

**SANFORD HOUSING AUTHORITY
REQUEST FOR PROPOSALS**

LANDSCAPING-GROUND SERVICES

FILE 2010-AMP-001,002,003,004

Castle Brewer Court/William Clark
Edward Higgins Terrace/Cowan Moughton Terrace
Redding gardens
Lake Monroe Terrace
Child Care Center
Cosmetology Building

DATE: 04/07/10

**SANFORD HOUSING AUTHORITY
BARBARA GREEN CENTRAL ADMINISTRATION OFFICE
94 CASTLE BREWER COURT
SANFORD, FLORIDA 32771
(407) 323-3150
(407) 324-1806 FAX**

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Vendor Forms A & B

HUD Form 5369-c Certifications and Representations; HUD Form 5369-b Instructions to offerors; HUD Form 5370-c General Contract Conditions Non-Construction; HUD Form 00310-1 Affidavit of non-collusion; W-9 Request for Taxpayers

REQUEST FOR PROPOSALS FOR LANDSCAPING SERVICES

File Number 2010-LS/AMP-001, 002, 003, 004

1.00 BACKGROUND

1.01 The SANFORD HOUSING AUTHORITY

The SANFORD HOUSING AUTHORITY (SHA) is the Public Housing Agency (PHA) for the City of Sanford. The mission of the SHA is to provide decent, safe and sanitary housing for low to moderate income families and to make Sanford Housing Authority public housing “housing of choice” instead of “housing of last resort”.

SHA owns six (6) developments and two (2) out parcels, with a total of 480 units.

A five (5) person Board of Commissioners, authorized by State law is responsible for the development of housing policy and the authorization of expenditures. Operations and recommendations regarded planning strategies made to the Board of Commissioners are the responsibility of the Executive Director of the SHA. The SHA is an agency as stipulated in Florida Statutes 421 and is subject to all County and City ordinances and regulations.

1.02 Goals and Objectives

The SHA is requesting sealed responses from independent firms or individuals interested in providing comprehensive lawn and grounds keeping services to SHA’s four (4) Asset Management Projects (AMP’s) and two (2) out parcels. The intent of this Request for Proposal is to enter into a Fixed Price Contract with a Qualified Landscape Contractor. All Sanford Housing Complexes and two (2) separate properties are in this Bid Package. The Scope of Services is not limited to but shall include: mowing, edging, weed-eating, blowing (sidewalks, patios and drives, etc), tree trimming and hedge trimming. It is the Sanford Housing Authority’s intent to enter into a one (1) year contract with possible annual renewals for up to two (2) years for the eight (8) locations with a qualified contractor.

1.3 TIMETABLE

Date of Distribution for RFP: April 7, 2010
Last Day for Inquiries: April 16, 2010
Pre-Bid Meeting: April 19, 2010 at 9:00 AM, EST. at the Barbara Green Central Administration Office
Last Day to submit Bids April 29, 2010 at 4:40 PM, EST. at the Barbara Green Central Administration Office
Bid Opening: May 4, 2010 at 2:00 PM

1.4 INSTRUCTIONS TO BIDDERS

BIDS *MUST INCLUDE ALL OF THE FOLLOWING FORMS & CERTIFICATES:*

1. Bidder information form
2. Bidder price form
3. Copy of Business License
4. Copy of current Certificate Liability and Workers Compensation of Insurance
5. List of four (4) references
6. Certifications and Representations of Offerors HUD form 5369-C
7. Affidavit of Non Collusion and of Non Interest of Housing Authority Employees
8. W-9 Request for Taxpayers Identification Number and Certification

2.00 SCOPE OF SERVICES

SCOPE OF SERVICES

This shall be a full service contract as defined by the Florida Statues. The services shall include the following:

SCOPE AND CLASSIFICATION FOR:

2.1 SCOPE: This specification describes Landscape Maintenance Service required by Sanford Housing Authority.

DESCRIPTION OF WORK TO BE PERFORMED

A. Schedule

- 1.) Services will be performed every week during the growing season (March 1st, through November 30th). Other wise every other week or *as needed*, December 1st, through March 1st.

B. Work Scope

- 1.) All turf areas are to be mowed according to the above schedule Item 2.2 (A)(1)
- 2.) All driveways, walkways, curbing (hard edges) must be edged at each mowing. All bed lines, tree rings, (soft edges) must be edged and cleaned of cut grass runners every other mowing.
- 3.) A line trimmer must be used around all building, signposts, utility poles and any other objects requiring weed eating at the time of each mowing. No line trimming is to be done around or against tree trunks to safe guard against tree damage.
- 4.) All patios, walkways, driveways, etc. must be blown off or swept (cleaned) thoroughly after any work is done.
- 5.) All shrub, hedge and plant material should be trimmed as needed, using sound horticulture techniques and equipment to promote healthy plant growth. Control pruning designed to separate different species should be used to avoid letting older established planting areas from being overgrown.
- 6.) Ground cover plant material should be trimmed as needed to shape, and/or control plant growth to confine its growth spread within its intended planting area.
- 7.) *All tree canopies' must be pruned to maintain an eight (8) foot height of clearance. Cuttings must be removed from the site by the contractor.*
- 8.) All plant bed areas should be kept free of weeds by means of manual weeding or herbicide spraying.
- 9.) All planting bed areas shall be mulched with shredded cypress mulch or pine bark to a depth of two (2) inches once per year.

APARTMENT NAME	LOCATION	TOTAL NUMBER OF UNITS	TOTAL ACRES
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CASTLE BREWER	94 CASTLE BREWER CT., SANFORD, FL, 32771	126	18.15
WILLIAM CLARK	MULBERRY ST. & 10 TH ST. SANFORD, FL, 32771	86	12.5
EDWARD HIGGINS	3 RD ST. & PECAN ST. SANFORD, FL, 32771	41	3.82
COWAN MOUGHTON	3 RD ST. & AVACADO ST. SANFORD, FL, 32771	30	3.85
LAKE MONROE	5 TH ST. & MULBERRY ST. SANFORD, FL, 32771	100	12.53
REDDING GARDENS	400 LOCUST AVE.. SANFORD, FL, 32771	100	5.11
CHILD CARE CENTER	1221 WEST 7TH STREET SANFORD, FL, 32771	1	0.25
COSMOTOLOGY BUILDING	1300 WEST 7TH STREET SANFORD, FL, 32771	1	1.0

SECTION 3 - GENERAL & SUPPLEMENTARY CONDITIONS

3.1 BID PRICES: Bid prices shall be firm fixed prices and shall not be amended after the time and date of the close of receipts of bids. Award price include all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the work. The awardee shall indemnify and save harmless Sanford Housing Authority, its, officers, agents, and employees from any and all claims for infringement and for any costs, expenses and damages which may be incurred by reason of any infringement of patents, or copyrights at any time during the prosecution or after completion of the work.

3.2 PERFORMANCE

A. SERVICE HOURS

Services shall be provided Monday thru Friday between the hours of 7:30AM and 5:00PM, excluding holidays. Contractor must obtain special permission to work outside of these parameters.

B. VERIFICATION OF WORK

The contractor's personnel shall check in with the Property Management prior to commencing work. The contractor or its employees are not allowed to access any buildings or apartments without the permission of the Property Management.

The contractor shall submit to the Property Manager, after each service, with each

invoice, a written performance report.

3.3 QUALITY ASSURANCE PROVISIONS

- A.) INSPECTION:** Sanford Housing Authority reserves the right to perform any inspections where said inspections are needed to further determine compliance of services supplied.
- B.) QUANTITY AND QUALITY CONTROL:** A system of inspections shall be used to insure receipt of the quality and quantity of services/items purchased. Work will be promptly inspected and any discrepancies from the work requested and/or the suppliers' invoice shall be reported immediately to the Senior Housing Manager.
- C.) HOLD HARMLESS:** The awardee shall assume all costs arising from the use of patented materials/or equipment, devices, or processes incorporated in the materials/or equipment furnished. The awardee further agrees to indemnify and hold harmless Sanford Housing Authority and its duly authorized agents from any and all suits of law or actions of any nature for, or on account of, the use of any patented materials/or equipment, devices or processes.

3.3 A- CONDITIONS

- A.) NEXT LOWEST BIDDER:** In the event of default by the awardee, Sanford Housing Authority reserves the right to utilize the next lowest bidder as the new awardee. In the event of this occurrence, the next lowest bidder, if it wishes the award, shall be required to provide the bid items/services at the prices as contained on its proposal or bid
- B.) AUTHORIZATION:** Authorization will be obtained from the Executive Director or Designee. Sanford Housing Authority will submit changes to this authorization list in writing to the contractor as those changes occur.
- C.) FURNISHING BID ITEMS:** Award services/items are to be furnished as specified in the "scope of work" during the life of this award.
- D.) RESPONSE TIME:** Services shall be supplied as specified in the "scope of work unless other specific arrangements have been made for a particular job. Failure to do so shall be considered a breach of this award or default. In the event of this occurrence, Sanford Housing Authority reserves the right to utilize the next lowest bidder. Continual failure to respond properly will result in Sanford Housing Authority re-advertising for bid or utilizing the next lowest bidder as the primary awardee.

3.4 Evidence of the Firm's Ability to Perform the Work

Proposers shall provide experienced, qualified and capable personnel to perform the functions and responsibilities outlined in Section 2.01 Statement of Work. Experience with public housing agencies is key. Each proposer must at a minimum provide at least the following information related to the principals and staffs professional and technical competence. Resumes must be provided that succinctly summarize the experience and qualifications of the proposed Key Personnel who will actually assure that work will be performed. This is to include references (names, address, telephone and facsimile numbers) for each similar task these professionals have performed.

- (a) Key Personnel. Time commitments for each Key Person should be shown in relation to each major task, expressed in percentages. Time commitments for Key Personnel may vary over the course of the project. As such, a narrative describing typical use of time over the course of the project should be provided.
- (b) Experience of Key Personnel. Experience of Key Personnel on projects of a similar size and nature. SHA is particularly interested in knowing the experience of Key Personnel working with each other at the Firm on previous projects.
- (c) A staffing plan on who will be responsible for the tasks identified in Section 2.01 Statement of Work.
- (d) Firm Size. Proposers must indicate the size of the Firm. The firm size should be stated in the average volume of work per year. The size categories are as follows.

Small Firm	\$ 2 - \$10 million per year
Medium Firm	\$10 - \$20 million per year
Large Firm	\$20 - \$50 million per year

3.05 Capability to Provide Services in a Timely Manner

Proposers must discuss their approach or method in carrying out tasks identified in Section 2.01 Statement of Work.

3.06 Past Performance

Proposers must discuss their past performance in terms of cost control, quality of work and compliance with performance schedules. This should include the areas that follow.

- (a) Type(s) of projects previously involved. Proposers should identify those

projects in which they have been previously involved. This should include the type of project, time-frame of the project, nature of involvement in the project, estimated cost and final cost.

- (b) Cost Control. Proposers should identify those cost control mechanisms it has in place to control the cost of the project.
- (c) Quality of Work. Proposers should provide examples of past performances on projects of a similar nature listed in Section 2.01 Scope of Work.
- (d) References. References are to include the name, address, telephone and facsimile numbers.

3.07 SBE/WBE/MBE/DBE and Section 3 Compliance

It is the policy of SHA to encourage its contractors to understand, endorse and fully implement the policies and programs associated with expanding the business potential for small, women-owned, minority-owned and/or City of Sanford based business enterprises, as well as similar activities associated with low and very low income persons, notably those living in public housing, as described in "Section 3" requirements. Each Proposer must provide its policy statement on these matters, as well as its plan for meeting and fostering these objectives in terms of its own team and project expenditures.

3.08 Evidence that the Firm is currently licensed in the City of Sanford, Seminole County and the State of Florida and Carries Appropriate Insurance

Proposers shall be currently licensed in the City of Sanford, Seminole County and the State of Florida. Proposers should note that this is a "yes" or "no" criterion. Proposers shall provide evidence of such licenses. If the Proposer is not licensed the Firm will be disqualified.

4.00 EVALUATION CRITERIA

4.01 Review Team

The evaluation of proposals will be conducted by a Review Team. The Review Team will consist of 3-5 representatives from the SHA. The Review Team shall evaluate and score each responsive proposal using the method described in Section 4.02 Evaluation Criteria of this RFP.

4.02 Evaluation Criteria

BID EVALUATIONS: The evaluation of bids and the determination to equality of services offered shall be the responsibility of Sanford Housing Authority and will be based on information furnished by the bidder.

a.) BASIS OF AWARD: Sanford Housing Authority reserves the right to award this bid by line item total. Current Worker's Compensation and General Liability insurance certificate will be required. The award, if awarded, will be made within 30 days after the close of bid acceptance to the lowest responsive, responsible bidder.

b.) AWARD PERIOD AND RENEWAL: The award period shall be for a one (1) year period from the date of the award, and made by mutual written agreement, and possibly renewed at the same terms and conditions annually for a total of three (3) years.

c.) PROOF OF INSURANCE: Before commencing work, the offeror shall furnish Sanford Housing Authority with evidence showing that adequate insurance is in force covering all operations under this contract. The offeror shall submit as part of its offer written evidence that it maintains:

Workers Compensation
Comprehensive General Liability
Auto Liability

d.) AWARD CHANGES: No awardee shall assign the award or any rights or obligations hereunder without the written consent of Sanford Housing Authority.

e.) DEFAULT: Any award resulting from this specification may be canceled or annulled by the Executive Director or Designee in whole or in part by written notice of default to the awardee upon non-performance or violation of the award terms. An award may be made to the next lowest bidder or services specified may be purchased on the "open market". Failure of the awardee to deliver materials or services within the time stipulated in this specification, unless extended in writing by the Executive Director or Designee shall constitute award default.

f.) CANCELLATION: When deemed to be in the best interest of Sanford Housing Authority, any awards or contracts resulting from this specification may be canceled by the following means: *Ten (10) day* written notice with cause or *thirty 30 days* written notice without cause.

4.03 Process for Award

This Request for Proposal is the first step in a two-step process. All proposals will be evaluated by the SHA Review Team and determine proposals to be responsive from the most qualified to the least qualified based on their written proposal. The SHA reserves the right to conduct oral interviews with any of the firms submitting proposals and to arrange office visits with those firms deemed qualified.

After the selection has been finalized, the SHA Executive Director or his/her designee will submit a recommendation to the Board of Housing Commissioners. Upon the approval from the SHA Board of Commissioners, the SHA will enter into a contract with the approved firm.

5.00 PROCUREMENT PROCESS

5.01 Availability of the RFP Package

The RFP package may be obtained in person from the Sanford Housing Authority at 94 Castle Brewer Court, Sanford, Florida 32771, (407) 323-3150; or by login to www.sanfordha.org/Documents

5.02 Submission Place Proposals shall be submitted to:

**SANFORD HOUSING AUTHORITY
94 Castle Brewer Court
Sanford, Florida 32771
(407) 323-3150**

5.03 Submission Method

One (1) original and five (5) copies of the written proposal shall be submitted in a sealed envelope. The face of the envelope shall contain, in addition to the above address, the proposal number and title.

5.04 Submission Date and Time

Proposals must be received by **4:40 p.m. on April 29, 2010**. They will be opened publicly. It is the Firm's responsibility to ensure that its proposal is delivered at the proper time and place. Proposals which for any reason are not timely delivered will not be considered and will be returned unopened. Offers by telegram, facsimile or telephone are not acceptable.

SHA staff designated to receive proposals will determine when the specified time has arrived. No responsibility will attach to an officer, employee, or agent of SHA for not recognizing or receiving a proposal which is not properly marked, addressed or delivered to the submission place using the submission method by the submission date and time.

5.05 Questions/Interpretations

Any questions concerning this RFP shall be directed in writing to the address noted in Section 5.03 for receipt no later than 4:00 P.M., April 16, 2010. No interpretation shall be considered binding unless provided in writing by the SHA.

5.06 Withdrawal of Proposals

Proposals may **not** be withdrawn for ninety (90) days from the submission deadline date.

5.07 Mistakes in Proposals

If a mistake in a proposal is suspected or alleged, the proposal may be withdrawn.

Mistakes discovered after award shall not be corrected unless the SHA Counsel makes a written determination that it would be disadvantageous to the SHA not to allow the mistake to be corrected. The approval or disapproval of requests of this nature shall be in writing by the SHA's Legal Counsel.

5.08 Execution of Proposal

The original proposal must contain a manual signature of an authorized representative of the Firm. The proposal must be typed or printed in ink. Use of erasable ink is not permitted. All corrections made on the proposal sheets must be initialed by the authorized representative. The proposal must include all documents, materials and information required herein.

6.00 CONTRACT PROVISIONS

6.01 Conflict of Interest

- a. The Firm warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest. Conflict of interest is defined as a situation in which the nature of work under this contract and the Firm's organizational, financial, contractual or other interests are such that:
 1. Award of the contract may result in an unfair competitive advantage; or
 2. The Firm's objectivity in performing the contract work may be impaired. In the event the Firm has an organizational conflict of interest as defined herein, the Firm shall disclose such conflict of interest fully in the proposal

submission.

- b. The Firm 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 Executive Director which shall include a description of the action which the Firm has taken or intends to take to eliminate or neutralize the conflict. SHA may, however, terminate the contract if it is in its best interest.
- c. In the event the Firm was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Executive Director, SHA may terminate the contract for default.
- d. The provisions 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 Firm. The Firm shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.
- e. No member of or delegate to the U.S. Congress or Resident Commissioner shall be allowed to any share or part of this contract or to any benefit to arise. This provision shall be construed to extend to this contract if made with a corporation for its general benefit.
- f. No member, officer, or employee of the SHA, no member of the governing body of the locality in which the project is situated, no member of the governing body in which the SHA 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.
- 7. No member, officer or employee of the firm selected to perform the services described above shall, during the term of their contract, or for one year thereafter, have any interest, direct or indirect, in any contract that they are responsible for procuring, managing or overseeing on in the proceeds of any such contract.
- h. SHA reserves total discretion to determine the proper treatment of any conflict of interest disclosed under this provision.

6.02 Cost of Proposal

All costs incurred, directly or indirectly, in response to this proposal shall be the sole responsibility of and shall be borne by the respondents.

6.03 Awards

A contract shall be awarded in accordance with the terms and conditions of this RFP. SHA reserves the right to reject any or all proposals or to waive any minor irregularities or technicalities in proposals received as the best interest of SHA may require.

6.04 Proposal Tabulations/Notification

After the award is made, a list of Firms submitting proposals will be posted for review by interested parties at SHA's Central Office and will remain posted for a period of ten (10) days. The list will be furnished upon written request only and will not be provided by telephone. A self addressed, stamped envelope must be included with the written request. Each unsuccessful bidder will be notified in writing promptly upon award. The notice shall identify the successful Firm.

6.05 Form of Purchase

The acceptance of the proposed Firm's offer for the services specified herein will be made by issuance of a duly authorized contract prepared by SHA. Bidders are cautioned to make no assumptions or accept any representations by any employee, member, officer or representative of SHA concerning the award until a contract agreement is executed.

6.06 Government Restrictions

In the event any governmental restrictions may be imposed which would necessitate alteration of the material, quality, workmanship or performance of the goods or services offered, it shall be the responsibility of the successful Firm to immediately notify the SHA in writing specifying the regulation which requires alteration. The SHA reserves the right to accept any such alteration, including any reasonable price adjustments occasioned thereby, or to cancel the contract at no expense to the SHA.

6.07 Nonconformance to Conditions/Specifications/Scope of Services

Services will be inspected for compliance with specifications. Services not conforming to specifications may not be accepted at the Firm's expense. Services not provided in accordance with the Scope of Services may result in the Firm being found in default. In the event of default all procurement costs may be charged against the Firm. Any violations of these stipulations may result in the Firm's name being removed from SHA's proposal mailing list.

6.08 Assignment or Transfer

The successful Firm shall not assign or transfer any interest in the contract, in whole or

part, without written approval of SHA. Claims for sums of money due, or to become due from SHA pursuant to the contract may be assigned to a bank, trust company or other financial institution. SHA is hereby expressly relieved and absolved of any and all liability in the event a purported assignment or subcontracting of the contract is attempted in the absence of the Firm obtaining the SHA's prior written consent.

6.09 Availability of Records

The Comptroller General of the United States, the Department of Housing and Urban Development (HUD), SHA and any duly authorized representative of each, shall have full and free access to, and the right to audit and to make excerpts and transcripts from, any and all pertinent books, records, documents, invoices papers and the like, of the vendor, or in the possession of the Firm, which shall relate to, or concern the performance of the contract.

6.10 Patents - Licenses and Royalties

The successful Firm shall indemnify and save harmless the SHA and its employees from liability of any kind, including cost and expenses for or on account of any copyrighted, patented, or not patented invention, process or article manufactured or used in the performance of the contract, including its use by the SHA. If the vendor uses any design, device or material covered by letters, patent or copyright, it is mutually agreed and understood that the proposal prices shall include all royalties or cost arising from the use of such design, device or materials involved in the work. Further all residual right to Patents, Licenses and Royalties (e.g. software and license to use same purchased) shall revert to SHA at the end of the Agreement.

6.11 Proprietary Rights and Patent Indemnity

1. The successful Firm shall acknowledge that should the performance of the Contract result in the development of new proprietary and secret concepts, methods, techniques, processes, adaptations, discoveries, improvement and ideas, same shall be promptly reported to the SHA, belong solely and exclusively to the SHA without further consideration and without regard to the origin thereof, the Contractor will not, other than in the performance of the Contract, make use of or disclose same to anyone. At the SHA's request, the Contractor shall execute all documents and papers and shall furnish all reasonable assistance requested in order to establish in the SHA all right, title and interest in such inventions, discoveries and improvements or to enable the SHA to apply for United States patents thereon, if the SHA elects to do so.
2. The Work Product materials shall not be disclosed, published or copyrighted in whole or in part by the Contractor. The right to copyright such materials shall rest exclusively in the City. Further, the SHA shall have unrestricted and

exclusively authorities to publish, disclose, distribute and otherwise use, in whole or in part, any of the Work Product materials. All Work Product materials prepared by the Contractor shall be dated and shall carry the following notation on the Front Cover or Title Page: "The document was prepared for an is exclusive property of the Sanford Housing Authority, a municipal corporation."

3. The Contractor warrants that the performance of this Contract does not infringe upon or violate any patent, copyright, trademark, trade secret or any other proprietary rights of any third party. In the event of any claim or cause of action related to the above obligations of the Contractor by the third party against the SHA, the Contractor shall defend at its expense and indemnify the SHA against any loss, cost, expense or liability arising out of such claim, whether or not such claim is successful.

6.12 Permits and Licenses

The successful Firm shall obtain all permits and licenses that are required for performing its work. The Firm shall pay all related fees and costs in connection with required permits and licenses. Proof of ownership shall be made on all software used in the execution of the contract. The Firm will hold SHA harmless for any violation of software licensing resulting from breaches by employees, owners and agents of the Firm.

6.13 Taxes

The successful Firm is responsible for all state and federal payroll and/or social security taxes. The Firm shall hold SHA harmless in every respect against tax liability.

6.14 Advertising

In submitting a proposal, the Firm and their consultants agree not to use the results as a part of any commercial advertising.

6.15 Insurance

a. Insurance. The selected Firm shall maintain at its expense during the term of the Contract the following insurance.

(1) Worker's Compensation Employer's Liability in the amount of \$100,000 each accident; \$100,000 each disease; and \$100,000 for each disease/each employee.

(2) Automobile Liability Insurance (covering all owned, hired and non-owned vehicles with personal and property protection insurance including residual liability insurance under Florida No Fault Insurance Law) in an amount not less than \$1,000,000 per occurrence.

(3) Professional Liability Insurance in the amount of \$1 million.

(4) General Liability Insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 aggregate.

The Sanford Housing Authority shall be named as additional insured on all policies.

b. Waiver. The selected Firm shall not hold the SHA liable for any personal injury incurred by its employee, agent or consultant, contractor or subcontractor while working on this project. The Firm agrees to hold the SHA harmless from any such claim by its employees, agents, consultants, contractor or sub-contractor, unless a Court having jurisdiction finds there is gross negligence of an employee of the SHA while acting within the scope of their employment.

c. The insurance company covering the Firm must be licensed to do business in the State of Florida.

6.16 Proof of Liability Insurance

The successful Firm shall furnish to SHA a certified copy of the policy or policies covering the work as required in the specifications as evidence that the insurance required will be maintained in force for the entire duration of the contract with SHA. SHA must be listed as an additional insured.

6.17 Standards of Conduct

The successful Firm shall be responsible for maintaining satisfactory standards of its' employee's competence, conduct, courtesy, appearance, honesty, and integrity. It shall be responsible for taking such disciplinary action with respect to any of its employees as may be necessary.

6.18 Removal of Employees

The SHA may request the successful Firm to immediately remove from assignment to the SHA and/or dismiss any employee found unfit to perform duties due to one or more of the following reasons:

- (1) Neglect of Duty.
- (2) Disorderly conduct, use of abusive or offensive language, quarreling, intimidation by words or actions or fighting.
- (3) Theft, vandalism, immoral conduct or any other criminal action.
- (4) Selling, consuming, possessing, or being under the influence of intoxicants, including alcohol, or illegal substances while on assignment at the SHA.

6.19 Supervision

The successful Firm shall provide adequate competent supervision at all times during the performance of the contract. To that effect, a qualified consultant and one or more alternates shall be designated in writing to the SHA prior to contract start. The Firm or his designated representative shall be readily available to meet with SHA personnel. The successful Firm shall provide the telephone numbers where its representative(s) can be reached.

6.20 Performance Evaluation Meeting

The selected Firm shall be readily available to meet with representatives of the SHA weekly during the first month of the contract and as often as necessary thereafter. A mutual effort will be made to resolve any and all performance problems identified at these meetings.

6.21 Disputes

- a. **Issues Causing Protest.** Any Firm who disputes the reasonableness, necessity, or competitiveness, of the terms and conditions of this Solicitation or who has been adversely affected by a decision concerning a notice of intended or actual purchase award may file a written notice of protest with the contact person listed in the solicitation.
- b. **Filing the Protest.** The Firm must first advise the contact person listed in the solicitation in writing within 72 hours after receipt of the bid solicitation or intended or actual notice of award of his intent to file a formal written notice with the contact person listed in the solicitation.
- c. **Content of Formal Written Notice.** The formal written notice should be printed, typewritten, or otherwise duplicated in legible form. The formal written notice of protest should contain the information that follows:
 - (1) The name and address of the Firm filing the protest and an explanation of how his substantial interests have been affected by the bid solicitation or by the SHA's notice of intended or actual award.
 - (2) A statement of how and when the Firm filing the protest received notice of the bid solicitation or notice of intended or actual award.
 - (3) A statement of all issues of disputed material fact. If there are none, the protest must so indicate.
 - (4) A concise statement of the ultimate facts alleged, as well as the SHA's policies which entitle the Firm filing the protest to relief.

- (5) A demand for relief the Firm deems themselves entitled.
- (6) Any other information which the Firm contends is material.
- d. **Response to Protest.** Upon receipt of a timely filed Notice of Protest and meeting the above requirements, the solicitation process, or award process will be stopped until the protest is resolved. The Executive Director, with the Modernization Coordinator's recommendation, if it is deemed necessary, may set forth in writing particular facts and circumstances which require continuance of the solicitation process on an emergency without the above mentioned delay in order to avoid immediate or serious danger to health, safety or welfare. This written determination will specifically detail the facts underlying the Executive Director's decision and will constitute final agency action.
- e. **Informal Resolution.** Upon receipt of the formal written notice of protest or intent to protest, the Review Team must attempt to resolve the protest on an informal basis. The Review Team will have seven (7) days after receipt of the formal written protest to resolve it through mutual agreement. If the protest is not resolved by mutual agreement within the required time, the formal written protest will be referred to the Executive Director.
- f. **Resolution.** The Executive Director may request such information pertaining to the matter as he/she deems appropriate. Within seven (7) days of the date that the formal written protest is referred to him/her, the Executive Director will notify the Firm making the protest his/her decision.

6.22 Federal, State and Local Reporting Compliance

The Firm shall provide such financial and programmatic information as required by SHA to comply with all Federal, State and local law reporting requirements.

6.23 Nondiscrimination

The Firm agrees that it will abide by County and City Ordinances and State Laws incorporated by reference herein (Attachment II).

6.24 Section 3 Clause

Every applicant, recipient, contracting party, contractor, and subcontractor shall incorporate or cause to be incorporated a "Section 3 Clause" in all contracts for work in connection with a Section 3 covered development. The Section 3 Clause is located in Attachment I of this RFP.

All proposals must also include a Compliance Plan for Section 3 requirements. The Compliance Plan for Section 3 requirements is located in Attachment I.

6.25 Project Personnel

Except as formally approved by SHA, the key personnel identified in the accepted proposal shall be the individual who will actually complete the work, at the proposed levels of effort. Changes in staffing must be proposed in writing to SHA and approved.

6.26 Payment

Pursuant to the schedule of deliverables or negotiations under each task order, the SHA shall make periodic payments for services provided.

Firm awarded a contract will provide a monthly invoice that contains a summary of activities with actual man hours of work performed by title, including any reimbursable expenses by SHA Projects. Property management must inspect work immediately following each service. The invoices are to be sent to:

Account Receivables
Sanford Housing Authority
94 Castle Brewer Court
Sanford, Florida 32771

Upon review and acceptance of the invoice, payment shall be due and payable.

6.27 Notices

All written notices required to be given by either party under the terms of the contract(s) resulting from the contract award shall be addressed to the Firm at their legal business residence as given in the contract. Written notices to the SHA shall be addressed as provided in the contract.

6.28 Cancellation

Irrespective of any default hereunder the SHA may also at any time at its discretion cancel the contract in whole or in part. In the event of cancellation, the Firm shall be entitled to receive equitable compensation for all work completed and accepted prior to such termination or cancellation as shall be indicated in the contract.

6.29 Laws

The contract shall be governed by the laws of the State of Florida.

6.30 Contract Documents

Written contract documents will be prepared by the SHA. Modifications may be

adopted based on final negotiations and specific requirements of the contract under this particular RFP.

6.31 Travel

All travel and miscellaneous expenses will be borne by the Firm.

6.32 Holidays

The SHA observes the following Holidays. No service will be performed on these dates unless specifically approved by SHA in writing.

New Year's Day	January 1, 2010
M.L. King's Birthday	January 18, 2010
President's Day	February 15, 2010
Spring Holiday	April 2, 2010
Floating Holiday	May 28, 2010
Memorial Day	May 31, 2010
Independence Day	July 2, 2010
Labor Day	September 6, 2010
Columbus Say	October 11, 2010
Veterans Day	November 11, 2010
Thanksgiving Day	November 25, 2010
Day after Thanksgiving	November 26, 2010
Christmas Eve	December 24, 2010
Christmas Day	December 24, 2010
New Years Eve	December 31, 2010

6.33 Contract Award

The Contract for Landscape Maintenance Services as requested in this RFP document may be subject to the approval of the SHA's Board of Commissioners, the Department of Housing and Urban Development.

6.34 Security and Safety

The selected contractor shall be cognizant of security and safety as it pertains to employees, residents SHA staff and contractors' employees or sub-contractors. The Sanford Housing Authority is not responsible for any acts of vandalism or theft that can result from engaging in this contract. The Sanford Housing Authority recommends that the selected contractor takes every step available to them to mitigate and or minimize any possible occurrences.

Attachment I

SECTION 3 CLAUSE

ECONOMIC OPPORTUNITIES FOR LOW AND VERY LOW INCOME PERSONS

Every applicant, recipient, contracting party, contractor, and subcontractor shall incorporate, or cause to be incorporated, in all contracts for work in connection with a Section 3 covered project, the following clause (referred to as a Section 3 clause):

Section 3 Clause

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 impediments that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice.

The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

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

knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

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

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

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to this 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).

Compliance Plan for Section 3 Requirements

Compliance

Every applicant bidder, contractor or subcontractor is encouraged to review the complete text that may be obtained, at no cost, by contacting the Sanford Housing Authority, 94 Castle Brewer Court, Sanford, Florida 32771, Telephone (407) 323-3150.

Every applicant, recipient contracting party or contractor and subcontractor, in order to comply with Section 3, must commit in writing to the following:

1. With the need to employ any additional personnel or to subcontract any work, the contractor must comply with Section 3 requirements to recruit, hire and or solicit contracts with low income Section 3 residents, persons and Section 3 businesses.

2. When the need is identified that additional personnel or any subcontractor is needed to complete the contract work, that the appropriate percentage of all new hires be Section 3 residents 10% of the contractor funds be awarded to Section 3 businesses. If the contractor hires only one employee or subcontracts with only one company, that employee must be a Section 3 resident and the company must be a section business.
3. Order of preference for Section 3 hires are as follows:
 - 1) Residents of the housing developments for which the Sections 3 covered assistance is expended (category 1 residents);
 - 2) Residents of other housing developments managed by the HA that is expending the Section 3 covered housing assistance (category 2 residents);
 - 3) Participants in HUD Youth build programs being carried out in the metropolitan area (or non-metropolitan county) in which the Section 3 covered assistance is expended (category 3 resident);
 - 4) Other Section 3 residents within the Detroit City limits.
4. Order of preference for subcontracting business concerns complying with Section 3 are as follows:
 - 1) Business concerns that are 51 percent or more owned by residents to the housing development or developments for which the Section 3 covered assistance is expended, or whose full-time, permanent workforce includes 30 percent of these persons as employees (category 1 businesses);
 - 2) Business concerns that are 51 percent or more owned by residents to the housing development or developments managed by the HA that is expending the Section 3 covered assistance, or whose full-time, permanent workforce includes 30 percent of these persons as employees (category 2 businesses);
 - 3) HUD Youth build programs being carried out in the metropolitan area (or non-metropolitan county) in which the Section 3 covered assistance is expended (category 3 businesses);
 - 4) Business concerns that are 51 percent or more owned by

Section 3 residents, or whose full-time, permanent workforce includes no less than 30 percent Section 3 residents (category 4 businesses), or that subcontract amount in excess of 25 percent of the total amount of subcontracts to Section 3 business concerns.

5. The contractor shall maintain all records, reports and other documents to demonstrate compliance with the Sections requirements.
6. Implementation of Section 3 by the contractor may be accomplished as indicated in the following examples:
 - 1) Advertising the training and employment positions by distributing flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) to every occupied dwelling unit in the housing development or developments where category 1 or category 2 persons reside.
 - 2) Contracting agencies administering HUD Youth build programs, and requesting their assistance in recruiting HUD Youth build program participants for the HA's or contractor's training and employment positions.

- 3) Consulting with State and Local agencies administering training programs funded through JTPA or JOBS, probation and parole agencies, unemployment compensation programs, community organizations and other officials or organizations to assist with recruiting Section 3 residents for the HA's or contractor's training and employment positions.
 - 4) Advertising the jobs to be filled through the local media, such as community televised networks, newspapers or general circulation, and radio advertising.
 - 5) Where appropriate, breaking out contract work items into economically feasible units to facilitate participation by Section 3 business concerns.
7. A Section 3 Implementation Plan outlining the proposed actions to insure compliance with the Section 3 requirements must be submitted prior to award of any contract issuing form this solicitation.
 8. The recipient shall refrain from entering into a contract with any contractor after notification to the recipient by HUD that the contractor has been found in violation of the Section 3 regulations. The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts of funding of any contractors or subcontractors during any period of debarment, suspension, or otherwise ineligible status.

The bidder is advised to thoroughly familiarize themselves with the regulation in 24 CFR 135. The bidder is responsible for complying with the regulations in its entirety.

Vendor Form A

SANFORD HOUSING AUTHORITY BIDDER RESPONSE FORM

BIDDERS INFORMATION

I, the undersigned, as bidder, hereby declare that I have carefully read this proposal or bid and the provisions, terms and conditions concerning the equipment, materials, supplies or services as called for, and with full knowledge and understanding of the requirements and conditions, do hereby agree to furnish and to deliver as indicated in this RFP to Sanford Housing Authority for the prices quoted as follows.

Company Information:

Please type or print:

Firm

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone #: _____ Fax #: _____

Federal I.D. # _____

Authorized Representative's

Name: _____

Authorized Representative's Title: _____

Authorized Signature: _____ Date: _____

Vendor Form B

SANFORD HOUSING AUTHORITY

Bidder Response Form **Prices**

INSTRUCTIONS TO BIDDERS:

1. Bid amount shall include landscape maintenance of the entire site to include all yards and common areas. This will an annual dollar amount

Property and address	Annual Dollar Amount	Per Service Amount	# Acres
Castle Brewer Court 94 Castle Brewer Ct. Sanford, Florida 32771			18.15
William Clark Court Mulberry St.. & 10 TH St.. Sanford, Florida 32771			12.5
Edward Higgins Terrace 3 rd St. & Pecan St. Sanford, Fl. 32771`			3.82
Cowan Moughton Terrace 3 rd St. & Avocado St. Sanford, Fl. 32771			3.85
Lake Monroe Terrace 5 th St. & Mulberry St. Sanford, Fl. 32771			12.53
Redding Gardens 400 Locust Ave. Sanford, Fl. 32771			5.11
Child Care Center 1221 West 7 th Street Sanford, Florida 32771			0.25
Cosmetology Building 1300 West 7 th Street Sanford, Florida 32771			1.0



NON-COLLUSIVE AND NON-IDENTITY OF INTEREST AFFIDAVIT

STATE OF _____

COUNTY OF _____

_____ being first duly sworn, deposes and states she is a _____ at _____ is the Offeror 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 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, or to secure any advantage against the Sanford Housing Authority or any person interested in the proposed contract; and that all statements in said proposal or bid are true.

BY: _____
Name

TITLE: _____

DATE: _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2010 by _____ who is personally known to me or who has produced _____ as identification.

Notary Public

My Commission Expires

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

**Instructions to Bidders for Contracts
Public and Indian Housing Programs**

Instructions to Bidders for Contracts

Public and Indian Housing Programs

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1. Bid Preparation and Submission

(a) Bidders are expected to examine the specifications, drawings, all instructions, and, if applicable, the construction site (see also the contract clause entitled **Site Investigation and Conditions Affecting the Work** of the *General Conditions of the Contract for Construction*). Failure to do so will be at the bidders' risk.

(b) All bids must be submitted on the forms provided by the Public Housing Agency/Indian Housing Authority (PHA/IHA). Bidders shall furnish all the information required by the solicitation. Bids must be signed and the bidder's name typed or printed on the bid sheet and each continuation sheet which requires the entry of information by the bidder. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority. (Bidders should retain a copy of their bid for their records.)

(c) Bidders must submit as part of their bid a completed form HUD-5369-A, "Representations, Certifications, and Other Statements of Bidders."

(d) All bid documents shall be sealed in an envelope which shall be clearly marked with the words "Bid Documents," the Invitation for Bids (IFB) number, any project or other identifying number, the bidder's name, and the date and time for receipt of bids.

(e) If this solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words "No Bid" in the space provided for any item on which no price is submitted.

(f) Unless expressly authorized elsewhere in this solicitation, alternate bids will not be considered.

(g) Unless expressly authorized elsewhere in this solicitation, bids submitted by telegraph or facsimile (fax) machines will not be considered.

(h) If the proposed contract is for a Mutual Help project (as described in 24 CFR Part 905, Subpart E) that involves Mutual Help contributions of work, material, or equipment, supplemental information regarding the bid advertisement is provided as an attachment to this solicitation.

2. Explanations and Interpretations to Prospective Bidders

(a) Any prospective bidder desiring an explanation or interpretation of the solicitation, specifications, drawings, etc., must request it at least 7 days before the scheduled time for bid opening. Requests may be oral or written. Oral requests must be confirmed in writing. The only oral clarifications that will be provided will be those clearly related to solicitation procedures, i.e., not substantive technical information. No other oral explanation or interpretation will be provided. Any information given a prospective bidder concerning this solicitation will be furnished promptly to all other prospective bidders as a written amendment to the solicitation, if that information is necessary in submitting bids, or if the lack of it would be prejudicial to other prospective bidders.

(b) Any information obtained by, or provided to, a bidder other than by formal amendment to the solicitation shall not constitute a change to the solicitation.

3. Amendments to Invitations for Bids

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

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date on the bid form, or (3) by letter, telegram, or facsimile, if those methods are authorized in the solicitation. The PHA/IHA must receive acknowledgement by the time and at the place specified for receipt of bids. Bids which fail to acknowledge the bidder's receipt of any amendment will result in the rejection of the bid if the amendment(s) contained information which substantively changed the PHA's/IHA's requirements.

(c) Amendments will be on file in the offices of the PHA/IHA and the Architect at least 7 days before bid opening.

4. Responsibility of Prospective Contractor

(a) The PHA/IHA will award contracts only to responsible prospective contractors who have the ability to perform successfully under the terms and conditions of the proposed contract. In determining the responsibility of a bidder, the PHA/IHA will consider such matters as the bidder's:

- (1) Integrity;
- (2) Compliance with public policy;
- (3) Record of past performance; and
- (4) Financial and technical resources (including construction and technical equipment).

(b) Before a bid is considered for award, the bidder may be requested by the PHA/IHA to submit a statement or other documentation regarding any of the items in paragraph (a) above. Failure by the bidder to provide such additional information shall render the bidder nonresponsible and ineligible for award.

5. Late Submissions, Modifications, and Withdrawal of Bids

(a) Any bid 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 PHA/IHA that the late receipt was due solely to mishandling by the PHA/IHA after receipt at the PHA/IHA; or

(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 observed holidays.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) of this provision.

(c) The only acceptable evidence to establish the date of mailing of a late bid, 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 bid, 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, bidders should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(d) The only acceptable evidence to establish the time of receipt at the PHA/IHA is the time/date stamp of PHA/IHA on the proposal wrapper or other documentary evidence of receipt maintained by the PHA/IHA.

(e) The only acceptable evidence to establish the date of mailing of a late bid, 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, bidders should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and Failure by a bidder to acknowledge receipt of the envelope or wrapper.

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

(g) Bids 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 the exact time set for opening of bids; provided that written confirmation of telegraphic or facsimile withdrawals over the signature of the bidder is mailed and postmarked prior to the specified bid opening time. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

6. Bid Opening

All bids received by the date and time of receipt specified in the solicitation will be publicly opened and read. The time and place of opening will be as specified in the solicitation. Bidders and other interested persons may be present.

7. Service of Protest

(a) Definitions. As used in this provision:

"Interested party" means an actual or prospective bidder whose direct economic interest would be affected by the award of the contract.

"Protest" means a written objection by an interested party to this solicitation or to a proposed or actual award of a contract pursuant to this solicitation.

(b) Protests shall be served on the Contracting Officer by obtaining written and dated acknowledgement from —

[Contracting Officer designate the official or location where a protest may be served on the Contracting Officer]

(c) All protests shall be resolved in accordance with the PHA's/IHA's protest policy and procedures, copies of which are maintained at the PHA/IHA.

8. Contract Award

(a) The PHA/IHA will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the PHA/IHA considering only price and any price-related factors specified in the solicitation.

(b) If the apparent low bid received in response to this solicitation exceeds the PHA's/IHA's available funding for the proposed contract work, the PHA/IHA may either accept separately priced items (see 8(e) below) or use the following procedure to determine contract award. The PHA/IHA shall apply in turn to each bid (proceeding in order from the apparent low bid to the high bid) each of the separately priced bid deductible items, if any, in their priority order set forth in this solicitation. If upon the application of the first deductible item to all initial bids, a new low bid is within the PHA's/IHA's available funding, then award shall be made to that bidder. If no bid is within the available funding amount, then the PHA/IHA shall apply the second deductible item. The PHA/IHA shall continue this process until an evaluated low bid, if any, is within the PHA's/IHA's available funding. If upon the application of all deductibles, no bid is within the PHA's/IHA's available funding, or if the solicitation does not request separately priced deductibles, the PHA/IHA shall follow its written policy and procedures in making any award under this solicitation.

(c) In the case of tie low bids, award shall be made in accordance with the PHA's/IHA's written policy and procedures.

(d) The PHA/IHA may reject any and all bids, accept other than the lowest bid (e.g., the apparent low bid is unreasonably low), and waive informalities or minor irregularities in bids received, in accordance with the PHA's/IHA's written policy and procedures.

(e) Unless precluded elsewhere in the solicitation, the PHA/IHA may accept any item or combination of items bid.

(f) The PHA/IHA may reject any bid as nonresponsive if it is materially unbalanced as to the prices for the various items of work to be performed. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(g) A written award shall be furnished to the successful bidder within the period for acceptance specified in the bid and shall result in a binding contract without further action by either party.

9. Bid Guarantee (applicable to construction and equipment contracts exceeding \$25,000)

All bids must be accompanied by a negotiable bid guarantee which shall not be less than five percent (5%) of the amount of the bid. The bid guarantee may be a certified check, bank draft, U.S. Government Bonds at par value, or a bid bond secured by a surety company acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. In the case where the work under the contract will be performed on an Indian reservation area, the bid guarantee may also be an irrevocable Letter of Credit (see provision 10, Assurance of Completion, below). Certified checks and bank drafts must be made payable to the order of the PHA/IHA. The bid guarantee shall insure the execution of the contract and the furnishing of a method of assurance of completion by the successful bidder as required by the solicitation. Failure to submit a bid guarantee with the bid shall result in the rejection of the bid. Bid guarantees submitted by unsuccessful bidders will be returned as soon as practicable after bid opening.

10. Assurance of Completion

(a) Unless otherwise provided in State law, the successful bidder shall furnish an assurance of completion prior to the execution of any contract under this solicitation. This assurance may be [Contracting Officer check applicable items] —

[] (1) a performance and payment bond in a penal sum of 100 percent of the contract price; or, as may be required or permitted by State law;

[] (2) separate performance and payment bonds, each for 50 percent or more of the contract price;

[] (3) a 20 percent cash escrow;

[] (4) a 25 percent irrevocable letter of credit; or,

[] (5) an irrevocable letter of credit for 10 percent of the total contract price with a monitoring and disbursements agreement with the IHA (applicable only to contracts awarded by an IHA under the Indian Housing Program).

(b) Bonds must be obtained from guarantee or surety companies acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. Individual sureties will not be considered. U.S. Treasury Circular Number 570, published annually in the Federal Register, lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies listed in this circular is mandatory. Copies of the circular may be downloaded on the U.S. Department of Treasury website <http://www.fms.treas.gov/c570/index.html>, or ordered for a minimum fee by contacting the Government Printing Office at (202) 512-2168.

(c) Each bond shall clearly state the rate of premium and the total amount of premium charged. The current power of attorney for the person who signs for the surety company must be attached to the bond. The effective date of the power of attorney shall not precede the date of the bond. The effective date of the bond shall be on or after the execution date of the contract.

(d) Failure by the successful bidder to obtain the required assurance of completion within the time specified, or within such extended period as the PHA/IHA may grant based upon reasons determined adequate by the PHA/IHA, shall render the bidder ineligible for award. The PHA/IHA may then either award the contract to the next lowest responsible bidder or solicit new bids. The PHA/IHA may retain the ineligible bidder's bid guarantee.

11. Preconstruction Conference (applicable to construction contracts)

After award of a contract under this solicitation and prior to the start of work, the successful bidder will be required to attend a preconstruction conference with representatives of the PHA/IHA and its architect/engineer, and other interested parties convened by the PHA/IHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract (e.g., Equal Employment Opportunity, Labor Standards). The PHA/IHA will provide the successful bidder with the date, time, and place of the conference.

12. Indian Preference Requirements (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

(a) HUD has determined that the contract awarded under this solicitation is subject to the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) requires that any contract or subcontract entered into for the benefit of Indians shall require that, to the greatest extent feasible

(1) Preferences and opportunities for training and employment (other than core crew positions; see paragraph (h) below) in connection with the administration of such contracts or subcontracts be given to qualified "Indians." The Act defines "Indians" to mean persons who are members of an Indian tribe and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and,

(2) Preference in the award of contracts or subcontracts in connection with the administration of contracts be given to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452). That Act defines "economic enterprise" to mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that the Indian ownership must constitute not less than 51 percent of the enterprise; "Indian organization" to mean the governing body of any Indian tribe or entity established or recognized by such governing body; "Indian" to mean any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act; and Indian "tribe" to mean any Indian tribe, band, group, pueblo, or community including Native villages and Native groups (including

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

(b) (1) The successful Contractor under this solicitation shall comply with the requirements of this provision in awarding all subcontracts under the contract and in providing training and employment opportunities.

(2) A finding by the IHA that the contractor, either (i) awarded a subcontract without using the procedure required by the IHA, (ii) falsely represented that subcontracts would be awarded to Indian enterprises or organizations; or, (iii) failed to comply with the contractor's employment and training preference bid statement shall be grounds for termination of the contract or for the assessment of penalties or other remedies.

(c) If specified elsewhere in this solicitation, the IHA may restrict the solicitation to qualified Indian-owned enterprises and Indian organizations. If two or more (or a greater number as specified elsewhere in the solicitation) qualified Indian-owned enterprises or organizations submit responsive bids, award shall be made to the qualified enterprise or organization with the lowest responsive bid. If fewer than the minimum required number of qualified Indian-owned enterprises or organizations submit responsive bids, the IHA shall reject all bids and readvertise the solicitation in accordance with paragraph (d) below.

(d) If the IHA prefers not to restrict the solicitation as described in paragraph (c) above, or if after having restricted a solicitation an insufficient number of qualified Indian enterprises or organizations submit bids, the IHA may advertise for bids from non-Indian as well as Indian-owned enterprises and Indian organizations. Award shall be made to the qualified Indian enterprise or organization with the lowest responsive bid if that bid is -

(1) Within the maximum HUD-approved budget amount established for the specific project or activity for which bids are being solicited; and

(2) No more than the percentage specified in 24 CFR 905.175(c) higher than the total bid price of the lowest responsive bid from any qualified bidder. If no responsive bid by a qualified Indian-owned economic enterprise or organization is within the stated range of the total bid price of the lowest responsive bid from any qualified enterprise, award shall be made to the bidder with the lowest bid.

(e) Bidders seeking to qualify for preference in contracting or subcontracting shall submit proof of Indian ownership with their bids. Proof of Indian ownership shall include but not be limited to:

(1) Certification by a tribe or other evidence that the bidder is an Indian. The IHA shall accept the certification of a tribe that an individual is a member.

(2) Evidence such as stock ownership, structure, management, control, financing and salary or profit sharing arrangements of the enterprise.

(f) (1) All bidders must submit with their bids a statement describing how they will provide Indian preference in the award of subcontracts. The specific requirements of that statement and the factors to be used by the IHA in determining the statement's adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement shall be rejected as nonresponsive. The IHA may require that comparable statements be provided by subcontractors to the successful Contractor, and may require the Contractor to reject any bid or proposal by a subcontractor that fails to include the statement.

(2) Bidders and prospective subcontractors shall submit a certification (supported by credible evidence) to the IHA in any instance where the bidder or subcontractor believes it is infeasible to provide Indian preference in subcontracting. The acceptance or rejection by the IHA of the certification shall be final. Rejection shall disqualify the bid from further consideration.

(g) All bidders must submit with their bids a statement detailing their employment and training opportunities and their plans to provide preference to Indians in implementing the contract; and the number or percentage of Indians anticipated to be employed and trained. Comparable statements from all proposed subcontractors must be submitted. The criteria to be used by the IHA in determining the statement(s)'s adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement(s), or that includes a statement that does not meet minimum standards required by the IHA shall be rejected as nonresponsive.

(h) Core crew employees. A core crew employee is an individual who is a bona fide employee of the contractor at the time the bid is submitted; or an individual who was not employed by the bidder at the time the bid was submitted, but who is regularly employed by the bidder in a supervisory or other key skilled position when work is available. Bidders shall submit with their bids a list of all core crew employees.

(i) Preference in contracting, subcontracting, employment, and training shall apply not only on-site, on the reservation, or within the IHA's jurisdiction, but also to contracts with firms that operate outside these areas (e.g., employment in modular or manufactured housing construction facilities).

(j) Bidders should contact the IHA to determine if any additional local preference requirements are applicable to this solicitation.

(k) The IHA [] does [] does not [Contracting Officer check applicable box] maintain lists of Indian-owned economic enterprises and Indian organizations by specialty (e.g., plumbing, electrical, foundations), which are available to bidders to assist them in meeting their responsibility to provide preference in connection with the administration of contracts and subcontracts.

Instructions to Offerors Non-Construction

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



- 03291 -

1. Preparation of Offers

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

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

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

2. Submission of Offers

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

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

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

3. Amendments to Solicitations

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

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

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

4. Explanation to Prospective Offerors

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

5. Responsibility of Prospective Contractor

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

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

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

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

6. Late Submissions, Modifications, and Withdrawal of Offers

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

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

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

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

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

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

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

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

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

7. Contract Award

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

(b) The HA may

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

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

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

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

8. Service of Protest

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

9. Offer Submission

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

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

[Describe bid or proposal preparation instructions here:]

Certifications and Representations of Offerors

Non-Construction Contract

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

This form includes clauses required by OMB's common rule on bidding/offering procedures, implemented by HUD in 24 CFR 85.36, and those requirements set forth in Executive Order 11625 for small, minority, women-owned businesses, and certifications for independent price determination, and conflict of interest. The form is required for nonconstruction contracts awarded by Housing Agencies (HAs). The form is used by bidders/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:

General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 12/31/2011)

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

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

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

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

1. Definitions

The following definitions are applicable to this contract:

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

2. Changes

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

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

3. Termination for Convenience and Default

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

4. Examination and Retention of Contractor's Records

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

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

5. Rights in Data (Ownership and Proprietary Interest)

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

6. Energy Efficiency

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

7. Disputes

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

8. Contract Termination; Debarment

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

9. Assignment of Contract

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

10. Certificate and Release

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

11. Organizational Conflicts of Interest

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

12. Inspection and Acceptance

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

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

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

13. Interest of Members of Congress

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

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

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

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

- (i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

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

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

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

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

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

(iii) Selling activities by independent sales representatives.

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

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

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

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

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

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

16. Equal Employment Opportunity

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

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

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

17. Dissemination or Disclosure of Information

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

18. Contractor's Status

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

19. Other Contractors

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

20. Liens

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

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

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

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

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

22. Procurement of Recovered Materials

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

General Conditions for Non-Construction Contracts

Section II – (With Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 12/31/2011)

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

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

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

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

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

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

2. Withholding of funds

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

3. Records

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

4. Apprentices and Trainees

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

Apprenticeship Training, Employer and Labor Services (OATELS), or with a state apprenticeship agency recognized by OATELS, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice;

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

5. Disputes concerning labor standards

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

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

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

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

6. Contract Work Hours and Safety Standards Act

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

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

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

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

7. Subcontracts

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

8. Non-Federal Prevailing Wage Rates

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



NON-COLLUSIVE AND NON-IDENTITY OF INTEREST AFFIDAVIT

STATE OF _____

COUNTY OF _____

_____ being first duly sworn, deposes and states she is a _____ at _____ is the Offeror 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 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, or to secure any advantage against the Sanford Housing Authority or any person interested in the proposed contract; and that all statements in said proposal or bid are true.

BY: _____
Name

TITLE: _____

DATE: _____

The foregoing instrument was acknowledged before me this ____ day of _____, 200__ by _____ who is personally known to me or who has produced _____ as identification.

Notary Public

My Commission Expires