

The following forms are attached and are part of the
Request for Proposals (RFP) documents.

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

| | |
|------------|---|
| G | Section 3 Preference Explanation |
| G-1 | Auburn Housing Authority Section 3 Plan |
| H | form HUD-5369-B, <i>Instructions to Offerors, Non-Construction</i> |
| I | <i>AHA Supplemental Instructions to Proposers & Contractors (SIPC)</i> |
| J | <i>AHA Sample Contract Form (Please note that this contract and any noted appendices are being given as a sample only—the AHA reserves the right to revise any clause herein and/or to include within the ensuing contract any additional clauses that the AHA feels that it is in its best interests to do so)</i> |
| K | form HUD-5370-C, <i>General Conditions for Non-Construction Contracts Section I and Section II (With or without Maintenance Work)</i> |
| N | Agency Profile of Properties |

Section 3 Business Explanation

Be aware that the Agency previously conducted competitive solicitations that required responders to comply with the requirements of 24 CFR §135, *Economic Opportunities for Low- and Very Low-Income Persons* (a.k.a., Section 3).

However, September 2020 the U.S. Department of Housing and Urban Development (HUD) discontinued these former requirements and implemented the requirements of 24 CFR §5, 14, 75, 91, 92, 93, 135, 266, 570, 574, 576, 578, 905, 964, 983, and 1000, entitled *Enhancing and Streamlining the implementation of Section 3 Requirements for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses*.

Accordingly, these new Section 3 regulations do not provide for a firm proposing to provide services to a housing agency to immediately submit any information pertaining to Section 3, including the new regulations do not provide for the granting of any preferences to Section 3 firms submitting bids. The Agency will advise all firms if these requirements change.

Instructions to Offerors Non-Construction

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



- 03291 -

1. Preparation of Offers

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

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

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

2. Submission of Offers

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

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

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

3. Amendments to Solicitations

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

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

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

4. Explanation to Prospective Offerors

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

5. Responsibility of Prospective Contractor

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

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

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

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

6. Late Submissions, Modifications, and Withdrawal of Offers

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

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

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

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

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

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

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

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

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

7. Contract Award

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

(b) The HA may

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

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

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

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

8. Service of Protest

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

9. Offer Submission

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

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

[Describe bid or proposal preparation instructions here:]

ATTACHMENT I

Supplemental Instructions to Proposers & Contractors (SIPC)

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1.0 GENERAL CONDITIONS:

- 1.1 Applicability:** If referred to within the text of such, these ITPC shall be applicable to all Requests for Proposals (RFP) solicitations that Auburn Housing Authority (AHA) conducts and shall be applicable to any contract that the AHA awards to or signs with any firm, agency or individual pursuant to that RFP. A copy of these ITPC shall be made available to any actual or prospective proposer, or contractor who does business with or intends to do business with the AHA.
- 1.1.1** Unless otherwise specified within the RFP or contract documents, in the event that any provision in any document listed herein conflicts with any provision within these ITPC, the provision in RFP or contract document shall govern. Further, in the case of any attached HUD forms (more specifically: HUD-5369-C; HUD-5369-B; and HUD-5370-C, (Section I and/or Section II), the information within such HUD form(s) shall govern any other information issued, especially that issued within any AHA-created forms that are issued as a part of this solicitation.
- 1.2 Definitions** (pertaining to all RFP documents issued by the AHA pertaining to this RFP, including the attachments and the ensuing contract):
- 1.2.1** "Contracting Officer" when named within an RFP document shall refer to the AHA PM (as delegated by the AHA ED who is the AHA Contracting Officer).
- 1.2.2** "Contract" refers to the fully executed written agreement that ensues from the RFP. Whereas all RFP documents are included, by reference, as a part of the ensuing contract, when "contract" is referred to within an RFP document, such is referring to both the RFP documents and the ensuing contract document.
- 1.2.3** "Contractor" and the term "successful proposer" may be used interchangeably.
- 1.2.4** "Days" unless otherwise directed, shall refer to calendar days.
- 1.2.6** "ED" is the AHA Executive Director.
- 1.2.8** "AHA" is the Auburn Housing Authority, unless otherwise defined herein or within the ensuing contract, whenever the term "the AHA" is used without clearly designating a responsible AHA staff person, the proposer(s) may assume that responsibility for that item rests with the AHA PM.
- 1.2.9** "HUD" is the United States Department of Housing and Urban Development. HUD is the Federal agency that the AHA receives funding from; however, pertaining to this RFP, correspondences, including proposal submittals, received from each proposer must exhaust all provisions contained herein prior to contacting HUD (i.e., in the case of a protest).

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

2.0 CONDITIONS TO PROPOSE:

- 2.1 Pre-Qualification of Proposers:** Prospective proposers will not be required to pre-qualify in order to submit a proposal. However, all proposers will be required to submit adequate information showing that the proposer is qualified to perform the required work (i.e., Profile of Firm Form and required resumes). Failure by the prospective proposer to provide the requested information may, at the AHA's discretion, eliminate that proposer from consideration, provided that all proposers were required to submit the same information.
- 2.2 RFP Forms, Documents, Specifications and Drawings:**
- 2.2.1** It shall be each prospective proposer's responsibility to, prior to submitting a proposal in response to the RFP, examine carefully and as may be required, properly complete all documents issued pursuant to this RFP.
- 2.2.2** Unless otherwise instructed, specifications and drawings (if provided) do not purport to show all of the exact details of the work. They are intended to illustrate the character and extent of the performance desired under the proposed contract and may be supplemented or revised from time to time.
- 2.2.3** The AHA shall reserve the right to, prior to award, revise, change, alter or amend any of the instructions, terms, conditions, and/or specifications identified within the RFP documents issued, within any attachment or drawing, or within any addenda issued; such notice shall be delivered in writing to each prospective and/or actual proposer. Such changes that are issued before the deadline for receipt of proposals shall be binding upon all prospective proposers. Such changes that are issued after the receipt of proposals, but prior to award shall be binding upon all parties that have submitted proposals; however, such parties shall be allowed to reject such changes by, within 5 days of receipt of such written notice, withdrawing his/her proposal. Such withdrawal must be delivered, in writing, to the AHA PM within the 5-day deadline period.
- 2.3 Proposal Preparation, Submission and Receipt by the AHA:**
- 2.3.1 Required Forms:** All required forms furnished by the AHA as a part of the RFP document issued shall, as instructed, be fully completed, and submitted by the proposer. Such forms may be completed in a legible handwritten fashion, by use of a typewriter, or may be downloaded and completed on a computer. If, during the download, a form becomes changed in any fashion, the proposer must "edit" the form back to its original form (for example, signature lines must appear on the page the line was originally intended to be on).
- 2.3.2 Manner of Submission:** The proposal submittal shall be submitted in the manner detailed within the RFP document. Failure to submit the proposal in the manner specified may result in a premature opening of, post-opening of, or failure to open and consider that proposal, and may, at the

discretion of the AHA PM, eliminate that proposer from consideration for award.

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

RFP document issued and as directed by the AHA. Official interpretations will be issued in the form of addenda, which will be delivered to each proposer; but it shall be the prospective proposer's responsibility to make inquiry as to addenda issued. All such addenda shall become a part of the RFP documents and the proposed contract with the successful proposer, and all proposers shall be bound by such addenda, whether or not received by the prospective or successful proposer(s).

2.4 Exceptions to Specifications:

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

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

2.5 Lump Sum Cost Breakdown (LSCB):

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

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

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

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

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

3.0 PROPOSAL EVALUATION:

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

3.1.1 All proposal documents submitted by the proposers are not necessarily a matter of public record and as a matter of normal course, the proposals submitted by each proposer will not, at any time, be viewed by any interested parties except as approved by the AHA Legal Counsel (i.e. a proposer will not be allowed to challenge an apparent top-rated proposer by inspecting the proposal that the apparent top-rated proposer submitted). The AHA shall, however, upon request, verify that the proposal documents submitted are/were complete and correct.

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

3.3 Rejection of Proposals:

- 3.3.1** The AHA reserves the right to, at any time during the proposal process, reject any or all proposals received. In the case of rejection of all proposals, the AHA reserves the right to advertise for new proposals or to proceed to do the work otherwise, if in the judgment of the AHA, the best interest of the AHA will be promoted.
- 3.3.2** Prospective proposers acknowledge by downloading and receiving the RFP documents and/or by submitting a proposal that the submission of a proposal to the AHA is not a right by which to be awarded that proposal, but merely an offer by the prospective proposer to perform the requirements of the RFP documents in the event the AHA decides to consider an award to that proposer.
- 3.4 Cancellation of Award:** The AHA reserves the right to, without any liability, cancel the award of any proposal(s) at any time before the execution of the contract documents by all parties.
- 3.5 Mistake in Proposal Submitted:**

 - 3.5.1** A request for withdrawal of a proposal due to a purported error need not be considered by the AHA unless the same is filed in writing by the proposer within 48 hours after the proposal deadline. Any such request shall contain a full explanation of any purported error and shall, if requested by the AHA, be supported by the original calculations on which the proposal was computed, together with a certification and notarization thereon that such computation is the original and prepared by the proposer or his/her agent, who must be identified on the notarized form. The foregoing shall not be construed that such withdrawal will be permitted, as the AHA retains the right to accept or reject any proposed withdrawal for a mistake.
 - 3.5.2** Unless otherwise prohibited within the RFP documents, a mistake in the cost unit pricing that does not affect the total cost sum submitted may, at the AHA's discretion, be corrected by submitting a corrected cost form, together with a complete explanation in writing, of how the mistake occurred to the AHA PM, for his/her review. This mistake must be corrected before the issuance of contract documents.
- 3.6 Irregular Proposal Submittal:** A proposal shall be considered irregular for any one of the following reasons, any one or more of which may, at the AHA's discretion, be cause for rejection:

 - 3.6.1** If the forms furnished by the AHA are not used or are altered or if the proposed costs are not submitted as required and where provided.
 - 3.6.2** If all requested completed attachments do not accompany the proposal submitted.
 - 3.6.3** If there are unauthorized additions, conditional or alternate proposals, or irregularities of any kind which may tend to make the proposal

incomplete, indefinite, or ambiguous as to its meaning or give the proposer submitting the same a competitive advantage over other proposers.

3.6.4 If the proposer adds any provisions reserving the right to accept or reject any award or to enter into a contract pursuant to an award.

3.6.5 If the individual cost proposal items submitted by a specific proposer are unbalanced in the sense that the listed price of any cost item departs by more than 25% from the AHA's cost estimate for that item.

3.7 Disqualification of Proposers: Any one or more of the following shall be considered as sufficient for the disqualification of a prospective proposer and the rejection of his/her proposal:

3.7.1 Evidence of collusion among prospective proposers. Participants in such collusion will receive no recognition as bidders or proposers for any future work of the AHA until such participant shall have been reinstated as a qualified bidder or proposer. The names of all participants in such collusion shall be reported to HUD and any other inquiring governmental agency.

3.7.2 More than one proposal for the same work from an individual, firm, or corporation under the same or different name(s).

3.7.3 Lack of competency, lack of experience and/or lack of adequate machinery, plant and/or other resources.

3.7.4 Unsatisfactory performance record as shown by past work for the AHA 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 AHA, might hinder or prevent prompt completion of additional work, if awarded.

3.7.6 Failure to pay or satisfactorily settle all bills due on former contracts still outstanding at the time of letting.

3.7.7 Failure to comply with any qualification requirement of the AHA.

3.7.8 Failure to list, if required, all subcontractors (if subcontractors are allowed by the AHA) who will be employed by the successful proposer(s) to complete the work of the proposed contract.

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

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

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

4.0 Right to Protest:

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

4.1.1 An alleged aggrieved "protestant" is a prospective proposer or proposer who feels that he/she has been treated inequitably by the AHA and wishes the AHA to correct the alleged inequitable condition or situation. To be eligible to file a protest with the AHA pertaining to an RFP or contract, the alleged aggrieved protestant must have been involved in the RFP process in some manner as a prospective proposer (i.e., registered and received the RFP documents) when the alleged situation occurred. The AHA 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 AHA ED to grant or deny any requests for administrative appeal. If, in the opinion of the ED, the alleged aggrieved protestant merits an administrative review, the ED shall direct that alleged aggrieved protestant to submit additional data.

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

4.3.1 The alleged aggrieved protestant must file, in writing, to the AHA PM 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 AHA or condition is being protested as inequitable, making, where appropriate specific reference to the RFP documents issued. The protest document must also state the corrective action requested. Failure by the alleged aggrieved protestant to fully submit such information shall relieve the AHA from any responsibility to take any corrective action.

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

4.3.2.1 the deadline for receiving proposals;

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

- 4.3.2.3 the alleged aggrieved protestant knows or should have known the facts.
- 4.3.3 In any case, protests shall be filed no more than 10 days after any of the above (unless the occurrence being protested occurred in its entirety after the proposal deadline). Protests received after these dates shall not be considered.
- 4.3.4 The AHA PM 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 AHA ED.
- 4.3.5 **Administrative Appeal:** If the alleged aggrieved protestant does not agree with the written opinion and decision issued by the AHA PM, the alleged aggrieved protestant may, after receipt of the written opinion and decision issued by the AHA PM 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 AHA from accepting or acting on that request for administrative hearing:
- 4.3.5.1 The alleged aggrieved protestant must file, in writing, his/her request for an administrative hearing, to the AHA ED. This request must be filed within 10 calendar days after the receipt of the AHA PM's written opinion and decision.
- 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 AHA ED to, after review of the request submitted, grant or deny any request for administrative appeal.
- 4.3.5.4 If the AHA 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 AHA ED, after review of the alleged aggrieved protestant's written request, decides that the request merits further consideration, he/she shall forward the protestant's

written request, along with a cover letter explaining why it merits further consideration and with a recap of all proposals submitted and a copy of the original written protest, to the AHA Legal Counsel for consideration. The AHA 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 AHA internal protest and administrative appeal process available to the alleged aggrieved protestant.

5.0 Disputed Billings (Charges):

- 5.1 Procedures:** In addition to the procedures detailed within Clause No. 7 of Form HUD-5370-C (10/2006), *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, in the event that the AHA disputes any portion of its billing(s), the AHA shall pay the undisputed portion of such billing and initiate the dispute-resolving procedures, as follows:
- 5.1.1** The AHA's representative shall, within 10 days after the AHA'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 AHA PM and the contractor's representative shall meet to discuss the matter and attempt to arrive at a resolution.
 - 5.1.3** If the AHA PM and the contractor's representative are unable to resolve the dispute through such discussion within 10 days, the AHA shall, within 10 days thereafter, either:
 - 5.1.3.1** pay the disputed charges and reserve the right to submit the matter to an Arbitration Specialist or to the appropriate district court in the State of Alabama;
 - 5.1.3.2** not pay the disputed charge and submit the matter to the Arbitration Specialist or to the appropriate district court in the State of Alabama;
 - 5.1.4** The decision from arbitration will be binding upon both parties. If the decision is adverse to the AHA, the AHA shall pay the AHA's receipt of the decision. If the decision is in favor of the AHA, the contractor will either:
 - 5.1.4.1** clear the amount which is ordered from the AHA account; or

5.1.4.2 repay to the AHA the amount ordered;

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

6.0 Additional Considerations:

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

proposer. Upon default, the successful proposer agrees that the AHA may, at its option, rescind the finalized contract under the default clause herein and seek compensatory damages as provided by law.

- 6.7 Communication:** If during the period of the contract, it is necessary that the AHA place toll or long distance telephone calls or telegrams in connection therewith (for complaints, adjustments, shortages, failure to deliver, etc.), it is understood that the successful proposer will bear the charge or expense for all such calls and/or telegrams.
- 6.8 Work on AHA Property:** If the successful proposer's work under the contract involves operations by the successful proposer on HA premises, the successful proposer shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work and, except to the extent that any such injury is caused solely and directly by the AHA's negligence, shall indemnify the AHA, and their officers, agents, servants and employees against all loss which may result in any way from any act or omission of the successful proposer, its agents, employees, or subcontractors.
- 6.9 Estimated Quantities:** Unless otherwise indicated, the quantities reflected within the RFP documents, to the best of the AHA'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 AHA under the finalized contract; but, pursuant to all RFP documents, these quantities will be used as calculation figures to determine the successful proposer.

6.10 Warranty:

- 6.10.1** The services provided under the contract shall conform to all information contained within the RFP documents as well as applicable Industry Published Technical Specifications, and if one of the above-mentioned Specifications contains more stringent requirements than the other, the more stringent requirements shall apply.
- 6.10.2** The liability of the successful proposer to the AHA (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.
- 6.11 Official, Agent and Employees of the AHA 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 AHA in any way be personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this agreement.
- 6.12 Subcontractors:** Unless otherwise stated within the RFP documents, the successful proposer may not use any subcontractors to accomplish any portion of the services described within the RFP documents or the contract without the prior written permission of the AHA PM.
- 6.13 Salaries and Expenses Relating to the Successful Proposers Employees:** Unless otherwise stated within the RFP documents, the successful proposer shall pay all salaries and expenses of, and all Federal, Social Security taxes, Federal and State Unemployment taxes, and any similar taxes relating to its employees used in the performance of the contract. The successful proposer further agrees to comply with all Federal, State, and local wage and hour laws and all licensing laws applicable to its employees or other personnel furnished under this agreement.
- 6.14 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 allowed as attorneys' fees shall be taxed to the losing party as costs of the suit, unless prohibited by law.
- 6.15 Independent Contractor:** Unless otherwise stated within the RFP documents or the contract, the successful proposer is an independent contractor. Nothing herein shall create any association, agency, partnership, or joint venture between the parties hereto and neither shall have any authority to bind the other in any way.
- 6.16 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.

- 6.17 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 the limitation of any other remedy, right, obligation or agreement of either party.
- 6.18 Time of the Essence:** Time is of the essence under this agreement as to each provision in which time of performance is a factor.
- 6.19 Limitation of Liability:** In no event shall the AHA be liable to the successful proposer for any indirect, incidental, consequential, or exemplary damages.
- 6.20 Indemnity:** To the full extent authorized by law, Contractor agrees to indemnify, hold harmless and defend AHA, its commissioners, employees, and agents from and against any and all liabilities, claims, damages, losses, suits, penalties, forfeitures, actions, decrees, judgments, attorneys' fees, court costs, and other costs and expenses incidental thereto (including but not limited to the cost of defense, settlement, judgment, and reasonable attorneys' fees) which AHA, its officers, commissioners, employees, or agents may suffer or which may be sought against, recovered from, or obtainable against AHA, its commissioners, employees, or agents, as a result of, by reason of, arising out of, on account of, or in consequence of any act or failure to act on the part of Contractor, its subcontractors or agents, or anyone directly or indirectly employed by any such subcontractors or agent, in the fulfillment or performance of the terms, conditions, or covenants that are contained in this Agreement, and which said act or failure to act is contrary to or is not authorized by this Agreement or is otherwise negligent, wanton, willful, or contrary to any applicable law, regulation, or recognized standard of practice or performance. The covenants and obligations set forth in the preceding sentence shall exist and remain in full effect notwithstanding the fact that the occurrence which gave rise to such claim, damage, loss, liability, suit, action, judgment, or expense was caused in part by the negligence or other wrongful act of any party indemnified hereunder. Nothing contained herein shall waive any rights, privileges, immunities, or limitations of liability to which AHA is entitled under §11-93-2 of the Code of Alabama (which limits recovery for damages against a governmental entity to \$100,000 for bodily injury or death for one person in a single occurrence; \$300,000 in the aggregate for bodily injury or death for more than two persons in a single occurrence; and \$100,000 for damage or loss of property in a single occurrence) or under any other present or future statute or rule of law which limits any liability of AHA in any manner.
- 6.21** In the course of performing the services under this RFP, Contractor shall assume full liability for any and all claims and demands for injury and property damage caused by its employees, agents, or equipment. To the extent any such claim is made or determined payable against AHA, Contractor further shall indemnify and hold AHA harmless, therefore. This shall include any and all claims arising from the implementation of this Agreement and arising from the work and performance of services undertaken by Contractor, its employees, agents, or subcontractors and

arising out of any other operation no matter by whom performed for and on behalf of Contractor, whether or not due in whole or in part to conditions, acts, or omissions done, or permitted by Contractor or AHA.

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

- 6.22.1** No Federal appropriated funds have been paid or will be paid, by or on behalf of the proposer, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of an Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
- 6.22.2** If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of an Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- 6.22.3** The successful proposer shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- 6.22.4** This clause is a material representation of fact upon which reliance was placed when the award was made or entered into. The signing of a contract or acceptance of award certifies compliance with this certification, which is a prerequisite for making or entering into a contract, which is imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certifications shall be subject to civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

6.23 2 CFR § 200.317-200.326: Pursuant to this CFR, as issued by the Office of the Secretary, HUD, the AHA 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 AHA and the contractor to communicate with each in as clear and complete a manner as possible. If at any time during the term of this contract the AHA 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 AHA 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 AHA shall retain the right to, if conditions warrant, require the contractor to respond in a shorter period of time). Further, the AHA 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 AHA may promptly invoke the termination clause detailed within Section No. 3 of form HUD-5370-C, *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, which is attached hereto, and terminate the contract for cause. Such termination must be delivered to the contractor in writing and shall fully detail all pertinent issues pertaining to the cause of and justification for the termination.

6.23.1.2 Prior to termination, the AHA 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 AHA 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 ten 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 AHA's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the AHA's alleged incorrect action(s).

- 6.23.1.3** After termination, if the contractor does not agree with the AHA'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 AHA's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the AHA's alleged incorrect action(s).
- 6.23.1.4** The response to any protest received shall be conducted in accordance with Section No. 4.0 of this document.
- 6.23.2** **Termination for Cause and Convenience:** As detailed within Clause No. 3 of Form HUD-5370-C, *General Conditions for Non-Construction Contracts, Section I—(Within or without Maintenance Work)*, attached hereto.
- 6.23.3** **Executive Order 11246:** For all construction contracts awarded in excess of \$10,000, both parties hereby agree to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor Regulations (41 CFR Chapter 60).
- 6.23.4** **Copeland "Anti-Kickback" Act:** For all construction or repair contracts awarded, both parties hereby agree to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).
- 6.23.5** **Davis-Bacon-Act:** For all construction contracts awarded in excess of \$2,000 when required by Federal Grant Program legislation, both parties hereby agree to comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented in Department of Labor Regulations (29 CFR Part 5).
- 6.23.6** **Sections 103 and 107 of the Contract Work Hours and Safety Standards Act:** For all construction contracts awarded in excess of \$2,000 and for other contracts, which involve the employment of mechanics or laborers awarded in excess of \$2,500, both parties hereby agree to comply with the Sections 103 and 107 of the Contract Work Hours and Safety Act (40 U.S.C. 327-330) as supplemented in Department of Labor Regulations (29 CFR Part 5).
- 6.23.7** **Reporting:** Both parties hereby agree to comply with any reporting requirements that may be detailed herein.
- 6.23.8** **Patent Rights:** Both parties hereby agree to comply with HUD Bulletin 90-23, which is the (a) Notice of Assistance Regarding Patent and Copyright Infringement.
- 6.23.9** **Copy Rights/Rights in Data:** In addition to the requirements contained within Clause No. 5 of Form HUD-5370-*General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, the AHA has unlimited rights to any data, including computer software,

developed by the contractor in the performance of the contract specifically:

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

- 6.23.9.5** The AHA agrees not to remove any copyright notices placed on data and to include such notices in all reproductions of the data. If any data delivered under this contract is improperly marked, the AHA may either return the data to the contractor, or cancel or ignore the markings.
- 6.23.9.6** The contractor is responsible for obtaining from its subcontractors all data and rights necessary to fulfill the contractor's obligations under this contract.
- 6.23.9.7** Notwithstanding any provisions to the contrary contained in the contractor's standard commercial license or lease contract pertaining to any restricted computer software delivered under this contract, and irrespective of whether any such contract has been proposed prior to the award of this contract or of the fact that such contract may be affixed to or accompany the restricted computer software upon delivery, the contractor agrees the AHA shall have the rights set forth below to use, duplicate, or disclose any restricted computer software delivered under this contract. The terms and conditions of this contract, including any commercial lease or licensing contract, shall be subject to the following procedures.
- 6.23.9.8** The restricted computer software delivered under this contract may not be used, reproduced, or disclosed by the AHA except as provided below or as expressly stated otherwise in this contract. The restricted computer software may be: used or copied for use in or with the computer(s) for which it was acquired, including use at any HA location to which such computer(s) may be transferred; used or copied for use in or with backup computer if any computer for which it was acquired is inoperative; reproduced for safekeeping (archives) or backup purposes; modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restrictions set forth in this contract; and used or copies for use in or transferred to a replacement computer.
- 6.23.10** **Clean Air Act:** For all contracts in excess of \$100,000, both parties hereby agree to comply with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).
- 6.23.13** **Energy Policy and Conservation Act:** Both parties hereby agree to comply with all mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

- 6.24 Additional Federally Required Orders/Directives:** Both parties agree that they will comply with the following laws and directives that the AHA has received from HUD and that these same clauses will be a part of any contract that ensues as a result of this RFP:
- 6.24.1** Executive Order 11061, as amended, 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 AHA 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. 1901 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 AHA requires that the Contractor administer all programs and activities, which are related to housing and community development in such a manner as affirmatively to further fair housing.
 - 6.24.4** The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age.
 - 6.24.5** Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.).
 - 6.24.6** HUD Information Bulletin 909-23 which is the following:
 - 6.24.6.1** Notice of Assistance Regarding Patent and Copyright Infringement;
 - 6.24.6.2** Clean Air and Water Certification; and
 - 6.24.6.3** Energy Policy and Conversation Act.
 - 6.24.7** The mentioned herein of any statute or Executive Order is not intended as an indication that such statute or Executive Order is necessarily applicable not is the failure to mention any statute or Executive Order intended as an indication that such statute or Executive Order is not applicable. In this connection, therefore each provision of law and each clause, which is required by law to be inserted in this agreement, shall be deemed to have been inserted herein, and this agreement shall be read and enforced as

though such provision or clause had been physically inserted herein. If, through mistake or otherwise, any such provision is not inserted or is inserted incorrectly, this agreement shall forthwith be physically amended to make such insertion or correction upon the application of either party.

[REDACTED]

**AGREEMENT BETWEEN
AUBURN HOUSING AUTHORITY,
AND**

[REDACTED]

THIS AGREEMENT (hereinafter referred to as Agreement) is entered into by and between **Auburn Housing Authority** (hereinafter referred to as AHA or Auburn Housing Authority), a public corporation with its principal office located at 931 Booker Street, Auburn, Alabama, and [REDACTED] (hereinafter referred to as Contractor), located at [REDACTED]

WHEREAS AHA has extended a Request for Proposals (RFP) No. PXXXX requiring professional qualified firms or individuals to provide [REDACTED] services; and

WHEREAS [REDACTED] their submitted a response to said RFP which appears to be in conformity with the needs of AHA; and

WHEREAS AHA desires to retain Contractor to provide [REDACTED] services to AHA [REDACTED].

NOW, THEREFORE, in consideration of the mutual covenants between the parties herein provided the parties do agree to the following terms and conditions:

1. SCOPE OF SERVICES

Contractor will provide [REDACTED] services in accordance with the terms, provisions, and specifications provided in this Agreement, and AHA’s RFP, and the RFP attachment documentation, all labeled as Exhibit A, attached hereto, and incorporated herein by reference as though fully set forth. In the case of any discrepancy between this agreement, the RFP, and the RFP attachments, the requirement(s) detailed within the body of this agreement, shall take first precedence, then the requirement(s) detailed within the RFP, and the RFP attachments shall be controlling.

2. COMPENSATION - PAYMENT

- 2.1 Contractor acknowledges, understands, and agrees that this Agreement is a fixed price contract for [REDACTED] services care services, and is not subject to alterations or modifications. The contract amount agreed upon is inclusive of all work, expenses, labor, equipment, materials, tools, services, and transportation used in the performance of the work specified.
- 2.2 Contractor shall not begin any additional work (other than that already detailed herein) without the receipt of a completed Contract Task Order Form from the authorized AHA representative at the hourly rate(s) set forth in the proposal submitted by Contractor.
- 2.3 Contractor shall be compensated for [REDACTED] according to the RFP response:

[REDACTED]

The Contractor exceeds the NTE amount at his/her own risk. The Contractor is under no obligation to provide additional services that would cause the Contractor's fees to exceed the NTE amount without prior revision of this amount by written change order or task order.

- 2.4 Contractor shall submit monthly invoices for payment to the Contract Administrator for said housing development. The Contract Administrator will review the invoice for approval and forward it to the AHA Chief Financial Officer for review and evaluation of payment. Contractor shall be paid within thirty (30) days of submission of an approved invoice for completed work. Contractor acknowledges and agrees that this Agreement is a flat-fee contract and is not subject to alterations or modifications of the cost of the work specified.

3. TIME AND ORDER OF PERFORMANCE

The term of this Agreement shall begin on or about [REDACTED], and end on [REDACTED], unless an extension of time is authorized by AHA and is evidenced in a written document executed before the date scheduled for completion of the services. The option to renew the agreement for additional **one-year periods**, for a maximum total of **5 years** may be offered at the discretion of AHA.

4. ASSIGNMENT - SUBCONTRACTING - TRANSFER

- 4.1 AHA encourages the participation of women, AHA residents, and minority-owned businesses. Contractor will make every effort to utilize businesses owned by minorities and/or women and AHA residents for work performed under this contract.
- 4.2 All subcontracts entered into by Contractor shall contain a provision which allows Contractor to terminate the subcontract immediately in the event that AHA terminates this Agreement. No subcontracts shall be entered in by Contractor without AHA's prior written approval.
- 4.3 The performance of services under this Agreement may not be assigned or transferred without the expressed written approval of AHA prior to such assignment or transfer. Contractor acknowledges, understands, and agrees that assignment or transfer of performance shall be at the sole discretion of AHA. Approval for the same may be denied by AHA for its own convenience.
- 4.4 Contractor shall assume full responsibility for the work performed pursuant to this Agreement and shall indemnify and hold AHA harmless from all damages for claims of all subcontractors or any employees, independent contractors, or vendors of any subcontractor, which are made relative to, or arising from, work to be performed by Contractor under this Agreement.

5. CONFLICT OF INTEREST

No member of, or delegate to, the Congress of the United States of America shall be admitted to any share or part of this contract or to any benefit that may arise, therefore. Furthermore, no member, officer, or employee of AHA, no member of the governing body of the locality in which AHA was activated, and no other public official of such locality who exercises any functions or responsibilities with respect to AHA shall have any interest, direct or indirect, in this contract or the proceeds thereof within his or her tenure, or for one year thereafter.

6. GRATUITIES-KICKBACKS-USE OF CONFIDENTIAL INFORMATION-PROGRAM INCOME

AHA officers, employees, or agents shall not solicit nor accept gratuities, favors, or anything of monetary value from Contractor, potential Contractor's customers, or parties to subcontracts and shall not knowingly use confidential information for actual or anticipated personal gain. Contractor warrants that it has not paid and will not pay any person for influencing or attempting to influence an officer or employee of any agency, member of Congress, or employee of a member of Congress, or any officer or employee of Congress in connection with the awarding of an AHA contract.

7. TERMINATION OF THE CONTRACT

- 7.1 This Agreement may be terminated for any of the following reasons: failure to deliver the services as specified, failure to perform the work in a timely manner or refusing or failing to prosecute the work or any separate portion thereof within the stipulated time, or violation of a contract clause. AHA may consider any of the foregoing events to be a default under the Agreement, and if the contract is terminated due to such a default, Contractor will not be entitled to payment for any undelivered work, services, or reports. Contractor further agrees that in the event of such a default AHA may obtain the services of another Contractor for completion of the work required.
- 7.2 This contract may also be terminated for the convenience of AHA if the contracting officer determines that such would be in the best interest of AHA or in the event of absence of funding. Any such termination shall specify the extent to which the performance of the work under the contract is terminated and the date upon which such termination becomes effective. If the performance is so terminated, either in whole or in part, AHA shall pay to Contractor the prorated percentage of all services completed up to the date of termination. Percentage of completion will be determined by AHA's Executive Director.
- 7.3 If termination is necessary, the contracting officer shall terminate the Agreement by a written notice to [REDACTED]. Said notice shall be sent by certified mail, return receipt requested, shall be effective upon the date so indicated, and deemed received, whether signed by Contractor, its agent or representative, or is indicated as refused. If to Contractor, said notices and demands should be sent by certified mail, return receipt requested, or hand delivered [REDACTED] adison, located [REDACTED]. If to AHA, said notices and demands shall be sent by certified mail, return receipt requested, or hand delivered to the Executive Director, 931 Booker Street, Auburn, AL 36832.

8. DISPUTE RESOLUTION PROCEDURE

A contract administrator who will serve as the point of contact (POC) has been assigned to this agreement. The POC is an AHA representative who will oversee and manage the performance of the agreement. Any controversy or dispute arising under this Agreement shall be referred to the contract administrator by Contractor. If Contractor and contract administrator fail to agree on a resolution of the dispute or controversy, Contractor shall give written notice of the controversy to the Executive Director for AHA, who will serve as contracting officer for this Agreement. The decision of the executive director (contracting officer) will be binding on both parties hereto, except as the same may be modified by a court of competent jurisdiction. AHA and Contractor hereby agree that the time and order for performance under this agreement will be in compliance with AHA's Contract Administrative Plan, labeled as **Exhibit B**, attached hereto, and incorporated herein by reference. The Contract Administration Plan shall identify the POC for this Agreement.

9. VENUE AND CONTROLLING LAW

In the event that a cause of action arises, either in law or in equity, from, or in reference to any aspect of this Agreement (including those documents incorporated by reference and attached hereto), both parties agree that such action shall be filed and prosecuted only in the Circuit Court of Lee County, Alabama. This Agreement shall be interpreted in accordance with the laws of the State of Alabama.

10. COMPLIANCE WITH LAWS AND REGULATIONS

10.1 Contractor shall give all notices and comply with all applicable laws, ordinances, codes, rules, and regulations as they exist or may be amended during performance of this contract.

10.2 Contractor shall assume full liability for all contributions, taxes, or other payments required for the benefit of the employees of Contractor by Federal and/or State Unemployment Compensation Laws, the Social Security Acts or any amendments, rules, or regulations thereto. Contractor shall also require any subcontractors to pay such contributions, taxes, or other payments required for the benefit of the subcontractor's employees.

11. MODIFICATIONS

The terms and conditions contained in this Agreement may not be added to, modified, superseded, or otherwise altered, except by a written instrument signed by the authorized representative of AHA and delivered by AHA to Contractor, and the work shall be deemed to be only upon the terms and conditions contained in this Agreement and accompanying Exhibits, notwithstanding any terms or conditions that may be contained in any acknowledgment, invoice, or other form of Agreement, or any of its suppliers, and notwithstanding AHA's act of receiving or paying for any nonconforming product, report, service, or any similar action on the part of AHA.

12. CONFLICTS IN LANGUAGE-SEVERABILITY

If a court of competent jurisdiction finds any provision of this Agreement to be void and/or unenforceable, the parties hereto agree that those provisions of the Agreement not directly affected by the void and/or unenforceable provision shall continue in full force and effect.

13. LIABILITY-INDEMNITY-REMEDIES

13.1 In the course of performing the services under this Agreement, Contractor shall assume full liability for any and all claims and demands for injury and property damage caused by its employees, agents, or equipment. To the extent any such claim is made or determined payable against AHA, Contractor further shall indemnify and hold AHA harmless, therefore. This shall include any and all claims arising from the implementation of this Agreement and arising from the work and performance of services undertaken by Contractor, its employees, agents, or subcontractors, and arising out of any other operation, no matter who performed it on behalf of Contractor, whether or not due in whole or in part to conditions, acts, or omissions done or permitted by Contractor or AHA.

13.2 To the full extent authorized by law, Contractor agrees to indemnify, hold harmless, and defend AHA, its commissioners, employees, and agents from and against any and all liabilities, claims, damages, losses, suits, penalties, forfeitures, actions, decrees, judgments, Contractors' fees, court costs, and other costs and expenses incident thereto (including, but not limited to, the cost of defense, settlement, judgment, and reasonable Contractors' fees) that AHA, its officers, commissioners, employees, or agents may suffer or which may be

sought against, recovered from, or obtainable against AHA, its commissioners, employees, or agents as a result of, by reason of, arising out of, on account of, or in consequence of any act or failure to act on the part of Contractor, its subcontractors or agents, or anyone directly or indirectly employed by any such subcontractors or agent in the fulfillment or performance of the terms, conditions, or covenants that are contained in this Agreement and which said act or failure to act is contrary to or is not authorized by this Agreement or is otherwise negligent, wanton, willful, or contrary to any applicable law, regulation, or recognized standard of practice or performance. The covenants and obligations set forth in the preceding sentence shall exist and remain in full effect, notwithstanding the fact that the occurrence which gave rise to such claim, damage, loss, liability, suit, action, judgment, or expense was caused in part by negligence or other wrongful act of any party indemnified hereunder. Nothing contained herein shall waive any rights, privileges, immunities, or limitations of liability to which AHA is entitled under §11-93-2 of the Code of Alabama (which limits recovery for damages against a governmental entity to \$100,000 for bodily injury or death for one person in a single occurrence; \$300,000 in the aggregate for bodily injury or death for more than two persons in a single occurrence; and \$100,000 for damage or loss of property in a single occurrence) or under any other present or future statute or rule of law which limits any liability of AHA in any manner.

- 13.3 No remedy herein provided shall be deemed exclusive of any other remedy allowed in law or in equity.
- 13.4 These provisions are specifically intended and shall survive the termination of this Agreement.

14. CONTRACTOR AS INDEPENDENT CONTRACTOR

It is agreed that Contractor is an independent contractor with respect to all work and activities contemplated by this Agreement and that all of Contractor's employees who perform work with respect to this Agreement are the employees of Contractor and not of AHA. Contractor shall exercise complete control over the conduct of its employees and will pay all wages and applicable federal, social security, and unemployment taxes, as well as workers' compensation insurance, with respect to such employees.

15. INSURANCE REQUIREMENTS

In this regard, the Contractor shall maintain the following insurance coverage during the effective term(s) of this contract:

- 15.1 **General Liability Insurance.** An original certificate evidencing General Liability coverage, naming AHA as an additional insured, together with the appropriate endorsement to said policy reflecting the addition of AHA as an additional insured under said policy (minimum of \$1,000,000 each occurrence, general aggregate minimum limit of \$2,000,000, together with damage to premises and fire damage of \$50,000 and medical expenses any one person of \$5,000), with a commercially reasonable deductible (e.g. "commercially reasonable," meaning at least 1% of the "general aggregate minimum" of the policy, with a maximum deductible amount of \$50,000).
- 15.2 **Professional Liability Insurance.** An original certificate showing the proposer's professional liability and/or "errors and omissions" coverage (minimum of \$1,000,000 each occurrence, general aggregate minimum limit of \$2,000,000), with a commercially reasonable deductible (e.g., "commercially reasonable," meaning at least 1% of the "general aggregate minimum" of the policy, with a maximum deductible amount of \$50,000).

- 15.3 **Automobile Insurance.** An original certificate showing the proposer's automobile insurance coverage in a combined single limit of \$1,000,000. For every vehicle utilized during the term of this program, when not owned by the entity, each vehicle must have evidence of automobile insurance coverage with limits of no less than \$100,000/\$300,000 and medical pay of \$5,000.
- 15.4 Worker's compensation coverage evidencing carrier and coverage amount.
- 15.5 The Contractor shall provide to the AHA with current certificate(s)/endorsement(s) evidencing the insurance coverage referenced above. Failure to maintain the above-reference insurance coverage, including naming the AHA as an additional insured (where appropriate) during the term(s) of this contract shall constitute a material breach thereof.
- 15.6 Contractor shall furnish AHA with certificates of insurance reflecting the required coverage. The certificates for each insurance policy are to be signed by a person authorized by the insurance carrier to bind coverage on its behalf. All certificates are to be received and approved by AHA before work commences. AHA reserves the right to require complete, certified copies of all required insurance policies at any time.

16. FINANCIAL VIABILITY AND REGULATORY COMPLIANCE

- 16.1 The Contractor warrants and represents that its corporate entity is in good standing with all applicable federal, state, and local licensing authorities and that it possesses all requisite licenses to perform the services required by this contract. The Contractor further warrants and represents that it owes no outstanding delinquent federal, state, or local taxes or business assessments.
- 16.2 The Contractor agrees to promptly disclose to the AHA any IRS liens or insurance or licensure suspension or revocation that may adversely affect its capacity to perform the services outlined within this contract. The failure by the Contractor to disclose such issue to the AHA in writing within 5 days of such notification received will constitute a material breach of this contract.
- 16.3 The Contractor further agrees to promptly disclose to the AHA any change of more than 50% of its ownership and/or any declaration of bankruptcy that the Contractor may undergo during the term(s) of this contract. The failure of the Contractor to disclose any change of more than 50% of its ownership and/or its declaration of bankruptcy within 5 days of said actions shall constitute a material breach of this contract.
- 16.4 All disclosures made pursuant to this section of the contract shall be made in writing and submitted to AHA within the time periods required herein.

17. THIRD PARTY RIGHTS

This Agreement shall not be construed as creating any right of any third party to enforce any provision hereof or to assert any claim against AHA.

18. ENTIRE AGREEMENT

All parties agree, understand, and acknowledge that this written Agreement, along with the heretofore-identified attached documents that have been incorporated by reference, constitutes the entire agreement of all parties. Neither party is responsible for, nor bound by, any terms or conditions not contained herein.

IN WITNESS THEREOF the parties by and through their undersigned authorized officers have executed this Agreement on this _____ day of _____, 2023.

AUBURN HOUSING AUTHORITY

By: _____

Title: _____

By: _____

Executive Director

General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 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 \$150,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 905.100) **greater than \$2,000 but not more than \$150,000 - use Section II;** and
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$150,000 – use Sections I and II.**

Section I - Clauses for All Non-Construction Contracts greater than \$150,000

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

8. Contract Termination; Debarment

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

9. Assignment of Contract

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

10. Certificate and Release

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

11. Organizational Conflicts of Interest

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

12. Inspection and Acceptance

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

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

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

13. Interest of Members of Congress

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

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

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

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

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

- (ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

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

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

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

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

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

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

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

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

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

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

(2) Professional and technical services.

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

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

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

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

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

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

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

(iii) Selling activities by independent sales representatives.

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

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

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

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

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

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

16. Equal Employment Opportunity

During the performance of this contract, the

Contractor/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 Braille 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 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (e) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts
- (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

22. Procurement of Recovered Materials

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

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

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

General Conditions for Non-Construction Contracts

Section II – (With Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 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 \$150,000 - use Section I;
- 2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 905.200) greater than \$2,000 but not more than \$150,000 - use Section II; and
- 3) Maintenance contracts (including nonroutine maintenance), greater than \$150,000 – 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.