

REQUEST FOR PROPOSAL (RFP) 23-R004, GEOTECHNICAL CONSTRUCTION TESTING & REPORTING SERVICES

FORM OF Proposal
(RFP Attachment A)

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

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

Signature

Date

Printed Name

Company

LUCAS METROPOLITAN HOUSING (LMH)

REQUEST FOR PROPOSAL (RFP) 23-R004, GEOTECHNICAL CONSTRUCTION TESTING AND REPORTING SERVICES

PROFILE OF FIRM FORM ATTACHMENT B
--

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

(2) Name of Firm:

Telephone:

Fax:

Email:

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

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

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

[Table No. 1]

(1) Name	(2) Title	(3) % of Ownership

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

[Table No. 2]

(1) Name	(2) Title

Signature Date Printed Name Company

REQUEST FOR PROPOSAL (RFP) 23-R004, GEOTECHNICAL CONSTRUCTION TESTING AND REPORTING SERVICES

PROFILE OF FIRM FORM ATTACHMENT B
--

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

- | | | | |
|---|---|---|---|
| <input type="checkbox"/> Caucasian American (Male)
_____% | <input type="checkbox"/> Public-Held Corporation
_____% | <input type="checkbox"/> Government Agency
_____% | <input type="checkbox"/> Non-Profit Organization
_____% |
|---|---|---|---|

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

- | | | | | | | |
|---|---|--|---|--|---|---|
| <input type="checkbox"/> Resident-Owned*
_____% | <input type="checkbox"/> African American
_____% | <input type="checkbox"/> Native American
_____% | <input type="checkbox"/> Hispanic American
_____% | <input type="checkbox"/> Asian/Pacific American
_____% | <input type="checkbox"/> Hasidic Jew
_____% | <input type="checkbox"/> Asian/Indian American
_____% |
| <input type="checkbox"/> Woman-Owned (MBE)
_____% | <input type="checkbox"/> Woman-Owned (Caucasian)
_____% | <input type="checkbox"/> Disabled Veteran
_____% | <input type="checkbox"/> Other (Specify):
_____% | | | |

WMBE Certification Number:
Certified by (What Agency):
(NOTE: A CERTIFICATION/NUMBER IS NOT REQUIRED TO BID - ENTER IF AVAILABLE)

- (8) Federal Tax ID No.:**
- (9) Local Business License No. (if applicable):**
- (10) State of Ohio License Type and No. (if applicable):**
- (11) Federal License Type and No. (if applicable):**
- (12) Worker’s Compensation Insurance Carrier:**
Policy No.:
Expiration Date:
- (13) General Liability Insurance Carrier:**
Policy No.
Expiration Date:
- (14) Automobile Liability Insurance Carrier:**
Policy No.
Expiration Date:

Signature	Date	Printed Name	Company
-----------	------	--------------	---------

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

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

Representations, Certifications, and Other Statements of Bidders

Public and Indian Housing Programs

Table of Contents

Clause	Page
1. Certificate of Independent Price Determination	1
2. Contingent Fee Representation and Agreement	1
3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions	1
4. Organizational Conflicts of Interest Certification	2
5. Bidder's Certification of Eligibility	2
6. Minimum Bid Acceptance Period	2
7. Small, Minority, Women-Owned Business Concern Representation	2
8. Indian-Owned Economic Enterprise and Indian Organization Representation	2
9. Certification of Eligibility Under the Davis-Bacon Act	3
10. Certification of Nonsegregated Facilities	3
11. Clean Air and Water Certification	3
12. Previous Participation Certificate	3
13. Bidder's Signature	3

1. Certificate of Independent Price Determination

(a) The bidder certifies that--

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

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

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

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

(1) Is the person in the bidder's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

_____ [insert full name of person(s) in the bidder's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

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

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

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

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

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

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

2. Contingent Fee Representation and Agreement

(a) Definitions. As used in this provision:

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

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

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

(1) [] has, [] has not employed or retained any person or company to solicit or obtain this contract; and

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

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

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

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

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

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

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a contract resulting from this solicitation;

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

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

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

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

4. Organizational Conflicts of Interest Certification

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

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

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

5. Bidder's Certification of Eligibility

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

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

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

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

6. Minimum Bid Acceptance Period

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

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

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

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

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

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

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

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

(a) [] is, [] is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) [] is, [] is not a women-owned business enterprise. "Women-owned business enterprise," as used in this provision, means a business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

(c) [] is, [] is not a minority business enterprise. "Minority business enterprise," as used in this provision, means a business which is at least 51 percent owned or controlled by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are:

(Check the block applicable to you)

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

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

The bidder represents and certifies that it:

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

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

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

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

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

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

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

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

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

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

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

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

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

Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities

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

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

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

The bidder certifies that:

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

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

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

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

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

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

13. Bidder's Signature

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

(Signature and Date)

(Typed or Printed Name)

(Title)

(Company Name)

(Company Address)



SECTION 3 BUSINESS SELF-CERTIFICATION FORM

(In compliance with Section 3 of the HUD Act of 1968 Updated 24 CFR Part 75 - 11/30/2020)

The purpose of this form is to comply with Section 3 of the HUD Act of 1968 Business Certification requirements. To count as a Section 3 Business your company/firm must meet one of the listed categories below. Each category will require additional documentation to support the election. You must provide that supporting documentation with this form to be properly and completely confirmed as a Section 3 business. If this form is submitted without the required supplemental data, your certification will not be processed.

Section 3 Business Category	Additional Required Data	Mark an "X" on Your Election
It is at least 51 percent owned by low- or very low-income persons;	Proof of ownership showing all owners and their percentages and a completed Section 3 Individual Self-Certification form for all low- and very low-income owners	
Over 75 percent of the labor hours performed for the business are performed by low- or very low-income persons; or	Provide the last 90 days full payrolls for the entire company, make a list of the names from the payrolls of the Section 3 workers, and provide a completed Section 3 Individual Self-Certification for all low- and very low-income workers you list	
It is a business at least 51 percent owned by current public housing residents or residents who currently live in Section 8-assisted housing.	Proof of ownership showing all owners and their percentages and a Section 3 Individual Self-Certification form for all public housing and/or Section 8 owners	

I hereby certify to the US Department of Housing and Urban Development (HUD) that all of the information on this form is true and correct. I attest under penalty of perjury that my business meets the elected definition and understand proof of this information may be requested. If found to be inaccurate, I understand that I may be disqualified as a certified Section 3 business.

Signature:		Date Signed:
Print Name:	Title:	
Company Name:	Signers Email:	
Address		
Telephone Number		
Type of Business: (Check One): <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Other		



SECTION 3 INDIVIDUAL LOW-INCOME PERSON SELF-CERTIFICATION FORM

(In compliance with Section 3 of the HUD Act of 1968 Updated 24 CFR Part 7- 11/30/2020)

The purpose of this form is to comply with Section 3 of the HUD Act of 1968 self-certification income requirements. To count as a Section 3 individual, any legal resident of the United States annual income must not exceed the HUD income limits for the year before they were hired, or, the individuals current year income annualized for the year you are being confirmed as low-income.

Printed Name: _____

Street Address *(Not a PO Box)* Apt# City State Zip

Phone #: _____ Email: _____

To qualify as a Section 3 Person, you must meet one of the standards in the box on the left and your individual annual income must not exceed the number in the left box below.

<p>Check only one line below that describes your housing situation:</p> <p><input type="checkbox"/> I am a Public Housing Resident or Section 8 Assists me with my rent, or I am a current YouthBuild participant</p> <p><input type="checkbox"/> I receive No HUD support, but I am low-income and live in the Lucas County MSA</p>	<p>My Individual Income does not exceed: \$43,600.</p>
<p>The Toledo, OH MSA contains the following areas: Fulton County, OH; Lucas County, OH; Monroe County Michigan, Fulton County Michigan, and Wood County, OH (Except Bowling Green).</p>	

I hereby certify to the US Department of Housing and Urban Development (HUD) that all of the information on this form is true and correct. I attest under penalty of perjury that my total income is as shown above, and that proof of this information may be requested. If found to be inaccurate, I understand that I may be disqualified as an applicant and/or a certified Section 3 individual. Finally, I authorize including my name on a list of Section 3 Residents seeking employment and to include my contact information so that contractors may contact me directly for any employment opportunities.

Signature

Date



Lucas Metropolitan HOUSING SECTION 3 HOURS WORKED REPORTING FORM

(In compliance with Section 3 of the HUD Act of 1968 Updated 24 CFR Part 75 11/30/2020)

The purpose of this form is to comply with Section 3 of the HUD Act of 1968 tracking of hours worked by all person's employed by your company on the _____ contract including those meeting the Section 3 income requirements as low- or very low-income. To count as a Section 3 individual, any legal resident of the United States annual income must not exceed the HUD income limits for the year before they were hired, or, the individuals current year income annualized for the year you are confirming they are low-income. If your company employs any person, you believe is low income now or was when they were hired within the past five years, please have them complete the "SECTION 3 INDIVIDUAL LOW-INCOME PERSON SELF-CERTIFICATION FORM" and return it to the GC immediately. Please keep in mind the objective and the HUD benchmark requirements for this project are:

- 25% of the total labor hours worked by everyone employed under the project must be worked by Section 3 Workers (Defined as the low and very low-income people in your project service area)

And

- 5% of the total labor hours worked by everyone employed under the project must be worked by Targeted Section 3 Workers (Defined as Public Housing and Section 8 Assisted persons in your project service area)

Therefore, we are interested in identifying as many people Section 3 workers as possible that will allow us to count their hours toward the benchmarks. However, all hours worked by everyone on the project must be reported monthly to:

John Keegan
Section 3 Compliance Coordinator
jkeegan@lucasmha.org

Official Hours Worked for the Period of _____ 2022 - _____ 2022

Total Hours Worked by all Non-Section 3 staff _____

Total Hours Worked by All Section 3 staff Targeted and Non-Targeted _____

Please list the names and hours worked by each Section 3 Worker individually below or on a separate sheet.

First Name	Last Name	Total Hours This Period Only
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

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) 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.

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.

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.

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;

(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:]

REQUEST FOR PROPOSAL (RFP) 23-R004, GEOTECHNICAL CONSTRUCTION TESTING & REPORTING SERVICES

**Supplemental Instructions to Bidders & Contractors (SIBC)
Maintenance, with Construction option - (IFB Attachment F)**

Table of Contents

Section	Description	Page
1.0	General Conditions	2
1.1	Applicability	2
1.2	Definitions	2
2.0	Conditions to Bid	4
2.1	Pre-qualification of Bidders	4
2.2	IFB Forms, Document Specifications, and Drawings	4
2.3	Bid Preparation, Submission, and Receipt by the Agency	4
2.4	Exceptions to Specifications	6
2.5	Lump Sum Cost Breakdown (LSCB)	6
3.0	Bid Evaluation	7
3.1	Bid Opening Results	7
3.2	Award of Bid(s)	7
3.3	Rejection of Bids	8
3.4	Cancellation of Award	8
3.5	Mistake in Bid Submitted	8
3.6	Irregular Bid Submitted	8
3.7	Disqualification of Bidders	9
3.8	Burden of Proof	10
4.0	Right to Protest	10
4.1	Rights	10
4.2	Administrative Powers	10
4.3	Procedure to Protest	10
5.0	Disputed Billings (Charges)	12
5.1	Procedures	12
6.0	Additional Considerations	13
6.1	Right of Joinder or Piggyback	13
6.2	Non-escalation	13
6.3	Funding Restrictions and Order Quantities	13
6.4	Required Permits	14
6.5	Taxes	14
6.6	Government Standards	14
6.7	Freight on Bill and Delivery	14
6.8	Communication	14
6.9	Work on Agency Property	14
6.10	Estimated Quantities	15
6.11	Warranty	15
6.12	Official, Agent, and Employees of the Agency not Personally Liable	15
6.13	Subcontractors	15
6.14	Salaries and Expenses Relating to the Contractor's Employees	15
6.15	Attorney's Fees	15
6.16	Independent Contractor	16
6.17	Severability	16
6.18	Waiver of Breach	16
6.19	Time of the Essence	16
6.20	Limitation of Liability	16
6.21	Indemnity	16
6.22	Lobbying Certification	18
6.23	2 CFR §200.326, Appendix II, <i>Contract Provisions For Non-Federal Entity Contracts Under Federal Awards</i>	19
6.24	Additional Federally Required Orders/Directives	23

REQUEST FOR PROPOSAL (RFP) 23-R004, GEOTECHNICAL CONSTRUCTION TESTING & REPORTING SERVICES

Supplemental Instructions to Bidders & Contractors (SIBC)
Maintenance, with Construction option - (IFB Attachment F)

1.0 GENERAL CONDITIONS.

- 1.1 **Applicability.** If referred to within the text of such, this SIBC shall be applicable to all maintenance- and construction-related Invitation for Bids (IFB) solicitations that the Charleston County Housing & Redevelopment Authority (hereinafter, "the Agency") conducts and shall be applicable to any contract that the Agency awards to or signs with any firm, agency or individual pursuant to that IFB. A copy of this SIBC shall be made available to any actual or prospective bidder, or Contractor who does business with or intends to do business with the Agency.
- 1.1.1 **HUD Forms.** Unless otherwise specified within the IFB or contract documents, in the event that any provision in any document listed herein conflicts with any provision within this SIBC, the provision in the IFB or contract document shall govern. Further, in the case of any attached HUD forms, most specifically: HUD-5369-A (11/92); HUD-5369 (10/2002); HUD-5370 (1/2014), the information within such HUD form(s) shall govern over any other information issued, especially any information issued within any Agency-created forms that are issued as a part of this solicitation.
- 1.2 **Definitions** (pertaining to all IFB documents issued by the Agency pertaining to this IFB, including the attachments and the ensuing contract):
- 1.2.1 **"Agency"** is the Charleston County Housing & Redevelopment Authority. Unless otherwise defined herein or within the ensuing contract, whenever the term "the Agency" is used without clearly designating a responsible Agency staff person, the bidder(s) shall assume that responsibility for that item rests with the CO.
- 1.2.2 **"Bid"** and/or **"Bid Submittal"** is the "hard copy" document that the bidder is required to, as detailed within the IFB document, deliver to the Agency.
- 1.2.2 **"Contract"** refers to the fully executed written agreement that ensues from the IFB. Whereas all IFB documents are included, by reference, as a part of the ensuing contract, when "contract" is referred to within the IFB documents such is referring to both the IFB documents and the ensuing contract document.
- 1.2.3 **"Contracting Officer (CO)"** - When named within an IFB document shall refer to either the ED or the person he/she has delegated such responsibilities to.
- 1.2.4 **"Contractor"** and the term "successful bidder" may be used interchangeably.
- 1.2.5 **"Days"** unless otherwise directed, shall refer to calendar days.

REQUEST FOR PROPOSAL (RFP) 23-R004, GEOTECHNICAL CONSTRUCTION TESTING & REPORTING SERVICES

Supplemental Instructions to Bidders & Contractors (SIBC)
Maintenance, with Construction option - (IFB Attachment F)

- 1.2.6 "ED" is the Agency Executive Director.
- 1.2.7 "Herein" shall refer to all documents issued pursuant to the noted IFB, including the IFB documents and the attachments.
- 1.2.8 "HUD" is the United States Department of Housing and Urban Development. HUD is the Federal agency that the Agency receives some funding from; however, pertaining to this IFB, correspondences, including bid submittals, received from each bidder must exhaust all provisions contained herein prior to contacting HUD (i.e., in the case of a protest).
- 1.2.9 "IFB Document(s)" - Whether stated in the singular or the plural, such refers to the body of documents, including attachments and the information posted on the eProcurement Marketplace, that the Agency makes available to all prospective bidders wherein is detailed the Agency's requirements.
- 1.2.10 "Invitation for Bids" (IFB) is the competitive bid process allowed by HUD, especially as defined within Chapter 6 of HUD Procurement Handbook 7460.8 REV 2.
- 1.2.11 "Offer" is the bid submittal referred to within the following Section 1.2.14 that the bidder delivers to the Agency in response to the IFB.
- 1.2.12 "Offeror" or "Offerors" are the bidders.
- 1.2.13 "Parties" - When "the parties," "both parties" and/or "either party" is stated within the IFB documents or the contract, such refers to the Agency and the successful bidder(s).
- 1.2.14 "Protestant" is a prospective or actual bidder who feels that he/she has been treated inequitably by the Agency and wishes the Agency to correct the inequitable condition or situation. To be eligible to file a protest with the Agency pertaining to an IFB or contract, the protestant must have been involved in the IFB process in some manner as a prospective bidder (i.e., registered and received the IFB documents).
- 1.2.15 "Prospective Bidder" or "Bidder" - A prospective bidder is a firm or individual who has been notified of the IFB solicitation and/or who has requested and/or received the IFB documents and is considering responding with a bid; a bidder is a firm or individual who has submitted a bid in response to the IFB. All terms and conditions shall apply equally to all prospective and/or actual bidders, though prospective bidders may not, after the deadline set for receiving bids, receive further notices pertaining to that IFB—meaning, certain notices (such as the Notice of Results of Evaluation) are typically only delivered to actual bidders and not to all prospective bidders.

**REQUEST FOR PROPOSAL (RFP) 23-R004, GEOTECHNICAL CONSTRUCTION TESTING &
REPORTING SERVICES**

**Supplemental Instructions to Bidders & Contractors (SIBC)
Maintenance, with Construction option - (IFB Attachment F)**

1.2.16 “Solicitation” or “Competitive Solicitation” is the IFB process detailed herein.

2.0 CONDITIONS TO BID.

2.1 Pre-qualification of Bidders. Prospective bidders will not be required to pre-qualify in order to submit a bid. However, all bidders will be required to submit adequate information showing that the bidder is qualified to perform the required work (i.e., Profile of Firm Form and required resumes). Failure by the prospective bidder to provide the requested information may, at the Agency’s discretion, eliminate that bidder from consideration, provided that all bidders were required to submit the same information as a part of the IFB process (in the case of a successful bidder(s), these requirements shall also apply in the context of the successful bidder or bidders).

2.2 IFB Forms, Documents, Specifications, and Drawings.

2.2.1 It shall be each prospective bidder’s responsibility to, prior to submitting a bid in response to the IFB, examine carefully and as may be required, properly complete and submit all documents issued pursuant to this IFB.

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

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

2.3 Bid Preparation, Submission, and Receipt by the Agency.

2.3.1 **Required Forms.** All required forms furnished by the Agency as a part of the IFB document issued shall, as instructed, be fully completed, and submitted, by the bidder. Such forms may be completed in a legible hand-written fashion, by use of a typewriter, or may be downloaded and completed on a computer. If, during the download, a form becomes changed in any fashion, the bidder must “edit” the form back to its original

REQUEST FOR PROPOSAL (RFP) 23-R004, GEOTECHNICAL CONSTRUCTION TESTING & REPORTING SERVICES

Supplemental Instructions to Bidders & Contractors (SIBC)
Maintenance, with Construction option - (IFB Attachment F)

- form (for example, signature lines must appear on the page the line was originally intended to be on).
- 2.3.1 **Manner of Submission.** The bid submittal shall be submitted in the manner detailed within the IFB document. Failure to submit the bid in the manner specified may result in a premature opening of, post-opening of, or failure to open and consider that bid, and may, at the discretion of the CO, eliminate that bidder from consideration for award.
- 2.3.2 **Time for Receiving Bids.** Bids received prior to the time set as the deadline for the receipt by the Agency of the bid submittal shall be securely kept, unopened, by the Agency. The CO, whose duty it is to open such bids, will decide when the specified time has arrived. No bid received after the designated deadline shall be considered, except as detailed within Section No. 6 of form HUD-5369-B, *Instructions to Offerors Non-Construction (8/93)* (pertaining to non-construction-related issues), or Section No. 5 of form HUD-5369 (10/2002), *Late Submissions, Modifications and Withdrawal of Bids* (pertaining to construction-related issues), each form attached hereto.
- 2.3.3.1 Bidders are cautioned that any bid submittal that may be time-stamped as being received by the Agency after the exact time set as the deadline for the receiving of bids shall be returned unopened to the bidder. Any such bids inadvertently opened shall not be considered but shall be ruled to be invalid. No responsibility will attach to the Agency or any official or employee thereof, for the pre-opening of, or the failure to open a bid not properly addressed and identified.
- 2.3.4 **Public Opening of Bids.** Pursuant to the IFB process, bids shall be publicly opened at the day and time published in the IFB documents. At the bid opening, only the name of the company and the pertinent cost information will be read aloud (for instance, in the case of bids with multiple line items in a number that it is not realistic to read all item, only the actual or calculated total may be read. The full determination of responsiveness (i.e., minimum compliance with the requirements of the IFB) and responsibility will be conducted by an Agency official in private after the public bid opening. Persons other than Agency staff involved in this process are not allowed to be present during the responsive and responsibility evaluations, nor may they at inspect the bids until after award has been completed.
- 2.3.5 **Withdrawal of Bids.** Bids may be withdrawn as detailed within Section No. 6 of form HUD-5369-B, *Instructions to Offerors Non-Construction (8/93)* (pertaining to non-construction-related issues), or Section No. 5 of form HUD-5369 (10/2002), *Late Submissions, Modifications and Withdrawal of Bids* (pertaining to construction-related issues), each form attached hereto. Negligence on the part of the bidder in preparing his/her bid confers no right

REQUEST FOR PROPOSAL (RFP) 23-R004, GEOTECHNICAL CONSTRUCTION TESTING & REPORTING SERVICES

**Supplemental Instructions to Bidders & Contractors (SIBC)
Maintenance, with Construction option - (IFB Attachment F)**

of withdrawal or modification of his/her bid after such bid has been received and opened.

2.3.6 Conflicting Conditions. Any provisions detailed within any of the IFB documents which may be in conflict or inconsistent with any of the paragraphs in any of the other IFB documents, including attachments, shall be void to the extent of any such conflict or inconsistency. Further, as stated within Section 1.1.1 of this SIBC, unless otherwise specified within the IFB or contract documents, in the event that any provision in any document listed herein conflicts with any provision within this SIBC, the provision in the IFB or contract document shall govern.

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

2.4 Exceptions to Specifications.

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

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

REQUEST FOR PROPOSAL (RFP) 23-R004, GEOTECHNICAL CONSTRUCTION TESTING & REPORTING SERVICES

Supplemental Instructions to Bidders & Contractors (SIBC)
Maintenance, with Construction option - (IFB Attachment F)

2.5 Lump Sum Cost Breakdown (LSCB).

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

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

2.5.1.1.1 **Prior to award of Bids.** The Agency may request a LSCB for any or all items reflected within the IFB document as “lump sum” for the purpose of determining an unbalanced cost bid. The CO, using acceptable methods dictated by the industry, shall conduct the analysis.

2.5.1.1.2 **After Award.** The Agency may request a LSCB for any or all items reflected within the IFB document as “lump sum” for the purpose of making partial payments to the successful bidder.

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

3.0 BID EVALUATION.

3.1 **Bid Opening Results.** It is understood by all bidders/prospective bidders that the bids received will be publicly opened and read aloud and the results will immediately be a matter of public record; meaning, the Agency will record all bids on a bid tabulation form and make such tabulation available to any person upon request.

3.1.1 **Bid documents** submitted by the bidders shall not be a matter of public record until after award has been completed. The Agency shall, however, upon request, verify that the bid documents submitted are/were acceptable.

3.2 **Award of Bid(s).** The successful bidder shall be determined as the responsive and responsible bidder who submits the lowest actual or calculated cost as detailed with the IFB, as long as he/she is able to deliver the specified items in a timely manner and

REQUEST FOR PROPOSAL (RFP) 23-R004, GEOTECHNICAL CONSTRUCTION TESTING & REPORTING SERVICES

**Supplemental Instructions to Bidders & Contractors (SIBC)
Maintenance, with Construction option - (IFB Attachment F)**

it is, in the opinion of the Agency, to the best interests of the Agency to accept the bid. All bidders will be notified in a timely manner of the results of the evaluation after award has been completed.

3.3 Rejection of Bids.

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

3.3.2 Prospective bidders acknowledge by downloading and receiving the IFB documents and/or by submitting a bid that the submission of a bid to the Agency is not a right by which to be awarded that bid, but merely an offer by the prospective bidder to perform the requirements of the IFB documents in the event the Agency decides to consider an award to that bidder.

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

3.5 Mistake in Bid Submitted.

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

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

REQUEST FOR PROPOSAL (RFP) 23-R004, GEOTECHNICAL CONSTRUCTION TESTING & REPORTING SERVICES

Supplemental Instructions to Bidders & Contractors (SIBC)
Maintenance, with Construction option - (IFB Attachment F)

- 3.6 Irregular Bid Submittal.** A bid shall be considered irregular for any one of the following reasons, any one or more of which may, at the Agency 's discretion, be cause for rejection:
- 3.6.1** If the forms furnished by the Agency are not used or are altered or if the bid costs are not submitted as required and where provided (especially within the eProcurement Marketplace).
 - 3.6.2** If all requested completed attachments do not accompany the bid submitted.
 - 3.6.3** If there are unauthorized additions, conditional or alternate bids, or irregularities of any kind which may tend to make the bid incomplete, indefinite or ambiguous as to its meaning or give the bidder submitting the same a competitive advantage over other bidders.
 - 3.6.4** If the bidder adds any provisions reserving the right to accept or reject any award or to enter into a contract pursuant to an award.
 - 3.6.5** If the individual Pricing Items submitted by a specific bidder are unbalanced in the sense that the listed price of any cost item departs by more than 25% from the Agency's cost estimate for that item.
- 3.7 Disqualification of Bidders.** Any one or more of the following shall be considered as sufficient for the disqualification of a bidder and the rejection of his/her bid:
- 3.7.1** Evidence of collusion among prospective or actual bidders. Participants in such collusion will receive no recognition as bidders or bidders for any future work of the Agency until such participant shall have been reinstated as a qualified bidder or bidder. The names of all participants in such collusion shall be reported to HUD and any other inquiring governmental agency.
 - 3.7.2** More than one bid for the same work from an individual, firm, or corporation under the same or different name(s), unless such was specifically allowed by the Agency within the bid documents issued, including by addendum.
 - 3.7.3** Lack of competency, lack of experience and/or lack of adequate machinery, plant, and/or other resources.
 - 3.7.4** Documented unsatisfactory performance record as shown by past work for the Agency or with any other local, State, or Federal agency, judged from the standpoint of workmanship and progress.
 - 3.7.5** Incomplete work, which in the judgment of the Agency, might hinder or prevent prompt completion of additional work, if awarded.

REQUEST FOR PROPOSAL (RFP) 23-R004, GEOTECHNICAL CONSTRUCTION TESTING & REPORTING SERVICES

Supplemental Instructions to Bidders & Contractors (SIBC)
Maintenance, with Construction option - (IFB Attachment F)

- 3.7.6 Failure to pay or satisfactorily settle all bills due on former contracts still outstanding at the time of letting.
- 3.7.7 Failure to comply with any qualification requirement of the Agency.
- 3.7.8 Failure to list, if required, all subcontractors (if subcontractors are allowed by the Agency) who will be employed by the successful bidder(s) to complete the work of the bid contract.
- 3.7.9 As required by the IFB documents, failure of the successful bidder to be properly licensed by the State of South Carolina and/or to be insured by a general liability and/or worker's compensation policy.
- 3.7.10 Any legal reason to be determined, in good faith, to be in the best interests of the Agency.

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

4.0 **Right to Protest.**

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

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

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

REQUEST FOR PROPOSAL (RFP) 23-R004, GEOTECHNICAL CONSTRUCTION TESTING & REPORTING SERVICES

Supplemental Instructions to Bidders & Contractors (SIBC)
Maintenance, with Construction option - (IFB Attachment F)

- 4.3 **Procedure to Protest.** An alleged aggrieved protestant shall comply with the following protest procedures, and failure to comply in the manner prescribed shall automatically relieve the Agency from accepting or considering that protest:
- 4.3.1 The alleged aggrieved protestant must file, in writing, to the CO the exact reason for the protest, attaching any supportive data. The protestant must state within the written protest document specifically (not by inference) what action by the Agency or condition is being protested as inequitable, making, where appropriate specific reference to the IFB documents issued. The protest document must also state the corrective action requested. Failure by the alleged aggrieved protestant to fully submit such information shall relieve the Agency from any responsibility to consider the protest and take any corrective action.
- 4.3.2 The written instrument containing the reason for the protest must be received by the CO within 10 days after the occurrence of any of the following:
- 4.3.2.1 The deadline for receiving bids; or,
- 4.3.2.2 Receipt of notification of the results of the evaluation or the award; or
- 4.3.2.3 The alleged aggrieved protestant knows or should have known the facts.
- 4.3.3 In any case, protests shall be filed no more than 10 days after any of the above (unless the occurrence being protested occurred in its entirety after the bid deadline). Protests received after these dates shall not be considered.
- 4.3.4 The CO shall review the written protest and supportive data, if any. He/she shall, within 10 days after receipt of the written protest, issue a written opinion and decision. This document shall state the reasons for the action taken as well as inform the alleged aggrieved protestant of the right of further administrative review. A copy of this written opinion and decision shall be forwarded to the ED.
- 4.3.5 **Administrative Appeal.** If the alleged aggrieved protestant does not agree with the written opinion and decision issued by the CO, the alleged aggrieved protestant may, after receipt of the written opinion and decision issued by the CO request an administrative appeal hearing be granted. The following procedures must be complied with in the manner prescribed; failure by the alleged aggrieved protestant to comply shall automatically relieve the Agency from accepting or acting on that request for administrative hearing:

REQUEST FOR PROPOSAL (RFP) 23-R004, GEOTECHNICAL CONSTRUCTION TESTING & REPORTING SERVICES

Supplemental Instructions to Bidders & Contractors (SIBC)
Maintenance, with Construction option - (IFB Attachment F)

- 4.3.5.1 The alleged aggrieved protestant must file, in writing, his/her request for an administrative hearing, to the ED, within 5 days of receipt of the written opinion and decision and failure to do so within such 5 days shall relive the Agency of any responsibility to consider such request.
- 4.3.5.2 The request for an administrative appeal hearing must contain the specific reasons for the appeal and all supporting data for those reasons.
- 4.3.5.3 It shall be within the administrative powers of the ED to, after review of the request submitted, grant, or deny any request for administrative appeal.
- 4.3.5.4 If the ED, after complete review of the alleged aggrieved protestant's written request and supporting data, decides that the request does not merit further consideration, he/she shall render his/her decision in writing to the alleged aggrieved protestant. A decision rendered under this paragraph shall be made within 10 days after the receipt of the alleged aggrieved protestant's request for an administrative hearing. This decision shall be final without further administrative recourse.
- 4.3.5.5 If the ED, after review of the alleged aggrieved protestant's written request, decides that the request merits further consideration, he/she shall forward the protestant's written request, along with a cover letter explaining why it merits further consideration and with a recap of all bids submitted and a copy of the original written protest, to the Agency Legal Counsel for consideration. The Agency Legal Counsel shall issue to the alleged aggrieved protestant a decision, in writing, within 10 days of his/her receipt of such documents.
- 4.3.5.5 Such written decision delivered to the alleged aggrieved protestant shall exhaust the Agency internal protest and administrative appeal process available to the alleged aggrieved protestant.

5.0 Disputed Billings (Charges).

- 5.1 **Procedures.** In addition to the procedures detailed within Section No. 7 of Contract Appendix No. 1, form HUD-5370-C (01/2014), *General Conditions for non-Construction Contracts, Section I - (With or without Maintenance Work* (pertaining to Maintenance-related work), or Section No. 31 of Contract Appendix No. 3, form HUD-5370 (1/2014), *General Conditions for Construction Contracts - Public Housing Programs* (pertaining to construction-related issues), each form attached hereto, in the event that the

REQUEST FOR PROPOSAL (RFP) 23-R004, GEOTECHNICAL CONSTRUCTION TESTING & REPORTING SERVICES

**Supplemental Instructions to Bidders & Contractors (SIBC)
Maintenance, with Construction option - (IFB Attachment F)**

Agency disputes any portion of its billing(s), the Agency shall pay the undisputed portion of such billing and initiate the dispute-resolving procedures, as follows:

- 5.1.1 The Agency’s representative shall, within 10 days after the Agency’s receipt of such billing, formally notify the Contractor’s representative of all particulars pertaining to the dispute, and request that he/she investigate and respond to this issue.
- 5.1.2 If such dispute cannot be resolved by the Contractor’s response, within 10 days after such notification is given, the CO and the Contractor’s representative shall meet to discuss the matter and attempt to arrive at a resolution.
- 5.1.3 If the CO and the Contractor’s representative are unable to resolve the dispute through such discussion within 10 days, the Agency shall, within 10 days thereafter, either (herein, “appropriate” at the sole decision and discretion of the Agency):
 - 5.1.3.1 Pay the disputed charges and reserve the right to submit the matter to the appropriate District Court in the State of South Carolina; or,
 - 5.1.3.2 Not pay the disputed charge and submit the matter to the appropriate district court in the State of South Carolina; or,
 - 5.1.3.3 Not pay the disputed charge and allow the Contractor to submit the matter either to the appropriate District Court in the State of South Carolina.

6.0 Additional Considerations.

6.1 Right of Joinder.

- 6.1.1 Any political subdivision within the State of South Carolina may be granted the privilege of joining the awarded contract, only at the option of the successful bidder. If the successful bidder so grants such a privilege, the terms, and conditions, of the IFB documents, including the ensuing contract, may be passed on to the joining political subdivision by the successful bidder.
- 6.1.2 The successful bidder shall retain the unilateral right to allow or disallow any political subdivision the privilege of joining the awarded contract. In the event the successful bidder allows another political subdivision to join the Agency contract, it is expressly understood that the Agency shall in no way be liable for the joining political subdivision obligations to the successful bidder in any manner whatsoever.

REQUEST FOR PROPOSAL (RFP) 23-R004, GEOTECHNICAL CONSTRUCTION TESTING & REPORTING SERVICES

Supplemental Instructions to Bidders & Contractors (SIBC)
Maintenance, with Construction option - (IFB Attachment F)

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

REQUEST FOR PROPOSAL (RFP) 23-R004, GEOTECHNICAL CONSTRUCTION TESTING & REPORTING SERVICES

Supplemental Instructions to Bidders & Contractors (SIBC)
Maintenance, with Construction option - (IFB Attachment F)

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

REQUEST FOR PROPOSAL (RFP) 23-R004, GEOTECHNICAL CONSTRUCTION TESTING & REPORTING SERVICES

Supplemental Instructions to Bidders & Contractors (SIBC)
Maintenance, with Construction option - (IFB Attachment F)

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

REQUEST FOR PROPOSAL (RFP) 23-R004, GEOTECHNICAL CONSTRUCTION TESTING & REPORTING SERVICES

**Supplemental Instructions to Bidders & Contractors (SIBC)
Maintenance, with Construction option - (IFB Attachment F)**

against the Agency, its officers, employees, agents, consulting engineers or other retained consultants such as:

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

REQUEST FOR PROPOSAL (RFP) 23-R004, GEOTECHNICAL CONSTRUCTION TESTING & REPORTING SERVICES

Supplemental Instructions to Bidders & Contractors (SIBC)
Maintenance, with Construction option - (IFB Attachment F)

successful bidder has indemnified the Agency, its officers, employees, agents, consulting engineers and other retained consultants against, and if the successful bidder shall fail to do so, the Agency shall have the right, but not the obligation, to defend the same and to charge all direct and incidental costs of such defense to the successful bidder including attorney's fees and court costs; provided, however, that if the forum in which such claim suit or action is heard determines that the occurrence that gave rise to the same was caused, in whole or in part, by any party who is indemnified hereunder, the Agency shall reimburse the successful bidder for all, or the indemnified party's proportionate share, as the case may be, of the costs of such defense.

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

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

6.22 **Lobbying Certification.** By proposing to do business with the Agency or by doing business with the Agency, each bidder certifies the following:

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

6.22.2 If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

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

REQUEST FOR PROPOSAL (RFP) 23-R004, GEOTECHNICAL CONSTRUCTION TESTING & REPORTING SERVICES

Supplemental Instructions to Bidders & Contractors (SIBC)
Maintenance, with Construction option - (IFB Attachment F)

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

6.23 **2 CFR §200.326, Appendix II, *Contract Provisions For Non-Federal Entity Contracts Under Federal Awards*.** Pursuant to this CFR, as issued by the Office of the U.S. Secretary of HUD, the Agency, and the Contractor each agree to comply with the following provisions and agree that any contract that ensues as a result of this RFP will include the following clauses, whether actually inserted or by reference:

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

6.23.1.1 If the Contractor is in material breach of the contract, the Agency may promptly invoke the termination clause detailed within Section No. 3 of Contract Appendix No. 1, form HUD-5370-C (01/2014), *General Conditions for non-Construction Contracts, Section 1 - (With or without Maintenance Work)* (pertaining to Maintenance-related work), or Section No. 34 of Contract Appendix No. 3, form HUD-5370 (1/2014), *General Conditions for Construction Contracts - Public Housing Programs* (pertaining to construction-related issues), each form attached hereto, and terminate the contract for cause. Such termination must be delivered to the Contractor in writing and shall fully detail all pertinent issues pertaining to the cause of and justification for the termination.

REQUEST FOR PROPOSAL (RFP) 23-R004, GEOTECHNICAL CONSTRUCTION TESTING & REPORTING SERVICES

Supplemental Instructions to Bidders & Contractors (SIBC)
Maintenance, with Construction option - (IFB Attachment F)

- 6.23.1.2 Prior to termination, the Agency may choose to warn the Contractor, verbally or in writing, of any issue of non-compliant or unsatisfactory performance. Such written warning may include placing the Contractor on probation, thereby giving the Contractor a certain period of time to correct the deficiencies or potentially suffer termination. The Agency shall maintain in the contract file a written record of any such warning detailing all pertinent information. If the Contractor does not agree with such action, the Contractor shall have 10 days to dispute or protest, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with the Agency's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the Agency's alleged incorrect action(s).
- 6.23.1.3 After termination, if the Contractor does not agree with the Agency's justification for the termination, the Contractor shall have 10 days to dispute, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with the Agency's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the Agency's alleged incorrect action(s).
- 6.23.1.4 The response to any protest received shall be conducted in accordance with Section No. 4.0 of this document.
- 6.23.2 **Termination for Cause and Convenience.** For all contracts in excess of \$10,000, as detailed within Section No. 3 of Contract Appendix No. 1, form HUD-5370-C (01/2014), *General Conditions for non-Construction Contracts, Section I - (With or without Maintenance Work* (pertaining to Maintenance-related work), or Section No. 34 of Contract Appendix No. 3, form HUD-5370 (1/2014), *General Conditions for Construction Contracts - Public Housing Programs* (pertaining to construction-related issues), each form attached hereto. In addition to the immediate-foregoing, if the Agency terminates the Contractor for convenience, the Agency is obligated to, as detailed within Section 11.6.C.2 of HUD Procurement Handbook 7460.8 REV 2, negotiate with and pay to the Contractor a "reasonable allowance for profit" for the remainder of the contracted period.
- 6.23.3 **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive

REQUEST FOR PROPOSAL (RFP) 23-R004, GEOTECHNICAL CONSTRUCTION TESTING & REPORTING SERVICES

Supplemental Instructions to Bidders & Contractors (SIBC)
Maintenance, with Construction option - (IFB Attachment F)

Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

- 6.23.4 **Davis-Bacon Act, as amended (40 U.S.C.3141-3148).** When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C.3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors [are] required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors [are] required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- 6.23.5 **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases

REQUEST FOR PROPOSAL (RFP) 23-R004, GEOTECHNICAL CONSTRUCTION TESTING & REPORTING SERVICES

Supplemental Instructions to Bidders & Contractors (SIBC)
Maintenance, with Construction option - (IFB Attachment F)

of supplies or materials or articles ordinarily available on the open market, or *contracts for transportation or transmission of intelligence.*

- 6.23.7 **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- 6.23.8 **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended**—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C.1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 6.23.9 Mandatory standards and policies relating to **energy efficiency** which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- 6.23.10 **Debarment and Suspension (Executive Orders 12549 and 12689)**—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 6.23.11 **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)**—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with

REQUEST FOR PROPOSAL (RFP) 23-R004, GEOTECHNICAL CONSTRUCTION TESTING & REPORTING SERVICES

Supplemental Instructions to Bidders & Contractors (SIBC)
Maintenance, with Construction option - (IFB Attachment F)

obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

6.23.12 §200.322 Procurement of recovered materials. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only 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, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

6.24 Additional Federally Required Orders/Directives. Both parties agree that they will comply with the following laws and directives that the Agency has received from HUD and that these same clauses will be a part of any contract that ensues as a result of this IFB:

6.24.1 Executive Order 11061, as amended, which directs the Secretary of HUD to take all action which is necessary and appropriate to prevent discrimination by agencies that utilize federal funds.

6.24.2 Public Law 88-352, Title VI of the Civil Rights Act of 1964, which provides that no person in the United States shall, on the basis of race, color, national origin, or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives federal financial assistance. The Agency hereby extends this requirement to the Contractor and its private contractors. Specific prohibited discriminatory actions and corrective action are described in Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 19901 et. seq.).

6.24.3 Public Law 90-284, Title VIII of the Civil Rights Act of 1968, popularly known as the Fair Housing Act, which provides for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person because of race, color, religion, sex, or national origin. Pursuant to this statute, the Agency requires that the Contractor administer all programs and activities, which are related to housing and community development in such a manner as affirmatively to further fair housing.

REQUEST FOR PROPOSAL (RFP) 23-R004, GEOTECHNICAL CONSTRUCTION TESTING & REPORTING SERVICES

Supplemental Instructions to Bidders & Contractors (SIBC)
Maintenance, with Construction option - (IFB Attachment F)

- 6.24.4 The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age.
- 6.24.5 Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.).
- 6.24.6 HUD Information Bulletin 909-23 which is the following:
 - 6.24.6.1 Notice of Assistance Regarding Patent and Copyright Infringement;
 - 6.24.6.2 Clean Air and Water Certification; and
 - 6.24.6.3 Energy Policy and Conversation Act.
- 6.24.7 The mentioned herein of any statute or Executive Order is not intended as an indication that such statute or Executive Order is necessarily applicable not is the failure to mention any statute or Executive Order intended as an indication that such statute or Executive Order is not applicable. In this connection, therefore each provision of law and each clause, which is required by law to be inserted in this agreement, shall be deemed to have been inserted herein, and this agreement shall be read and enforced as though such provision or clause had been physically inserted herein. If, through mistake or otherwise, any such provision is not inserted or is inserted incorrectly, this agreement shall forthwith be physically amended to make such insertion or correction upon the application of either party.

**LUCAS METROPOLITAN HOUSING AUTHORITY
CONTRACT**

THIS CONTRACT (“Contract”) is made by and between ABC Contractor (“**Contractor**”), 1234 Main Street., Toledo, OH 43604, (419) 123-4567, (sContractor@gmail.com); and Lucas Metropolitan Housing Authority, (“LMH”), a body corporate and politic under Ohio law, whose principal office is located at 435 Nebraska Avenue, Toledo, Ohio, 43604.

NOW, THEREFORE, Contractor and LMH, for the consideration stated herein, mutually agree as follows:

ARTICLE I. Statement of Work.

ARTICLE II. Contract Price. This is an Indefinite Quantity Contract for consulting services. The contractor will invoice for work within 30 days of completion. The not to exceed amount of this contract shall be no more than Twenty Thousand and 00/100 dollars (\$20,000.00). The minimum amount of this contract shall be no less than Two Hundred and no/100 dollars (\$200.00). Any changes to this Contract shall be made pursuant to a modification, agreed to, and signed by both parties.

ARTICLE III. Invoice and Payment. Contractor agrees to invoice LMH every 30 days. LMH agrees to make payment within 30 days of receipt of invoices and any required documentation from Contractor. LMH reserves the right to withhold payment approval if the service is not performed to its satisfaction, including but not limited to, when the work is not completed to the extent that the invoice reflects or is not corrected on a timely basis. LMH also reserves the right to provide a notice of poor performance to the contractor and give the same an opportunity to cure defects in performance in a timely manner.

Contractor will submit invoice as follows:

Go to our website – www.lucasmha.org, select “*Business Partners*” at the top, *Doing Business with LMH*. The last menu item is Vendor Invoice Submission, click on ‘Vendor Invoice Submission Portal’, and fill out the cover sheet. Attach your invoice to the cover sheet. Make sure that you have a purchase order number. Direct the invoice to the department / AMP and the person who ordered the work.

ARTICLE IV. Contract Documents. The following documents are incorporated herein by reference: a. this Instrument; b. the Contractor’s Submission; c. the Request for Quotations; and d. HUD 5370 C-1 (General Conditions for Non-Construction Contracts), which are included into this agreement by reference.

If there is a conflict between this Contract and the terms contained in an Exhibit, the terms of this Contract are controlling and binding on the parties.

ARTICLE V. Insurance and Indemnification. Contractor, and those acting through it or on its behalf, including but not limited to all subcontractors (collectively referred to as “Contractor”), agrees to name LMH as an additional insured on its general liability policy, and any other insurance policy as determined by LMH that is relevant to the contract scope of work. These policies shall also be primary to and non-contributory to LMH’s General Liability policy. Contractor agrees to indemnify LMH, to the fullest extent provided by law, for any and all claims arising out of the Contractor’s negligence in performance of this contract. Contractor agrees to provide proof of General Liability insurance coverage with combined single limit for bodily injury and property damage not less than \$1million per occurrence. Contractor also agrees to provide proof of Automobile insurance of owned and non-owned vehicles used on the sites or in connection therewith for combined single limit for bodily injury and property damage not less than \$500,000 per

Contract No: 21-MAXXX
Resolution No.:

occurrence. LMH reserves the right to request a copy of the applicable insurance policy or policies, with endorsements, from the contractor. Contractor must maintain the same insurance coverage set forth above during the entire length of the contract.

ARTICLE VI. Section 3 Compliance. Contractor and LMH further expressly affirm their commitment to Section 3 compliance and Contractor expressly agrees to cooperate with any and all efforts by LMH to verify and confirm such compliance. In addition to the regulations regarding Section 3 in 24CFR Part 75, the parties to this contract agree to comply with the requirements of LMH's Section 3 policy, when applicable.

ARTICLE VII. MBE/WBE/SBE Compliance. The Contractor shall take affirmative steps, found in form HUD-5370, clause 38, to ensure that whenever possible, subcontracts are awarded to small business firms, minority firms, women's business enterprises, and labor surplus area firms.

ARTICLE VIII. AFFH Compliance. The parties agree to affirmatively further fair housing. For purposes of the AFFH rule, the duty to "affirmatively further fair housing" means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.

ARTICLE IX. Equal Opportunity. The contractor will ensure that all employees, applicants for employment, and any subcontractors if applicable, are not discriminated against because of their race, color, religion, sex, military status, national origin, disability, pregnancy, genetic information, age, ancestry, religious creed, handicap, or sexual orientation, consistent with 41 CFR 60-1.4(a) and any other applicable statute or law.

ARTICLE X. Contract Period. This Contract shall begin on January 1, 2022 and terminate on December 31, 2022. There are four optional one-renewals available with this contract.

ARTICLE XI. Breach of Contract. Pursuant to 2CFR 200.326, Appendix II, the Contractor and the Agency shall communicate with each other in a clear and complete manner as possible. If at any time during the term of this contract the Agency is not satisfied with any issue, a written Notice to Cure that details the issue and a corrective action. The Contractor will have ten (10) days to respond. If the Contractor is in material breach of the contract, the Agency may invoke the termination clause within Section 3 of the Contract Appendix No. 1, form HUD-5370-C Section 1, which is attached hereto, and terminate for cause.

ARTICLE XII. Termination for Convenience. LMH reserves the right to terminate this agreement without prior notification for reasons it deems in the best interest of LMH. If terminated, LMH will notify the Contractor of the termination electronically, via email, and shall pay Contractor for services rendered prior to Contractor's receipt of the Notice of the Agreement Termination.

ARTICLE XIII. The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall hold and save the PHA, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

ARTICLE XIV. Force Majeure. If either party is prevented from performing its obligations hereunder as a result of government regulations, fires, strikes, or other causes beyond the control of such party, the obligation to so perform shall be suspended for a reasonable time during which such condition continues to exist. If an actual or potential labor dispute delays or threatens to delay vendor's timely performance, vendor shall immediately notify LMH in writing.

Contract No: 21-MAXXX
Resolution No.:

ARTICLE XV. Waiver. Contractor acknowledges that no delay or failure by LMH in exercising any right under this Contract and no partial or single exercise of such right shall constitute a waiver (post or perspective) of that right.

ARTICLE XVI. Governing Law. Contractor and LMH agree that Ohio law governs this Contract. LMH and Contractor agree to comply with all applicable federal, state, and local laws and ordinances as may be amended from time to time.

ARTICLE XVII. Assignment. This contract cannot be transferred or assigned without prior written approval from LMH. Should the Contractor require hiring subcontractors, the Contractor will provide written notice to LMH prior to the subcontractor performing any work. The notice will identify the name, business address and federal tax identification number of each subcontractor. The Contractor's subcontractor must follow all of the rules of the solicitation, including meeting the minimum maintenance wages for LMH projects and carrying the same limits of liability on its insurance.

ARTICLE XVIII. Disputes. All claims by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. The Contracting Officer shall within 60 (unless otherwise indicated) days after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made. LMH's policy is to resolve all contractual issues informally without litigation. Disputes shall not be referred to HUD unless all administrative remedies have been exhausted between the parties.

ARTICLE XIX. All notices and reports submitted to the Agency by the Contractor pursuant to this contract shall be made in writing and delivered to the attention of the following department representing the Agency:

Lucas Metropolitan Housing Authority
435 Nebraska Avenue
Toledo, Ohio 43604
Attention: Legal Department

ARTICLE XX. Penalties and Interest. In accordance with the Office of Management and Budget (OMB) Circular A-87, Cost Principles for State, Local and Indian Tribal Governments, and cross-referenced in 23 CFR 85.22, certain penalties and interest cannot be paid with HUD program funds without written advanced permission of HUD.

ARTICLE XXI. Recordkeeping. The contractor shall retain all significant and material documentation and records concerning this contract for a period of three years after the final payment and all matters pertaining to the contract are closed.

ARTICLE XXII. Contract Standards. The following clauses pertain to this contract are included by reference: Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-37080) for contracts awarded by a non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers. Sections 103 and 107 of the Contract Work Hours and Safety Standards for contracts awarded in excess of \$2,500. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended, to agree to comply with all applicable standards, order or regulations issued pursuant to compliance.

ARTICLE XXIII. Debarment, Suspension and Lobbying. Executive Orders 12549 and 12689 provide a contract award may not be made to parties listed on the government wide Excluded Parties List System for Award Management (SAM). Also, the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) that requires a contractor who apply or bid for an award of \$100,000 or more must file the required certification. For all construction and repair contracts awarded, both parties hereby agree to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (41 CFR Chapter 60).

**Contract No: 21-MAXXX
Resolution No.:**

ARTICLE XXIV. May not be applicable. Davis Bacon Act. For all construction contracts awarded in excess of \$2,000, when required by Federal Grant Program legislation, both parties hereby agree to comply with the Davis Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented in Department of Labor Regulations (29 CFR Part 5).

ARTICLE XXV. Additional Federal Orders / Directives. Executive Order 11061, as amended, which directs the Secretary of HUD to take all action which is necessary to prevent discrimination by agencies that utilizes federal funds; Public Law 88-352 Title VI of the Civil Rights Act of 1964, which provides that no person in the United States shall, on the basis of race, color, national origin, or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program which received federal financial assistance. Public Law 90-284, title VIII of the Civil Rights Act of 1968, known as the Fair Housing Act, the Agency requires that the Contractor administer all programs and activities, which are related to housing and community development in such a manner as affirmatively to further fair housing. Contractor also abides by the Age Discrimination Act of 1975, and Anti-Drug Abuse Act of 1988.

ARTICLE XXVI. Right of Joinder. Any political subdivision may be granted the privilege of joining the awarded contract. If the Contractor grants the privilege, the ensuing contract may be passed on to the joining political subdivision by the Contractor.

ARTICLE XXVII. Non-Escalation. Unless otherwise specified within the bidding documents, the unit prices reflected on the contract shall remain firm with no provision for price increases during the term of the contract.

ARTICLE XXVIII. Confidentiality Clause. Contractor understands that from time to time, their employees may come into contact with confidential information and records about LMH’s employees/applicants/residents/participants.

Therefore:

- a. Contractor agrees to advise their employees not to disclose such confidential information and records.
- b. Contractor agrees to advise their employees that they shall not directly or indirectly, publish, make known or in any manner disclose any confidential information or records, or permit any inspection or copying of confidential information and records by, any individual or entity for any purpose, except with the express prior written consent of LMH.
- c. Contractor agrees to advise their employees to hold such information in confidence after the work in this solicitation is completed.

AUTHORITY. Contractor and LMH certify that the below named individuals have the authority to enter into this Contract on behalf of their respective organizations, and voluntarily do so on the date indicated below.

By: _____
XXX, President
ABC Company

Date

By: _____
Joaquin Cintron Vega, President & Chief Executive Officer
Lucas Metropolitan Housing Authority

Date

General Conditions for Non-Construction Contracts

Section I — (With or without Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (excl. 11/30/2023)

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

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

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

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

1. Definitions

The following definitions are applicable to this contract:

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

2. Changes

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

proposal submitted before final payment of the contract.

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

3. Termination for Convenience and Default

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

4. Examination and Retention of Contractor's Records

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

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

5. Rights in Data (Ownership and Proprietary Interest)

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

6. Energy Efficiency

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

7. Disputes

- (a) All disputes arising under or relating to this contract, except for disputes arising under clauses contained in Section 111, Labor Standards Provisions, including any claims for damages for the alleged breach there of which are not disposed of by agreement, shall be resolved under this clause.
- (b) All claims by the Contractor shall be made in writing and submitted to the HA. A claim by the HA against the Contractor shall be subject to a written decision by the HA.
- (c) The HA shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HA's decision, shall notify the HA in writing that it takes exception to such decision, the decision shall be final and conclusive.
- (d) Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against the HA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HA that it submit a final voucher and release, whichever is earlier, then the HA's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.
- (e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the HA.

8. Contract Termination; Debarment

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

9. Assignment of Contract

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

10. Certificate and Release

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

11. Organizational Conflicts of Interest

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

12. Inspection and Acceptance

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

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

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

13. Interest of Members of Congress

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

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

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

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

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

(v) The prohibition does not apply as follows:

-
- (1) Agency and legislative liaison by Own Employees.
- (a) The prohibition on the use of appropriated funds, in paragraph (i) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, if the payment is for agency and legislative activities not directly related to a covered Federal action.
- (b) For purposes of paragraph (b)(i)(1)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.
- (c) The following agency and legislative liaison activities are permitted at any time only where they are not related to a specific solicitation for any covered Federal action:
- (1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,
- (2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
- (d) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:
- (1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
- (2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
- (3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.
- (e) Only those activities expressly authorized by subdivision (b)(ii)(1)(a) of this clause are permitted under this clause.
- (2) Professional and technical services.
- (a) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply in the case of-
- (i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
- (i) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (b) For purposes of subdivision (b)(ii)(2)(a) of clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline.
- (c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
- (d) Only those services expressly authorized by subdivisions (b)(ii)(2)(a)(i) and (ii) of this section are permitted under this clause.
- (iii) Selling activities by independent sales representatives.
- (c) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:
- (i) Discussing with an agency (including individual demonstration) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and
- (ii) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
- (d) Agreement. In accepting any contract, grant, cooperative agreement, or loan resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.
- (e) Penalties. Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
- (f) Cost Allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation (FAR), or OMB Circulars dealing with cost allowability for recipients of assistance agreements. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of FAR Part 31 or the relevant OMB Circulars.
-

16. Equal Employment Opportunity

During the performance of this contract, the

Contractor/Seller agrees as follows:

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

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

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

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

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

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

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

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

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

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

17. Equal Opportunity for Workers with Disabilities

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

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

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

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

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

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

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

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

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

18. Dissemination or Disclosure of Information

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

19. Contractor's Status

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

20. Other Contractors

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

21. Liens

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

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

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 75, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 prioritization requirements, and shall state the minimum percentages of labor hour requirements established in the Benchmark Notice (FR-6085-N-04)..
- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.
- (e) Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts
- (f) Contracts, subcontracts, grants, or subgrants subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business opportunities to Indians and Indian organizations, and are therefore not subject to the requirements of 24 CFR Part 75.

23. Procurement of Recovered Materials

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered

materials practicable consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract

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. 11/30/2023)

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

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

- 1) Non-construction contracts (*without* maintenance) greater than \$250,000 - use Section I;
- 2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 905.200) greater than \$2,000 but not more than \$250,000 - use Section II; and
- 3) Maintenance contracts (including nonroutine maintenance), greater than \$250,000 – use Sections I and II.

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

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; A

- (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). 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. 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.

RFP23-R004 Geotechnical Construction, Testing and Reporting Services	Unit	Rates
Professional Services:		
Chief Geotechnical Engineer, P.E.	Hour	
Senior Geotechnical Engineer, P.E.	Hour	
Project Geotechnical Engineer, P.E.	Hour	
CAD / Engineering Technician	Hour	
Clerical Assistant	Hour	
Drilling and Boring Services:		
Mobilization / Demobilization	Hour	
Boring layout / Staking	Hour	
Drilling per foot (with interval sampling)	Hour	
Drilling - 2-1/2 Ft. Sampling	Feet	
Drilling - 5 Ft. Sampling	Feet	
Drilling without Sampling	Feet	
Rock Coring	Feet	
Asphalt / Concrete patch	Bag	
Delays	Hour	
Obstructed Boring (5 Ft. per LMHA)	Each	
Other	Each	
Soils Laboratory Testing:		
Nuclear Moisture density gauge for testing soil or asphalt compaction.	Day	
Dry sieve analysis of granular material.	Each	
Standard / Modified Proctor.	Each	
Relative Density Determination - Maximum	Each	
Relative Density Determination - Minimum	Each	
Construction Material Testing & Inspection - Field		
Engineering Technician (8-hour day)	Hour	
Overtime work (Saturday and over 8 hours)	Hour	
Soils	Hour	
Soils	Over Time	
Concrete	Hour	
Concrete	Over Time	

Asphalt / Concrete patch	Hour	
Asphalt / Concrete patch	Over Time	
Masonry	Hour	
Masonry	Over Time	
Steel	Hour	
Steel	Over Time	
Paint	Hour	
Paint	Over Time	
Roofing	Hour	
Roofing	Over Time	
Fireproofing	Hour	
Fireproofing	Over Time	
Coring asphalt/concrete using a thin walled diamond core barrel:		
Two-man crew during normal business hours	Hour	
Overtime work (Saturday and over 8 hours)	Hour	
Concrete Laboratory / Field Testing:		
Concrete test cylinder and mortar grout curing	Each	
Compression strength testing	Each	
Holding	Each	
Flexure test on molded concrete beams	Each	
Determining compression strength of drilled cores	Each	
Concrete mix design to verify a Portland cement concrete mix design	Each	
Testing of hardened concrete	Each	
Asphalt Laboratory Testing:		
Marshall stability and flow tests of asphalt - molding and testing specimens	Each	
Density of asphalt mix	Each	
Specific gravity (density) of asphalt sample	Each	
Extraction/gradation asphalt	Each	
5-point Marshall mix design for bituminous paving mixtures based on aggregate sieve analysis	Each	