



REQUEST FOR PROPOSALS (RFP)
for
Development Legal Services
DLS I

Cover Page

Please complete and return this form with your proposal.

Issue Date: May 2, 2024
Title: Development Legal Services
Period of Contract: Three years with two additional one-year option periods
Due Date: May 31, 2024
Delivery Address: Staunton Redevelopment and Housing Authority
900 Elizabeth Miller Gardens
Staunton, VA 24401

IN COMPLIANCE WITH THIS REQUEST FOR PROPOSALS AND TO ALL THE CONDITIONS IMPOSED HEREIN, THE UNDERSIGNED OFFERS AND AGREES TO FURNISH THE SERVICES IN ACCORDANCE WITH THE SIGNED PROPOSAL, OR AS MUTUALLY AGREED UPON THROUGH SUBSEQUENT NEGOTIATION, THE UNDERSIGNED FURTHER CERTIFIES THAT HE/SHE IS AUTHORIZED TO SIGN THIS DOCUMENT ON BEHALF OF THE SUBMITTING FIRM.

Name of Firm: _____

Address: _____

City, State, Zip: _____

Telephone Number: _____ Fax Number: _____

Signature of Person Submitting Proposal: _____

Printed or Typed Name: _____

Title: _____

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INFORMATION FURNISHED BY REQUESTER

A. Submission of Proposals

1. Requester of Proposals and Recipient Organization

Staunton Redevelopment and Housing Authority
900 Elizabeth Miller Gardens
Staunton, VA 24401

2. Contract Administrator

Mr. Nehemias Velez
Executive Director
Staunton Redevelopment and Housing Authority
900 Elizabeth Miller Gardens
Staunton, VA 24401
(540) 886-3413

3. Closing Date and Delivery Address

An original and three (3) copies of the proposal are to be delivered to the requester at the following address on or before 5:00 P.M. EDT on May 31, 2024.

Staunton Redevelopment and Housing Authority Attn:
Nehemias Velez
900 Elizabeth Miller Gardens
Staunton, VA 24401

Late proposals will not be considered.

Comments on specifications or other provisions in this Request for Proposals may be submitted in writing by fax to (540) 885-5414, or e-mail at nvelez@stauntonrha.org before 5:00 PM EDT on May 20th, 2024. Answers will be mailed, faxed, or emailed on a case-by-case basis within one (1) business day.

During the period of advertisement for this RFP, Staunton Redevelopment and Housing Authority (hereafter "SRHA" or "the Authority") may wish to amend, add to, or delete from, the contents of this RFP. In such situations, SRHA will issue an addendum to the RFP setting forth the nature of the modification(s). SRHA will mail and/or email the addendum to all entities receiving a copy of this RFP.

The cost proposal shall be delivered in a separate sealed envelope clearly marked in the lower left corner with the following:

Request for Proposal Closing Date and Time _____
Proposal for Development Legal Services
Authorized Contact Person: _____
Telephone Number of Contact Person: _____

Note: See HUD Form 5369-B Instructions to Offerors.

B. Introduction/Background Information

The SRHA is a political subdivision of the Commonwealth of Virginia, created following Title 36 of the Code of Virginia. The SRHA was organized on March 9th, 1961, and it has been in continual operation since that date. The SRHA provides affordable housing and related services to eligible low-income families within the City of Staunton and Augusta County, Virginia. The Authority is headed by the Executive Director and is governed by a seven-person Board of Commissioners appointed by City Council. The SRHA is subject to requirements of the Department of Housing and Urban Development (hereinafter “HUD”), Title 243 of the Code of Federal Regulations (hereinafter “CFR”), the Commonwealth of Virginia Public Procurement Act, SRHA’s procurement policy, and various other rules and regulations.

The Staunton Redevelopment and Housing Authority administers three separate Housing and Urban Development (HUD) income-based housing programs: the Housing Choice Voucher program, the Project Based Voucher program, and the Multifamily Apartments program. Under the Multifamily Apartments program, SRHA owns and operates two separate properties, Elizabeth Miller Gardens and Farrier Court. The SRHA also administers approximately 248 Housing Choice Vouchers throughout the City of Staunton and Augusta County. The Authority currently has 9 employees.

Site Name	Number of Units	Status
Elizabeth Miller Gardens	88	Family
Farrier Court	62	Family

SRHA is currently designated by the U.S. Department of Housing and Urban Development (HUD) as a ‘High Performer’ agency.

C. Nature of Services Required

1. Purpose of Request

SRHA hereby requests proposals from qualified firms to provide development legal services, including but not limited to development, demolition, renovations, and rehabilitations.

2. Term of Contract

The term of the contract shall be three years from the date of the contract with an option of up to two (2) additional 1-year option periods, at the Authority's discretion. The maximum contract term, including option periods, will not exceed five (5) years. Prices and terms shall remain the same as the original contract unless both parties mutually agree to the changes. SRHA reserves the right to negotiate price adjustments in future years based on economic conditions.

3. Scope of Services

The Authority seeks to retain legal services and representation in connection with its development projects. The SRHA may retain any Offeror to provide other services that the Offeror has shown an ability to provide. The scope of services may include, but is not limited to:

- i. LIHTC Syndication and Closing:
 - Review existing tax credit and syndication documents including, but not limited to, Land Use Restriction Agreement, Tax Credit Reservation, Guaranty Agreement, Right of First Refusal;
 - Prepare organizational documents for the Authority and/or review existing documents. Documents include Partnership Agreement, Certifications of Good Standing, Articles of Incorporation, and By-Laws. Review general partner documents;
 - Note: LLPs should be created prior to submission of LIHTC application.
 - Review and advise on negotiation agreements with funding agents, including, but not limited to equity investors, bond underwriters, VHDA and HUD;
 - Provide loan review and negotiation with funders on construction and/or permanent financing documents. Review construction loan financing documents such as Commitment Letter, Certificate of Occupancy, Architect's Certification, and IRS Form 8609;
 - Advise on property decisions, title work and related real estate services. Prepare and/or review related documents such as appraisal, survey, title insurance, deed, easements; and
 - Coordinate closing and prepare/review closing documents such as the Tax Opinion, Authority Opinion, Zoning Opinion and Post Construction.
- ii. Rental Assistance Demonstration Program (RAD):
 - Review and advise on RAD submittals to HUD including Use Agreement, Conversion Commitment, and Project Based Voucher Housing Assistance Payment Contracts;
 - Review and advise on RAD guarantees and indemnifications for equity and third-party loan documents;
 - Negotiate with lenders and HUD counsel concerning regulatory

- compliance matters;
 - Coordinate closing and documents for coordination between RAD and LIHTC programs.
- iii. Section 18 Demolition/Disposition:
- Review and advise on submittals to HUD including Use Agreement, Conversion Commitment, and Project Based Voucher Housing Assistance Payment Contracts;
 - Review and advise on guarantees and indemnifications for equity and third-party loan documents;
 - Negotiate with lenders and HUD counsel concerning regulatory compliance matters;
 - Coordinate closing and documents for coordination between RAD and LIHTC programs.
- iv. Consult in other Development related activities as needed.

D. Economic Opportunities

SRHA has an agency goal to take affirmative steps to ensure that qualified minority-owned, women-owned, public housing resident-owned, and small business enterprises (collectively, Disadvantaged Business Enterprises, or “DBEs”) are used when possible. It is the policy of SRHA to encourage and promote economic opportunity by encouraging participation by DBEs in SRHA contracts through subcontracting, joint ventures, or other contracting methods.

E. Contractual Arrangement

SRHA shall prepare a comprehensive written legal services contract after selection and negotiation with the Contractor. The contract shall include the provisions required by HUD and/or Virginia law or regulations. In addition to the terms and conditions outlined in the body of this Request for Proposals, additional sample contract terms and conditions are contained in forms which are accessible through the HUD website.

F. Equal Employment Opportunity

SRHA is committed to equal employment opportunity and affirmative action. It is the goal of SRHA to increase employment of minorities, low-income persons and public housing residents in professional firms. The Employment Profile form attached in Exhibit E must be submitted for the principal office that will be performing the legal consulting services as well as for any other firm the offeror proposes to use.

G. Right to Reject Proposals

The SRHA does not discriminate based on race, sex, age, color, national origin, religion, or disability in its employment opportunities, programs, services, or activities. SRHA reserves the right to reject any and all proposals submitted, and to request additional

information from all offerors. SRHA may disqualify any proposals in accordance with its Procurement Policy. SRHA reserves the right to waive any informalities associated with this proposal. SRHA also reserves the right to reject the proposal of any offeror who has previously failed to perform properly or to complete on time a contract of similar nature; who is not in a position to perform the contract; who habitually and without just cause neglected the payment of bills or otherwise disregarded its obligations to subcontractors, providers of materials, or employees; or who makes a misrepresentation in their response to this request.

H. Indemnification

The selected offeror will be required to protect, defend, indemnify, keep, save, and hold SRHA, its officers, officials, Commissioners, employees and agents free and harmless from and against any and all liabilities, losses, penalties, damages, settlements, environmental liability, costs, charges, professional fees or other expenses or liabilities of every kind, nature and character arising out of or relating to any and all claims, liens, demands, obligations, actions, suits, judgments or settlements, proceedings or causes of action of every kind, nature and character (collectively, "claims") in connection with or arising directly or indirectly out of the acts or omissions and/or the performance thereof by the selected offeror, its officers, officials, agents, employees, and subcontractors, including, but not limited to, the enforcement of the indemnification provision. The selected offeror will be further required to investigate, handle, respond to, provide defense for and defend all suits for any and all claims, at its sole expense and agrees to bear all other costs and expenses related thereto, even if the claims are considered groundless, false or fraudulent.

SRHA will have the right, at its option and at its expense, to participate in the defense of any suit, without relieving the selected offeror of any of its obligations under this indemnity provision. The indemnities to be set forth in the contract resulting from this RFP will survive the expiration or termination of that contract.

INFORMATION TO BE FURNISHED BY OFFEROR

Proposals should be organized in the following manner:

A. Title Page

Show the RFP subject, the name of the offeror, address, telephone number, name of the contact person, and the date.

B. Table of Contents

Include a clear identification of the material by section and by page number.

C. Proposal Letter from Offeror

Limit to 10 pages, if possible (not including résumés).

1. Work to be Done

SRHA is soliciting competitive bids from qualified firms and individuals with a documented track record in providing the required services for public housing authorities. Bids should demonstrate the offeror's capacity and readiness to perform the Scope of Services immediately upon execution of a contract with SRHA. The bid should include evidence of the offeror's previous experience, capabilities, and qualifications relative to the provision of such services.

2. Authorized Representatives

State the names of the person(s) who will be authorized to make representations for the offeror, their titles, addresses, telephone numbers and email addresses.

3. Primary Contact and Assigned Personnel

Give the name of the offeror and firm, address and phone number, and the name and title of the one individual who would be responsible for this engagement. Identify the individuals who would perform the work in this engagement and describe how their responsibilities will be assigned and managed. Please provide resumes for each person, including background and experience relevant to this engagement, and each person's capacity to provide advice as needed if the primary contact for the engagement is not available.

4. Range of Professional Activities

Provide a qualification profile of the team that will be allocated to SRHA. You may include the firm's principals, but the evaluation will be based on the technical competence and experience of those who will be assigned to perform the work. You may also include location of facilities or offices, number of years

in business and number of employees.

5. Participation by Other Firms

If applicable, state the name, address and a brief statement of the qualifications and experience of any firm(s) that have agreed to assist the offeror in providing any of the services listed in this RFP's Scope of Services, along with the percentage of participation and a description of the relationship of the offeror to such firm(s) (e.g., joint venture, subcontract).

6. Economic Opportunities

Please address the actions that the offeror will take if awarded the contract to assist and support SRHA in achieving its economic opportunity goals, including, without limitation, outlining any proposed participation opportunities by DBEs. The offeror's commitment with respect to DBE participation will be considered as a factor when determining who will be awarded the contract.

7. Equal Employment Opportunity

Each offeror should indicate in its proposal whether it anticipates having to hire additional employees to perform the legal services work and, if so, the actions that the offeror will take to assist and support SRHA in achieving its equal employment opportunity goals.

The Employment Profile form attached in Exhibit E must be submitted for the principal office that will be performing the legal services as well as for any other firm(s) the offeror proposes to use.

8. References

Provide a minimum of three (3) references where the offeror has performed similar legal services within the past 5 years. Include the name, address, telephone number and email address of a contact person for each reference as well as a brief description of the services performed.

9. Insurance

Prior to commencement of the contract resulting from this RFP, the selected respondent shall procure and maintain at all times and at offeror's own expense Professional Liability insurance covering acts, errors, or omissions and shall be maintained with limits of not less than \$1,000,000.00 per occurrence. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of services under the contract. The insurance carriers used by the respondent must be authorized to do business in the State of Virginia and the insurance provided will cover all operations under the contract, whether performed by the offeror or by subcontractors.

10. Other Forms

The following forms and certifications must be completed and submitted with the proposal:

- HUD Form 5370-C General Contract Conditions – Non-Construction (Exhibit A)
- Non-Collusive Affidavit (Exhibit C)
- Certification Regarding Debarment Suspension (Exhibit D)
- Employment Profile (Exhibit E)
- Evidence of Insurance

11. RFP Cover Page

The cover page of this RFP must be completed and submitted with the proposal.

12. Certification

Submit a statement that the offeror is not currently nor has previously been debarred, suspended, or otherwise prohibited from providing professional services by any federal, state or local government or agency.

13. Rules, Regulations, and Licensing Requirements

The selected respondent shall possess all of the required State and Local licenses and certifications required to perform work of the type required by this contract in the City of Staunton, VA. In addition, the selected respondent shall comply with all laws, ordinances, and regulations applicable to the services contemplated herein. Respondents are presumed to be familiar with all federal, state, and local laws, ordinances, codes, rules, and regulations that may in any way affect the delivery of services.

D. Cost Proposal

In a **SEPARATE SEALED ENVELOPE MARKED ON THE OUTSIDE “COST PROPOSAL,”** please list the following:

- Normal hourly billing rates for offeror and any persons identified in Section III C. of this RFP who will bill on an hourly basis, and any offered discounts in hourly billing rates. Billing arrangements not tied to hourly rates are encouraged.
- Information on how you propose to keep track of, and charge for, any expenses.
 - No fees or expenses will be paid for travel time or mileage, except in cases when the attorney’s travel exceeds 50 miles round-trip. Offerors should take this into account in their proposal.
- Any assumptions on which your fees are based, and any factors that you believe would justify an increase in the fees.
- Frequency of billing.

EVALUATION OF PROPOSALS

A. Evaluation Criteria

All proposals received by the deadline set forth in this RFP shall be evaluated by a review committee (the "Review Committee") consisting of members of SRHA's staff and other SRHA designees. Each Cost Proposal will be separately evaluated by the Chairperson of the Review Committee. The Review Committee shall examine each proposal for compliance with the requirements of this RFP. In addition, the following criteria shall be applied by the Review Committee when reviewing proposals:

1. The offeror's capacity to perform work to be done (25%)
2. The offeror's capability and experience in providing the services requested by SRHA as demonstrated in its written proposal (40%)
3. The relevance and strength of the references submitted with the proposal (20%)
4. Cost (10%)
5. Demonstrated commitment of the offeror to furthering SRHA's stated economic opportunity and equal employment opportunity goals (5%)

B. Selection

1. The Chairperson of the Review Committee will establish a competitive range for all submitted proposals based on the Review Committee's evaluation of each proposal and the Chairperson's independent review of the Cost Proposal. Offerors whose proposals are deemed to be unacceptable shall receive written notice of such determination.
2. One or more interviews, which may include telephone discussions, may be held with all offerors whose proposals fall within the competitive range. If only one offeror is determined to have submitted an acceptable proposal, the contract may be negotiated and awarded to that offeror. Each firm may ask specific questions about the requested services and will have an opportunity to elaborate on its qualifications and experience. During the interview, each candidate will be expected to discuss their proposed method of undertaking the work and to make recommendations regarding the scope and content of the services to be provided.
3. At the close of the interview(s), the Chairperson of the Review Committee will establish a common date and time for submission of best and final offers. Offerors are hereby informed that if they do not submit a notice of withdrawal or best and final offer, their immediate previous offer shall be construed as their best and final offer.

C. Contract Terms

Following the completion of the interviews and receipt of the best and final offers, a contract will be offered to the firm with the most advantageous proposal, considering all factors.

The term of the contract shall be for two years with an option of up to three (3) annual renewals. Prices and terms shall remain the same as the original contract, unless both parties mutually agree to the changes. SRHA reserves the right to negotiate price adjustments in future years based on economic conditions.

The respondent may not transfer or assign any portion of the contract without prior written approval from SRHA.

SRHA may cancel this RFP at any time prior to award and for any reason it deems sufficient. SRHA is not required to explain why a particular proposal was not selected. SRHA reserves the right to make multiple awards as a result of this solicitation.

EXHIBITS

- A. Non-Collusive Affidavit
- B. Certification Regarding Debarment Suspension
- C. Employment Profile
- D. Section 3 Clause
- E. HUD Form 5370-C General Contract Conditions – Non-Construction
- F. HUD Form 5369-B Instructions to Offerors Non-Construction

EXHIBIT C

NON-COLLUSIVE AFFIDAVIT

State of _____, County/City of _____

(Printed Name of Principal) _____, being first duly sworn, deposes and says that they are the (Printed Title of Principal) _____ of the party making a certain bid proposal dated _____ to the Staunton Redevelopment and Housing Authority (SRHA) for contract work located in Staunton, Virginia; that such 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 bidder, or to fix any overhead, profit, or other cost element of said bid price, or of that of any other bidder, or to secure any advantage against the SRHA or any person interested in the proposed CONTRACT; and that all statements in said bid proposal are true.

Bidder's Name: _____
(If Applicable)

Partner's Name: _____
(If Applicable)

Address: _____

Address: _____

City: _____

City: _____

Signature of Principal

Signature of Principal

CORPORATE SEAL:
(If applicable)

Subscribed and sworn before me this _____ day of _____, _____.

Notary Public: _____

Notary Signature: _____

My commission expires: _____

NOTARY SEAL:

EXHIBIT D

CERTIFICATION REGARDING DEBARMENT

This form is to certify that this person, firm, or corporation has not been barred from bidding or participating in contracts funded by any agency of the Commonwealth of Virginia or the United States government, nor is this person, firm, or corporation a part of any firm or corporation that has been barred from bidding on contracts funded by any agency of The Commonwealth of Virginia or the United States Government.

Respectfully Submitted (Date): _____

Bidder (Company Name): _____

Submitted By: (Print Name): _____

Title: _____

Address: _____

Telephone #: _____

Attested/ Signed By: _____

Virginia Contractor License No. : _____

Virginia Business License No. : _____

EXHIBIT E

EMPLOYMENT PROFILE

Name of Firm: _____

Please list the number of full-time employees at your firm who fall into the following categories. See below for definitions of each category.

Number of Minority (African American) _____

Number of Minority (Other) _____

Number of Caucasian _____

Number of Males _____

Number of Females _____

Number with disability _____

Definitions

- Full-time: All officers, partners, associates, professionals, and employees who are engaged in the activities of the company/firm on a full-time basis, or are considered by the company/firm to be in a full-time status.
- Minority (African American): All persons having origin in any of the black racial groups of Africa.
- Minority (Other): All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race; all persons having origins in any of the original peoples of Southeast Asia, the Indian Subcontinent, or the Pacific Islands (includes, for example, China, Japan, Korea, the Philippine Islands and Samoa); all persons having origin in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.
- Caucasian: All persons having origin in any of the original peoples of Europe, North Africa, or the Middle East.
- Disability: All persons who has a physical or mental impairment that substantially limits one or more of their major life activities.

EXHIBIT F

CONTRACT LANGUAGE SECTION 3 CLAUSE

24 CFR PART 135.20 (b)

Every Contractor and Subcontractor shall incorporate, or cause to be incorporated, in all contracts for work on conjunction with Section 3 covered projects, the following 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 impediment that would prevent them from complying with the Part 135 regulations.
- c. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- d. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- e. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- f. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

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

General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

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

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

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

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

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.

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:]