



REQUEST FOR PROPOSAL (RFP) # 2024 – 03

REQUEST FOR PROPOSALS FOR FULL-SERVICE GROUND SOURCE HEAT PUMP SYSTEM SERVICE AND MAINTENANCE AT VARIOUS PROPERTIES OWNED OR MANAGED BY THE MUNICIPAL HOUSING AUTHORITY FOR THE CITY OF YONKERS

The Municipal Housing Authority for the City of Yonkers (“MHACY”) is soliciting proposals from qualified firms for a Full-Service Heating System Service and Maintenance for MHACY at various sites as specified in this Request for Proposals (“RFP”).

This RFP package contains submission requirements and terms and conditions and other pertinent information for submitting a proper and responsive proposal. This RFP is the only information provided to prospective bidders (hereinafter “Responders” or “Respondents”) and is available online starting April 26, 2024 at www.mhacy.org.

There will be a site tour for interested parties on May 2, 2024, at 10 A.M. starting at 1-8 Schroeder Street, Yonkers, NY 10701. The RFP questions deadline is May 6, 2024 at 3:00PM Eastern Standard Time (EST). Any and all questions must be emailed to Procurement at procurement@mhacy.org by the deadline. No telephone calls and/or written communication sent via mail will be accepted.

Proposals must reach MHACY no later than 3:00 PM (EST) on May 16, 2024. Late submissions will be handled in accordance with the provisions in Form HUD-5369B.

Proposals will be evaluated on the criteria stated in the RFP. Negotiations may be conducted with contractors who have a reasonable chance of being selected for the award. After evaluation of the proposal revision, if any, the contract will be awarded to the responsible firm(s) whose qualifications, price and other factors are considered to be the most advantageous to MHACY.

MHACY reserves the right to reject any and all proposals and waive any irregularities or informalities if it is in MHACY’s best interest to do so. MHACY reserves the right to cancel this RFP or to reject, in whole or in part, any and all proposals received in response to this RFP, upon its determination that such cancellation or rejection is in the best interest of MHACY.

MHACY is an Equal Opportunity Employer and does not discriminate on the basis of race, sexual orientation, color, national origin, sex, religion, age, disability, or family status. MHACY solicits and encourages the participation of minorities and small businesses in procurement.

Contact, related to this procurement, with members of MHACY’s Board of Commissioners, or MHACY’s officers and/or employees other than the contact person show above, during the procurement process could result in disqualification of a proposal.

Wilson Kimball
President & CEO
Municipal Housing Authority for the City of Yonkers
1511 Central Park Avenue
Yonkers, New York 10710
Project No. 2024-03

1. INTRODUCTION

The Municipal Housing Authority for the City of Yonkers (“MHACY”) is a municipal housing authority duly authorized and validly existing under the laws of the State of New York operating under Federal and State housing laws. MHACY owns and manages a wide variety of properties, administers a Housing Choice Voucher Program, to provide affordable, stable, decent and safe housing opportunities within the City of Yonkers, New York. In pursuing our mission we work collaboratively with federal and state officials, and with the City of Yonkers, as their participation and assistance is essential in addressing the housing needs of families with very low income.

MHACY’s Board of Commissioners (the “Board”) has ultimate authority over the MHACY’s policies and procedures. Five Commissioners are appointed by the Mayor of Yonkers and two are elected by MHACY’s residents. The mayoral appointments serve for five years. The elected Commissioners – one to represent the Family Sites and one to represent the Senior Sites – are elected for a two year term. The Board while autonomous is responsible to the U.S. Department of Housing and Urban Development.

The Municipal Housing Authority for the City of Yonkers invites bidders to submit bids in accordance with the outlines and specifications contained in this RFP. This RFP contains specific requests for information. In responding to this RFP, bidders are encouraged to provide any additional information they believe is relevant.

The purpose of this procurement is to select an appropriate contractor for Full-Service Heating System Service and Maintenance at various properties owned and/or managed by MHACY. See **“Exhibit A”** for specifications and additional requirements.

2. SEQUENCE OF EVENTS

<u>Event</u>	<u>Date</u>
Release of RFP	April 26, 2024
Site Tour	May 2, 2024
Submission of Questions	May 6, 2024
Bid Submission	May 16, 2024 at 3:00 p.m.
Bid Evaluation	May 20, 2024 to May 24, 2024
Contract Award	May 28, 2024

The selection date is subject to extension at the discretion of the MHACY. The effective date of the contract is tentative as it is dependent on the selection date and the length of time for processing the contract.

The events identified in the schedule above are briefly described below.

A. RFP Questions. The RFP questions deadline is May 6, 2024 at 3:00PM Eastern Standard Time (EST). Any and all questions must be emailed to procurement@mhacy.org by the deadline. No telephone calls and/or written communication sent via mail will be accepted.

B. Submission of Bids. One (1) sealed, signed copy of the Bid Form and supporting documentation shall be submitted to the MHACY at its Central Park Avenue address. Bids shall be in the format specified in Paragraph 5 of this RFP and signed by the authorized representative of the bidder. Exhibit B for “Bid Form”. Bids will be time-stamped upon receipt.

All bids shall be submitted in sealed envelopes clearly marked **“Full-Service Heating System Service and Maintenance”**.

Bids shall be addressed to:

Procurement Department
Municipal Housing Authority for the City of Yonkers
1511 Central Park Avenue
Yonkers, New York 10710

C. Sealed Bids. A bid may be modified by a bidder prior to the deadline for submission of bids by delivery of a written modification to the above address. The sealed envelope shall be marked **“Modification to Bid for Full-Service Heating System Service and Maintenance”** and list the name and address of the bidder.

A bid may be withdrawn prior to the deadline for submission of bids by delivering written notification to Wilson Kimball, President & CEO, Attention: Procurement Department

Bids will be opened publicly on May 16, 2024 and recorded immediately thereafter at 3:00 p.m. at the first-floor conference room at 1511 Central Park Avenue.

D. Evaluation of Bids. Bids will be evaluated by the MHACY staff using the criteria listed in Paragraph 6 of this RFP.

E. Selection of Bidder. The contractor selected to perform the work and those contractors not selected will be notified by the MHACY. Selection does **NOT** constitute an obligation to contract with the successful bidder.

3. AMENDMENTS TO RFP

Amendments (addenda) to this RFP shall be in writing and shall be mailed electronically or by United States Postal Service to all individuals who received the RFP. Amendments shall be distributed with sufficient time to allow bidders to consider the amendments in preparing their bids. If necessary, the deadline for submission of bids will be extended by an amendment.

The written acknowledgment form mailed with the amendment shall be completed by the bidder and submitted with the bid as evidence of receipt of the amendment or shall be noted on the Bid Form.

4. CANCELLATION OF RFP — REJECTION OF BIDS

The MHACY reserves the right to cancel this RFP at any time and for any reason.

Any bid may be rejected in whole or in part when it is in the interest of the MHACY to do so. The MHACY shall not be responsible for the payment of any costs incurred by the bidder in the preparation or submission of a bid.

The issuance of this RFP, the receipt of a bid or the selection of a bidder in no manner obligates the MHACY to the eventual purchase of services. This process is solely at the discretion of the MHACY and may be terminated by MHACY without penalty or obligation at any time prior to the signing of a written contract.

5. BID FORMAT

Bidders shall use the Bid Form (Exhibit B) and include the following additional information in their bid:

A. Description and Manner in Performing the Work. The bidder shall provide a description of the equipment and process and methods that will be employed to provide the services described in the Scope of Work in **“Exhibit A”** of this RFP.

B. Delivery of Service. The bidder shall state the anticipated delivery schedule for the work to be performed.

C. Related Experience and Qualifications. The bidder shall include in the bid prior experience and qualifications related to accomplishing the Scope of Work contained in **“Exhibit A”** of this RFP; list at least three (3) contact names and phone numbers of prior clients, including government clients, if appropriate, that may be called for references; and note prior experience with buildings that are similar in size and scope of work to this project.

6. EVALUATION. Bids will be evaluated upon the following criteria:

Criteria	Maximum Points	Points
Equipment specifications	30	
Respondents plan and capability to meet the contract requirements	30	
Past and present work history as required in proposal	30	
Overall cost proposal	10	
Total Points	100	

During proposal evaluation, MHACY reserves the right to call for supplementary information from Responders and to meet with all or any one of them to clarify points of uncertainty or ambiguity. Responders agree to cooperate fully and promptly in providing such supplementary information or meeting requirements.

Proposals will be evaluated and ranked according to points received. MHACY, in its sole discretion, may invite selected Responders for an interview. Responders should be prepared to discuss the proposed scope of work, including availability of equipment and staffing, accounting and payment procedures, schedules, qualification of subcontractors proposed for portions of the work, and such other items as are directly related to the proposal.

MHACY also reserves the right to obtain clarification of any point in a Responder's proposal or to obtain additional information necessary to properly evaluate a particular proposal. Failure of an Offeror to respond to such a request for additional information or clarification could result in rejection of the Responder's proposal.

All selected Offerors will be invited to negotiate all aspects of the fee proposal to arrive at a firm and reasonable cost as determined by MHACY.

7. CONTRACT TERMS AND CONDITIONS

The contract between the MHACY and a successful bidder shall contain substantially the following terms and conditions. By submitting the Bid Form, the bidder agrees to these terms and conditions and the terms and conditions contained in Form HUD 5370 and the sample contract which is attached hereto and made a part hereof as **Exhibit B**. Any and all exceptions to the sample contract attached to this RFP should be noted in the Respondent's response to this RFP. In the event additional services are required that have not been awarded, but are within the scope of the services described in this RFP, MHACY will have the sole and exclusive right to allocate the service to a firm under contract or seek the services on the open market, whichever is deemed to be in its best interest. The person signing the proposal on behalf of the Respondent must be authorized to commit the Respondent in contractual matters and to conduct negotiations or on behalf of the Respondent.

- A. Scope of Work.** This portion of the contract will be drafted following the selection of an individual to perform the services. It will incorporate the Scope of Work in **Exhibit A** of this RFP and the description of products and services from the bidder's bid.
- B. Compensation.** Bidders shall submit a "cost proposal" which clearly and comprehensively outlines the method by which the parties will share costs and revenues pursuant to the prospective contract.

- C. Term.** The contract shall be effective on the date that the last of the parties to the contract signs the contract and will terminate as set forth in the contract.
- D. Termination.** The contract may be terminated by either of the parties upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. A party may not nullify obligations or liabilities already incurred for performance or for failure to perform prior to the date of termination.
- E. Status of Contractor.** The contractor is an independent contractor performing services for MHACY and is not an employee of the State of New York ("State"). The contractor shall not accrue leave, retirement, insurance, bonding, or use of MHACY vehicles or any other benefits afforded to employees of MHACY by virtue of the contract.
- F. Assignment.** The contractor shall not assign or transfer any interest in the contract or assign any claims for money due or to become due under the contract without the prior written approval of MHACY which consent may be withheld, conditioned or delayed. An approved assignment or transfer shall include a provision that binds the assignee or transferee to all terms and conditions of the contract.
- G. Subcontracting.** The contractor shall not subcontract any portion of the services to be performed under the contract without the prior written approval of MHACY which consent may be withheld, conditioned or delayed.
- H. Records and Audit.** The contractor shall maintain detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the MHACY and State and / or Federal Auditors. MHACY shall have the right to audit billings both before and after payment. Payment under the contract shall not foreclose the right of MHACY to recover excessive or illegal payments.
- I. Release.** The contractor shall, upon final payment of the amount due under the contract, release MHACY and, its officers, directors and employees from all liabilities, claims and obligations arising from or under the contract.
- J. Authority.** The contractor agrees not to purport to bind MHACY to any obligation not assumed in the contract by MHACY, unless the contractor has express written authority from MHACY to do so, and then only within the strict limits of that authority.
- K. Conflict of Interest.** The contractor shall warrant that the contractor has no interest and shall not acquire any interest, direct or indirect, that does or would conflict in any manner or degree with the performance of services required under the contract. The contractor shall further warrant that the contractor will not violate the provisions of City of Yonkers or State laws by entering into the contract.
- L. Amendment.** The contract shall not be altered, changed or amended except by an instrument in writing executed by the parties.
- M. Merger.** The contract shall incorporate all of the agreements, covenants and understandings between the parties concerning the subject matter. No prior agreement or understanding, verbal or otherwise, of the parties shall be valid or enforceable unless embodied in the contract.
- N. Applicable Law.** The contract shall be governed by the laws of the State of New York.
- O. Appropriation.** The terms of the contract are contingent upon sufficient appropriations and authorization being made available to MHACY for the purposes of project completion under the Federal RAD Program. If sufficient appropriations and authorization are not made by project financing sources, the contract shall, notwithstanding the provisions of any other section of the contract, terminate immediately upon the contractor's receipt of written notice of termination from MHACY. MHACY's decision as to whether sufficient appropriations and authorization are made shall be accepted by the contractor and shall be final.
- P. Notice.** MHACY Procurement Policy imposes civil and criminal penalties for its violation. In addition, the New York criminal statutes impose felony penalties for bribes, illegal gratuities and kickbacks.
- Q. Equal Opportunity Compliance.** Contractor shall agree to comply with all federal and state laws pertaining to equal employment opportunity. In accordance with all such laws, the contractor shall agree to assure that no person

in the United States shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits of or be otherwise subjected to discrimination under any program or activity performed under the Contract. If the Contractor is found not to be in compliance with these requirements during the life of the Contract, the Contractor shall agree to take appropriate steps to correct these deficiencies.

- R. Indemnity.** The contractor shall hold harmless and indemnify MHACY, its officers, directors and employees against any injury, loss or damage, including cost of defense, arising out of the negligent acts, errors or omissions of the contractor and subcontractors and anyone directly or indirectly employed by any of them.
- S. Insurance.** Contractor shall purchase and maintain insurance for protection from claims that may arise out of the contractor's operations under the contract, including operations by the contractor and subcontractors and anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The certificate of insurance shall name MHACY an additional insured on all policies and a copy shall be filed with MHACY prior to commencement of the work.
- T. Minimum Wage Rate Determination.** MHACY anticipates a bid and subsequently entering into a contract with the successful bidder in excess of twenty-five thousand dollars (\$25,000). Under Federal law the provisions of the Davis Bacon and Related Acts, ("DBRA") requires that the Contractor and all subcontractors to pay Federal Davis Bacon prevailing wages to all trade workers on the project. A preliminary wage decision which is the current wage decision for Westchester County, New York is attached to provide bidders with approximate wage and fringe benefit data to be utilized in arriving at the contractor's bid price. This wage decision will be updated with a final wage decision that will be in effect on the day that the construction contract is signed and the contractor is given a notice to proceed.
- U. SOCIOECONOMIC CONSIDERATION:** MHACY encourages and gives preference to companies located in or owned by persons residing in a public housing development (commonly referred as Section 3 companies). MHACY's Affirmative Purchasing Policy also encourages bids from all small businesses including minority and woman owned businesses. A section 3 Business is a New York business at least 51% or more owned by a Section 3 resident or:
 - a** The New York registered business must have at least 30% permanent full-time employees that are Section 3 residents or that within the past 3 years were section 3 residents
 - b** A Section 3 resident is a public housing resident in Yonkers with an income no greater than 80% of the median income for Yonkers.

8.0 Submission Requirement Summary

Proposals, whether hand delivered or mailed shall be delivered directly to:

**The Municipal Housing Authority for the City of Yonkers
1511 Central Park Avenue
Yonkers, NY 10710**

With the following clearly noted on the lower left side of the submission envelope

**Request for Proposals/Invitation to Bid – RFP/RFP 2024-03
The Municipal Housing Authority for the City of Yonkers
Bid for Full-Service Ground Source Heat Pump System Service and Maintenance
Attn: Procurement**

RFP Sealed Bid Opening

Sealed bids will be opened and recorded immediately thereafter on May 16, 2024, at 3:00 p.m. at the offices of the Municipal Housing Authority for the City of Yonkers at 1511 Central Park Avenue, Yonkers, NY 10710.

Required RFP/Bid Submittals

The following is a description of the minimum information which must be supplied by each contractor in their sealed bid package. Contractors are allowed to give such supplementary facts or materials that they consider may be of assistance in the evaluation of the proposal submitted. Proposals that omit critical elements may be considered nonresponsive. Proposal packages must contain, at a minimum, the following information and materials:

- Manufacturing specification sheet on all proposed equipment to be installed on the project.
- Completed bid forms that are contained in the Exhibits to the RFP – Exhibit A [initialed] and Exhibits, B, C, & D [signed]
- Electronic copy of your proposal on a CD, DVD or flash drive.
- An initialed copy of each page of the RFP showing you have read the conditions and understand them, attach a page of exceptions, if any.
- A complete cost proposal that breaks all work to be completed down individually by location. Any and all costs not specifically provided for in the proposal response will be borne by each Contractor.
- A proposed project schedule broken out by calendar weeks and months from the date of notice to proceed.

SECTION 2 SCOPE OF SERVICES

The Municipal Housing Authority for the City of Yonkers is seeking proposals from qualified and experienced firms to provide Full-Service Ground Source Heat Pump System Service and Maintenance for MHACY at various sites as specified in this Request for Proposals and as more fully described in "**Exhibit A**". In order to be considered eligible for this RFP, each Respondent must be able to provide Full-Service Ground Source Heat Pump System Service and Maintenance in accordance with the requirements contained in this RFP.

The selected proposer shall be required to provide insurance in the amounts set forth below naming MHACY as an additional insured.

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

i.) General Liability Insurance. An original certificate evidencing General Liability coverage, naming the Agency as an additional insured, together with the appropriate endorsement to said policy reflecting the addition of the Agency as an additional insured under said policy (minimum of \$1,000,000 each occurrence, general aggregate minimum limit of \$1,000,000, together with damage to premises and fire damage of \$50,000 and medical expenses any one person of \$5,000), with a commercially reasonable deductible (e.g. "commercially reasonable," meaning not greater than 1% of the "general aggregate minimum" of the policy, with a maximum deductible amount of \$50,000;

ii.) 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 \$1,000,000), with a commercially reasonable deductible (e.g. "commercially reasonable," meaning not greater than 1% of the "general aggregate minimum" of the policy, with a maximum deductible amount of \$75,000;

iii.) Automobile Liability Insurance. Automobile Liability coverage in a combined single limit of \$1,000,000. For every vehicle utilized during the term of this contract, 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, with a deductible not greater than \$5,000.

iv.) Worker's Compensation Insurance. Worker's compensation coverage evidencing carrier and coverage amount.

v.) Certificates/Endorsements. The Contractor shall provide to the Agency with current certificate(s)/endorsement(s) evidencing the insurance coverage referenced above. Failure to maintain the above-referenced insurance coverage, including naming the Agency as an additional insured (where appropriate) during the term(s) of this contract shall constitute a material breach thereof. All insurance shall be carried with companies which are financially responsible and admitted to do business in New York State. If any such insurance is due to expire during the contract period, the Contractor and subcontractors shall not permit the coverage to lapse and shall furnish evidence of coverage to the Contracting Officer. All certificates of insurance, as evidence of coverage, shall provide that no coverage may be cancelled or non-renewed by the insurance company until at least 30 days prior written notice has been given to the Contracting Officer. Insurance certificate(s)/endorsement(s) shall be delivered to the following person representing the Agency:

Municipal Housing Authority for the City of Yonkers
Attention: Lakisha Collins-Bellamy, Esq.
1511 Central Park Avenue, Yonkers, NY 10710

SECTION 3 QUALIFICATION STATEMENT

See Attachment A, Parts 1 and 2, which must be completed and included in your bid package.

SECTION 4 PRICE SHEET

Respondents are required to provide a complete fee schedule inclusive of all potential costs associated with delivering the full range of services required on its Price Sheet. The Respondent shall provide a description of the equipment and process and methods that will be employed to provide the services described in the Scope of Work Section of this RFP.

Any and all costs not specifically provided for in the proposal response will be borne by the Contractor. **FEES TO REMAIN FIRM.** Fees must remain firm for the duration of the Contract. Any and all costs not specifically stipulated will be borne by the Contractor.

ALL PRICE SHEETS MUST BE SIGNED AND CONTAIN THE FOLLOWING LANGUAGE:

The Undersigned agrees to hold its offer open for 90 days from the date of RFP opening.

Signed by: _____ Print Name _____

Name of Company or Title _____

Address _____

Telephone _____

SECTION 5 GENERAL TERMS AND CONDITIONS

The contract between the MHACY and a successful bidder shall contain substantially the following terms and conditions. By submitting the Bid Form, the bidder agrees to these terms and conditions and the terms and conditions contained in Form HUD 5370 attached hereto and made a part hereof.

A. Scope of Work. This portion of the contract will be drafted following the selection of an individual to perform the services. It will incorporate the Scope of Work in "**Exhibit A**" of this RFP and the description of products and services from the bidder's bid.

B. Compensation. The total "lump sum" bid price for completion of all activity set forth in the Project Scope. Compensation shall not exceed the limit specified in the contract for services provided for which the contractor is liable. The lump-sum price shall be specified in the contract. With each application for payment, the selected contractor shall submit waivers of mechanic's lien(s) from any entity lawfully entitled to file a mechanic's lien arising out of the work covered by the payment.

1. Submit partial waivers on each item for amount requested in previous application, after deduction for retainage (if any), on each item.

2. When an application shows completion of an item, submit conditional final or full waivers.

3. MHACY reserves the right to designate which entities involved in the work must submit waivers.

4. Submit final Application for Payment with or preceded by conditional final waivers from every entity involved with performance of the Work covered by the application who is lawfully entitled to a lien.

5. Waiver Forms: Submit executed waivers of lien on forms acceptable to MHACY. 6. The selected vendor shall indemnify and hold harmless MHACY, its officers, directors and employees from and against any and all actions, claims, and demands arising out of or related to the filing of mechanic's liens against any MHACY property filed by the vendor's contractors or subcontractors, as the case may be. In the event that a mechanic's lien is filed in connection with the work, vendor shall secure a release or bond-off the lien claim within thirty (30) days of its filing.

C. Term. It is anticipated that the contract shall be for the period _____, 2024 through _____, 202__, unless otherwise extended modified, terminated or renewed by the parties as provided for within this contract. The parties shall have the option to extend the term of the agreement by two (2) additional one (1) year terms upon the mutual consent of the parties.

D. The contract shall be effective on the date that the last of the parties to the contract signs the contract and will terminate as set forth in the contract a sample of which is attached hereto as "**Exhibit B**".

E. Termination. The contract may be terminated by either of the parties upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. A party may not nullify obligations or liabilities already incurred for performance or for failure to perform prior to the date of termination.

F. Status of Contractor. The contractor is an independent contractor performing services for the MHACY and is not an employee of the State of New York ("State"). The contractor shall not accrue leave, retirement, insurance, bonding, or use of MHACY vehicles or any other benefits afforded to employees of the MHACY by virtue of the contract.

G. Assignment. The contractor shall not assign or transfer any interest in the contract or assign any claims for money due or to become due under the contract without the prior written approval of the MHACY which consent may be withheld, conditioned or delayed. An approved assignment or transfer shall include a provision that binds the assignee or transferee to all terms and conditions of the contract.

H. Subcontracting. The contractor shall not subcontract any portion of the services to be performed under the contract without the prior written approval of the MHACY which consent may be withheld, conditioned or delayed.

I. Records and Audit. The contractor shall maintain detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the MHACY and State and / or Federal Auditors. The MHACY shall have the right to audit billings both before and after payment. Payment under the contract shall not foreclose the right of the MHACY to recover excessive or illegal payments.

J. Release. The contractor shall, upon final payment of the amount due under the contract, release the MHACY and, its officers, directors and employees from all liabilities, claims and obligations arising from or under the contract.

K. Authority. The contractor agrees not to purport to bind the MHACY to any obligation not assumed in the contract by the MHACY, unless the contractor has express written authority from the MHACY to do so, and then only within the strict limits of that authority.

L. Conflict of Interest. The contractor shall warrant that the contractor has no interest and shall not acquire any interest, direct or indirect, that does or would conflict in any manner or degree with the performance of services required under the contract. The contractor shall further warrant that the contractor will not violate the provisions of City of Yonkers or State laws by entering into the contract.

M. Amendment. The contract shall not be altered, changed or amended except by an instrument in writing executed by the parties.

N. Merger. The contract shall incorporate all of the agreements, covenants and understandings between the parties concerning the subject matter. No prior agreement or understanding, verbal or otherwise, of the parties shall be valid or enforceable unless embodied in the contract.

O. Applicable Law. The contract shall be governed by the laws of the State of New York.

P. Appropriation. The terms of the contract are contingent upon sufficient appropriations and authorization being made available to the MHACY for the purposes of project completion. If sufficient appropriations and authorization are not made by project financing sources, the contract shall, notwithstanding the provisions of any other section of the contract, terminate immediately upon the contractor's receipt of written notice of termination from the MHACY. The MHACY's decision as to whether sufficient appropriations and authorization are made shall be accepted by the contractor and shall be final.

Q. Notice. The MHACY Procurement Policy imposes civil and criminal penalties for its violation. In addition, the New York criminal statutes impose felony penalties for bribes, illegal gratuities and kickbacks.

R. Equal Opportunity Compliance. Contractor shall agree to comply with all federal and state laws pertaining to equal employment opportunity. In accordance with all such laws, the contractor shall agree to assure that no person in the United States shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits of or be otherwise subjected to discrimination under any program or activity performed under the Contract. If the Contractor is found not to be in compliance with these requirements during the life of the Contract, the Contractor shall agree to take appropriate steps to correct these deficiencies.

S. Indemnity. The contractor shall hold harmless and indemnify the MHACY, its officers, directors and employees against any injury, loss or damage, including cost of defense, arising out of the negligent acts, errors or omissions of the contractor and subcontractors and anyone directly or indirectly employed by any of them.

T. Insurance. Contractor shall purchase and maintain insurance for protection from claims that may arise out of the contractor's operations under the contract, including operations by the contractor and subcontractors and anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable as set forth herein. The certificate of insurance shall name MHACY an additional insured on all policies and a copy shall be filed with the MHACY prior to commencement of the work.

U. Minimum Wage Rate Determination. The MHACY anticipates a bid and subsequently entering into a contract with the successful bidder in excess of twenty-five thousand dollars (\$25,000). Under Federal law the provisions of the Davis Bacon and Related Acts, ("DBRA") requires that the Contractor and all subcontractors to pay Federal Davis Bacon prevailing wages to all trade workers on the project. A preliminary wage decision which is the current wage decision for Westchester County, New York is attached to provide bidders with approximate wage and fringe benefit data to be utilized in arriving at the contractor's bid price. This wage decision will be updated with a final wage decision that will be in effect on the day that the construction contract is signed and the contractor is given a notice to proceed.

V. Elations Systems Utilization. As a component of its procurement process, the MHACY has adopted a policy of requiring the successful bidder/contractor on construction contracts to utilize the "Elations Systems" wage reporting system for assuring strict compliance with DBRA requirements for all contracts in excess of \$100,000. It is recommended that prospective bidders contact Elations Systems at: <https://www.elationsys.com/> or by phone to determine pricing for the proposed project.

W. Performance and Payment Bonds. Intentionally Omitted.

X. Required Project Close Out Manuals. Intentionally Omitted.

Exhibit A

SCOPE OF WORK

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Except as modified by governing Codes and by this Division, the work shall comply with provisions of the latest adopted editions of the following, and in the event of conflict between these standards, the owner's determination shall be final:
1. Local and/or State laws applicable for logistical area of project work including but not limited to:

State of New York, Department of State, Division of Code Enforcement and Administration, 19NYCRR 1221 and 1226, latest edition
City of Yonkers, NY local requirements and ordinances.
 2. NFPA Life Safety Code, Latest Edition
 3. National Electrical Code (ANSI/NFPA 70)
 4. Title III of the Americans with Disabilities Act (ADAAG)
 5. New York State Codes.

The Contractor shall advise the Authority and Consultant of pending Code changes that could be applicable to this project or properties and shall provide written notice to same if there are any Code changes during the term of the maintenance contract.

1.2 SUMMARY

- A. This Section details the requirements of the full comprehensive maintenance and repair contract to service, repair, and maintain all ground source heat pump system equipment identified in this specification and other related equipment if not listed, accompanying accessories, and related equipment, and thereof, in a manner that ensures all requirements, procedures, tests, inspections, filing procedures and recording documentation as referenced, mandated or implied herein are all inclusive.
- B. Maintenance coverage shall include, but is not limited to, preventive services, emergency callback services, inspection and testing services and/or direct replacement component renewal procedures.
- C. Contractor shall service and maintain, in full accordance with the terms of these specifications, the building ground source heat pump system at the locations specified herein. The scope of work shall include, but not be limited to:
1. Keeping the ground source heat pump system in safe operating condition 24 hours per day, 7 days per week, including Holidays (callback times as shown in §1.15)
 2. Providing maintenance and replacement of parts and equipment as hereinafter specified.

3. Maintaining and submitting to the Authority a quarterly service report. This report shall be included with monthly invoices.

Note: Invoice will not be processed for payment without quarterly service report.

4. Providing inspection and testing service for any insurance company, city, state, or government agencies, which have jurisdiction over the ground source heat pump system.
- D. All noted devices shall be maintained as described in this Specification. Trained employees of the Contractor shall use all reasonable care to keep the systems in proper adjustment and in safe operating condition, in accordance with the applicable codes, ordinances, and regulations. The requirements are specified in their singular with the understanding that all provisions shall be provide for all ground source heat pump system indicated unless otherwise specified.
- E. Equipment:
1. The Contractor shall provide full comprehensive ground source heat pump system maintenance as described herein on the specific equipment identified on the attached forms.
- F. Exceptions:
1. The work to be performed by the said Contractor under these specifications shall be done to and for each ground source heat pump system and everything which was furnished with each of them.
 2. The Contractor shall not be required to restore to satisfactory operating condition any item of the ground source heat pump system or parts thereof damaged by negligence, abuse, or misuse thereby caused by persons other than the Contractor, his agents, or employees as further defined herein.

1.3 FIRM AND PERSONNEL QUALIFICATIONS

- A. If required by law, Contractor certifies that it is licensed in the state, municipality and/or local jurisdiction where the property is located to perform the ground source heat pump system maintenance services pursuant to this specification, and that license will be maintained current and valid for the term of the Contract.
- B. Work shall be performed only by Licensed Qualified Technicians and Mechanics directly employed and supervised by the Contractor, who are experienced and skilled in maintaining ground source heat pump system equipment similar to be maintained under this Work and shall not be assigned or transferred to any agent or subcontractor without the express written consent of the Authority or Managing Agent.

1.4 NOTICE BY OWNER TO REPAIR OR REPLACE

- A. The Contractor shall comply with all written recommendations of the governing authority or independent inspectors, consultants and insurance carriers employed by the Authority. However, Contractor is not required under this Contract to install new attachments different from those now constituting the equipment, as recommended or directed by insurance companies, Government Authorities, or otherwise.

1.5 SUBSEQUENT EQUIPMENT MODERNIZATION, ALTERATIONS, AND UPGRADES

- A. Full comprehensive service and repair coverage shall be included under the terms of this agreement when equipment and/or component systems represented herein are modified or upgraded.
- B. Such changes in equipment necessitating continuing full maintenance coverage may be initiated by the Authority under a separate voluntary extra cost upgrading agreement with or without this Contractor's permission or direct authorization and involvement before the work is performed.
- C. Modernized or otherwise upgraded systems and parts thereof shall automatically be included under the terms of this full comprehensive agreement whether such components are specifically identified or not without extra cost to the Authority.
- D. Authority shall have the option of severing the ground source heat pump system comprehensive maintenance and repair service contract with no penalty at any time if any of the units covered under the agreement undergo

modernization, whether with the service provider or a different company.

1.6 PAYMENT FOR MAINTENANCE SERVICE

- A. This Section supplements the requirements of the General Conditions and is specific to this Maintenance and Service Repair of the Work.
- B. The Authority will pay the Contractor for service and maintenance, as specified herein, on a quarterly basis, the annual fee divided by four during the terms of this agreement, subject to price adjustments as specified herein.
 - a. The invoice charges shall be presented in a spreadsheet format.
 - b. Quarterly invoices shall indicate the base quarterly portion fee of the amount due under the agreement for maintenance services. Titled: Base Quarterly Maintenance Fee presented at follows:
 - 1. Quarterly Fee: As defined in schedule of values and/or proposal form.
 - 2. Extraordinary Work and/or Other Work: Work not covered under the full maintenance contract as approved by the Authority, such as elective upgrading of components and accessories, modernization of equipment and invoiced separately upon completion and acceptance of the work or other service performed. Such invoicing shall include mechanic's time ticket with description of work, hours spent, materials, date, and other pertinent information.
- C. The owner, in no instance, will process and/or pay an invoice unless it includes a clear, typed comprehensive monthly report of all activities at each site and car. It is incumbent on the servicecontractor to clearly itemize all charges by building name and address, and specific piece of equipment. Equipment shall be identified by numbers to match the attached equipment list.
- D. Contractor shall submit with invoices all state non-compliance reports and subsequent work slipsfor corrective actions to comply with state regulations.

1.7 RECORDING KEEPING AND REPORTS

- A. Record Drawings: The contractor shall provide and maintain two (2) complete sets of updated schematic drawing on file within the building and they are to become the Property of the Authority for each individual system.
- B. Permanent Records: A complete permanent record of inspections, maintenance, lubrication and call-back service shall be kept in the machine room or other designated location at the site of work. These records are to be made available to the Authority and Authority designees at all times. The records shall indicate the reason the mechanic was in the building, arrival and departure time, the work performed, etc., and these records will be the property of the Authority. Record keeping requirements shall include Contractor assigned maintenance personnel and scheduled preventive maintenance procedures, inspections, tests and third party assisted examinations. The Contractor shall be required to maintain and submit to the Authority: service records, permits, certificates, inspection reports, etc. It shall be the Contractor's responsibility to provide sufficient documentation to allow the Authority to adequately monitor the performance of this contract.
- C. Annually the records specified in paragraph B. above shall be submitted to the Authority and become the property of the Authority. If electronic tracking is utilized to comply with paragraph B of this section, a complete printout will be submitted to the Authority for their records.
- D. Reports: The Contractor shall, at any time during the term of this Contract, upon written request of the Authority, render a report of inspections, repairs or replacements made by the Contractor at the premises herein, itemized as to parts installed or services performed and supply samples of lubricants, compounds, or other materials employed.
 - 1. Contractor shall prepare and issue all required forms and/or reports relative to examinations, tests and inspections as specified herein.
 - 2. Contractor shall provide a typed quarterly report of all activities at each site, as part of the invoice process.

1.8 PERFORMANCE

- A. The Authority may have the Contractor's work and systems' performance operations checked quarterly to ensure the Contractor is performing in accordance with this Contract. If the work requirements are not maintained, the Authority will retain the quarterly payment to the Contractor until the Consultant verifies that the work and/or operating performance is back to standard. If two (2) consecutive quarters of substandard maintenance is noted, the Authority has the right to immediately cancel the Contract without notice to the Contractor.
- B. The Consultant and/or Authority's Designee may withhold approval for payment on any request to such extent as may be necessary to protect the Authority from loss on account of:
 - 1. Negligence on the part of the Contractor to execute the work properly or failure to perform any provisions of the contract. The Authority, after three (3) days written notice to the Contractor, may, without prejudice to any other remedy, make good such deficiencies and may deduct the cost of the contract.
 - 2. Claims filed or reasonable evidence indicating probable filing of claims due to the Contractor's failure to perform.
 - 3. Failure of Contractor to make payments properly to subcontractors for material and labor used to fulfill contractual requirements.
 - 4. Damage to the building as a result of work performed or another subcontractor's failure to perform.
- C. If the Contractor fails to respond within the performance times specified in Paragraph 2.6 of this specification for Emergency Call-Back Service, the Authority reserves the right to utilize another Service Provider to respond to emergency and shall deduct the cost of this other Service Provider from the Contractor's next monthly payment.
- D. Contractor's failure to execute statutory tests mandated by either national codes or local jurisdictions or regulations within 30 calendar days of required time constraint shall subject Contractor to a \$100.00 per calendar day penalty on each unit for each infraction beginning on the 30th day subsequent to the required date and continuing until Authority receives written notification from Contractor of completion of required test. Statutory tests include but are not limited to tests specified herein. Contractor shall attempt to schedule said tests in the presence of local enforcing authority and/or persons designated by the Authority. Scheduling difficulties shall not exempt Contractor from performing tests in compliance with applicable code or regulatory requirements.

1.9 OWNERSHP OF EQUIPMENT

The Contractor does not assume possession or control of any part of the equipment, but such remains the property of the building exclusively as the owner thereof.

1.10 NOTICES

All notices to be given under the contract from the Contractor to the Authority shall be in writing and addressed to the party to be notified, postage prepaid, by registered or certified mail, return receipt requested, or by delivering the same in-person to such party. All notices shall be deemed to have been given as of the date of delivery indicated on the return receipt or date of failure to deliver by reason of changed address of which no notice was given or refusal to accept delivery, or when personally delivered. Any party or person to whom notices are to be sent or given pursuant to the Contract may, by notice to all such other parties or persons mentioned herein, change its address for the giving of notices, provided, however, that a notice addressee. Notices from the Authority to the Contractor may be in the form of e-mail or other electronic communication.

1.11 AGREEMENT INTENT

- A. Provide proactive preventive maintenance for the equipment covered by this Agreement to facilitate the following:
 - i. Consistent safe operation of equipment
 - ii. Maximum operational performance of equipment
 - iii. Maximum beneficial usage of equipment
 - iv. Maximum life cycle of equipment
- B. Contractor expressly acknowledges that the Authority is relying on Contractor's professional expertise in performance of Services to achieve and maintain Agreement intent.
- C. For clarification boilers, pumps, etc. may be referred to as "units", or "equipment" in this Agreement.

1.12 CONTRACTOR SERVICES

- A. Services shall include all labor, transportation, supplies, materials, parts, tools, scaffolding, machinery, hoists, employee safety equipment, equipment, lubricants, supervision, applicable taxes, and all other work and materials expressly required under this Agreement or reasonably inferred whether or not expressly stated herein.
- B. Contractor shall submit a written Maintenance Control Program (MCP) specifically designed for the properties included in this agreement defining the planned preventive maintenance procedures to facilitate Agreement intent and "Services" for all equipment included under this Agreement. Routine maintenance procedures shall include any unique or product specific procedures or methods required for inspecting or testing the equipment. MCP shall identify quarterly, bi-annual and annual maintenance procedures, including statutory and other required equipment tests.
- C. Coordinate and follow the directives of the Authority with respect to scheduling Services and any deliveries hereunder or at time or times further specified in other provisions of this Agreement.
- D. Services shall be performed as follows:
 - a. In conformance with all provisions of this Agreement.
 - b. In conformance with all applicable original equipment manufacturer's specifications.
 - c. In conformance with the written Maintenance Control Program (MCP).
 - d. In conformance with the Authority's requirements for cleanup using containers supplied by Contractor.
 - e. To the Authority's satisfaction.
 - f. By qualified, careful, and efficient employees in conformity with best industry practices.
 - g. Diligently and in a first class, complete, and workmanlike manner, free of defect or deficiency.
 - h. In such manner as to minimize any annoyance, interference, or disruption to occupants of Property and their invitees.
- E. Materials: The term "materials" shall include all tangible property, whether designated as materials, goods, parts, or otherwise. All such materials shall be:
 - a. New.
 - b. Best quality and suitable for their intended uses.
 - c. Obtained from or recommended by original manufacturer(s) of equipment for replacement or repair, including parts redesigned by and recommended as replacement parts by the original equipment manufacturer(s). Equivalent parts may be used if approved by the Authority in writing.
 - d. Parts requiring repair shall be rebuilt to "like new" condition.
 - e. All lubricants shall be suitable for purpose intended and shall meet or exceed minimum requirements specified by original manufacturer of equipment to which the lubricant is applied.
 - f. All materials delivered and stored at the Property which are intended to become part of the completed Services shall pass to the Authority upon installation.
 - g. Lubricants, cleaning fluids, and all combustible liquids shall be stored in a metal cabinet in machine room and shall be disposed of in accordance with Federal or local jurisdiction guidelines. A metal can with lid shall be provided in each machine room for temporary storage of oily rags.
 - h. Proration of equipment or materials shall not be allowed.

Consideration shall be given in regard to obsolescence of systems, materials, or parts only when both the original equipment manufacturer(s) and after-market ground source heat pump system industry suppliers no longer manufacture or rebuild required parts or assemblies. Rebuilt parts and/or assemblies are acceptable when documentation is provided indicating parts and/or assembly meets all design requirements of the original part and/or assembly.

- F. No parts or equipment required by Services may be removed from the Property without written approval of the Authority. This does not include renewal parts stocked on site by Contractor, which shall remain Contractor's sole property until installed on the equipment. Expediently replenish parts/materials as utilized.
- G. Initiate, maintain, and supervise all safety precautions and programs in connection with Services and comply with all applicable safety laws. Take all reasonable precautions for safety of building occupants and visitors, Contractor's employees, and other persons on or about Property.
- H. Repair, to satisfaction of the Authority, any damage to the Property and adjacent areas caused by performance of Services.

1.13 CONTRACTOR'S EMPLOYEES

- A. Contractor shall be responsible for the supervision and execution of Services by its employees. An onsite condition review shall be conducted by a designated Supervisor of Contractor on an annual basis to ensure all Services hereunder are properly performed. Contractor shall inform the Authority of the name of its Supervisor responsible for execution of Services and Supervisor shall have the authority to act as Contractor's agent. Supervisor shall notify the Authority of site inspection and provide the Authority's Real Estate Manager, Engineer and Consultant with written summary of findings within ten (10) working days after completion of site review.

1.14 CONTRACTOR'S HOURS AND MANNER OF WORK

- A. Services, except as otherwise noted under this Agreement, including unlimited emergency callback service, shall be performed during regular hours of regular working days of the Trade Monday through Friday 8:00am to 4:30pm. For all properties with a single boiler, or a single pump that serves a specific area of the building for which there is no alternate piece of equipment, emergency callback services shall be 24-hours per day, including weekends and holidays, as part of the base scope of services for that unit.
- B. Response time for callback service:
 - a. During the hours identified above, Contractor shall arrive at Property within ninety (90) minutes from time of notification of equipment problem or failure by the Authority.
 - b. During the hours identified above, Contractor shall arrive at Property in response to no heat calls within thirty (30) minutes from time of notification by the Authority.
 - c. After hours, Contractor shall respond to callback service within one hundred and twenty (120) minutes from the time of notification by the Authority.
- C. Callback is defined as any request for service or assistance by the Authority or the Authority's representative when any unit is not available for beneficial usage due to equipment shutdown or malfunction.
- D. Removal of units from beneficial usage to facilitate Services shall be coordinated with and approved by the Authority and identified in the MCP unless removal is necessitated for emergency repair or adjustment. The Authority agrees to permit Contractor to remove units from service for a reasonable time during hours identified above, to perform Services.

1.15 SPECIAL CONDITIONS

- A. Contractor will update its online system within twenty-four (24) hours of servicing or repairing a piece of equipment. Detail shall include a description of the work performed and the name of Contractor's employees who performed such work.

- B. Conspicuously post written Maintenance Control Program (MCP) and work log in each boiler room. Maintain preventive maintenance history and testing logs in accordance with the MCP in the boiler room, building management office, and electronically within unit computer control system. Data shall be accessible by the Authority via manual log or web access and hard copy printout at all times. Log or electronic printout shall include all entries for routine preventive maintenance, repairs, tests, callbacks, and Supervisor's inspection. Entries shall include date work is completed, Mechanic's or Supervisor's name, brief description of work completed, including unit number and number of units serviced, repaired or inspected, and the approximate time required for work excluding travel time to and from property. The Authority shall be allowed to inspect and copy log or electronic printout and maintenance history and schedule at any time.
- C. Maintain property's complete set of single line piping diagrams in good condition. Drawings shall be consistently updated and properly noted with "as built" conditions with any changes or modifications to piping resulting from control modifications, parts replacement, or equipment upgrades made by Contractor during Agreement term. The Authority shall be allowed to reproduce these "as built" drawings and retain sole possession of these drawings in event Agreement is cancelled. If Agreement is cancelled, the Authority will withhold final payment due Contractor until all as built/as modified set(s) of piping diagrams are delivered to the Authority.
- D. Equipment manufacturer's electronic diagnostic devices required to facilitate services, including fixed and hand-held devices, shall be maintained and upgraded by Contractor during the term of this Agreement. If requested by the Authority or the Authority's Consultant, any such handheld or other electronic devices shall be left on-site at all times.
- E. Local inspection fees in regard to operation of equipment covered by this Agreement shall be paid by the Authority. Fees for re-inspection, including any fees payable to the Authority's third-party witness, due to Contractor's failure to expeditiously eliminate deficiencies covered by Services prior to inspections shall be paid by Contractor.

1.16 CONTRACTOR'S REPORTING REQUIREMENTS

- A. The Contractor shall provide a quarterly report showing all equipment maintained by them no later than the fifth day of each quarter. The report shall be in excel format and include a column for the number of callbacks that occurred in that quarter, a cumulative total of callbacks since contract inception, the length of the callback (time for response, correcting problem and returning unit to service), time for all quarterly maintenance performed, time for all quarterly repairs performed, time for testing and all other occurrences where equipment was out of service.

1.17 AUTHORITY'S RIGHT TO AUDIT SERVICES

- A. The Authority reserves the right to make, or cause to be made, such audits and tests whenever necessary to ascertain that Services are being fulfilled. Deficiencies noted shall be submitted, in writing, to the Contractor. Contractor shall expeditiously correct deficiencies within thirty (30) working days at its expense.
- B. A qualified mechanical Consultant selected by the Authority will be retained by the Authority to perform audit of Services and mediate disputes. Re-inspection deficiencies and associated fees will be at Contractor's expense.

1.18 NOTICES

- A. Each party will notify the other when they become aware of the death or injury to any person or damage to property arising from the use of the Equipment

1.19 AUTHORITY'S RESPONSIBILITIES

- A. Provide clear and safe access to Property and equipment rooms.
- B. Maintain controls and electrical feeders to equipment.

- C. Maintain equipment room heating and ventilating systems.
- D. Maintain fire alarm initiating devices in equipment rooms, etc.
- E. Prevent storage of Property or other Contractors' equipment or supplies in equipment rooms and obstruction of equipment room access corridors and doors.
- F. Maintain standby power generator systems and related switchgear and feeders.
- G. Maintain equipment rooms in code compliant dry condition.
- H. During Property construction and/or modernization, make provisions to limit infiltration of dust and debris into equipment and equipment spaces.

1.20 CONTRACT TERM

- A. Initial contract term shall be two (2) years from the date of commencement.
- B. The Authority may optionally extend contract for up to three (3) additional years from the date of expiration of initial term, providing notice is provided by the Authority to Contractor prior to expiration of initial contract term. Contractor shall be notified of additional contract term with each renewal.
- C. In the absence of formal notice from the Authority, contract shall automatically renew each quarter for a period of ninety (90) days, until the Authority or Contractor gives notice of cancellation as per Termination of Contract provisions of this contract.

PART 2 - PRODUCTS AND SERVICES

2.1 MATERIALS AND WORKMANSHIP

All materials are to be new and of the best quality of the kind specified. Installation of such materials shall be accomplished in a neat and workmanlike manner. In case the Contractor should receive written notification from the Authority stating the presence of inferior, improper, or unsound materials or workmanship, the Contractor shall, within twenty-four (24) hours proceed to remove such work or materials and make good all other work or materials damaged thereby. If the Authority permits said work or materials to remain, the Authority shall be allowed the difference in value or shall, at its election, have the right to have said work or materials repaired or replaced as well as the damage caused thereby, at the expense of the Contractor, at any time within one (1) year after completion of the work; and neither payments made to the Contractor, nor any other acts of the Authority shall be construed as evidence of acceptance and waiver.

2.2 SCHEDULED PREVENTIVE MAINTENANCE LABOR

- A. Contractor shall provide scheduled quarterly examinations, adjustments, cleaning and lubrication of all equipment. The Contractor shall include a minimum of **two hours per quarter per boiler, and one hour per quarter per associated equipment**, that is to be dedicated to routine preventive maintenance.
- B. Where there is no specific requirement for a preventive maintenance procedure, the original equipment manufacturer (O.E.M) standard shall be employed unless there is no relative documentation available. The absence of both contract requirement herein and the O.E.M. design standard shall cause the contractor to engage the services of a qualified engineer to formulate the relative standards and incorporate same as an addendum to this agreement with the Professional's Seal and Stamp.

2.3 FULL PROTECTIVE MAINTENANCE REQUIREMENTS

- A. The Contractor shall keep each piece of equipment maintained to operate at the original capacity, as designed and installed by the manufacturer.
- B. The Authority reserves the right to make inspections and tests as and when deemed advisable. If it is found that the boilers and associated equipment are deficient either electrically or mechanically, the Contractor shall be notified of these deficiencies in writing, and it shall be his responsibility to make the necessary corrections within 30 days after his receipt of such notice. In the event that the deficiencies have not been corrected within 30 days, the Authority may terminate the Contract and employ a Contractor to make the corrections at the original bidder's expense.
- C. Approximately six months prior to the end of the contract term, the Authority may make a thorough maintenance inspection of all equipment covered under the contract. At the conclusion of this inspection, the Authority may give the Contractor written notice of any deficiencies found. The Contractor shall be responsible for correction of these deficiencies within 30 days after receipt of such notice.
- D. Spare Parts
 - 1. Provide a list of minor spare parts for the Consultant's review and approval.
 - 2. In addition to the minor spare parts, the Contractor shall have available at all times, for immediate delivery and installation, sufficient supply of emergency spare parts for the repair of each type of equipment concerned.
 - 3. Contractor shall provide at the building a spare part metal; lockable storage cabinet and metal safety containers for storage of waste and other flammable materials.

E. Items of Preventive Maintenance Work

1. The preventive maintenance specified herein is considered the minimum for all equipment. If specific equipment covered by this contract required additional preventive maintenance for safe, reliable operation as specified by the manufacturer, the Contractor shall perform the required additional preventive maintenance without added cost to the Authority. If specific equipment covered by this contract required additional preventative maintenance for safe, reliable operation as specified by the manufacturer, the Contractor shall perform the required additional preventative maintenance without added cost to the Authority.

2. BOILERS

a. Quarterly

- 1) Clean or replace expansion tank sight glass
- 2) Check all electrical connections for tightness.
- 3) Check accuracy of temperature gauges.
- 4) Check air lines.
- 5) Check wire insulation.
- 6) Check accuracy of pressure gauges. Test boiler room floor drains.
- 7) Check accuracy of stack temperature gauges.
- 8) Check emergency disconnect boiler shutdown.

b. Bi-annual

- 1) Test in accordance with the manufacturer's instructions and report findings.
- 2) Coordinate water treatment specialist's chemical additions.
- 3) Coordinate water sampling lab testing requirements.
- 4) Ensure low water cutoff functions properly.
- 5) Ensure high limit functions properly.
- 6) Check relief valve operation.
- 7) Verify operation of makeup water system.
- 8) Check condition of flues.
- 9) Clean each flue passage.
- 10) Vacuum combustion chamber, burner base, clean and check all components.
- 11) Check cleanout cover and rope seal, replace if deteriorated.
- 12) Replace cleanout covers, reseal with 500 degree Fahrenheit rated silicone caulk.
- 13) Check boiler exterior for leaks.
- 14) Check fireside of boiler.
- 15) Check waterside of boiler for scale buildup and/or oil.
- 16) Reassemble and fill boiler, fire burner to boil off oxygen.
- 17) Verify boiler room supply vents are free from obstructions.
- 18) Verify operation of pressure or temperature, primary and backup controls.
- 19) Use a combustion analyzer to ensure that the burner is adjusted properly.
- 20) Disassemble, clean and check low water fuel cutoff.
- 21) Clean or replace sight glass.
- 22) Disassemble, clean and check water feeder.

3. BURNER (BI-ANNUALLY)

a. Burner Testing, Cleaning and Adjustment

- 1) Test in accordance with the manufacturer's instructions and report findings.
- 2) Check and lubricate all burner linkages.
- 3) Test and clean primary and secondary shutoff dampers. Check and clean air intake screens.

b. Forced or Induced Draft Blower

- 1) Check and clean blowers and air passages.
- 2) Test secureness of mounting points, and tighten all major points.
- 3) Visually check coupling for abnormal conditions.
- 4) Lubricate coupling.
- 5) Check motor windings.
- 6) Lubricate motor bearings.
- 7) Lubricate blower bearings. Check starter.

- c. Pilot
 - 1) Leak test pilot gas train.
 - 2) Check and clean ignition assembly and electrode.
 - 3) Check and clean pilot orifice.
 - 4) Check high tension wire. Check and set spark gap.
 - 5) Flame Safeguard
 - 6) Clean flame detector.
 - 7) Test flame detention device.
 - 8) Test minimum pilot test.
 - 9) Test pilot flame failure protection.
 - 10) Test main flame failure protection.
 - 11) Perform combustion test and adjust air mixture as necessary.
 - 12) Operational Test
 - 13) Test low oil pressure safety circuit.
 - 14) Test low oil temperature safety circuit. Verify operation of operating controls.
 - 15) Check flame condition.
 - 16) Test atomizing air pressure supervisory switch.
 - 17) Test all special safety devices.
 - 18) Verify operation of high operating limit controls.

4. PUMPS

- a. Quarterly
 - 1) Check seal visually.
 - 2) Clean or blow down strainers.
 - 3) Lubricate per manufacturer's recommendations.
- b. Annual
 - 1) Check alignment of flex coupled pumps.
 - 2) Tighten electrical connections.
 - 3) Check operation of starter and overload relay.
 - 4) Compare electrical characteristics with historical data.
 - 5) Compare hydraulic pressures, pressure drop and system head with historical data.
 - 6) Compare bearing area temperature with historical data.

5. HEAT PUMP UNITS

- a. Quarterly
 - 1) Replace air filters
 - 2) Clean grilles and cover
- b. Bi-Annual
 - 1) Inspect and clean evaporator coil.
 - 2) Clean blades on blower wheel.
 - 3) Inspect and clean condenser coil.
 - 4) Inspect and clean drain pan.
 - 5) Check caulking around wall sleeves. Adjust level to tilt to outside.
 - 6) Verify operation of units.

6. Miscellaneous

- a. Bi-annual
 - 1) Check condensate neutralizer system. Replace media if necessary.
 - 2) Check glycol concentration level. Adjust as needed.
 - 3) Bleed air vents.

2.4 PAINTING

A. The Contractor shall keep the exterior of the equipment and any other parts of the equipment subject to rust properly painted, identified and presentable at all times. Motor windings and controller coils shall be periodically treated with proper insulating compound. The equipment room floor and all storage areas shall be painted annually with a good quality deck enamel as typically used and accepted in the industry.

2.5 INSPECTIONS / TESTS

- A. The Contractor shall conduct Safety, Efficiency and Maintained Conditions surveys, inspections and tests as follows:
1. Semi-Annual quality control evaluations by a qualified supervisor to ensure and confirm the services and procedures as specified herein are properly executed relative to maintenance and performance standards for the systems serviced.
 2. Perform test of the Boiler Room's Fire Safety System quarterly; i.e., fire alarm system in the designated mechanical room. Confirmation and results of all tests shall be forwarded in writing to Consultant and the Authority upon completion of testing.
 3. The Authority retains the right to have these tests performed on a not-to-interfere basis at any hour of the day and any day of the week. There shall be no additional costs for overtime testing if requested by the Authority.
4. Whenever necessary for the safe and satisfactory operation of the equipment, the Contractor shall repair and/or replace any or all the electrical equipment from the load side of each disconnect switch.
5. Whenever necessary for the safe and/or satisfactory operation of the equipment, the Contractor shall repair and/or replace any and all mechanical parts of each piece of equipment.
6. The Authority's Inspections: Up to two inspections per year shall be scheduled at the convenience of both the Contractor and the Consultant to jointly inspect all work included in this contract.
7. The Authority shall reserve the right, from time to time to employ others to test the condition, and safety of the equipment as it may be deemed advisable. If it is found that the equipment does not conform to the required standards as set forth under the terms of this contract, the Authority will immediately demand that the equipment be placed in satisfactory condition, and if the work has not commenced within twenty-four (24) hours, the Authority can enter into agreement with others to perform such work and deduct the total cost of said work from the Contractor's monthly charge for the services specified. If the above happens repeatedly, the Authority may void this contract and not allow this Contractor to bid on future work.

2.6 VIOLATIONS

- A. Contractor agrees that he/she and his/her agents shall comply with any violation issued by the city of Yonkers Department of Buildings, Environmental Control Board (ECB), or any other agency having jurisdiction, assuming all repairs are covered under the scope of work outlined in this agreement. The contractor shall provide a separate proposal for any repairs not covered by this agreement. Any affirmations of correction and/or other paperwork, expediting, hearings and or any other means necessary to clear all violations shall be the sole responsibility of the contractor. The Authority and/or the Authority's representative shall forward any violation issued to the contractor within five (5) business days. All fines related to violations on covered items shall be the responsibility of the contractor. Any fines which have accrued prior to the date the contractor was given the violation shall be the responsibility of the Authority, however, after twenty (20) calendar days, if left uncured, the contractor will be responsible for fines incurred afterward.
- B. If there is work that needs to be performed by someone other than the contractor, or work that is not included in this contract, the contractor MUST inform the Authority/Management and the Authority's consultant in writing. In either case, clearing of the violation shall be the responsibility of the Contractor, once the Authority or the Authority's Representative has stated completion.

2.7 OBSOLESCENCE OF PARTS

- A. Contractor understands and recognizes the current age and condition of the equipment covered by this Contract upon entering into it. Contractor agrees to attempt to make repairs to covered equipment using spare parts and/or salvaged components and/or have existing components repaired using a qualified repair facility prior to requiring the Authority to make upgrades to the equipment.

2.8 ESCALATION

- A. For all lump-sum costs not included on the bid form, year price escalation is permitted. The escalation shall be calculated based upon two components on the following basis:

Material (20%)

Pre-variance (increase or decrease) shall be defined based upon the metals index published by the appropriate authorities.

Labor (80%)

Pre-variance (increase or decrease) shall be based upon applicable prevailing wage requirements. These shall be quantified and qualified by the Contractor as required by the Authority and Consultant and supported by official documents as requested.

- B. In either event, the Contractor agrees not to increase the maintenance for a Five-Year period by more than three (3%) percent each year with a cap of 9% (calculated from year one) for the life of this contract.
- C. This price escalation shall apply to Contractor's hourly billing rates as well.

PART 3 - EXECUTION AND SUPPLEMENTAL REQUIREMENTS

3.1 PARTS INVENTORY AND WIRING DIAGRAMS

- A. The Contractor shall maintain an inventory of spare parts at the site of the work for scheduled preventive maintenance procedures and common emergency call-back service repairs. Such parts shall include but are not limited to valves, grease guns and an assortment of hardware.
- B. The Contractor shall maintain and continually update piping schematic diagrams and control schematics to ensure "asbuilt" documents remain on site and the property of the Purchaser per the maintenance agreement.

3.2 PROTECTION OF WORK AND PROPERTY

- A. The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the Authority's property from injury or loss arising out of this contract. The Contractor shall make good any such damages, injury or loss, except such as may be directly caused by agents or employees of the Authority. The Contractor shall provide all barricades required to protect open hoist ways or shafts per OSHA regulations. Such protection shall include any necessary guards or other barricades for employee protections during and after the maintenance procedure.

3.3 NO LIABILITY

- A. Neither The Municipal Housing Authority for the City of Yonkers nor the fee owners and mortgagees of the Building shall at any time be liable (except if they or any of them shall be negligent) for loss of or damage to Contractor's tools, materials and/or equipment. Notwithstanding any other provision in the contract to the contrary, neither party shall be liable for any loss, damage or delay due to any cause beyond either party's reasonable control, including but not limited to acts of government, labor disputes, theft, weather, natural or man-made disaster, civil commotion, mischief or act of God. Under no circumstances shall either party be liable for special, indirect or consequential damages of any kind including, but not limited to, loss of profits, loss of goodwill, loss of business opportunity, additional financing costs or loss of use of any equipment or property.

3.4 COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS

- A. Contractor agrees that he/she and his/her agents and employees will comply with all municipal, state, and federal laws, rules and regulations applicable to the business to be conducted under this Contract, and that he/she shall obtain all necessary permits, pay all license fees and taxes to comply therewith. Contractor may also comply with the terms and conditions of the Exhibit attached hereto. If a strike, boycott, picketing, work stoppage, slowdown, or other labor activities is directed against the Contractor at the Authority's Facilities which results in the discontinuation of services performed by the Contractor, the Authority shall have the unrestricted right during said period to cause itself or by any other third person or persons to perform said services of Contractor using such equipment which is used by the Contractor and without cost to the Authority.
- B. Payments required to be made by the Authority to the Contractor under the Contract shall be excused and terminated during such period. Equipment damage, exclusive of normal wear and tear, will be reimbursed to the Contractor.

3.5 PREVAILING WAGE LABOR REQUIREMENT

- A. For all construction performed at any property covered under this agreement, all contractors and subcontractors at any tier performing any construction, repair, refurbishment or restoration, including, without limitation, tenant improvements, build-out, alterations, additions, improvements, renovations, repairs, remodeling, painting and installations of fixtures, mechanical, electrical, plumbing, data, security, telecommunication, low voltage or ground source heat pump system equipment or systems or, other equipment, or with respect to any other construction work in, on, or to the Property (including any such work performed by any person who contracts to provide services to any portion of the Property, such as cable, DSL, communications, telecommunications or similar services) shall:
 - a. observe area standards for prevailing wages and other terms and conditions of employment, including fringe benefits.

3.6 BENEFITS

- A. Contractor is solely responsible for any benefits due to any employees during the term on this contract according to its Union Labor Agreement.

3.7 SAFETY

- A. Contractor will take all the necessary precautions for the safety of its employees, Authority's and Agent's staff, other contractors' employees, and the tenants' employees while performing work under this Contract. Contractor must be in compliance with Federal and State OSHA. Laws including but not limited to "the right to know" Law.

3.8 SOLE RESPONSIBILITY

- A. The maintenance work shall be performed only by properly uniformed and trained personnel directly employed and supervised by the Contractor, who are experienced and skilled in maintaining the ground source heat pump system similar to those to be maintained under this Contract and shall not be assigned or transferred to any Owner or subcontractor. However, the Authority retains the right to hire third party vendors to make repairs to said equipment.

3.9 LABOR CONTRACTS AND OVERTIME

- A. It is further understood and agreed that the Contractor shall furnish to the Authority, in duplicate, a copy of his current labor contract and any subsequent labor contracts effective during the term of this Contract pertaining to his ground source heat pump system maintenance personnel, and the Contractor further agrees to furnish any additional information concerning overtime to the Authority at any time upon request.

3.10 LABOR RELATIONS

- A. Contractor shall retain and pay all people rendering services to the building pursuant to this agreement, as its own employees, throughout the term hereof.
- B. Contractor, the Authority and Agent shall cooperate with each other to the end that there shall be no labor difficulties in or about the Building. If any such conflict shall arise as a result of anything Contractor shall do or fail to do, Contractor shall eliminate the basis therefore within 24 hours after notice from the Authority or Agent.

3.11 REPRESENTATION

Contractor represents that it will (i) perform maintenance services under this Agreement in accordance with acceptable industry professional and ethical standards, (ii) not proceed with performance of various aspects of the Services, unless pre-authorized ("Pre-approved Services") by the Authority, (iii) conduct any handling of the Authority's Confidential Information in accordance with acceptable industry professional and ethical standards, (iv) not represent to any third party that it has authority to sign, endorse or represent a contractual relationship with or in the Authority's name, or enter into any agreement on behalf of the Authority in connection herewith (unless expressly pre-authorized in writing by the Authority), (v) safeguard the physical security of the Authority's Confidential Information if it has access to or possession of such information, (vi) ensure that only "Authorized Representatives" of this Agreement, will have access to any of the Authority's Confidential Information while rendering the Services, and that it will not be copied, or disseminated to anyone other than the Authorized Representative, and (vii) ensure that all of its employees, representatives, agents or assigns will not solicit any of the Authority's employees for any purpose. The Parties agree that any alteration to any of the Addenda or Exhibits hereto shall be null and void, unless made in writing by mutual consent of the Parties. The obligations of Contractor set forth herein shall remain in full force and effect for the later of a period of one (1) year from the date of termination or expiration of this Agreement, or the date the Confidential Information is returned to whomever disclosed such information, after the date of termination or expiration of this Agreement.

3.12 TERMINATION

- A. Either party may terminate this Agreement at the end of the initial two (2) year term or subsequent term by giving the other party not less than sixty (60) days written notice.
- B. The Authority may also terminate this Agreement at any time upon thirty (30) days written notice to the Contractor due to the following reasons:
 - a. Unacceptable performance by the Contractor, which shall be determined in the Authority's sole and absolute discretion.
 - b. Contractor's failure to comply with all of its duties and obligations under this Contract.
 - c. If the Authority chooses to modernize ground source heat pump system equipment, during any term of this Agreement.
 - d. Sale of building

Permanent removal of equipment from service

Attachment A
(Part 1)
The Municipal Housing Authority for the City of Yonkers
Respondent's Qualification Statement
Full-Service Ground Source Heat Pump System Service and Maintenance

Instructions

This questionnaire will be used in assessing a Respondent's Qualification and will be used to determine if bid submitted is from a responsible bidder. MHACY procurement policy requires that contracts be awarded to the lowest responsible qualified bidder. Factors such as past performance, integrity of the bidder, conformity to the specifications, etc., will be used in evaluating bids.

This questionnaire must be completed by an officer who is knowledgeable about the past and present operation of the applicant. A response should be provided to each question. If a particular question does not apply, the response should state "NA" (not applicable). The completed questionnaire must be returned to the address below.

Wilson Kimball, President, CEO
The Municipal Housing Authority for the City of Yonkers
1511 Central Park Avenue
Yonkers, NY 10710

Please answer all questions truthfully, fully and accurately. The company may expand on the answers given or the information submitted by attaching additional pages. Use 8 ½" x 11" paper, marking each page with the firm's name and Tax ID # (also known as the Employer Identification Number – EIN). Individual contractors that do not have a Tax ID# should enter its Social Security Number. **In the event of changes in ownership, address, circumstances, conditions of status of the firm that would require amending the answers to this questionnaire, the firm should notify the above in writing of such changes within one month after the change has occurred.**

ATTACHMENT A

(Part 2)

RESPONDENT'S CERTIFICATION

This certification must be completed by each current key person of the company identified in response to question 6 in Respondent's Qualification Statement and by a representative of each firm that is currently an owner or affiliate of the company identified in response to questions 8-10 in Respondent's Qualification Statement. Certification must be notarized when signed.

I _____ being duly sworn, state that I am _____

(name)

(title)

of the company, and that I have read and understood the questions contained in the attached representations and warranties statement and its appendices.

I certify that to the best of my knowledge the information given in response to each question and the appendices is full, complete and truthful as of this date hereof and as of the date of closing.

I acknowledge that the MHACY or its designee may, by means it deems appropriate, determine the accuracy and truth of the statements made in the application.

I recognize that all the information submitted is for the express purpose of inducing the MHACY or its designee to enter contract or do business with company or its affiliates.

I agree and warrant that truthfully answering the questions in connection with these representations and warranties is an event entirely within my control.

I authorize the MHACY or its designee to contact any entity named in the attached representations and warranties for purposes of verifying the information supplied by the company.

Signature

Title

Sworn to before me this ____ day of _____, 2024

Notary Public

Instructions to Offerors Non-Construction

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



- 03291 -

1. Preparation of Offers

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

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

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

2. Submission of Offers

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

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

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

3. Amendments to Solicitations

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

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

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

4. Explanation to Prospective Offerors

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

5. Responsibility of Prospective Contractor

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

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

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

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

6. Late Submissions, Modifications, and Withdrawal of Offers

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

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

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

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

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

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

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

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

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

7. Contract Award

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

(b) The HA may

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

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

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

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

8. Service of Protest

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

9. Offer Submission

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

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

[Describe bid or proposal preparation instructions here:]

Certifications and Representations of Offerors Non-Construction Contract

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

OMB Approval No: 2577-0180 (exp. 7/30/96)

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

This form includes clauses required by OMB's common rule on bidding/offering procedures, implemented by HUD in 24 CFR 85.36, and those requirements set forth in Executive Order 11625 for small, minority, women-owned businesses, and certifications for independent price determination, and conflict of interest. The form is required for nonconstruction contracts awarded by Housing Agencies (HAs). The form is used by bidders/offerors to certify to the HA's Contracting Officer for contract compliance. If the form were not used, HAs would be unable to enforce their contracts. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

1. Contingent Fee Representation and Agreement

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

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

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

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

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

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

- (a) is, is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.
- (b) is, is not a women-owned small business concern. "Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.
- (c) is, is not a minority enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals.

For the purpose of this definition, minority group members are:
(Check the block applicable to you)

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

3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

- (1) The prices in this bid/offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder/offeror or competitor relating to (i) those prices, (ii) the intention to submit a bid/offer, or (iii) the methods or factors used to calculate the prices offered;
 - (2) The prices in this bid/offer have not been and will not be knowingly disclosed by the bidder/offeror, directly or indirectly, to any other bidder/offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
 - (3) No attempt has been made or will be made by the bidder/offeror to induce any other concern to submit or not to submit a bid/offer for the purpose of restricting competition.
- (b) Each signature on the bid/offer is considered to be a certification by the signatory that the signatory:
- (1) Is the person in the bidder/offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
 - (2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above (insert full name of person(s) in the bidder/offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offeror's organization);
(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

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

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

4. Organizational Conflicts of Interest Certification

(a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed contract and a prospective contractor's organizational, financial, contractual or other interest are such that:

(i) Award of the contract may result in an unfair competitive advantage;

(ii) The Contractor's objectivity in performing the contract work may be impaired; or

(iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.

(b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract for the convenience of HA if it would be in the best interest of HA.

(c) In the event the Contractor was aware of an organizational conflict of interest before the award of this Contract and intentionally did not disclose the conflict to the HA, the HA may terminate the Contract for default.

(d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

5. Authorized Negotiators (RFPs only)

The offeror represents that the following persons are authorized to negotiate on its behalf with the PHA in connection with this request for proposals: (list names, titles, and telephone numbers of the authorized negotiators):

6. Conflict of Interest

In the absence of any actual or apparent conflict, the offeror, by submission of a proposal, hereby warrants that to the best of its knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement, as described in the clause in this solicitation titled "Organizational Conflict of Interest."

7. Offeror's Signature

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

Signature & Date:

Typed or Printed Name:

Title:

Attachment B
Part 1
The Municipal Housing Authority for the City of Yonkers
VENDOR DISCLOSURE FORM

Instructions

This questionnaire will be used in assessing a Bidders Qualification and will be used to determine if bid submitted is from a responsible bidder. MHACY procurement policy requires that contracts be awarded to the lowest responsible qualified bidder. Factors such as past performance, integrity of the bidder, conformity to the specifications, etc., will be used in evaluating bids.

This questionnaire must be completed by an officer who is knowledgeable about the past and present operation of the applicant. A response should be provided to each question. If a particular question does not apply, the response should state "NA" (not applicable). The completed questionnaire must be returned to the address below.

Attn: Procurement
The Municipal Housing Authority for the City of Yonkers
1511 Central Park Avenue
Yonkers, NY 10710

Please answer all questions truthfully, fully and accurately. The company may expand on the answers given or the information submitted by attaching additional pages. Use 8 ½" x 11" paper, marking each page with the firm's name and Tax ID # (also known as the Employer Identification Number – EIN). Individual contractors that do not have a Tax ID# should enter its Social Security Number. **In the event of changes in ownership, address, circumstances, conditions of status of the firm that would require amending the answers to this questionnaire, the firm should notify the above in writing of such changes within one month after the change has occurred.**

General Identification

Company Name _____
Address _____
Full-Service Heating System Service and Maintenance Address _____ Suite # _____

City _____ State _____ Zip Code _____

Home Phone () _____ Fax Number () _____

E-mail Address _____

Tax ID # or Social Security # _____

1. Has the Company had a change of address in the past five years?
() Yes () No

2. Has the Company operated under any other name(s) in the past five years?
 Yes No
3. Does the Company have offices, plants or warehouses at other addresses?
 Yes No

If "yes" to questions 1-3, please provide details below:

Name	Address	From (mo/yr)	To (mo/yr)

Business Organization and History

1. Date the Company was formed ___/___/___
2. Corporate Structure
 - a. State in which incorporated: _____
 - b. Number of shares authorized to the corporation: _____
 Number of shares issued to individuals or entities: _____
 - c. Registered Agent (Lawyer/Incorporator) and date of Incorporation if different than date the Company was formed: _____
3. Was the Company purchased as an existing business by its present owners(s)?
 Yes No

Date purchased ___/___/___

Previous Owner(s) Name(s): _____

4. Does the Company own, rent or lease any of its facilities?
 Own Lease/Rent

If leased or rented, provide Owner's Name: _____

Phone Number: _____

Address: _____

5. Does the company share office space, staff, or equipment (including telephone exchanges) with any other business organization?
 Yes, list below No

Tax #	Firm Name	Address/Nature of Shared

		Facilities

6. Identify all Key People – Complete all required information on all present and past key people for the past five years. Key people include:
- Principals, directors, officers
 - Shareholders of 5% or more of the Company issued stock
 - Any manager or individual who participates in overall policy-making or financial decisions for the company.
 - Any person in a position to control and direct the firm’s overall operations.
 - Signatories to bank accounts and any debt instruments, whether or not otherwise considered key people.

“Shareholders” are owners of stock or other securities that can be converted to stock that, if exercised, would constitute 5% of the company issued stock. Other securities include stock options, secured or unsecured bonds, warrants and rights.

Be sure to include all those who fit the definition of key people for the past five years whether or not they are currently with the company. Copy the table if more space is required.

* Provide current proper legal name and specify any name change, including maiden or married names or aliases. Each current key person of the company must file a **notarized** certification on the form attached as Exhibit A.

KEY PEOPLE TABLE – Complete all blank areas

	Person #1	Person #2	Person #3
* Name			
Home Address			
Date of Birth			
SS #			
Title			
From (date)			
To (date)			

% of Ownership			
# of Shares Owned			
How Shares Were Acquired			

7. Number of employees (not including key people): _____

8. At present or during the past five years:

9.

At present or during the past five years:	Yes/No
Has the company been a subsidiary of any other firm?	() Yes () No
Has the company consisted of a partnership in which one or more partners are from other firms?	() Yes () No
Has any other person or firm owned 5% or more of the company?	() Yes () No
Has the company joint ventured with any other firms?	() Yes () No

If "yes" to any of the above questions, list the other firms below and indicate the percent of stock, if any, owned in the company.

	Firm # 1	Firm # 2
Tax ID #		
Firm Name		
Address		
Relationship to the company (co-owner, partner, etc.)		
% of the company owned		
From (date)		
To (date)		
Representative name/title		

10. At present or during the past five years:

All firms listed in questions 8-10 will be referred to in the following questions as “Affiliate Firms”

12. Are any key people associated with MHACY:

Are any key people associated with MHACY:	Yes/No
Past or present employees of MHACY?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Related by kinship or marriage to any present or past employee of the MHACY	<input type="checkbox"/> Yes <input type="checkbox"/> No

If yes to either question, provide names of such individuals(s) and indicate relationship to the current/former MHACY employee:

Name of Individual	Relationship

Financial Information

13. At present or in the past five years:

- a. Has the company been indebted to an individual or entity other than a commercial lending institution in the cumulative amount of \$50,000 or more?
 Yes No

- b. Have any of the company’s key people been indebted to an individual or entity other than a commercial lending institution in the cumulative amount of \$50,000 or more, for the benefit of the company?
 Yes No

- c. Has the company pledge any of its stock to guarantee any of the above obligations?
 Yes No N/A

- d. Has any individual or the company been a guarantor, so-maker or co-signer of any of these obligations on behalf of the company?
 Yes No N/A

If yes to any portion of question 11, provide details below:

Name of Creditor	Name of Borrower	Amount of Loan & Balance Remaining	Terms of Pledge or Loan	Name of Guarantor,

- e. Have monies generated by the company in the cumulative amount of \$50,000 or more been loaned to another firm or individual by the company or its key people?

If yes, please provide details below:

Name _____

Address _____

- f. Has the company or any of its affiliates or key people paid commissions or finders fees to obtain contracts or work to anyone other than its own key people?

Yes No

If yes, please explain: _____

14. Has the company, or its affiliates or key people paid commissions or finders fees to obtain contracts or work to anyone other than its own key people paid commissions or finders fees to obtain contracts or work to anyone other than its own key people?

Yes No

If yes, please provide details below:

Caption	Date	Docket #	Court	County

15. During the past five years, has the company ever:

Been the subject of a lien, judgment or litigated claim of \$25,000 or more by a subcontractor, supplier or other creditor?	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

Failed to complete a contract for a commercial or private owner or government agency?	() Yes () No
Had, or does it currently have, any delinquent local, city, state or federal taxes outstanding? If yes, please explain and submit documentation of any repayment plans.	() Yes () No

If yes to any of the above questions, supply details below

Agency/Owner	Contract #	Description of Circumstances and Current Status	Date of Events	Name/Phone Number of Contact Person

Experience/Performance

16. On the following table summarize the services provided by the company for the last three years:

Fiscal Year End	Services Provided	Total Income
Prior Year		
Prior Year 2		
Prior Year 3		

17. Has the company or any of its officers, owners or managers had any business-related licenses, certificates or certifications revoked in the past 5 years?

() Yes () No

If yes, please explain

Compliance Information

18. In the past five years has the company or any of its affiliate firms been the subject of any of the following actions by any government agency:
 (Government agencies include city, state, federal public agencies, quasi-public agencies, authorities and corporations, public development corporations and local development corporations.)

Been suspended, debarred, disqualified, had its prequalification revoked or otherwise been declared ineligible to bid or to perform work?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Been barred from bidding or denied a contract as a result of refusal key people to testify before a grand jury or administrative board?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Been denied a contract despite being the low bidder for any other reason?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Been defaulted on a contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Had a contract terminated, for either "cause" or "convenience"	<input type="checkbox"/> Yes <input type="checkbox"/> No
Been given a final unsatisfactory performance determination or deemed a poor performer (by letter or formal proceedings)?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Been prevented, or barred from bidding for any other reason?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Been denied a contract for failure to obtain surety or otherwise provide required security?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Had liquidated damages assessed against it upon completion of a contract or failure to complete a contract	<input type="checkbox"/> Yes <input type="checkbox"/> No

Matters under appeal must be disclosed. If yes to any portion for question 19, please supply details below:

Agency	Contract #	Date of Action	Describe Action	Name/Phone # of Agency or Owner Contact Person

19. In the past five years, has the company or any current or past key people or affiliate firms been a plaintiff or defendant in any lawsuits arising out of the company's operations?
 Yes No

If yes to question 20, supply details below and submit documentation if applicable. Indicate

in P/D column whether the company's key people or key firms were plaintiffs (P) or defendants (D).

Caption or Action	P/D	Index/Docket No.	Date	Status

20. In the past ten years has the company or any of its current or past key people or affiliate firms:
- a. Been under investigation involving any alleged violation of criminal law relating to business activities:
- () Yes () No

An INVESTIGATION includes an appearance before a grand jury by representatives of a business entity, any oral or written inquiry or review of the entity's documents by a public agency, temporary commission or other investigative body including, but not limited to; subpoenas and/or search warrants, or questioning of employees concerning the general operation of a specific project or activities of such business entity.

Had records in its or his/her control, custody or ownership subpoenaed by any law enforcement agency?	() Yes () No
Been questioned by any officer or agent of a law enforcement agency regarding any practices or conduct relating to the providing of construction related services?	() Yes () No
Been advised of being the target or subject of an investigation involving any violation of criminal law?	() Yes () No
Been notified of being the subject of court ordered electronic surveillance?	() Yes () No
Been arrested or indicted or otherwise named as an unindicted co-conspirator in any indictment or other accusatory instrument?	() Yes () No
Been convicted, after trial or by plea, of any felony under state or federal law?	() Yes () No
Been convicted of any misdemeanor involving business-related crimes?	() Yes () No
Entered a plea of nolo contendere to a charge of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or a violation of the antitrust law?	() Yes () No
Entered into a consent decree?	() Yes () No
Been granted immunity from prosecution for any business-related conduct constituting a crime under state or federal law?	() Yes () No
Taken the Fifth Amendment in testimony regarding a business-related crime?	() Yes () No

If yes to any portion of question 21, supply details below and submit documentation.

Agency or Court	Nature of Charges	Key Person Named	Date of Charges

21. In the past ten years has the company or any of its current or past key people or affiliate firms engaged in any of the following practices:

Filed with a government agency or submitted to a government employee a written instrument which the company or any of its key people or affiliate firms knew contained a false statement or false information?	() Yes () No
Falsified business records?	() Yes () No
Given, or offered to give money, gifts or anything of value or any other benefit to a labor official or public servant with intent to influence that labor official or public servant with respect to any of his or her official acts, duties or decision as a labor official or public servant?	() Yes () No
Given or offered to give money, gifts or anything of value or any other benefit to a labor official or public servant for any reason?	() Yes () No
Given or offered to give money or other benefit to an official or employee of a private business with intent to induce that official or employee to engage in unethical or illegal business practices?	() Yes () No
Agreed with another to bid below prevailing market rate?	() Yes () No
Agreed with another to submit identical or complementary bids or otherwise not to bid competitively or agree to withdraw or abstain from bidding?	() Yes () No
Agreed with another not to submit competitive bids in another's territory established either by geography or customers?	() Yes () No
Agreed with another to take turns in obtaining contracts by pre-determining which firm shall submit the lowest bid?	() Yes () No

This document was prepared by:

_____ Title

_____ Date

Attachment B

Part 2 VENDOR DISCLOSURE CERTIFICATION

This certification must be completed by each current key person of the company identified in response to question 6 and by a representative of each firm that is currently an owner or affiliate of the company identified in response to questions 8-10. Certification must be notarized when signed.

I _____ being duly sworn, state that I am _____
(name) (title)
of the company, and that I have read and understood the questions contained in the attached representations and warranties statement and its appendices.

I certify that to the best of my knowledge the information given in response to each question and the appendices is full, complete and truthful as of this date hereof and as of the date of closing.

I acknowledge that the MHACY or its designee may, by means it deems appropriate, determine the accuracy and truth of the statements made in the application.

I recognize that all the information submitted is for the express purpose of inducing the MHACY or its designee to enter contract or do business with company or its affiliates.

I agree and warrant that truthfully answering the questions in connection with these representations and warranties is an event entirely within my control.

I authorize the Municipal Housing Authority for the City of Yonkers or its designee to contact any entity named in the attached representations and warranties for purposes of verifying the information supplied by the company.

Name (print) Date

Signature Title

Sworn to before me
This _____ day of _____ 2024

Notary Public

Attachment C
General Contract Conditions & Certification
PROVISION OF FULL-SERVICE GROUND SOURCE HEAT PUMP
SYSTEM SERVICE AND MAINTENANCE SERVICES AT
VARIOUS PROPERTIES FOR THE MUNICIPAL HOUSING
AUTHORITY FOR THE CITY OF YONKERS
GENERAL CONDITIONS CERTIFICATION

This certification must be completed by principal of the company submitting the proposal/bid who is acknowledged to be an owner or affiliate of the company identified. This Certification must be notarized when signed.

I _____ being duly sworn, state that I am _____
(name) (title)
of the company submitting this bid and that I have read and fully understand the each of the provisions of Form HUD 5370, General Conditions for Construction Contracts - Public Housing and, if selected as the successful bidder, will execute a contract with Form HUD 5370 included as a component thereof.

I recognize that all the information submitted with our bid is for the express purpose of inducing the MHACY to enter contract or do business with company or its affiliates. I agree and warrant that truthfully answering the questions in connection with these representations and warranties is an event entirely within my control.

Name (print)	Date

Signature	Title

Sworn to before me
This ____ day of ____ 20

Notary Public

General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing
Office of Labor Relations
OMB Approval No. 2577-0157 (exp. 1/01/2014)

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

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

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

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

1. Definitions

The following definitions are applicable to this contract:

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

2. Changes

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

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

3. Termination for Convenience and Default

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

4. Examination and Retention of Contractor's Records

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

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

5. Rights in Data (Ownership and Proprietary Interest)

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

6. Energy Efficiency

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

7. Disputes

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

8. Contract Termination; Debarment

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

9. Assignment of Contract

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

10. Certificate and Release

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

11. Organizational Conflicts of Interest

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

12. Inspection and Acceptance

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

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

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

13. Interest of Members of Congress

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

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

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

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

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

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

16. Equal Employment Opportunity

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

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

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

17. Dissemination or Disclosure of Information

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

18. Contractor's Status

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

19. Other Contractors

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

20. Liens

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

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

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

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

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

22. Procurement of Recovered Materials

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

General Conditions for Non-Construction Contracts

Section II – (With Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing
Office of Labor Relations

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

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

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

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

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

=====
Section 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

2. Withholding of funds

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

3. Records

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

4. Apprentices and Trainees

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

- Apprenticeship Training, Employer and Labor Services (OATELS), or with a state apprenticeship agency recognized by OATELS, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice;
- (ii) A trainee program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, ETA; or
 - (iii) A training/trainee program that has received prior approval by HUD.
- (b) Each apprentice or trainee must be paid at not less than the rate specified in the registered or approved program for the apprentice's/trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices and trainees shall be paid fringe benefits in accordance with the provisions of the registered or approved program. If the program does not specify fringe benefits, apprentices/trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.
 - (c) The allowable ratio of apprentices or trainees to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the employer as to the entire work force under the approved program.
 - (d) Any worker employed at an apprentice or trainee wage rate who is not registered in an approved program, and any apprentice or trainee performing work on the job site in excess of the ratio permitted under the approved program, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.
 - (e) In the event OATELS, a state apprenticeship agency recognized by OATELS or ETA, or HUD, withdraws approval of an apprenticeship or trainee program, the employer will no longer be permitted to utilize apprentices/trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

5. Disputes concerning labor standards

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

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

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

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

6. Contract Work Hours and Safety Standards Act

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

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

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

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

7. Subcontracts

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

8. Non-Federal Prevailing Wage Rates

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

Attachment D
Representations, Certifications, and Other Statements of Bidder

**PROVISION OF FULL-SERVICE GROUND SOURCE HEAT PUMP SYSTEM
SERVICE AND MAINTENANCE SERVICES AT VARIOUS PROPERTIES FOR
THE MUNICIPAL HOUSING AUTHORITY FOR THE CITY OF YONKERS**

NON-COLLUSION AFFIDAVIT OF CONTRACTOR
Attach to HUD-5369-A

STATE OF _____

COUNTY OF _____

_____, being first duly, sworn, deposes and says that he/she is
_____ (a partner or officer of the firm of, etc.) the party making
the foregoing proposal or bid is genuine and not collusive or sham; that said Proposer has not colluded,
conspired, connived or agreed, directly or indirectly, with any manner, directly or indirectly, sought by
agreement or collusion, or communication or conference with any person to fix the bid price of affiant or
of any other Proposer, or to fix any overhead, profit, or cost element of said bid price, or of that of any
other Proposer, or to secure any advantage against MUNICIPAL HOUSING AUTHORITY FOR
THE CITY OF YONKERS of any person interested in the proposed Contract; and that all statements
in said proposal or bid are true.

Signature of Proposer, if Proposer is an Individual

Signature of Proposer, if Proposer is a Partnership

Signature of Officer, if Proposer is a Corporation

Subscribed and sworn to me this _____ day of _____ 20____

Notary Public

My commission expires _____

Representations, Certifications, and Other Statements of Bidders

Public and Indian Housing Programs

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1. Certificate of Independent Price Determination

(a) The bidder certifies that--

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

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

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

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

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

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

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

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

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

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

[] [Contracting Officer check if following paragraph is applicable] (d) Non-collusive affidavit. (applicable to contracts for construction and equipment exceeding 50,000)

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

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

2. Contingent Fee Representation and Agreement

(a) Definitions. As used in this provision:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Organizational Conflicts of Interest Certification

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

(a) Result in an unfair competitive advantage to the bidder; or,

(b) Impair the bidder's objectivity in performing the contract work.

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

5. Bidder's Certification of Eligibility

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

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

(2) Participate in HUD programs pursuant to 24 CFR Part 24. (b) The certification in paragraph (a) above is a material representation of fact upon which reliance was placed when making award. If it is later determined that the bidder knowingly rendered an erroneous certification, the contract may be terminated for default, and the bidder may be debarred or suspended from participation in HUD programs and other Federal contract programs.

6. Minimum Bid Acceptance Period

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

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

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

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

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

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

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

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

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

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

(Check the block applicable to you)

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

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

The bidder represents and certifies that it:

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

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

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

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

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

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

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

10. Certification of Non-segregated Facilities (applicable to contracts exceeding \$10,000)

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

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

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

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

- (1) Obtain identical certifications from the proposed subcontractors

Notice to Prospective Subcontractors of Requirement for Certifications of Non-segregated Facilities

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

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

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

The bidder certifies that:

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

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

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

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

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

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

13. Bidder's Signature

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

(Signature and Date)

(Typed or Printed name)

(Title)

(Company Name)

(Company Address)

EXHIBIT B

THIS AGREEMENT made this ___ day of _____, 2024 and executed by and between, THE MUNICIPAL HOUSING AUTHORITY FOR THE CITY OF YONKERS, a municipal housing authority duly authorized and validly existing under the laws of the State of New York and having offices and its principal place of business at 1511 Central Park Avenue, Yonkers, New York 10710, hereinafter called the “MHACY” and _____ at _____, a corporation, individual, partnership, and/or joint venture, organized and existing under the laws of the State of New York, hereinafter called the “Contractor”.

Services pursuant to this contract shall begin on the _ day of _____, 2024, and shall end on the _____ day of _____, 202_, unless otherwise extended modified, terminated or renewed by the parties as provided for within this contract.

WHEREAS, MHACY owns and/or manages properties at 10 Brook Street, 55 School Street and 80 School Street in the City of Yonkers; hereinafter “the Property”; and

WHEREAS, MHACY is in need of Full-Service Ground Source Heat Pump System Service and Maintenance at the Property (the “Work”); and

WHEREAS, MHACY issued Request for Proposal (“RFP”) # 2024 – 03 for the Work; and

WHEREAS, Contractor submitted a proposal and after due investigation was determined to have submitted the most advantageous proposal to MHACY for the provision of the Work; and

NOW THEREFORE, in consideration of the matters above recited, the parties hereto formally covenant, agree and bind themselves as follows:

ARTICLE 1. STATEMENT OF WORK: Via the terms of this agreement the Contractor shall provide the Work at the Property as described herein and within the Exhibits/Appendices annexed to this contract. All personnel shall appear in uniform, shall be professionally trained, and shall have any and all necessary licenses or permits to provide the Work as the same may be issued by the State of New York, City of Yonkers or County of Westchester. In addition, the MHACY shall retain the right to implement and/or enforce any item issued as a part of Proposal submitted by Contractor entitled “Full-Service Ground Source Heat Pump System Service and Maintenance.”

ARTICLE 2. THE CONTRACT PRICE: MHACY agrees to pay Contractor for the services provided as follows: _____

ARTICLE 3. THE CONTRACT TERM. The contract term for this contract shall be for the period _____ 2024 through _____, 202_, unless otherwise extended modified, terminated or renewed by the parties as provided for within this contract.

ARTICLE 4. CONTRACT DOCUMENTS: The Contract consists of the following parts:

- a. This Agreement;
- b. Exhibits A, AI, AII, and AIII (Scope of Work);
- c. Signed Copy of Contractor's Bid;
- d. Drug-Free Workplace Certificate
- e. Signed Copy of Contractor's Non-Collusive Affidavit
- f. HUD Form 2992 entitled "Certification Regarding Debarment and Suspension"
- g. HUD form 5369b entitled "Instructions to Offerors Non-Construction"
- h. HUD Form 5370-C entitled "General Conditions for Non-Construction Contracts";
- i. Signed Copy of HUD Form 2530, Previous Participation Certificate; and
- j. Insurance Certificates (Workers' Compensation; Commercial General Liability; and Automobile (if applicable)).

ARTICLE 5. PAYMENTS TO MHACY

- a. Payments will be made as follows: 50% upon the execution of the Agreement and final payment of the remaining 50% for work performed, completed and approved by the Contracting Officer for MHACY.
- b. The terms of the contract are contingent upon sufficient appropriations. The MHACY's decision as to whether sufficient appropriations and authorization are made shall be accepted by the contractor and shall be final.
- c. In no event shall the obligations of MHACY be a debt of the state of New York, nor the City of Yonkers. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or any claim based upon or in respect of any modification of or supplement hereto against any past, present or future member, officer, agent, servant or employee, as such, of MHACY, or any

successor either directly or through MHACY, all such liability of such members, officers, agents, servants or employees being, to the extent permitted by law, expressly waived and released by Contractor as part of the consideration for the execution of this Agreement.

ARTICLE 6. CONTRACTOR OBLIGATIONS Pursuant to this contract, the Contractor agrees to provide the specific services detailed herein and shall be responsible for the following:

- a. **MHACY Supervision and Oversight.** The Contractor shall be solely responsible for providing supervision and oversight to all the Contractor's personnel that are assigned to the MHACY properties pursuant to this contract. While engaged in the performance of the services described herein, only authorized employees of the Contractor are allowed at MHACY locations where the work is being performed. During the performance of these services, the Contractor employees are not to be accompanied in the work area by acquaintances, family members, associates or any other person(s) who are not a current, authorized employee(s) of the Contractor.
- b. **Qualified Personnel.** The Contractor warrants and represents that it will assign only qualified personnel to perform the services outlined herein and within the appendices. For the purposes of this contract, the term "qualified personnel" shall mean those personnel that have been investigated, tested, and trained in the manner described within this contract and, as proposed by the Contractor within its bid or as provided by the Contractor during the Contractor's normal conduct of business.
- c. **Compliance with Federal and State Laws.** All work performed by the Contractor, pursuant to this contract, shall be done in accordance with applicable all Federal, State, and local laws, regulations, codes, and ordinances.

ARTICLE 7. INSURANCE REQUIREMENTS

a.) **Indemnity:** The Contractor shall protect, indemnify and hold harmless MHACY, its officers, directors, employees, agents, servants and representatives from and against any and all liabilities, obligations, claims, losses, damages, penalties, causes of action, costs and

expenses (including reasonable attorneys' fees, expenses and disbursements, and costs of investigation) imposed upon or incurred or asserted against MHACY, its agents, servants and representatives or to which MHACY, its officers, directors, employees, agents, servants and representatives may become subject, as a result of the negligent and/or illegal acts of the Contractor.

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

i.) General Liability Insurance. An original certificate evidencing General Liability coverage, naming the MHACY as an additional insured, together with the appropriate endorsement to said policy reflecting the addition of the MHACY as an additional insured under said policy (minimum of \$1,000,000 each occurrence, general aggregate minimum limit of \$1,000,000, together with damage to premises and fire damage of \$50,000 and medical expenses any one person of \$5,000), with a commercially reasonable deductible (e.g. "commercially reasonable," meaning not greater than 1% of the "general aggregate minimum" of the policy, with a maximum deductible amount of \$50,000);

ii.) 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 \$1,000,000), with a commercially reasonable deductible (e.g. "commercially reasonable," meaning not greater than 1% of the "general aggregate minimum" of the policy, with a maximum deductible amount of \$75,000);

iii.) Automobile Liability Insurance. Automobile Liability coverage in a combined single limit of \$1,000,000. For every vehicle utilized during the term of this contract, 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, with a deductible not greater than \$5,000.

iv.) Worker's Compensation Insurance. Worker's compensation coverage evidencing carrier and coverage amount.

v.) Certificates/Endorsements. The Contractor shall provide to the MHACY with current certificate(s)/endorsement(s) evidencing the insurance coverage referenced above. Failure to maintain the above-referenced insurance coverage, including naming the MHACY as an additional insured (where appropriate) during the term(s) of this

contract shall constitute a material breach thereof. All insurance shall be carried with companies which are financially responsible and admitted to do business in New York State. If any such insurance is due to expire during the contract period, the Contractor and subcontractors shall not permit the coverage to lapse and shall furnish evidence of coverage to the Contracting Officer. All certificates of insurance, as evidence of coverage, shall provide that no coverage may be cancelled or non-renewed by the insurance company until at least 30 days prior written notice has been given to the Contracting Officer. Insurance certificate(s)/endorsement(s) shall be delivered to the following person representing the MHACY:

Municipal Housing Authority for the City of Yonkers
Attention: Lakisha Collins-Bellamy, Esq.
1511 Central Park Avenue,
Yonkers, NY 10710

ARTICLE 8. ASSIGNMENT OF CONTRACT: The Contractor shall not assign, transfer, convey, sublet or otherwise dispose of this Contract to any person, company or corporation, without the previous consent in writing of MHACY which consent may be withheld, conditioned or delayed. If the contractor shall, without the said previous written consent of MHACY, assign, transfer, convey, sublet or otherwise dispose of this Contract, or the Contractor's title or interest herein, or the contractor's owner to execute this Contract, to any other person, company or other corporation, then MHACY shall be relieved and discharged from any and all liability and obligations growing out of this Contract to such Contractor and to the person, company or corporation to whom the Contract was assigned, transferred, conveyed, or sublet to, and the Contractor and the Contractor's assignee, transferee, or sublessee shall forfeit and lose all monies theretofore earned under this Contract.

ARTICLE 9. LEGAL ACTION: As part of the consideration for MHACY entering into this Contract, the Contractor hereby agrees that litigation between them may be brought only in courts located within the State of New York and the Contractor consents to the jurisdiction of any such court located within the State of New York, and further agrees to the venue of any such court as may be chosen by the MHACY. The Contractor waives the personal service of any and all process upon the Contractor, and consents that all such services of process may be made by certified mail, return receipt requested, directed to the Contractor at the address herein stated.

ARTICLE 10. FULL AGREEMENT: This Contract constitutes the full understanding of the parties, and may not be amended or modified except in writing signed by both parties. If there is a conflict between the Contract and any other writing signed by both parties, it is specifically agreed that this Contract will govern, whether such conflicting documents are prior to or subsequent to this Contract, unless each subsequent writing specifically enumerates it is in place of all or part of this Contract.

ARTICLE 11. GOVERNING LAW: The interpretation, validity and enforcement of this Contract shall be governed by and construed under any and all present and future local, state and federal laws, statutes, rules and regulations (“Laws”); and in the event of a conflict between this Contract and the said Laws, then the latter shall control.

ARTICLE 12. TERMINATION OF CONTRACT: If the Contractor should be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or it should persistently or repeatedly refuse or fail to supply enough properly skilled workers or proper materials, or if it should fail to make prompt payment to MHACY pursuant to this agreement or fail to observe or perform the provisions of this Contract, or otherwise be guilty of a substantial violation of any provision of this Contract, then MHACY may, without prejudice to any other rights or remedies of MHACY, terminate this Contract.

ARTICLE 13. NOTICES:

a. CONTRACTOR RESPONSIBILITY - Any notice to MHACY must be in writing, delivered to MHACY’s central office, or sent by certified mail, return receipt requested, address to MHACY at the address listed above.

b. MHACY RESPONSIBILITY – Notice to the Contractor must be in writing, delivered to the Contractor, or sent by certified mail, return receipt requested, address to the Contractor at the address listed above.

c. All notices shall be deemed delivered:

(1) Personal Service: upon personal services. (2)

Certified Mail Return Receipt Requested:

(i) If delivered, upon the date it is received and signed for by a recipient. (ii)

If returned to MHACY as undelivered, upon the date affixed to the certified mail receipt by the Post Office at the time of mailing.

ARTICLE 14. SEVERABILITY: If any provision of this Contract or the application of any provision of this Contract is held invalid, the remainder of this Contract

and the application of such provision, other than to the extent it is held invalid, will not be invalidated or affected thereby.

ARTICLE 15. SECTION HEADINGS: Section headings are for convenient reference only and shall not affect the meaning or have any bearing on the interpretation of this Contract.

ARTICLE 16. OTHER CONTRACTS: MHACY may undertake or award other contracts for additional work at or near the site of the work under this Contract. The Contractor shall fully cooperate with the other contractors and with MHACY 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 by MHACY employees. However, it shall be noted that although MHACY employees may offer assistance and direction in some instances, final authority for proceeding in any matter rests with the Contracting Officer.

ARTICLE 17. PERMITS AND CODES: The Contractor shall give all notices and comply with all applicable laws, ordinances, codes, rules and regulations.

ARTICLE 18. HEALTH, SAFETY AND ACCIDENT PREVENTION: In performing this Contract, the Contractor shall:

- a. Ensure that no employee shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and/or safety.
- b. Prevent damage to property, materials, supplies, and equipment; and c. Avoid work interruptions.

ARTICLE 19. ORDER OF PRECEDENCE: In the event of a conflict between the Contract and any applicable state or local law or regulation, the state or local law or regulation shall prevail; provided that such state or local law or regulation does not conflict with, or is less restrictive than applicable federal law, regulation, or Executive Order. In the event of such a conflict, applicable federal law, regulation, and Executive Order shall prevail.

ARTICLE 20. EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS:

a. MHACY 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/or transcriptions.

b. In addition to the above, the Contractor agrees to deliver the Contractor's payroll records to MHACY every quarter for the purpose of making audit, examination, excerpts and transcriptions.

ARTICLE 21. MISCELLANEOUS

This Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

[BALANCE OF PAGE INTENTIONALLY BLANK]

[SIGNATURE PAGE TO CONTRACT]

IN WITNESS WHEREOF, the parties hereto have caused this Instrument to be executed in four (4) original counterparts as of the day and year first above written.

Seal

(Contractor)

Attest:

By _____

Title _____

Business Address:

(Street)

(City) (State) (Zip)

THE MUNICIPAL HOUSING
AUTHORITY FOR THE CITY OF
YONKERS(MHACY)

Attest

By _____

WILSON KIMBALL

President & CEO

Business Address:

1511 Central Park Ave., P.O. Box 35

Yonkers, New York 10710
(City) (State) (Zip)_

CERTIFICATION

I, _____, certify that I am the _____
_____ of the corporation, or a General Partner or
Managing Partner of the partnership, named as Contractor in the attached Agreement:
that _____, who signed this Agreement on behalf of the
Contractor, was then _____ of that corporation
or partnership; that I know his signature, and his signature is genuine; and that the
Agreement was duly signed, sealed, and attested for and on behalf of that corporation or
partnership by authority of its governing body or partners.

Signed by the Secretary or Other Authorized Officer
Of the Corporation or By General or Managing Partner

Name of the Corporation or True Name of the Partnership

Corporate
Seal

VERIFICATION

STATE OF NEW YORK)
COUNTY OF _____)s.:

On this day of _____, 2024, before me personally appeared _____
(Contractor who executed the Agreement), to me known and known to me to be the
individual described in and who executed the foregoing Agreement, and *he/she* duly
acknowledged to me that *he/she* executed the same.

NOTARY PUBLIC

CERTIFICATION

I, WILSON KIMBALL, certify that I am the Executive Director of The Municipal Housing Authority for the City of Yonkers, named as MHACY in the attached Agreement and that I am authorized to execute the Agreement on behalf of MHACY.

Wilson Kimball, President & CEO

The Municipal Housing Authority for the
City of Yonkers

VERIFICATION

STATE OF NEW YORK)
COUNTY OF WESTCHESTER)s.:

On this day of _____, 2024, before me personally appeared WILSON KIMBALL, to me known and known to me to be the individual described in and who executed the foregoing Agreement, and *she* duly acknowledged to me that *she* executed the same.

NOTARY PUBLIC

SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

Operational Plan Summary:

The Municipal Housing Authority for the City of Yonkers (the “Authority”), is committed in assisting the residents of its housing developments and voucher participants to achieve self-sufficiency by providing opportunities for training and employment. The Authority provides employment opportunities on construction projects by encouraging its contractors to hire qualified residents of Authority housing, refers and connects residents to job training and placement opportunities, and provides coordination that facilitates these efforts. The Authority provides employment opportunities by hiring qualified residents of Authority public housing to fill available Authority positions.

- The Authority will formalize recruiting and hiring policies and practices that commit to a goal that allows at least 30% of the aggregate number of new hires each year at the Authority to be qualifying public housing residents.
- The Authority requires all contractors and subcontractors to commit to a goal to hire qualifying Authority residents for at least 30% of the new positions created as a result of contracts with Authority in the amount of \$25,000.00 or more.
- The Authority commits to a goal that at least 10% of the total dollar amount of contracts for construction, repair and rehabilitation be awarded to qualifying Section 3 business concerns and that at least 3% of the total dollar amount of all other Authority contracts are awarded to qualifying Section 3 business concerns.
- The Authority refers and informs the residents of public housing of available job training, education, and personal development programs in order to establish a potential qualifying list of job applicants. In order to assist residents in these efforts, the Authority will direct residents towards any additional support services required for participation.

Implementation:

Lakisha Collins-Bellamy, Esq., is charged with the overall responsibility of Section 3 implementation and maintaining all pertinent information and records as required. To be effective and responsive in this endeavor this office works closely with the office/department of Administration, Modernization, Maintenance, Finance, and Resident Services.

In order to comply with the Section 3 mandate, the Authority undertakes activities such as:

- Overall outreach and recruitment to residents;
- Publicizing the availability of job opportunities;
- Providing information and referral to residents relevant to training and educational programs in order to promote job readiness;
- Making provisions in all contracts relevant to resident hiring;
- Maintaining lists of Section 3 business concerns and their specialties;
- Assisting Section 3 business concerns in areas as requested to make them eligible for participation with Authority activities.

By undertaking this contract, vendor certifies to the Authority that the inspectors and any persons entering residents' apartments and/or cellars have not been convicted of any crimes against persons or property and/or other criminal acts that would adversely affect the health, safety or welfare of residents.

Contractors shall be responsible for the actions of its inspectors and other personnel performing services on this contract and shall indemnify the Authority in the event any claims should arise from the acts or omissions of such inspectors or personnel.

Name, Title

Date

Name of Business

MUNICIPAL HOUSING AUTHORITY FOR THE CITY OF YONKERS
ACKNOWLEDGEMENT OF ADDENDA FORM

Bidder has received the following Addenda, the receipt of which is hereby acknowledged:

Addendum Number _____	Date Received: _____
Addendum Number _____	Date Received: _____
Addendum Number _____	Date Received: _____
Addendum Number _____	Date Received: _____
Addendum Number _____	Date Received: _____

(Company Name)

(Signature)

(Printed or Typed Name)