants as necessary to satisfy governmental requirements regarding reporting, confidentiality and preservation of documents.
 - t) Mail a re-inspection letter designed by HACM and generated by Yardi to the tenant and property owner/manager of any unit that did not meet HQS standards along with a listing of failed items generated by Yardi. The letter should explain exactly why the unit did not pass, who the responsible party is, and the date by which the repairs must be completed. Clearly state responsibility (tenant or property owner/manager) in detail for HQS repairs. The letter will also provide the property owner/manager with a phone number to call with any questions they may have.
 - u) Proposer will reconcile Yardi Custom Report created for tracking units referred for abatement/ termination and unit referred for 24-hour fail with daily Drive Sheets and Inspection data uploaded to Yardi. Proposer will take appropriate action by sending Abatement/Termination Letter, updating the HACM inspections team and/or scheduling 24-hour fail reinspection.
 - v) Make sure that any reported 24-Hour fail items are reported to the owner/property manager on the same day of the failed inspection and re-inspections are conducted within 24 hours.
 - w) File all correspondence related to inspections electronically.
 - x) Perform all services not specifically mentioned above, in order to perform the services in a timely and professional manner according to SEMAP factors.

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- y) Make sure that any report reporting failed inspections clearly states responsibility (tenant or property owner/manager) in detail for HQS repairs.
- z) All failed items must be documented by photo and attached to inspection report electronically.
- aa) Ensure that inspectors are issued uniforms appropriate to the season and job duties and wear identifiable badges issued by the contractor. The proposer will ensure that dress code is maintained.
- bb) The proposer will observe HACM's work schedule and maintain daily working hours of required inspections from 8:00 AM to 5:00 PM. HACM is closed every other Friday.
- cc) Take all appropriate steps to attempt to maintain no-show appointments to less than 5% of total billed charges and develop a plan for doing so within the fee proposed.
- dd) No agent of the contractor will engage in business or agreements with participating landlords or their agents outside of those services contracted and paid for by the HACM.

3.0 PROPOSAL FORMAT:

3.1 Proposal Submittal: HACM intends to retain the successful proposer pursuant to a “Best Value” basis, not a “Low Proposal” basis. Accordingly, HACM will, as detailed within the following Section 3.1, consider factors other than just cost in making the award decision. Therefore, so that HACM can properly evaluate the offers received, all proposals submitted in response to this RFP must be formatted in accordance with the sequence noted in Table 2 below. Each category must be separated by a page that is identified and labeled with the corresponding tabbed reference number as listed in Table No. 2, also noted below. None of the proposed services may conflict with any requirement HACM has published herein or has issued by addendum.

[Table No. 2]

| RFP Section | Description |
|-------------|--|
| 3.1.1 | Form of Proposal: This Form is attached hereto as Attachment A to this RFP document. This 1-page Form must be fully completed, executed where provided thereon and submitted under this section as a part of the proposal submittal. |
| 3.1.2 | Form HUD-5369-C (8/93), Certifications and Representations of Offerors, Non-Construction Contract: This Form is attached hereto as Attachment B to this RFP document. This 2-page Form must be fully completed, executed where provided thereon and submitted as a part of the proposal submittal. |
| 3.1.3 | Profile of Firm Form: The Profile of Firm Form is attached hereto as Attachment C to this RFP document. This 2-page Form must be fully completed, executed, and submitted under this section as a part of the proposal submittal. |
| 3.1.4 | Proposed Services: As more fully detailed within Section 2.0, <i>Scope of Services</i> , of this document, the proposer shall, at a minimum, clearly detail within the information submitted under this section documentation showing each of the following identified as your responses to items 3.1.4.1 to 3.1.4.8: |
| 3.1.4.1 | As detailed within Section 9.1, Evaluation Factor No. 2, herein, the proposer’s Demonstrated Understanding of HACM’s Requirements and the steps the proposer firm will take to ensure the best possible outcomes in a timely manner for HACM. |

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| 3.1.4.2 | As detailed within Section 9.1, Evaluation Factor No. 3, herein, the proposer’s Technical Approach (including, if appropriate, labor categories, estimated hours and skill mix) and the proposer’s proposed Work Plan to provide the required services. |
| 3.1.4.3 | As detailed within Section 9.1, Evaluation Factor No. 4, herein, the proposer’s Technical Capabilities (in terms of personnel, equipment, and materials) and Management Plan (including staffing of key positions, method of assigning work and procedures for maintaining level of service, etc.). |
| 3.1.4.4 | As detailed within Section 9.1, Evaluation Factor No. 5, herein, the proposer’s Demonstrated Experience in performing similar work and the proposer’s Demonstrated Successful Past Performance (including meeting costs, schedules and performance requirements) of contract work substantially similar to that required by this solicitation. |
| 3.1.4.5 | If appropriate, how staff are retained, screened, trained, and monitored (Optional) |
| 3.1.4.6 | As detailed within Section 9.1, Evaluation Factor No. 6, herein; the proposer's Overall Quality & Professional Appearance of the Proposal Submitted. |
| 3.1.4.7 | An explanation and copies of forms that your firm will use and reports that will be submitted and the method of such reports (i.e. written; fax; internet; etc.); |
| 3.1.4.8 | A complete description of any additional inspection services that may be available through your firm or its affiliates which may assist with the transactions anticipated with this RFP. |
| 3.1.5 | Managerial Capacity/Financial Viability: The proposer must submit under this section a concise description of your managerial and financial capacity to deliver the proposed services, including brief professional resumes for the persons identified within areas (5) and (6) of Attachment C, <i>Profile of Firm Form</i> . Such information shall include the proposer's qualifications to provide the services; a description of the background and current organization of the firm. |
| 3.1.6 | Client Information: The proposer shall submit a listing of former or current clients, including any other Public Housing Authority, for whom the proposer has performed similar or like services to those being proposed herein. The listing shall, at a minimum, include: |
| 3.1.6.1 | The client’s name; |
| 3.1.6.2 | The client’s contact name; |
| 3.1.6.3 | The client’s telephone number; |
| 3.1.6.4 | A brief description and scope of the service(s) and the dates the services were provided. |
| 3.1.7 | Proposed Cost – The proposed cost the proposer intends to charge HACM. |
| 3.1.8 | Equal Employment Opportunity: The proposer must submit under this section a copy of its Equal Opportunity Employment Policy. |
| 3.1.9 | Subcontractor/Joint Venture Information (Optional Item): The proposer shall identify hereunder whether or not he/she intends to use any subcontractors for this job, if awarded, and/or if the proposal is a joint venture with another firm. Please remember that all information required from the proposer under the proceeding sections must also be included for any major subcontractors (10% or more) or from any joint venture. |

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| 3.1.10 | Section 3 Business Preference Documentation (Optional Item): For any proposer claiming a Section 3 Business Preference, he/she shall under this section include the fully completed and executed Section 3 Business Preference Certification Form attached hereto as Attachment D and any documentation required by that form. |
|--------|---|

If no information is to be placed under any of the above noted Sections (especially the "Optional"), please place, in that section, a statement such as "NO INFORMATION, LEFT INTENTIONALLY BLANK."

4.0 Entry of Proposed Fees: The proposed fees shall be submitted by the proposer and received by HACM stating ALL of the costs associated with the project, broken down by category of products and services, such as maintenance.

5.0 Submission Responsibilities: It shall be the responsibility of each proposer to be aware of and to abide by all dates, times, conditions, requirements, and specifications set forth within all applicable documents issued by HACM, including the RFP document, the documents listed within the following Section 8.0, and any addenda and required attachments submitted by the proposer. By virtue of completing, signing, and submitting the completed documents, the proposer is stating his/her agreement to comply with all conditions and requirements set forth within those documents. Written notice from the proposer not authorized in writing by HACM to exclude any of HACM requirements contained within the documents may cause that proposer to not be considered for award.

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

6.1 Addendums: All questions and requests for information must be addressed in writing to HACM via email to dcambunga@hamonterey.org. HACM will respond to all such inquiries in writing by addendum to all prospective proposers (i.e., firms or individuals that have obtained the RFP Documents from our official website hamonterey.org). During the RFP solicitation process, HACM will NOT conduct any *ex parte* (a substantive conversation “substantive” meaning, when decisions pertaining to the RFP are made—between HACM and a prospective proposer when other prospective proposers are not present) conversations that may give one prospective proposer an advantage over other prospective proposers. Any questions for HACM, must be submitted in writing via email. A response from HACM will be submitted on our website in the form of a numbered addendum.

7.0 MANDATORY Pre-proposal Conference: The scheduled pre-proposal video conference call, pursuant to HUD regulation is MANDATORY. The purpose of this video conference call is to assist prospective proposers in having a full understanding of the RFP documents so that he/she feels confident in submitting an appropriate proposal.

8.0 Recap of Attachments: It is the responsibility of each proposer to verify that he/she has answered and submitted, as required, the following attachments pertaining to this RFP, which are hereby by reference included as a part of this RFP:

[Table No. 3]

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| RFP Section | Attachment | Attachment Description |
|--------------------|-------------------|---|
| 8.1 | A | Form of Proposal: |
| 8.1.2 | B | Form HUD-5369-C (03/31/2020), <i>Certifications and Representations of Offerors, Non-Construction Contract</i> |
| 8.1.3 | C | Profile of Firm Form |
| 8.1.4 | D | Section 3 Forms, including explanation |
| 8.1.5 | E | Form HUD-5369-B (8/93), <i>Instructions to Offerors, Non-Construction</i> |
| 8.1.6 | F | <i>HACM Instructions To Proposers & Contractors</i> |
| 8.1.7 | G | Form HUD-5370-C Section I (03/31/2020), <i>General Conditions for Non-Construction Contracts Section I (With or without Maintenance Work)</i> |
| 8.1.9 | H | Non-Collusive/Non-Identity of Interest Affidavit |

9.0 PROPOSAL EVALUATION:

9.1 **Evaluation Factors:** The following factors will be utilized by HACM to evaluate each proposal submittal received; award of points for each listed factor will be based upon the documentation that the proposer submits within his/her proposal submittal.

[Table No. 4]

| NO. | MAX POINT VALUE | FACTOR TYPE | FACTOR DESCRIPTION |
|-----|-------------------|------------------------|---|
| 1 | 25 points | Objective | The PROPOSED COSTS the proposer proposes to charge HACM to provide the required work. |
| 2 | 10 points | Subjective (Technical) | The proposer's DEMONSTRATED UNDERSTANDING of the REQUIREMENT; |
| 3 | 15 points | Subjective (Technical) | The APPROPRIATENES of the TECHNICAL APPROACH (including labor categories, estimated hours and skill mix) and the QUALITY of the WORK PLAN. |
| 4 | 25 points | Subjective (Technical) | The proposer's TECHNICAL CAPABILITIES (in terms of personnel, equipment and materials) and the MANAGEMENT PLAN (including staffing of key positions, method of assigning work and procedures for maintaining level of service, etc.). |
| 5 | 15 points | Subjective (Technical) | DEMONSTRATED SUCCESSFUL PAST PERFORMANCE (including meeting costs, schedules and performance requirements) of contract work substantially similar to that required by this solicitation as verified by reference checks or other means. |
| 6 | 10 points | Subjective (Technical) | The OVERALL QUALITY AND PROFESSIONAL APPEARANCE OF THE PROPOSAL SUBMITTED , based upon the opinion of the evaluators. Follows proposal guidelines. |
| | 100 points | 100 points | Total Points (other than preference points) |

9.2 Evaluation

Method:

9.2.1 **Initial Evaluation for Responsiveness:** Each proposal received will first be evaluated for responsiveness (e.g., meets the minimum of the published requirements). HACM reserves the right to reject any proposals deemed by HACM not minimally responsive (HACM will notify such firms in writing of any such rejection).

9.2.2 **Evaluation Packet for Proposals Deemed Responsive:** Internally, an evaluation packet will be prepared for each evaluator, including the following documents:

HOUSING AUTHORITY OF THE COUNTY OF MONTEREY (HACM)

- 9.2.2.1 Instructions to Evaluators;
- 9.2.2.2 Proposal Tabulation Form;
- 9.2.2.3 Copy of all pertinent RFP documents.

9.2.3 **Evaluation Committee:** HACM anticipates that it will select a minimum of a five-person committee to evaluate each of the responsive “digital proposals submitted in response to this RFP. PLEASE NOTE: No proposer shall be informed at any time during or after the RFP process as to the identity of any evaluation committee member. If, by chance, a proposer does become aware of the identity of such person(s), he/she SHALL NOT make any attempt to contact or discuss with such person anything related to this RFP. The designated HACM employee is the only person at HACM that the proposers shall contact through e-mail via the email. Failure to abide by this requirement will cause such proposer(s) to be eliminated from consideration for award.

9.2.4 **Evaluation:** The HACM Committee will evaluate and award points pertaining to the Objective Evaluation Factors No. 1 and 6 independently from the evaluation committee. The evaluation committee, independent of the PA or any other person at HACM, shall evaluate the responsive proposals submitted and award points pertaining to the Subjective Evaluation Factors No. 2, 3, 4, and 5. After the evaluation committee has reviewed all submitted proposals and subjective factors, the committee will forward the completed evaluations to the Procurement and Contracts Manager.

9.2.5 **Determination of Top-ranked Proposer:** Typically, the subjective points awarded by the evaluation committee will be combined with the objective points awarded, to determine the final rankings, which is typically forwarded by the Committee to the ED for approval. If the evaluation was performed to the satisfaction of the ED, the final rankings may be forwarded to the Housing Authority Board of Commissioners (BOC) at a scheduled meeting for approval. Contract negotiations may, at HACM's option, be conducted prior to or after the BOC approval.

9.2.5.1 **Ties:** In the case of a tie in points awarded, the award shall be decided as detailed within Section 6.12.C of HUD Procurement Handbook 7460.8 REV 2, by “drawing lots or other random means of selection.”

9.2.6 **Notice of Results of Evaluation:** If a contractor is selected to receive an award of contract, all proposers will receive email, a Notice of Results of Evaluation.

9.2.7 **Restrictions:** All persons having familial (including in-laws) and/or employment relationships (past or current) with principals and/or employees of a proposer entity will be excluded from participation on the evaluation committee. Similarly, all persons having ownership interest in and/or

contract with a proposer entity will be excluded from participation on the evaluation committee.

10.0 CONTRACT AWARD:

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

10.1.1 By completing, executing, and submitting the Form of Proposal, Attachment A, the proposer is thereby agreeing to abide by all terms and conditions pertaining to this RFP as issued by HACM. Accordingly, HACM has no responsibility to conduct after the submittal deadline any negotiations pertaining to the contract clauses already published.

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

10.2.1 **Contract Form:** HACM will, during the RFP process (prior to the submittal deadline) consider any contract clauses that the proposer wishes to include therein and submits in writing a request for HACM to do so; but the failure of HACM to include such clauses does not give the successful proposer the right to refuse to execute HACM's contract form. It is the responsibility of each prospective proposer to notify HACM, in writing, prior to submitting a proposal, of any contract clause that he/she is not willing to include in the final executed contract and abide by. HACM will consider and respond to such written correspondence, and if the prospective proposer is not willing to abide by HACM's response (decision), then that prospective proposer shall be deemed ineligible to submit a proposal.

10.2.2 Please note that HACM has no legal right or ability to (and will not) at any time negotiate any clauses contained within ANY of the HUD forms included as a part of this RFP.

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

10.2.4 **Unauthorized Sub-Contracting Prohibited:** The successful proposer shall not assign any right, nor delegate any duty for the work proposed pursuant to this RFP (including, but not limited to, selling or transferring the contract) without the prior written consent of HACM. Any purported assignment of interest or delegation of duty, without the prior written consent of HACM shall be void and may result in the cancellation of the contract with HACM, or may result in the full or partial forfeiture of funds paid to the successful proposer as a result of the proposed contract; either as determined by HACM.

10.3 Contract Period: HACM anticipates that it will award a contract for a term of five (5) years.

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

11.0 Licensing and Insurance Requirements: Prior to award (but not as a part of the proposal submission) the *successful proposer* will be required to provide:

- 11.1 An original certificate evidencing the proposer's current industrial (worker's compensation) insurance carrier and coverage amount;
- 11.2 An original certificate evidencing General Liability coverage, naming HACM as an additional insured, together with the appropriate endorsement to said policy reflecting the addition of HACM as an additional insured under said policy (minimum of \$1,000,000 each occurrence, general aggregate minimum limit of \$1,000,000, together with damage to premises and fire damage of \$50,000 and medical expenses any one person of \$5,000), with a deductible of not greater than \$1,000;
- 11.3 An original certificate showing the proposer's automobile insurance coverage in a combined single limit of \$1,000,000. For every vehicle utilized during the term of this program, when no owned by the entity, each vehicle must have evidence of automobile insurance coverage with limits of no less than \$50,000/\$100,000 and medical pay of \$5,000.
- 11.4 A copy of the proposer's business license allowing that entity to provide such services within the County of Monterey and subsequent cities.
- 11.5 The requested related information shall also be entered where provided for on the Profile of Firm Form (DO NOT SUBMIT COPIES OF INSURANCE OR BUSINESS LICENSE DOCUMENTS WITHIN THE PROPOSAL SUBMITTAL--we will garner the necessary certificates from the successful proposer prior to contract execution).

ATTACHMENT A

Form of Proposal

FORM OF PROPOSAL

(This Form must be fully completed and placed under Tab No. 1 of the “hard copy” tabbed bid submittal.)

Instructions: Unless otherwise specifically required, the items listed below must be completed and included in the proposal submittal. Please complete this form by marking an “X,” where provided, to verify that the referenced completed form or information has been included within the “hard copy” proposal submittal submitted by the proposer. Also, complete the Section 3 Statement and the Proposer’s Statement as noted below:

| X=ITEM INCLUDED | SUBMITTAL ITEMS |
|-----------------|---|
| | Tab 1 Form of Proposal – (Attachment A) |
| | Tab 2 Form HUD 5369-C – (Attachment B) |
| | Tab 3 Profile of Firm Form – (Attachment C) |
| | Tab 4 Proposed Services |
| | Tab 5 Managerial Capacity/Financial Viability, Resumes |
| | Tab 6 Client Information |
| | Tab 7 Equal Employment Opportunity Policy |
| | Tab 8 Subcontractor/Joint Venture Information (If applicable) |
| | Tab 9 Section 3 Business Preference – (Attachment D) |
| _____ | Tab 10 Other Information (Optional) |
| | |

SECTION 3 STATEMENT

Are you claiming a Section 3 business preference? YES__ or NO__. If “YES,” pursuant to the Section 3 portion within the Conditions and Specifications, and pursuant to the documentation justifying such submitted under Tab No. 9, which priority are you claiming? __.

PROPOSER’S STATEMENT

The undersigned proposer hereby states that by completing and submitting this Form and all other documents within this proposal submittal, he/she is verifying that all information provided herein is, to the best of his/her knowledge, true and accurate, and that if HACM discovers that any information entered herein to be false, such shall entitle HACM to not consider or make award or to cancel any award with the undersigned party. Further, by completing and submitting the proposal submittal, and by entering and submitting the costs where provided within the noted e-Procurement System, the undersigned proposer is thereby agreeing to abide by all terms and conditions pertaining to this RFP as issued by HACM, either in hard copy or on the noted e-Procurement System, including an agreement to execute the attached Sample Contract form. Pursuant to all RFP Documents, this Form of Proposal, and all attachments, and pursuant to all completed Documents submitted, including these forms and all attachments, the undersigned proposes to supply HACM with the services described herein for the fee(s) entered within the areas provided within the noted e-Procurement System pertaining to this RFP.

Signature

Date

Printed Name

Company

ATTACHMENT B

***Form HUD-5369-C Certifications and Representations
of Offerers Non-Construction***

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/offers 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:

ATTACHMENT C

Profile of Firm Form

PROFILE OF FIRM FORM

(1) Prime _____ Sub-contractor _____ (This form must be completed by and for each).

(2) Name of Firm: _____ Telephone: _____ Fax: _____

(3) Street Address, City, State, Zip: _____

(4) Please attach a brief biography/resume of the company, including the following information:
 (a) Year Firm Established; (b) Year Firm Established in [JURISDICTION]; (c) Former Name and Year Established (if applicable); (d) Name of Parent Company and Date Acquired (if applicable).

(5) Identify Principals/Partners in Firm (submit under Tab No. 5 a brief professional resume for each):

| NAME | TITLE | % OF OWNERSHIP |
|------|-------|----------------|
| | | |
| | | |
| | | |
| | | |

(6) Identify the individual(s) that will act as project manager and any other supervisory personnel that will work on project; please submit under Tab No. 5 a brief resume for each. (Do not duplicate any resumes required above):

| NAME | TITLE |
|------|-------|
| | |
| | |
| | |
| | |

(7) Bidder Diversity Statement: You must circle all of the following that apply to the ownership of this firm and enter where provided the correct percentage (%) of ownership of each:

Caucasian American (Male) _____%
 Public-Held Corporation _____%
 Government Agency _____%
 Non-Profit Organization _____%

Resident- (RBE), Minority- (MBE), or Woman-Owned (WBE) Business Enterprise (Qualifies by virtue of 51% or more ownership and active management by one or more of the following:

Resident-Owned* _____%
 African American _____%
 **Native American _____%
 Hispanic American _____%
 Asian/Pacific American _____%
 Hasidic Jew _____%
 Asian/Indian American _____%

Woman-Owned (Caucasian) _____%
 Woman-Owned Veteran _____%
 Disabled _____%
 Other (Specify): (MBE) _____%

WMBE Certification Number: _____

Certified by (Agency): _____

(NOTE: A CERTIFICATION/NUMBER NOT REQUIRED TO BID – ENTER IF AVAILABLE)

Signature **Date** **Printed Name** **Company**

PROFILE OF FIRM FORM

(8) Federal Tax ID No.: _____

(9) [APPROPRIATE JURISDICTION] Business License No.: _____

(10) State of _____ License Type and No.: _____

(11) Worker's Compensation Insurance Carrier: _____
Policy No.: _____ Expiration Date: _____

(12) General Liability Insurance Carrier: _____
Policy No. _____ Expiration Date: _____

(13) Professional Liability Insurance Carrier: _____
Policy No. _____ Expiration Date: _____

(14) Debarred Statement: Has this firm, or any principal(s) ever been debarred from providing any services by the Federal Government, any state government, the State of California, or any local government agency within or without the State of California? Yes No If "Yes," please attach a full detailed explanation, including dates, circumstances and current status.

(15) Disclosure Statement: Does this firm or any principals thereof have any current, past personal or professional relationship with any Commissioner or Officer of HACM? Yes No If "Yes," please attach a full detailed explanation, including dates, circumstances and current status.

(16) Non-Collusive Affidavit: The undersigned party submitting this bid hereby certifies that such bid is genuine and not collusive and that said bidder entity has not colluded, conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham bid or to refrain from bidding, and has not in any manner, directly or indirectly sought by agreement or collusion, or communication or conference, with any person, to fix the bid price of affiant or of any other bidder, to fix overhead, profit or cost element of said bid price, or that of any other bidder or to secure any advantage against HACM or any person interested in the proposed contract; and that all statements in said bid are true.

(17) Verification Statement: The undersigned bidder hereby states that by completing and submitting this form he/she is verifying that all information provided herein is, to the best of his/her knowledge, true and accurate, and agrees that if HACM discovers that any information entered herein is false, that shall entitle HACM to not consider nor make award or to cancel any award with the undersigned party.

Signature **Date** **Printed Name** **Company**

ATTACHMENT D

Section 3 Business Preference Information, Documentation & Forms

Section 3 Business Preference Documentation Information & Forms (Optional Item)

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

SECTION 3 RESIDENT MEANS:

- (1) A Monterey County public housing resident; or
- (2) An individual who resides in the County of Monterey:
 - (i) A low-income person, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act defines this term to mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families; or
 - (ii) A very low-income person, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)) defines this term to mean families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

ADDITIONAL REQUIREMENTS UNDER SECTION 3

This contract is subject to the following conditions under Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3):

- 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

Section 3 Business Preference Documentation Information & Forms (Optional Item)

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 125.
- 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).

ECONOMIC OPPORTUNITIES POLICY

Section 3 of the Federal Housing Act of 1968, as amended, (hereinafter referred to as "Section 3") requires that economic opportunities generated by certain U.S. Department of Housing and Urban Development financial assistance for housing and community development programs shall, to the greatest extent feasible, be given to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities for these persons. Pursuant to Section 3 of the Housing Act of 1968, as amended, and 24 CFR part 135, the Housing Authority of the County of Monterey has adopted an Economic Opportunities Policy. It is the intent of the policy to comply fully with Section 3; and by publication of this policy, the Housing Authority of the County of Monterey wishes to provide direction for application of this policy. It is the policy of the Housing Authority of the County of Monterey to provide to the greatest extent feasible economic opportunities to low- and very low income persons residing in the Monterey metropolitan area (as defined in § 135.5 of 24 CFR part 135 and to businesses meeting the definition of "Section 3 business concern" as defined by 24 CFR part 135. In furtherance of this policy, the Housing Authority of the County of Monterey shall develop programs and procedures necessary to implement this policy covering all procurement contracts where labor-and/or professional services are provided, in order to achieve the goals outlined below. This policy does not apply to contractors who only furnish materials or supplies, and do not undertake work, as in the installation of the material or equipment.

Section 3 Business Preference Documentation Information & Forms (Optional Item)

NUMERICAL GOALS

All contractors undertaking Section 3 covered projects and Section 3 covered activities on behalf of the Housing Authority of the County of Monterey are expected to meet the requirements of Section 3. Any contractor (whether or not they meet the definition of a Section 3 business), to demonstrate compliance with the "greatest extent feasible" requirement of Section 3, must meet the numerical goals set forth below for providing training, employment and contracting opportunities to Section 3 residents and Section 3 business concerns. In meeting the goals, contractors are to apply a system of priority selection from among those Section 3 residents eligible pursuant to § 135.35, 24 CFR part 135:

First priority - residents of the development where the work is to be performed.

Second priority - other residents of the Housing Authority of the County of Monterey public housing developments.

Third priority - other residents of Monterey County who are participants of HUD Youthbuild programs being carried out in the County of Monterey.

Fourth priority - other persons from the Monterey County metropolitan area who meet the definition of Section 3 Residents contained in § 135.5 of 24 CFR part 135.

EMPLOYMENT GOALS

All contractors will seek to the greatest extent feasible to achieve a level of 30% of all new hires to be low- or very low-income residents of the Monterey County metropolitan area.

CONTRACTING PREFERENCE FOR SECTION 3 BUSINESS CONCERNS

Preferences shall be awarded to Section 3 business concerns according to the following system:

- Small Purchases - For Section 3 covered contracts aggregating no more than \$25,000, the Authority shall follow its small purchase procedures as outlined in its procurement policy:
 1. Where the Section 3 covered contract is to be awarded based upon the lowest price, the contract shall be awarded to the qualified Section 3 business concern with the lowest responsive quotation, if it is reasonable and no more than 10 percent higher than the quotation of the lowest responsive quotation from any qualified source. If no responsive quotation by a qualified Section 3 business concern is within 10 percent of the lowest responsive quotation from any qualified source the award shall be made to the source with the lowest quotation.
 2. Where the Section 3 covered contract is to be awarded based on factors other than price, a request for quotations shall be issued by developing the particulars of the solicitation, including a rating system for the assignment of points to evaluate the merits of each quotation. The solicitation shall identify all factors to be considered, including price or cost. The rating system shall provide for a range of 15 to 25 percent of the total number of available rating points to be set aside for the provision of preference for Section 3 business concerns. The purchase order shall be awarded the responsible firm whose quotation is the most advantageous, considering price and all other factors specified in the rating system.

Section 3 Business Preference Documentation Information & Forms (Optional Item)

- Competitive Bids - Bids shall be solicited from all business (Section 3 business concerns and non-Section 3 business concerns). An award shall be made to the qualified Section 3 business concern with the highest priority ranking (as defined in 24 CFR part 135) and with the lowest responsive bid if that bid:
 - A. is within the maximum total contract price established in the Authority's budget for the specific project for which bids are being taken, and
 - B. is not more than "X" higher than the total bid price of the lowest responsive bid from any responsible bidder. "X" is determined as follows:

"X"=lesser of:

| | |
|---|---|
| <u>When the lowest responsive bid is less than \$100,000.....</u> | <u>10% of that bid or \$9,000</u> |
| When the lowest responsive bid is: | |
| At least \$100,000, but less than \$200,000..... | 9% of that bid, or \$16,000 |
| At least \$200,000, but less than \$300,000..... | 8% of that bid, or \$21,000 |
| At least \$300,000, but less than \$400,000..... | 7% of that bid, or \$24,000 |
| At least \$400,000, but less than \$500,000..... | 6% of that bid, or \$25,000 |
| At least \$500,000, but less than \$1 million..... | 5% of that bid, or \$40,000 |
| At least \$1 million, but less than \$2 million..... | 4% of that bid, or \$60,000 |
| At least \$2 million, but less than \$4 million..... | 3% of that bid, or \$80,000 |
| At least \$4 million, but less than \$7 million..... | 2% of that bid, or \$105,000 |
| \$7 million or more..... | 1-1/2% of the lowest responsive bid, with no dollar limit |

If no responsive bid by a Section 3 business concern meets the requirements of paragraph 1 of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

In both paragraphs 1 and 2 above, a bidder, to be considered as responsible, must demonstrate compliance with the "greatest extent feasible" requirement of Section 3.

Competitive Proposals - When utilizing the competitive proposal process in compliance with its procurement policy, from 15% to 25% of the total number of available points shall be awarded for compliance with Section 3 on Section 3 covered contracts.

PROPOSALS FROM FIRMS NOT DEMONSTRATING COMPLIANCE WITH THE "GREATEST EXTENT FEASIBLE" REQUIREMENT OF SECTION 3 SHALL NOT BE CONSIDERED RESPONSIBLE.

MONITORING

The Authority requires that all contractors of Section 3 covered contracts will make periodic reports outlining their performance with regard to the meeting of Section 3 goals. The Authority will monitor contractors on the accomplishment of goals both by review of reports and through independent interviews and audits of payroll information.

Section 3 Business Preference Documentation Information & Forms (Optional Item)

SANCTIONS

Any noncompliance will result first in an attempt to bring about compliance informally. Continuing noncompliance by a contractor may result in the application of appropriate sanctions which may include termination of the contract for default, withholding of funds; and, pursuant to HUD regulations, debarment and limited denial of participation.

ATTACHMENT E

***Form HUD-5369-B (8/93), Instructions to Offerors, Non-
Construction***

Instructions to Offerors Non-Construction

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



- 03291 -

1. Preparation of Offers

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

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

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

2. Submission of Offers

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

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

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

3. Amendments to Solicitations

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

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

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

4. Explanation to Prospective Offerors

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

5. Responsibility of Prospective Contractor

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

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

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

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

6. Late Submissions, Modifications, and Withdrawal of Offers

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

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

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

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

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

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

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

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

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

7. Contract Award

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

(b) The HA may

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

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

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

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

8. Service of Protest

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

9. Offer Submission

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

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

[Describe bid or proposal preparation instructions here:]

ATTACHMENT F

***HACM Instructions to Bidders & Contractors,
Non- Construction***

Instructions To Proposers & Contractors(ITPC)

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1.0 GENERAL CONDITIONS:

1.1 Applicability: If referred to within the text of such, these ITPC shall be applicable to all Requests For Proposals (RFP) solicitations that the Housing Authority of Monterey County (HACM) conducts and shall be applicable to any contract that HACM awards to or signs with any firm, agency or individual pursuant to that RFP. A copy of these ITPC shall be made available to any actual or prospective proposer, or contractor who does business with or intends to do business with HACM.

1.1.1 Unless otherwise specified within the RFP or contract documents, in the event that any provision in any document listed herein conflicts with any provision within these ITPC, the provision in the RFP or contract document shall govern. Further, in the case of any attached HUD forms (more specifically: HUD-5369-C (8/93); HUD-5369-B (8/93); and HUD-5370-C (10/2006), Section I and/or Section II), the information within such HUD form(s) shall govern any other information issued, especially that issued within any HACM-created forms that are issued as a part of this solicitation.

1.2 Definitions (pertaining to all RFP documents issued by HACM pertaining to this RFP, including the attachments and the ensuing contract):

1.2.1 "**Contracting Officer**" when named within an RFP document shall refer to either the ED or the person he/she has delegated such responsibilities to the "**Purchasing Agent**" (PA).

1.2.2 "**Contract**" refers to the fully executed written agreement that ensues from the RFP. Whereas all RFP documents are included, by reference, as a part of the ensuing contract, when "contract" is referred to within the RFP document, such is referring to both the RFP documents and the ensuing contract document.

1.2.3 "**Contractor**" and the term "successful proposer" may be used interchangeably.

1.2.4 "**Days**" unless otherwise directed, shall refer to calendar days.

1.2.6 "**ED**" is HACM Executive Director.

1.2.8 "**HACM**" is the Housing Authority of Monterey County. Unless otherwise defined herein or within the ensuing contract, whenever the term "HACM" is used without clearly designating a responsible HACM staff person, the proposer(s) shall assume that responsibility for that item rests with the PA.

1.2.9 "**HUD**" is the United States Department of Housing and Urban Development. HUD is the Federal agency that HACM receives some funding from; however, pertaining to this RFP, correspondences, including proposal submittals, received from each proposer must exhaust all

provisions contained herein prior to contacting HUD (i.e. in the case of a protest).

- 1.2.10 **"Herein"** shall refer to all documents issued pursuant to the noted RFP, including the RFP documents and the attachments.
- 1.2.11 **"Offer"** is the proposal submittal referred to within the following Section 1.2.14 that the proposer delivers to HACM in response to the RFP.
- 1.2.12 **"Offeror" or "Offerors"** are the proposer or proposers.
- 1.2.13 **"Parties"** - When "the parties," "both parties" or "either party" is stated within the RFP documents or the contract, such refers to HACM and the successful proposer(s).
- 1.2.14 **"Proposal" and/or "Proposal Submittal"** is the "hard copy" document that the proposer is required to, as detailed within the RFP document, deliver to HACM.
- 1.2.15 **"Protestant"** is a prospective proposer or proposer who feels that he/she has been treated inequitably by HACM and wishes HACM to correct the inequitable condition or situation. To be eligible to file a protest with HACM pertaining to an RFP or contract, the protestant must have been involved in the RFP process in some manner as a prospective proposer (i.e. registered and received the RFP documents).
- 1.2.16 **"Prospective Proposer" or "Proposer"** - A prospective proposer is a firm or individual who has been notified of the RFP solicitation and/or who has requested and/or received the RFP documents and is considering responding with a proposal; a proposer is a firm or individual who has submitted a proposal in response to the RFP. All terms and conditions shall apply equally to all prospective proposers as well as proposers, though prospective proposers may not, after the deadline set for receiving proposals, receive further notices pertaining to that RFP--meaning, certain notices (such as the Notice of Results of Evaluation) are typically only delivered to proposers and not to all prospective proposers.
- 1.2.17 **"Request For Proposals" (RFP)** is the competitive proposal process allowed by HUD, especially as defined within Chapter 7 of HUD Procurement Handbook 7460.8 REV 2.
- 1.2.18 **"RFP Document(s)"** - Whether stated in the singular or the plural, such refers to the body of documents, including attachments and the information posted on the nahro.economicengine.com Internet System (hereinafter, the "noted Internet System" or the "System), that HACM makes available to all prospective proposers wherein is detailed HACM's requirements.
- 1.2.19 **"Solicitation" or "Competitive Solicitation"** is the RFP process detailed herein.

2.0 CONDITIONS TO PROPOSE:

2.1 Pre-Qualification of Proposers: Prospective proposers will not be required to pre-qualify in order to submit a proposal. However, all proposers will be required to submit adequate information showing that the proposer is qualified to perform the required work (i.e. Profile of Firm Form and required resumes). Failure by the prospective proposer to provide the requested information may, at HACM's discretion, eliminate that proposer from consideration, provided that all proposers were required to submit the same information (in the case of a successful proposer(s), these requirements shall also apply in the context of the successful proposer or proposers).

2.2 RFP Forms, Documents, Specifications and Drawings:

2.2.1 It shall be each prospective proposer's responsibility to, prior to submitting a proposal in response to the RFP, examine carefully and, as may be required, properly complete and submit all documents issued pursuant to this RFP.

2.2.2 Unless otherwise instructed, specifications and drawings (if provided) do not purport to show all of the exact details of the work. They are intended to illustrate the character and extent of the performance desired under the proposed contract and may be supplemented or revised from time to time.

2.2.3 HACM shall reserve the right to, prior to award, revise, change, alter or amend any of the instructions, terms, conditions, and/or specifications identified within the RFP documents issued, within any attachment or drawing, or within any addenda issued; such notice shall be delivered in writing to each prospective and/or actual proposer. Such changes that are issued before the deadline for receipt of proposals shall be binding upon all prospective proposers. Such changes that are issued after the receipt of proposals, but prior to award shall be binding upon all parties that have submitted proposals; however, such parties shall be allowed to reject such changes by, within 5 days of receipt of such written notice, withdrawing his/her proposal. Such withdrawal must be delivered, in writing, to the PA within the 5-day deadline period.

2.3 Proposal Preparation, Submission and Receipt by HACM:

2.3.1 Required Forms: All required forms furnished by HACM as a part of the RFP document issued shall, as instructed, be fully completed and submitted by the proposer. Such forms may be completed in a legible hand-written fashion, by use of a typewriter, or may be downloaded and completed on a computer. If, during the download, a form becomes changed in any fashion, the proposer must "edit" the form back to its originally form (for example, signature lines must appear on the page the line was originally intended to be on).

- 2.3.2 Manner of Submission:** The proposal submittal shall be submitted in the manner detailed within the RFP document. Failure to submit the proposal in the manner specified may result in a premature opening of, post- opening of, or failure to open and consider that proposal, and may, at the discretion of the PA, eliminate that proposer from consideration for award.
- 2.3.3 Time for Receiving Proposals:** Proposals received prior to the time set as the deadline for the receipt by HACM of the proposal submittal shall be securely kept, unopened, by HACM. The PA, whose duty it is to open such proposals, will decide when the specified time has arrived. No proposal received after the designated deadline shall be considered, except as detailed within Section 6 of Form HUD-5369-B (8/93), *Late Submissions, Modifications and Withdrawal of Offers*.
- 2.3.3.1** Proposers are cautioned that any proposal submittal that may be time-stamped as being received by HACM after the exact time set as the deadline for the receiving of proposals shall be returned unopened to the proposer. Any such proposals inadvertently opened shall not be considered, but shall be ruled to be invalid. No responsibility will attach to HACM or any official or employee thereof, for the pre-opening of, or the failure to open a proposal not properly addressed and identified.
- 2.3.4 No Public Opening of Proposals:** Pursuant to the competitive proposals or RFP process, proposals are not publicly opened, but are held secure until the submittal deadline has passed. The proposals are then opened in private by the PA (or his/her designee) and are, pursuant to the evaluation plan, examined for minimal responsiveness (i.e. minimum compliance with the requirements of the RFP). Persons other than HACM staff involved in this process are not allowed to be present during the opening, nor may they inspect the proposals until after award has been completed.
- 2.3.5 Withdrawal of Proposals:** Proposals may be withdrawn as detailed within Section 6(h) of Form HUD-5369-B (8/93), *Late Submissions, Modifications and Withdrawal of Offers*. Negligence on the part of the proposer in preparing his/her proposal confers no right of withdrawal or modification of his/her proposal after such proposal has been received and opened.
- 2.3.6 Conflicting Conditions:** Any provisions detailed within any of the RFP documents which may be in conflict or inconsistent with any of the paragraphs in any of the other RFP documents, including attachments, shall be void to the extent of any such conflict or inconsistency. Further, as stated within Section 1.1.1 of this ITP, unless otherwise specified within the RFP or contract documents, in the event that any provision in any document listed herein conflicts with any provision within this ITP, the provision in the RFP or contract document shall govern.

2.3.7 Interpretations: No official oral interpretation can be made to any proposer as to the meaning of any instruction, condition, specifications drawing (if any), or any other document issued pertaining to this RFP. Every request for an official interpretation shall be made by the prospective proposer, in writing, pursuant to the schedule set within the RFP document issued and as directed by HACM. Official interpretations will be issued in the form of addenda, which will be delivered to each proposer; but it shall be the prospective proposer's responsibility to make inquiry as to addenda issued. All such addenda shall become a part of the RFP documents and the proposed contract with the successful proposer, and all proposers shall be bound by such addenda, whether or not received by the prospective or successful proposer(s).

2.4 Exceptions to Specifications:

2.4.1 A proposer may take exception to any of the proposal documents or any part of the information contained therein, by submitting, in writing to the PA, at least 10 days prior to the proposal deadline, a complete and specific explanation as to what he/she is taking exception to. Proposed alternate documents or information must also be included. A response by HACM will be issued in writing within 5 days of receipt of such exception request. HACM reserves the right to agree with the prospective proposer and issue a revision to the applicable RFP requirements, or may reject the prospective proposer's request.

2.4.2 When taking exception, prospective proposers must propose services that meet the requirements of the RFP documents. Exceptions to the specification and/or approved "equal" requests may be discussed at the scheduled pre-proposal conference (if scheduled). All verbal instructions issued by HACM officers not already listed within the RFP documents shall only become official when issued as addenda or as a written answer issued pursuant to receipt of a written question.

2.5 Lump Sum Cost Breakdown (LSCB):

2.5.1 HACM reserves the right to, at any time, request and receive from any or all proposers a LSCB of any or all of the costs proposed. The proposal documents constitute an outline of the work to be completed by the proposer. These documents are intended to include all major items, and the lump sum cost breakdown computed therefrom will be the maximum compensation for all work and materials whatsoever furnished by the proposer in order to comply with the proposal documents in their present form, whether or not indicated in the approximate quantities or pertaining to the items of work as listed.

2.5.1.1 The purpose of this LSCB will serve HACM in two distinct areas:

2.5.1.1.1 **Prior to award of proposals:** HACM may request a LSCB for any or all items reflected within the RFP document as “lump sum” for the purpose of determining an unbalanced cost proposal. The PA, using acceptable methods dictated by the industry, shall conduct the analysis.

2.5.1.1.2 **After award:** HACM may request a LSCB for any or all items reflected within the RFP document as “lump sum” for the purpose of making partial payments to the successful proposer.

2.5.1.1.3 Under no circumstances, may any cost item reflected as “lump sum” be increased/decreased as a result of the LSCB analysis.

3.0 PROPOSAL EVALUATION:

3.1 Proposal Opening Results: It is understood by all proposers/prospective proposer that the proposals received are not publicly opened and the results will typically not be a matter of public record until HACM has concluded all evaluations, has chosen a final top-rated proposer, has completed the award and is ready to issue such results. When HACM issues such notice, HACM will inform all proposers as to each proposer's placement as a result of the evaluation (i.e. 1st, 2nd, 3rd, etc.), the total points each proposer was awarded as a result of the evaluation and the proposed costs submitted by each proposer.

3.1.1 All proposal documents submitted by the proposers are not necessarily a matter of public record and as a matter of normal course, the proposals submitted by each proposer will not, until after award has been completed, be available to be viewed by any interested parties except as approved by HACM Legal Counsel (i.e. a proposer will not, prior to completion of award, be allowed to challenge an apparent top-rated proposer by inspecting the proposal that the apparent top-rated proposer submitted). HACM shall, however, upon request, verify that the proposal documents submitted are/were acceptable.

3.2 Award of Proposal(s): The successful proposer shall be determined by the top-rated responsive and responsible proposer as determined by the evaluation process detailed within the RFP document issued, provided his/her proposal is reasonable, he/she is able to deliver the specified items in a timely manner and it is, in the opinion of HACM, to the best interests of HACM to accept the proposal. All proposers will be notified in a timely manner of the results of the evaluation after award has been completed.

3.3 Rejection of Proposals:

3.3.1 HACM reserves the right to, at any time during the proposal process, reject any or all proposals received. In the case of rejection of all proposals, HACM reserves the right to advertise for new proposals or to proceed to do the work otherwise, if in the judgment of HACM, the best interest of HACM will be promoted.

3.3.2 Prospective proposers acknowledge by downloading and receiving the RFP documents and/or by submitting a proposal that the submission of a proposal to HACM is not a right by which to be awarded that proposal, but merely an offer by the prospective proposer to perform the requirements of the RFP documents in the event HACM decides to consider an award to that proposer.

3.4 Cancellation of Award: HACM reserves the right to, without any liability, cancel the award of any proposal(s) at any time before the execution of the contract documents by all parties.

3.5 Mistake in Proposal Submitted:

3.5.1 A request for withdrawal of a proposal due to a purported error need not be considered by HACM unless the same is filed in writing by the proposer within 48 hours after the proposal deadline (proposers may of their own volition withdraw a proposal prior to the submittal deadline). Any such request shall contain a full explanation of any purported error and shall, if requested by HACM, be supported by the original calculations on which the proposal was computed, together with a certification and notarization thereon that such computation is the original and prepared by the proposer or his/her agent, who must be identified on the notarized form. The foregoing shall not be construed that such withdrawal will be permitted, as HACM retains the right to accept or reject any proposal withdrawal for a mistake.

3.5.2 Unless otherwise prohibited within the RFP documents, a mistake in the cost unit pricing that does not affect the total cost sum submitted may, at HACM's discretion, be corrected by submitting a corrected cost form, together with a complete explanation in writing, of how the mistake occurred, to the PA, for his/her review. This mistake must be corrected before the issuance of contract documents.

3.6 Irregular Proposal Submittal: A proposal shall be considered irregular for any one of the following reasons, any one or more of which may, at HACM's discretion, be cause for rejection:

3.6.1 If the forms furnished by HACM are not used or are altered or if the proposed costs are not submitted as required and where provided (especially within the noted Internet System).

- 3.6.2** If all requested completed attachments do not accompany the proposal submitted.
- 3.6.3** If there are unauthorized additions, conditional or alternate proposals, or irregularities of any kind which may tend to make the proposal incomplete, indefinite or ambiguous as to its meaning or give the proposer submitting the same a competitive advantage over other proposers.
- 3.6.4** If the proposer adds any provisions reserving the right to accept or reject any award or to enter into a contract pursuant to an award.
- 3.6.5** If the individual Pricing Items submitted by a specific proposer are unbalanced in the sense that the listed price of any cost item departs by more than 25% from HACM's cost estimate for that item.
- 3.7 Disqualification of Proposers:** Any one or more of the following shall be considered as sufficient for the disqualification of a proposer and the rejection of his/her proposal:

 - 3.7.1** Evidence of collusion among prospective proposers. Participants in such collusion will receive no recognition as bidders or proposers for any future work of HACM until such participant shall have been reinstated as a qualified proposer or proposer. The names of all participants in such collusion shall be reported to HUD and any other inquiring governmental agency.
 - 3.7.2** More than one proposal for the same work from an individual, firm, or corporation under the same or different name(s), unless such was specifically allowed by HACM within the proposal documents issued, including by addendum.
 - 3.7.3** Lack of competency, lack of experience and/or lack of adequate machinery, plant and/or other resources.
 - 3.7.4** Documented unsatisfactory performance record as shown by past work for HACM or with any other local, State or Federal agency, judged from the standpoint of workmanship and progress.
 - 3.7.5** Incomplete work, which in the judgment of HACM, might hinder or prevent prompt completion of additional work, if awarded.
 - 3.7.6** Failure to pay or satisfactorily settle all bills due on former contracts still outstanding at the time of letting.
 - 3.7.7** Failure to comply with any qualification requirement of HACM.
 - 3.7.8** Failure to list, if required, all subcontractors (if subcontractors are allowed by HACM) who will be employed by the successful proposer(s) to complete the work of the proposed contract.

3.7.9 As required by the RFP documents, failure of the successful proposer to be properly licensed by the _____ and/or the State of _____ and/or to be insured by a general liability and/or worker's compensation policy.

3.7.10 Any legal reason to be determined, in good faith, to be in the best interests of HACM.

3.8 Burden of Proof: If requested by HACM, it shall be the responsibility of the proposer(s) to furnish HACM with sufficient data or physical samples, within a specified time, so that HACM may determine if the goods or services offered conform to the Specifications.

4.0 Right to Protest:

4.1 Rights: Any prospective or actual proposer, offeror, or contractor who is allegedly aggrieved in connection with the solicitation of a proposal or award of a contract, shall have the right to protest. An alleged aggrieved protestant claiming this right is hereby informed that these regulations do not provide for administrative appeal as a matter of right for that alleged aggrieved protestant.

4.1.1 An alleged aggrieved "protestant" is a prospective or actual proposer who feels that he/she has been treated inequitably by HACM and wishes HACM to correct the alleged inequitable condition or situation. To be eligible to file a protest with HACM pertaining to an RFP or contract, the alleged aggrieved protestant must have been involved in the RFP process in some manner as a prospective proposer (i.e. registered and received the RFP documents) when the alleged situation occurred. HACM has no obligation to consider a protest filed by any party that does not meet these criteria.

4.2 Administrative Powers: It is totally within the administrative powers of the ED to grant or deny any requests for administrative appeal. If, in the opinion of the ED, the alleged aggrieved protestant merits an administrative review, the ED shall direct that alleged aggrieved protestant to submit additional data.

4.3 Procedure to Protest: An alleged aggrieved protestant shall comply with the following protest procedures, and failure to comply in the manner prescribed shall automatically relieve HACM from accepting or considering that protest:

4.3.1 The alleged aggrieved protestant must file, in writing, to the PA the exact reason for the protest, attaching any supportive data. The protestant must state within the written protest document specifically (not by inference) what action by HACM or condition is being protested as inequitable, making, where appropriate specific reference to the RFP

documents issued. The protest document must also state the corrective action requested. Failure by the alleged aggrieved protestant to fully submit such information shall relieve HACM from any responsibility to consider the protest and take any corrective action.

4.3.2 The written instrument containing the reason for the protest must be received by the PA within 10 days after the occurrence of any of the following:

4.3.2.1 the deadline for receiving proposals;

4.3.2.2 receipt of notification of the results of the evaluation or the award;
or

4.3.2.3 the alleged aggrieved protestant knows or should have known the facts.

4.3.3 In any case, protests shall be filed no more than 10 days after any of the above (unless the occurrence being protested occurred in its entirety after the proposal deadline). Protests received after these dates shall not be considered.

4.3.4 The PA shall review the written protest and supportive data, if any. He/she shall, within 10 days after receipt of the written protest, issue a written opinion and decision. This document shall state the reasons for the action taken as well as inform the alleged aggrieved protestant of the right of further administrative review. A copy of this written opinion and decision shall be forwarded to the ED.

4.3.5 **Administrative Appeal:** If the alleged aggrieved protestant does not agree with the written opinion and decision issued by the PA, the alleged aggrieved protestant may, after receipt of the written opinion and decision issued by the PA request an administrative appeal hearing be granted (such request must be delivered in writing to the PA within 5 days of receipt of the written opinion and decision; failure to do so within such 5 days shall relieve HACM of any responsibility to consider such request). The following procedures must be complied with in the manner prescribed; failure by the alleged aggrieved protestant to comply shall automatically relieve HACM from accepting or acting on that request for administrative hearing:

4.3.5.1 The alleged aggrieved protestant must file, in writing, his/her request for an administrative hearing, to the ED, within 5 days of receipt of the written opinion and decision and failure to do so within such 5 days shall relieve HACM of any responsibility to consider such request.

- 4.3.5.2 The request for an administrative appeal hearing must contain the specific reasons for the appeal and all supporting data for those reasons.
 - 4.3.5.3 It shall be within the administrative powers of the ED to, after review of the request submitted, grant or deny any request for administrative appeal.
 - 4.3.5.4 If the ED, after complete review of the alleged aggrieved protestant's written request and supporting data, decides that the request does not merit further consideration, he/she shall render his/her decision in writing to the alleged aggrieved protestant. A decision rendered under this paragraph shall be made within 10 days after the receipt of the alleged aggrieved protestant's request for an administrative hearing. This decision shall be final without further administrative recourse.
 - 4.3.5.5 If the ED, after review of the alleged aggrieved protestant's written request, decides that the request merits further consideration, he/she shall forward the protestant's written request, along with a cover letter explaining why it merits further consideration and with a recap of all proposals submitted and a copy of the original written protest, to HACM Legal Counsel for consideration. HACM Legal Counsel shall issue to the alleged aggrieved protestant a decision, in writing, within 10 days of his/her receipt of such documents.
- 4.3.5.5 Such written decision delivered to the alleged aggrieved protestant shall exhaust HACM internal protest and administrative appeal process available to the alleged aggrieved protestant.

5.0 Disputed Billings (Charges):

- 5.1 **Procedures:** In addition to the procedures detailed within Clause No. 7 of Attachment G-1, Form HUD-5370-C (10/2006), *General Conditions for Non- Construction Contracts, Section I—(With or without Maintenance Work)*, in the event that HACM disputes any portion of its billing(s), HACM shall pay the undisputed portion of such billing and initiate the dispute-resolving procedures, as follows:
 - 5.1.1 HACM's representative shall, within 10 days after HACM's receipt of such billing, formally notify the contractor's representative of all particulars pertaining to the dispute, and request that he/she investigate and respond to this issue.
 - 5.1.2 If such dispute cannot be resolved by the contractor's response, within 10 days after such notification is given, the PA and the contractor's

representative shall meet to discuss the matter and attempt to arrive at a resolution.

5.1.3 If the PA and the contractor's representative are unable to resolve the dispute through such discussion within 10 days, HACM shall, within 10 days thereafter, either:

5.1.3.1 pay the disputed charges and reserve the right to submit the matter to the _____ Court Annexed Arbitration program if the disputed amount does not exceed \$40,000.00 or to the appropriate District Court in the State of _____;

5.1.3.2 not pay the disputed charge and submit the matter to the _____ Court Annexed Arbitration program if the disputed amount does not exceed \$40,000.00 or to the appropriate District Court in the State of _____;

5.1.3.3 not pay the disputed charge and allow the Contractor to submit the matter either to the _____ Court Annexed Arbitration program if the disputed amount does not exceed \$40,000.00 or to the appropriate District Court in the State of _____.

5.1.4 The decision from arbitration will be binding upon both parties. If the decision is adverse to HACM, HACM shall pay HACM's receipt of the decision. If the decision is in favor of HACM, the contractor will either:

5.1.4.1 clear the amount which is ordered from HACM account; or

5.1.4.2 repay to HACM the amount ordered.

Either option shall be completed within 10 days after the contractor's receipt of the arbitrator's decision.

6.0 Additional Considerations:

6.1 Right of Joinder Pursuant to NRS 332.195:

6.1.1 Any political subdivision within the State of _____ may be granted the privilege of joining the awarded contract, only at the option of the successful proposer. If the successful proposer so grants such a privilege, the terms and conditions of the RFP documents, including the ensuing contract, may be passed on to the joining political subdivision by the successful proposer.

6.1.2 The successful proposer shall retain the unilateral right to allow or disallow any political subdivision the privilege of joining the awarded contract. In the event the successful proposer allows another political subdivision to join HACM contract, it is expressly understood that HACM

shall in no way be liable for the joining political subdivision obligations to the successful proposer in any manner whatsoever.

- 6.2 Non-Escalation:** Unless otherwise specified within the RFP documents, the unit prices reflected on the contract shall remain firm with no provision for price increases during the term of the contract.
- 6.3 Funding Restrictions and Order Quantities:** HACM reserves the right to reduce or increase estimated or actual quantities in whatever amount necessary without prejudice or liability to HACM, if:
- 6.3.1** funding is not available;
 - 6.3.2** legal restrictions are placed upon the expenditure of monies for this category of service or supplies; or,
 - 6.3.3** HACM's requirements in good faith change after award of the contract.
- 6.4 Required Permits:** Unless otherwise stated in the RFP documents, all local, State or Federal permits which may be required to provide the services ensuing from award of this RFP, whether or not they are known to either HACM or the proposers at the time of the proposal submittal deadline or the award, shall be the sole responsibility of the successful proposer and any costs submitted by the proposer shall reflect all costs required by the successful proposer to procure and provide such necessary permits.
- 6.5 Taxes:** All persons doing business with HACM are hereby made aware that HACM is exempt from paying California State Sales and Use Taxes and Federal Excise Taxes. A letter of Tax Exemption will be provided upon request.
- 6.6 Government Standards:** It is the responsibility of the prospective proposer to ensure that all items and services proposed conform to all local, State and Federal laws concerning safety (OSHA and NOSHA) and environmental control (EPA and ___ County Pollution Regulations) and any other enacted ordinance, code, law or regulation. The successful proposer shall be responsible for all costs incurred for compliance with any such possible ordinance, code, law or regulation. No time extensions shall be granted or financial consideration given to the successful proposer for time or monies lost due to violations of any such ordinance, code, law or regulations that may occur.
- 6.7 Freight on Bill and Delivery:** All costs submitted by the successful proposer shall reflect the cost of delivering the proposed items and/or services to the locations(s) specified within the RFP documents or within the contract.
- 6.7.1** The successful proposer agrees to deliver to the designated location(s) on or before the date as specified in the finalized contract. Failure to deliver on or before the specified date constitutes an event of default by the successful proposer. Upon default, the successful proposer agrees that HACM may, at its option, rescind the finalized contract under the default clause herein and seek compensatory damages as provided by law.

- 6.8 Communication:** If during the period of the contract, it is necessary that HACM place toll or long distance telephone calls or telegrams in connection therewith (for complaints, adjustments, shortages, failure to deliver, etc.), it is understood that the successful proposer will bear the charge or expense for all such calls and/or telegrams.
- 6.9 Work on HACM Property:** If the successful proposer's work under the contract involves operations by the successful proposer on HACM premises, the successful proposer shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work and, except to the extent that any such injury is caused solely and directly by HACM's negligence, shall indemnify HACM, and their officers, agents, servants and employees against all loss which may result in any way from any act or omission of the successful proposer, its agents, employees, or subcontractors.
- 6.10 Estimated Quantities:** Unless otherwise stated within the RFP documents, the quantities reflected within the RFP documents, to the best of HACM's knowledge, reflect projected consumption data. These quantities are not meant to infer or imply actual consumption figures or quantities that will be purchased by HACM under the finalized contract; but, pursuant to all RFP documents, these quantities will be used as calculation figures to determine the successful proposer.
- 6.11 Warranty:**
- 6.11.1** The services provided under the contract shall conform to all information contained within the RFP documents as well as applicable Industry Published Technical Specifications, and if one of the above mentioned Specifications contains more stringent requirements than the other, the more stringent requirements shall apply.
- 6.11.2** The liability of the successful proposer to HACM (except as to title) arising out of the furnishing of the services or of its use under the terms of the contract shall not exceed the correcting of the defect(s) in the services as provided under the contract, and upon expiration of the warranty period all such liability shall terminate except under the warranty for merchantability and the warranty of fitness for a particular purpose.
- 6.12 Official, Agent and Employees of HACM Not Personally Liable:** It is agreed by and between the parties hereto that in no event shall any official, officer, employee, or agent of HACM in any way be personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this agreement.
- 6.13 Subcontractors:** Unless otherwise stated within the RFP documents, the successful proposer may not use any subcontractors to accomplish any portion of the services described within the RFP documents or the contract without the prior written permission of the PA.

- 6.14 Salaries and Expenses Relating to the Successful Proposers Employees:** Unless otherwise stated within the RFP documents, the successful proposer shall pay all salaries and expenses of, and all Federal, Social Security taxes, Federal and State Unemployment taxes, and any similar taxes relating to its employees used in the performance of the contract. The successful proposer further agrees to comply with all Federal, State and local wage and hour laws and all licensing laws applicable to its employees or other personnel furnished under this agreement.
- 6.15 Attorney's Fees:** In the event that litigation is commenced by one party hereto against the other in connection with the enforcement of any provision of this agreement, the prevailing party shall be paid by the losing party all court costs and other expenses of such litigation, including attorneys' fees, in a reasonable amount, to be determined by the court. The amount so allowed as attorneys' fees shall be taxed to the losing party as costs of the suit, unless prohibited by law.
- 6.16 Independent Contractor:** Unless otherwise stated within the RFP documents or the contract, the successful proposer is an independent contractor. Nothing herein shall create any association, agency, partnership or joint venture between the parties hereto and neither shall have any authority to bind the other in any way.
- 6.17 Severability:** If any provision of this agreement or any portion or provision hereof applicable to any particular situation or circumstance is held valid, the remainder of this agreement or the remainder of such provision (as the case may be), and the application thereof to other situations or circumstances shall not be affected thereby.
- 6.18 Waiver of Breach:** A waiver of either party of any terms or condition of this agreement in any instance shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, obligation or agreement of either party.
- 6.19 Time of the Essence:** Time is of the essence under this agreement as to each provision in which time of performance is a factor.
- 6.20 Limitation of Liability:** In no event shall HACM be liable to the successful proposer for any indirect, incidental, consequential or exemplary damages.
- 6.21 Indemnity:**
- 6.21.1** The successful proposer shall protect, indemnify and hold HACM, its officers, employees, agents, consulting engineers and other retained consultants harmless from and against any and all claims, damages, losses, suits, actions, decrees, judgments, attorney's fees, court costs and other expenses of any kind or character which HACM, its officers, employees, agents, consulting engineers or other retained consultants may suffer, or which may be sought against, recovered from or obtainable against HACM, its officers, employees, agents, consulting engineers or other retained consultants such as:

- 6.21.1.1** as a result of, or by reason of, or arising out of, or on account of, or in consequence of any act or failure to act on the part of the successful proposer, its subcontractors or agents, or anyone directly or indirectly employed by any subcontractor or agent, in the fulfillment or performance of the terms, conditions or covenants that are contained in this contract or agreement, regardless of whether or not the occurrence which gave rise to such claim, damage, loss, suit, action, judgment or expense was caused, in part, by any party indemnified hereunder; or
 - 6.21.1.2** as a result of, or by reason of, or arising out of, or on account of, or in consequence of, any neglect in safeguarding the work; or
 - 6.21.1.3** through the use of unacceptable materials or products, or both, which may be defective or manufactured, designed or installed so as to give rise to a claim; or
 - 6.21.1.4** because of any claim or amount recovered under the “Nevada Industrial Insurance Act”, or any other law, ordinance, or decree, which claim or recovery arose out of or is attributable to any act or failure to act on the part of the successful proposer in the fulfillment or performance of the terms, conditions and covenants that are contained in this contract. Any money due by the successful proposer under and by virtue of this contract which is considered necessary by HACM for such purpose, may be retained by HACM for its protection; or in case no money is due, its surety may be held until all such claims, damages, losses, suits, actions, decrees, judgments, attorney’s fees and court costs and other expenses of any kind or character as aforesaid shall have been settled and suitable evidence to that effect furnished to HACM provided, however, that money due the successful proposer will not be withheld when the successful proposer produces satisfactory evidence that it is adequately protected by public liability and property damage insurance, if required.
- 6.21.2** In this connection, it is expressly agreed that the successful proposer shall, at its own expense, defend HACM, its officers, employees, agents, consulting engineers and other retained consultants, against any and all claims, suits or actions which may be brought against them, or any of them, as a result of, or by reason of, or arising out of, or on account of, or in consequence of any act or failure to act the consequences of which the successful proposer has indemnified HACM, its officers, employees, agents, consulting engineers and other retained consultants against, and if the successful proposer shall fail to do so, HACM shall have the right, but not the obligation, to defend the same and to charge all direct and incidental costs of such defense to the successful proposer including attorney’s fees and court costs; provided, however, that if the forum in

which such claim suit or action is heard determines that the occurrence that gave rise to the same was caused, in whole or in part, by any party who is indemnified hereunder, HACM shall reimburse the successful proposer for all, or the indemnified party's proportionate share, as the case may be, of the costs of such defense.

6.21.2 Reimbursement to the successful proposer by HACM, in whole or in part, for the costs of protecting traffic shall not serve to relieve the successful proposer of its responsibility as set forth in the RFP documents.

6.21.3 The successful proposer guarantees the payment of all just claims for materials, supplies and labor, and all other just claims against it or any subcontractor, in connection with the contract.

6.22 Lobbying Certification: By proposing to do business with HACM or by doing business with HACM, each proposer certifies the following:

6.22.1 No Federal appropriated funds have been paid or will be paid, by or on behalf of the proposer, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of an Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

6.22.2 If any funds other than 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 an Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form –LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions.

6.22.3 The successful proposer shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

6.22.4 This clause is a material representation of fact upon which reliance was placed when the award was made or entered into. The signing of a contract or acceptance of award certifies compliance with this certification, which is a prerequisite for making or entering into a contract, which is imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certifications shall be subject to civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

6.23 24 CFR 85.36(i), Procurement: Pursuant to this CFR, as issued by the Office of the Secretary, HUD, HACM and the contractor each agree to comply with the following provisions and agree that any contract that ensues as a result of this RFP will include the following clauses, whether actually inserted or by reference:

6.23.1 Remedies for Contractor Breach: Pertaining to contract-related issues, it is the responsibility of both HACM and the contractor to communicate with each other in as clear and complete a manner as possible. If at any time during the term of this contract HACM or the contractor is not satisfied with any issue, it is the responsibility of that party to deliver to the other party communication, in writing, fully detailing the issue and corrective action (please note that HACM has the right to issue unilateral addendums to this contract, but the contractor does not have the same right). The other party shall, within 10 days, respond in writing to the other party (however, HACM shall retain the right to, if conditions warrant, require the contractor to respond in a shorter period of time). Further, HACM shall, at a minimum, employ the following steps in dealing with the contractor as to any performance issues:

6.23.1.1 If the contractor is in material breach of the contract, HACM may promptly invoke the termination clause detailed within Section No. 3 of Attachment G-1, form HUD-5370-C (10/2006), *General Conditions for Non-Construction Contracts, Section I— (With or without Maintenance Work)*, which is attached hereto, and terminate the contract for cause. Such termination must be delivered to the contractor in writing and shall fully detail all pertinent issues pertaining to the cause of and justification for the termination.

6.23.1.2 Prior to termination, HACM may choose to warn the contractor, verbally or in writing, of any issue of non-compliant or unsatisfactory performance. Such written warning may include placing the contractor on probation, thereby giving the contractor a certain period of time to correct the deficiencies or potentially suffer termination. HACM shall maintain in the contract file a written record of any such warning detailing all pertinent information. If the contractor does not agree with such action, the contractor shall have 10 days to dispute or protest, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with HACM's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing HACM's alleged incorrect action(s).

6.23.1.3 After termination, if the contractor does not agree with HACM's justification for the termination, the contractor shall have 10 days to dispute, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no

recourse but to accept and agree with HACM's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing HACM's alleged incorrect action(s).

- 6.23.1.4** The response to any protest received shall be conducted in accordance with Section No. 4.0 of this document.
- 6.23.2 Termination For Cause and Convenience:** As detailed within Clause No. 3 of Attachment G-1, Form HUD-5370-C (10/2006), *General Conditions for Non-Construction Contracts, Section I—(Within or without Maintenance Work)*, attached hereto.
- 6.23.3 Executive Order 11246:** For all construction contracts awarded in excess of \$10,000, both parties hereby agree to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor Regulations (41 CFR Chapter 60).
- 6.23.4 Copeland "Anti-Kickback" Act:** For all construction or repair contracts awarded, both parties hereby agree to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).
- 6.23.5 Davis-Bacon-Act:** For all construction contracts awarded in excess of \$2,000 when required by Federal Grant Program legislation, both parties hereby agree to comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a- 7) as supplemented in Department of Labor Regulations (29 CFR Part 5).
- 6.23.6 Sections 103 and 107 of the Contract Work Hours and Safety Standards Act:** For all construction contracts awarded in excess of \$2,000 and for other contracts, which involve the employment of mechanics or laborers awarded in excess of \$2,500, both parties hereby agree to comply with the Sections 103 and 107 of the Contract Work Hours and Safety Act (40 U.S.C. 327-330) as supplemented in Department of Labor Regulations (29 CFR Part 5).
- 6.23.7 Reporting:** Both parties hereby agree to comply with any reporting requirements that may be detailed herein.
- 6.23.8 Patent Rights:** Both parties hereby agree to comply with HUD Bulletin 90- 23, which is the (a) Notice of Assistance Regarding Patent and Copyright Infringement.
- 6.23.9 Copy Rights/Rights in Data:** In addition to the requirements contained within Clause No. 5 of Attachment G-1, *General Conditions for Non- Construction Contracts, Section I—(With or without Maintenance Work)*, HACM has unlimited rights to any data, including computer software, developed by the contractor in the performance of the contract specifically:

- 6.23.9.1** Except as provided elsewhere in this clause, HACM shall have unlimited rights in data first produced in the performance of this contract; form, fit, and function data delivered under this contract; data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and all other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software.
- 6.23.9.2** The contractor shall have the right to: use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the contractor in the performance of this contract, unless provided otherwise in this clause; protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in this clause; substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action in accordance with this clause; and establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided below.
- 6.23.9.3** For data first produced in the performance of this contract, the contractor may establish, without prior approval of the CO, claim to copyright subsisting in scientific or technical articles based on or containing data first produced in the performance of this contract. The contractor grants HACM and others acting on its behalf a paid-up, non-exclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform or display publicly by or on behalf of HACM.
- 6.23.9.4** The contractor shall not, without the prior written permission of the PA, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains copyright notice, unless the contractor identifies such data and grants HACM a license of the same scope as identified in the preceding paragraph.
- 6.23.9.5** HACM agrees not to remove any copyright notice placed on data and to include such notices in all reproductions of the data. If any data delivered under this contract are improperly marked, HACM may either return the data to the contractor, or cancel or ignore the markings.

- 6.23.9.6** The contractor is responsible for obtaining from its subcontractors all data and rights necessary to fulfill the contractor's obligations under this contract.
- 6.23.9.7** Notwithstanding any provisions to the contrary contained in the contractor's standard commercial license or lease contract pertaining to any restricted computer software delivered under this contract, and irrespective of whether any such contract has been proposed prior to the award of this contract or of the fact that such contract may be affixed to or accompany the restricted computer software upon delivery, the contractor agrees HACM shall have the rights set forth below to use, duplicate, or disclose any restricted computer software delivered under this contract. The terms and conditions of this contract, including any commercial lease or licensing contract, shall be subject to the following procedures.
- 6.23.9.8** The restricted computer software delivered under this contract may not be used, reproduced, or disclosed by HACM except as provided below or as expressly stated otherwise in this contract. The restricted computer software may be: used or copied for use in or with the computer(s) for which it was acquired, including use at any HA location to which such computer(s) may be transferred; used or copied for use in or with backup computer if any computer for which it was acquired is inoperative; reproduced for safekeeping (archives) or backup purposes; modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restrictions set forth in this contract; and used or copies for use in or transferred to a replacement computer.
- 6.23.10 Clean Air Act:** For all contracts in excess of \$100,000, both parties hereby agree to comply with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).
- 6.23.13 Energy Policy and Conservation Act:** Both parties hereby agree to comply with all 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, 89 Stat. 871).
- 6.24 Additional Federally Required Orders/Directives:** Both parties agree that they will comply with the following laws and directives that HACM has received from HUD and that these same clauses will be a part of any contract that ensues as a result of this RFP:

- 6.24.1** Executive Order 11061, as amended, which directs the Secretary of HUD to take all action which is necessary and appropriate to prevent discrimination by agencies that utilize federal funds.
- 6.24.2** Public Law 88-352, Title VI of the Civil Rights Act of 1964, which provides that no person in the United States shall, on the basis of race, color, national origin or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives federal financial assistance. HACM hereby extends this requirement to the Contractor and its private contractors. Specific prohibited discriminatory actions and corrective action are described in Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 19901 et. seq.).
- 6.24.3** Public Law 90-284, Title VIII of the Civil Rights Act of 1968., popularly known as the Fair Housing Act, which provides for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person because of race, color, religion, sex or national origin. Pursuant to this statute, HACM requires that the Contractor administer all programs and activities, which are related to housing and community development in such a manner as affirmatively to further fair housing.
- 6.24.4** The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age.
- 6.24.5** Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.).
- 6.24.6** HUD Information Bulletin 909-23 which is the following:

 - 6.24.6.1** Notice of Assistance Regarding Patent and Copyright Infringement;
 - 6.24.6.2** Clean Air and Water Certification; and
 - 6.24.6.3** Energy Policy and Conversation Act.
- 6.24.7** The mentioned herein of any statute or Executive Order is not intended as an indication that such statute or Executive Order is necessarily applicable not is the failure to mention any statute or Executive Order intended as an indication that such statute or Executive Order is not applicable. In this connection, therefore each provision of law and each clause, which is required by law to be inserted in this agreement, shall be deemed to have been inserted herein, and this agreement shall be read and enforced as though such provision or clause had been physically inserted herein. If, through mistake or otherwise, any such provision is not inserted or is inserted incorrectly, this agreement shall forthwith be physically amended to make such insertion or correction upon the application of either party.

ATTACHMENT G

Form HUD-5370-C Section I, General Conditions for Non-Construction Contracts (With or Without Maintenance)

(11/30/2023)

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 (excl. 11/30/2023)

Public Reporting Burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number.

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

- 1) **Non-construction contracts** (*without* maintenance) **greater than \$250,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 905.100) **greater than \$2,000 but not more than \$250,000 - use Section II;** and
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$250,000 — use Sections I and II.**

Section I - Clauses for All Non-Construction Contracts greater than \$250,000

1. Definitions

The following definitions are applicable to this contract:

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

2. Changes

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

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

3. Termination for Convenience and Default

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

4. Examination and Retention of Contractor's Records

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

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

5. Rights in Data (Ownership and Proprietary Interest)

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

6. Energy Efficiency

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

7. Disputes

- (a) All disputes arising under or relating to this contract, except for disputes arising under clauses contained in Section 111, 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
 - () The Contractor's objectivity in performing the contract work may be impaired.
- (b) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract or any task/delivery order under the contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The HA may, however, terminate the contract or task/delivery order for the convenience of the HA if it would be in the best interest of the HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the HA may terminate the contract for default.
- (d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

12. Inspection and Acceptance

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

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

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

13. Interest of Members of Congress

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

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

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

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

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

(v) The prohibition does not apply as follows:

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- (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.
- (i) 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/Seller agrees as follows:

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

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

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

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

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

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

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

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

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

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

17. Equal Opportunity for Workers with Disabilities

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

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

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

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

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

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

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

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

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

18. Dissemination or Disclosure of Information

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

19. Contractor's Status

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

20. Other Contractors

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

21. Liens

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

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

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 75, 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 75 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 prioritization requirements, and shall state the minimum percentages of labor hour requirements established in the Benchmark Notice (FR-6085-N-04)..
- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75, 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 75. 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 75.
- (e) Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts
- (f) Contracts, subcontracts, grants, or subgrants subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business opportunities to Indians and Indian organizations, and are therefore not subject to the requirements of 24 CFR Part 75.

23. 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

ATTACHMENT H

Affidavit (Notarized) Form

AFFIDAVIT

(Prime Bidder)

State of _____,

ss.

County of _____,

_____, being first duly sworn, deposes and says:

That he is _____

(a partner or officer of the firm of, etc.)

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

Signature of:

Bidder, if the bidder is an individual
Partner, if the bidder is a partnership
Officer, if the bidder is a corporation

State of California

County of _____

Subscribed and sworn to (or affirmed) before me _____ Notary Public,

on this ____ day of _____, 20____, by _____, proved to me

on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature: _____

{Sea1J