

REGIONAL HOUSING AUTHORITY



Request For Proposal

Information Technology Consulting, Training & Network Maintenance Services

June 8, 2023

Issued by:

Regional Housing Authority
1455 Butte House Road
Yuba City, CA 95993

GENERAL INFORMATION

INTRODUCTION

Regional Housing Authority (RHA) is a small housing authority located in Northern California. We were established in 1946, under the U.S. Housing Act of 1937 and the State of California Health and Safety Codes (34200-34219), for the purpose of developing housing opportunities for families of low income. We proudly manage a combined approximate total of 2,275 housing units and vouchers for seniors, disabled individuals, veterans and children in Sutter, Nevada, Colusa and Yuba counties

PURPOSE

The purpose of this Request for Proposals is to solicit responses from qualified information technology consultants to furnish information technology services and support to RHA. RHA does not employ information technology personnel. RHA is issuing this RFP as the contract with our current consultant is expiring and as a public funded entity, we are required to perform a fair and open competitive solicitation for all contracts. All qualified proposals will be considered equally for an award based on the criteria listed in the RFP document.

The initial period of performance is for three base years, beginning October 1, 2023, and expiring September 30, 2026. In addition, RHA shall have the option to extend the engagement for up to two (2) additional years, one year at a time, until no later than September 30, 2028.

GENERAL INFORMATION

RHA has approximately 42 employees, full and part time, with approximately 10 office locations and 75 computers/laptops/cellphones. It owns and/or manages various low income housing including senior, migrant, and farmworker housing. It also manages more than 2,100 rental assistance vouchers (Section 8).

SOFTWARE

Please see Appendix A for a current listing of software

IT REFRESH

It is the intention of RHA to significantly overhaul its IT environment over the next two years, both software and hardware. Please see Appendix B for the proposed changes. Respondents will garner more application points if they are specific with their experience and pricing with implementing the proposed plan.

RFP INSTRUCTIONS

CONTACT INFORMATION

This RFP is being issued, as will any addenda, by RHA. The **Contact Person** for RHA is:

Marco A. Cruz, Chief Financial Officer
1455 Butte House Road
Yuba City, CA 95993
(530) 671-0220 ext. 120
m.cruz@regionalha.org

BOARD AND STAFF COMMUNICATIONS

Under no circumstances may any member of RHA Board of Commissioners or any staff member other than the Contact Person be contacted during this RFP process by any entity intending to submit a response to this RFP. Failure to comply with this request will result in disqualification. All questions should be in writing and directed to the Contact Person.

RFP SUBMISSION AND FORMAT SUMMARY

By this Request for Proposals, RHA solicits proposals to be received by **5:00 p.m. (PST) on July 13, 2023** in the form outlined below. **Late submittals will not be accepted.**

1. All requested proposal items requested on this RFP document, along with any and all other additional pricing and or support, must be emailed in PDF format to Marco A Cruz at m.cruz@regionalha.org. Please make sure to include in the body of the email the following:
 - Identification of the company or individual(s) including name, address, telephone number, and email address
 - Name, title, address and telephone number of contact person during the period of the evaluation process
2. RFP Packet must include:
 - a. Company Proposal
 - b. Pricing Matrix
 - c. Mandatory HUD Forms
 - d. W-9

RFP SCHEDULE

Timeline

<u>Event</u>	<u>Date</u>
Request for Proposal Released	June 8, 2023
Due Date for Questions	June 30, 2023
Posting of Responses for Questions	July 6, 2023
Tour of Buildings	July 6, 2023
Proposals Due	July 13, 2023, at 5:00 p.m.
Evaluation Process/Interviews	July 17-21, 2023
Board Approval	August/September 2023
Award Contract	August/September 2023

RFP Questions and Clarifications

If you have questions regarding this proposal, you must submit them in writing to M.cruz@regionalha.org no later than June 30, 2023.

All questions and clarifications shall be answered in one written addendum, to be issued no later than July 6, 2023, to all respondents who have been duly recorded as having received a copy in RHA's RFP distribution log and will also be posted on RHA's website.

Tour

A tour of the Administrative and Maintenance building will be provided starting at 10:00AM and ending at 12:00PM on Thursday, July 6, 2023. A visual inspection of the office, server, and IT rooms will be provided. No electronic connections or assessments of our networks and IT environment will be allowed. Interviews with other staff members will not be allowed.

Those parties wishing to attend the tour need to submit by email to M.cruz@regionalha.org by 5:00PM Wednesday, July 5, 2023. No other tour times will be scheduled or available.

RFP Interview

After RHA's review, some of the companies that responded may be asked to be available for interviews. If so, those companies will be given not less than three (3) business day notice, along with the date, time, and place of the interviews. Every effort will be made to conduct the interviews remotely through Zoom or an equivalent software platform. RHA reserves the right to conduct the interviews in person if necessary. Expenses will be the responsibility of the respondent.

PROPOSAL FORMAT AND REQUIREMENTS

The following items and forms must be executed and included in your submission. Any incomplete proposals will be deemed non-responsive and will be eliminated from further consideration.

Company Packet

1. Identify the consultant's name, address, phone number, E-mail address and contact person, date of proposal and the Federal I.D. number of consultant.
2. A statement detailing the understanding of the work to be done, the commitment to perform the work within the time frame, a statement why the consultant believes itself to be the best qualified to perform the engagement and that the proposal is an irrevocable offer for a stated period of time (minimum 90 days).
3. Information about the consultant. Is the consultant local, regional, or national? Identify the personnel from the office who will serve RHA. Will a technician come on site or all remote
4. Provide prior experience in providing IT services. Provide contacts for a minimum of three clients (with phone numbers and contact persons) so that they may provide a reference. The clients listed should be those served by members of the proposed IT team and/or local office who will be serving RHA. References who have a similar size, structure, and software will garner more points during the evaluation process.
5. Provide information as to the approach, timing, and program of the onboarding team.
6. A section identifying the staff who would be assigned to oversee RHA, including their background and experience.
7. Outline the level of support your consultant will require of RHA staff.
8. An itemized proposed services plan and response schedule, specifically addressing but not limited to:
 - a. Monthly services and support
 - b. Onboarding of new RHA employees and their hardware needs
 - c. Internet connectivity issues
 - d. Replacement of hardware (laptops, cords, peripherals)
 - e. Printer connectivity issues
 - f. IT upgrades listed in Exhibit C

Price

Provide an annual cost for services and support. Also include specific prices for items on Exhibit C. Preference will be given to proposals that clearly itemize costs and surcharges for items outside of normal scope.

Technology Assessment

An in-depth assessment was conducted by a 3rd party consultant on RHA's IT infrastructure. Many of the software and hardware recommendations will be incorporated by RHA over the next two years. The Technology Assessment will be made available to interested IT consultants by completing the included Non-Disclosure Agreement and email to Marco Cruz at m.cruz@regionalha.org.

Other Required Documents

- **Form HUD 5369-A**, Certifications and Representations of Offerors - Non-Construction Contract.
- **W-9**, Request for Taxpayer Identification Number and Clarification

Award Basis

At the option of RHA, finalists may be selected for a final round of negotiations, however, vendors are encouraged to present their best offers with their initial submission.

RHA reserves the right to accept or reject any and all proposals, to waive any irregularities in any proposal process, and to make a contract award in any manner in which RHA, acting in the sole and exclusive exercise of its discretion, deems to be in RHA's best interest. The award of the contract will not necessarily be made to the consultant offering the lowest price.

Contract Terms and Final Selection

The selected company will be expected to sign RHA's Contract Agreement, which will specify the term of service, likely to be annually. If the selected applicant and RHA cannot come to terms with respect to the contract, RHA reserves the right to select the next most qualified applicant or to terminate this RFP and to re-issue a new RFP if no Proposer is acceptable to RHA.

OTHER RFP TERMS AND CONDITIONS

Minimum Requirements

This RFP sets forth the minimum requirements that all submissions shall meet. Failure to submit proposals in accordance with this request may render the proposal unacceptable.

Cost Of the Proposal

Costs incurred by any proposer in the preparation of the RFP are the responsibility of the proposer and will not be reimbursed by RHA. Proposers shall not include any such expenses as part of their proposals.

Clarification To Proposals

RHA reserves the right to obtain clarification of any point in a company's proposal or to obtain additional information necessary to properly evaluate a particular proposal. Failure of a proposer to respond to such a request for additional information or clarification could result in rejection of the company's response or responses.

Cancellation Of The RFP

RHA reserves the right to cancel this RFP at any time, for any reason, and without liability if cancellation is deemed to be in the best interest of RHA. The proposer assumes the sole risk and responsibility for all expenses connected with the preparation of its proposal.

Collusion

Proposer certifies that no officer, agent, or employee of RHA has a pecuniary interest in this Proposal; that the Proposal is made in good faith without fraud, collusion, or connection of any kind with any other proposer; and that the proposer is competing solely in its own behalf without connection with, or obligation to any undisclosed person or company.

Disputes

In case of any doubt or differences of opinions as to the participation sought, or the interpretation of the provisions of the RFP, the decision of RHA shall be final and binding upon all parties.

Release Of Information

Information submitted in response to this RFP will not be released by RHA during the proposal evaluation process or prior to a contract award.

Proprietary Information

If a respondent does not desire certain proprietary information in their response disclosed, the respondent is required to identify all propriety information in the response, which identification shall be submitted concurrently with the response. If the respondent fails to identify proprietary information, it agrees by submission of its response that those sections shall be deemed nonproprietary and may be made available upon public request after a contract award.

RHA Reserves the Right to

1. Request an oral interview, with additional information from companies, prior to final selection of a provider.
2. Consider information about a company in addition to the information submitted in the response or interview.
3. Reject any and all responses and waive any irregularities.
4. Select more than one respondent (and will accept joint venture proposals), to select a respondent(s) for specific purposes or for any combination of specific purposes, and to defer the selection of any respondent(s) to a time of RHA's choosing.

Affirmative Action

RHA requires that each respondent be an Equal Opportunity Employer. State that the respondent complies fully with all government regulations regarding nondiscriminatory employment practices.

Withdrawal Of RFP

Proposals may be withdrawn before the RFP submittal deadline by submitting a written request to Marco A Cruz. Re-submittal before the RFP submittal deadline can be made; however, they may not be re-submitted after the deadline.

Equal Opportunity

The Housing Authority emphasizes that all respondents will receive full consideration without regard to race, color, religion, sex, national origin, sex, disability, age, or sexual orientation. Minority and women-owned consultants are especially encouraged to respond to this RFP.

Limitations

RHA reserves the right to reject any and all Proposals and to waive any informality in the solicitation process.

CONTRACT CONDITIONS

Compliance With Laws

The selected consultant agrees to be bound by applicable local, State and Federal laws, regulations, and directives as they pertain to the performance of the audit contract.

Independent Contractor

The successful bidder and its agents, officers and employees shall act at all times in an independent capacity during the term of the agreement and in the performance of the services to be rendered, and shall not act as, and shall not be, and shall not in any manner be considered to be agents, officers or employees of RHA.

Assignment

Neither the agreement, nor any part thereof, shall be assigned by the successful bidder without the prior written consent of the Housing Authority.

Infringement And Indemnification

The consultant awarded this contract agrees to protect, defend and hold harmless RHA against any demand for payment for use of any patented materials, process, article or device that it may enter into the rendering of the necessary services. Furthermore, the selected consultant agrees to indemnify and hold harmless RHA, their Board of Commissioners and employees from suits or actions of every nature and description arising out of, or in connection with, the performance of this contract, or on account of any injuries or damages received or sustained by a party or parties by or from any act of the selected consultant, or its agents.

Americans with Disabilities Act

Successful bidder must comply with all applicable requirements of federal and state civil rights law and rehabilitation statutes.

Law of the State of California

The resulting contract will be entered into within the State of California and the law of said state, whether substantive or procedural shall apply to the contract, and all statutory, charter and ordinance provisions that is applicable to public contracts within Colusa, Nevada, Yuba and Sutter Counties and the State of California shall be followed with respect to the contract.

INSURANCE REQUIREMENTS

Proof of Insurance shall not be terminated or expire without thirty (30) days written notice, and are required to be maintained in force until completion of the contract. The Contractor shall require all subcontractors used in the performance of this contract to name RHA as an additional insured. The following are standard types and minimum amounts.

- General Liability:** \$1,000,000; per occurrence for bodily injury, personal injury and property damage liability; *RHA Additional Insured* or,
- Commercial General Liability:** \$2,000,000; combined single limit bodily and property damage liability per occurrence; *RHA additional named insured.*
- Comprehensive Automobile Liability:** \$1,000,000; combined single limit bodily and property damage liability per occurrence and aggregate; *RHA Additional Insured.*
- Errors and Omissions Liability:** \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$3,000,000 aggregate **OR**;
- Professional Liability:** \$1,000,000; per occurrence and aggregate.
- Workers' Compensation:** statutory limits **OR**,
- Self-Insurance Program:** a State Approved program in an amount and form that meets all applicable requirements of the Labor Code of the State of California.
- Environmental Liability:** \$500,000; per occurrence and aggregate; *RHA Additional Insured.*
- Owner's Liability:** 100% of insurable value of the work, Builder's Risk, Extended coverage for Vandalism and Malicious Mischief, if required; *RHA additional named insured.*
- Fire Insurance with Extended Coverage:** 100% of insurable value of the work; Builder's Risk, Extended coverage including Vandalism and Malicious Mischief, if required; *RHA Additional Insured.*

Failure to provide proof of insurance or failure to maintain insurance as required in this bid, or by law; are grounds for immediate termination of the contract. In addition, the awarded bidder should be liable for all re-procurement costs and any other remedies under law.

Additional Named Insured

All policies, except for Workers' Compensation, Errors and Omissions and Professional Liability policies, shall contain additional endorsements naming RHA and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder.

Waiver of Subrogation Rights

The Contractor shall require the carriers of the above required coverages to waive all rights of subrogation against RHA, its officers, employees, agents, volunteers, Contractors and subcontractors.

Policies Primary and Non-Contributory

All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by RHA.

Proof of Coverage

The Contractor shall immediately furnish certificates of insurance to RHA evidencing the insurance coverage, including the endorsements above required, prior to the commencement of performance of services, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to RHA. Contractor shall maintain such insurance from the time Contractor commences performance of services until the completion of such services. Within sixty (60) days of the commencement of this Agreement, the Contractor shall furnish certified copies of the policies and all endorsements.

Insurance Review

The above insurance requirements are subject to periodic review by RHA. RHA is authorized, but not required, to reduce or waive any of the above insurance requirements whenever RHA determines that any of the above insurance is not available, is unreasonably priced, or is not needed to protect the interests of RHA. In addition, if RHA determines that, unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, RHA is authorized but not required to change the above insurance requirements, to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against RHA, inflation, or any other item reasonably related to RHA's risk. Any such reduction or waiver for the entire term of the Agreement and any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

EXHIBIT A
Current Software

- Microsoft 365
- Yardi Voyager
- Laserfiche
- Splashtop
- Adobe Acrobat Pro

EXHIBIT C
Planned IT Conversion

- Security
 - Phishing awareness campaign
 - New antivirus/firewall
 - Password manager
- Software
 - Assist with the implementation of Microsoft Teams
 - Remove Splashtop
 - Remove physical servers and associated network drives, replace with cloud-based drive, currently considering Egnyte with SharePoint overlay.
- Hardware
 - Internet based telephone system
 - All new business laptops, disposal of current desktops and laptops
 - Coordinate with contractor for CAT6 rewire of administrative building
 - Remove ancillary switches and replace with central switch.
 - Set up personal scanners.
 - Upgrade wireless network signal in administrative office
 - Implement a backup internet provider (cellular/satellite)

NON-DISCLOSURE AGREEMENT

This agreement (the "Agreement") is entered into by and between the Regional Housing Authority ("Authority") and _____ ("Consultant").

RECITALS

WHEREAS, the Authority has published a Request for Proposal for Information Technology Services to which Consultant is a potential responder;

WHEREAS, the Authority is considering whether to engage Consultant to provide consulting services with respect to its Request for Proposal;

WHEREAS, as part of the process whereby the parties might enter into a consulting relationship, the Authority has various documents and other information which is highly privileged and confidential;

WHEREAS, Consultant agrees the information it receives from the Authority is highly confidential in nature, the disclosure of which would prejudice the Authority's position if the same were disclosed; and

WHEREAS, Consultant agrees it shall at all times keep secret and not disclose the confidential information which the Authority provides it pursuant to this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

Section 1. Incorporation of Recitals

The foregoing recitals are not merely recitals but are contractual in nature and are incorporated into this Agreement.

Section 2. Confidential Information

For purposes of this Agreement, "Confidential Information" shall include all information or material which the Authority shall disclose to Consultant. Confidential Information includes, without limitation, financial information, technical information, all documents, reports, plans, formulas, data and any other information, however described. Consultant shall not have any ownership rights or license with respect to any Confidential Information and shall not disclose any Confidential Information without the Authority's prior written consent.

Consultant covenants and agrees that Consultant, its owners, managers, agents, employees and representatives will not disclose, divulge, communicate or confirm to any person or entity for any purpose or reason whatsoever any Confidential Information without the prior written consent of the Authority. Consultant shall only receive such Confidential Information as reasonably necessary for the purpose of responding to the Authority's Request for Proposal.

When directed by the Authority, Consultant shall return all Confidential Information it has

previously received from the Authority.

The non-disclosure provisions of this Agreement shall survive the termination of this Agreement and Consultant's duty to hold Confidential Information in confidence shall remain in effect unless and until the Authority sends Consultant written notice releasing Consultant from this Agreement.

Section 3. Relationships

Nothing contained in this Agreement shall be deemed to constitute either party a partner, joint venturer or employee of the other party for any purpose.

Section 4. Severability

Should any provisions of this Agreement be found to be invalid or unenforceable, the remainder of this Agreement shall be interpreted so as to best effect the intent of the parties.

Section 5. Damages and Injunctive Relief

Upon breach of this Agreement, the Authority shall be entitled to seek damages occasioned by any breach by Consultant. In addition to the foregoing, it is recognized that, notwithstanding the amount of any money damages, irreparable injury will result the Authority and others in the event of a breach of this Agreement and the Authority shall be entitled, in addition to any other remedies and damages available at law or equity, to an injunction to restrain the violation of this Agreement by Consultant or Consultant's owners, managers, agents, employees and representatives as well as any other persons acting for or in concert with Consultant.

Section 6. Attorneys Fees

In the event a party breaches any provisions of this Agreement, the non-breaching party shall be entitled to recover, in addition to its costs, its attorneys fees incurred seeking to remedy the breach of this Agreement. It shall not be necessary that legal proceedings be instituted to recover attorney fees pursuant to this section and such fees shall be recoverable as a contractual right, whether incurred before the initiation of litigation (and whether or not litigation is ever initiated) after commencement of legal proceedings, including attorneys fees which might be incurred on appeal. The parties agree that the Superior Court of the County of Sutter, State of California is the Court of proper jurisdiction and venue for any matters relating to this Agreement and specifically consent to jurisdiction and venue of the Sutter County Superior Court for any action brought on account of the breach of this Agreement.

Section 7. Notices

Whenever in this Agreement it shall be required or permitted that notice and demand be given or served by either party to the other, this notice or demand shall be given or served and shall be deemed to have been given or served when made in writing and forwarded by certified mail, addressed as follows:

TO THE AUTHORITY

TO
CONSULTANT:

REGIONAL HOUSING AUTHORITY
1455 Butte House Road

Yuba City, CA 95993

Attn: Marco A Cruz, CFO

COPY TO:

RICH, FUIDGE, BORDSEN & GALYEAN, INC.
1129 D Street
Marysville, CA 95901
Attn: Brant J. Bordsen

Either party may change this address by written notice by certified mail to the other.

Section 8. Integration

This Agreement expresses the complete understanding of the parties with respect to the subject matter and supersedes all prior proposals, agreements, representations and understandings. This Agreement may not be amended except in a writing signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

Date:

_____, Consultant

Date:

_____ REGIONAL
HOUSING AUTHORITY

By: _____
_____, its _____

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

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

Representations, Certifications, and Other Statements of Bidders

Public and Indian Housing Programs

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

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

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

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

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

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

Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities

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

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

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

The bidder certifies that:

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

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

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

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

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

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

13. Bidder's Signature

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

(Signature and Date)

(Typed or Printed Name)

(Title)

(Company Name)

(Company Address)

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

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

Instructions to Bidders for Contracts

Public and Indian Housing Programs

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1. Bid Preparation and Submission

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

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

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

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

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

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

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

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

2. Explanations and Interpretations to Prospective Bidders

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

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

3. Amendments to Invitations for Bids

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

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

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

4. Responsibility of Prospective Contractor

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

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

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

5. Late Submissions, Modifications, and Withdrawal of Bids

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

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the PHA/IHA that the late receipt was due solely to mishandling by the PHA/IHA after receipt at the PHA/IHA; or

(3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and observed holidays.

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

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

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

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

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

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

6. Bid Opening

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

7. Service of Protest

(a) Definitions. As used in this provision:

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

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

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

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

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

8. Contract Award

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

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

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

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

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

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

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

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

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

10. Assurance of Completion

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

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

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

[] (3) a 20 percent cash escrow;

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

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

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

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

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

11. Preconstruction Conference (applicable to construction contracts)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Instructions to Offerors Non-Construction

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



- 03291 -

1. Preparation of Offers

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

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

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

2. Submission of Offers

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

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

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

3. Amendments to Solicitations

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

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

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

4. Explanation to Prospective Offerors

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

5. Responsibility of Prospective Contractor

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

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

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

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

6. Late Submissions, Modifications, and Withdrawal of Offers

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

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

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

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

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

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

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

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

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

7. Contract Award

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

(b) The HA may

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

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

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

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

8. Service of Protest

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

9. Offer Submission

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

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

[Describe bid or proposal preparation instructions here:]