



Project Based Vouchers

RFP 1.27.2023: Project Based Vouchers

Publication of Request: January 27, 2023, at 12:00 p.m.

Submission of Response Deadline: February 27, 2023, at 12:00 p.m.

TABLE OF CONTENTS

Section	Description	Page
1.0	Fort Wayne Housing Authority (FWHA) Contact	3
2.0	Applicability	3
3.0	FWHA’s Reservation of Rights	3
4.0	Scope of Work	5
5.0	Bidder’s Responsibility	7
6.0	Proposal Format	7
7.0	Proposal Submission	9
8.0	Questions	11
9.0	Hold Prices/Non-Escalation	11
10.0	Proposal Evaluation	11
11.0	Right to Protest	16
12.0	Disputes Under the Contract	17
13.0	Additional Considerations	17
14.0	Fees	29
15.0	Bid Costs	29
16.0	Assignments of Personnel	29
17.0	Section 3	29
18.0	General Conditions	30
	Attachment A – Company Profile	
	Attachment B – Form of Proposal	
	Attachment C – Form HUD-5369 C	
	Attachment D – Profile of Firm Form	
	Attachment E – Section 3 Forms, including explanation	
	Attachment F – Form HUD-5369 B	
	Attachment G – Form HUD-5370 C	

OVERVIEW

The Housing Authority of the City of Fort Wayne, Indiana and its affiliated entities d/b/a Fort Wayne Housing Authority (“FWHA”) seeks proposals to increase Project Based Voucher units offered by the FWHA. For additional information, please see Attachment A – Company Profile.

RFP INFORMATION AT A GLANCE

[Table 2]

Contact Person	Sarah Smith (260) 267-9300 ssmith@fwha.org
How to obtain the RFP Documents on the applicable Internet Site	www.fwha.org Procurement Portal
Pre-Proposal Conference	N/A
How to fully respond to this RFP by submitting a Proposal Submittal	As directed within Section 6.0 of the RFP document
Submission of Proposal Deadline	Monday, February 27, 2023, 12:00 p.m.* Fort Wayne Housing Authority 7315 Hanna Street Fort Wayne, IN 46816 *The proposal must be electronically received by FWHA no later than 12:00 p.m. on this date.
Anticipated Approval by FWHA Board of Commissioners	Tuesday, May 9, 2023, Fort Wayne Housing Authority 7315 Hanna Street Fort Wayne, IN 46816

1. **FORT WAYNE HOUSING AUTHORITY (FWHA) CONTACT:** All questions or request for documents pertaining to this solicitation shall be addressed to Sarah Smith, Chief Operating Officer by e-mail at ssmith@fwha.org.
2. **APPLICABILITY:** By submitting a bid, the bidder is agreeing to abide by all terms and conditions listed herein, including those terms and conditions within HUD Handbook 7460.8 REV 2, Procurement Handbook for Public Housing Agencies, dated 2/2007 and HUD Table 5.1, Mandatory Contract Clauses for Small Purchases Other Than Construction and if attached; HUD 5370EZ, Davis Bacon or HUD Wage Decision.
3. **FWHA's RESERVATION OF RIGHTS:** FWHA reserves the right to:
 - 3.1 FWHA reserves the right to reject any or all proposals, to waive any informality in the RFP process, or to terminate the RFP process at any time, if deemed by the FWHA to be in its best interests.
 - 3.2 FWHA reserves the right not to award a contract pursuant to this RFP.
 - 3.3 FWHA reserves the right to terminate a contract awarded pursuant to this RFP, at any time for its convenience upon fourteen (14) days written notice to the successful proposer(s).
 - 3.4 FWHA reserves the right to determine the days, hours, and locations that the successful proposer(s) shall provide the services called for in this RFP.
 - 3.5 FWHA reserves the right to retain all proposals submitted and not permit withdrawal for a period of sixty (60) days subsequent to the deadline for receiving proposals without the written consent of the FWHA Contract Administrator (CA).
 - 3.6 FWHA reserves the right to negotiate the fees proposed by the proposer entity. If such negotiations are not, in the opinion of FWHA, successfully concluded within a reasonable timeframe as determined by FWHA, FWHA shall retain the right to end such negotiations.
 - 3.7 FWHA reserves the right to reject and not consider any proposal that does not meet the requirements of this RFP, including but not necessarily limited to incomplete proposals and/or proposals offering alternate or non-requested services.
 - 3.8 FWHA shall have no obligation to compensate any proposer for any costs incurred in responding to this RFP.
 - 3.9 FWHA shall reserve the right to at any time during the RFP or contract process to prohibit any further participation by a proposer or reject any proposal submitted that does not conform to any of the requirements detailed herein. Each prospective proposer further agrees that he/she will inform FWHA's CA in writing within five (5) days of the discovery of any item that is issued thereafter by FWHA that he/she feels needs to be addressed. Failure to abide by this timeframe shall relieve FWHA, but not the prospective proposer, of any responsibility pertaining to such issue.
 - 3.10 FWHA reserves the right, prior to award, to revise, change, alter or amend any of the instructions, terms, conditions, and/or specifications identified within the RFP documents issued, within any attachment or drawing, or within any addenda issued. All addenda will be posted on FWHA's website www.fwha.org under Business Opportunities. Such changes that are issued before the proposal submission deadline shall be binding upon all prospective proposers.

- 3.11 In the case of rejection of all proposals, FWHA reserves the right to advertise for new proposals or to proceed to do the work otherwise, if in the judgment of FWHA, the best interest of FWHA will be promoted.
- 3.12 FWHA reserves the right to, without any liability; cancel the award of any proposal(s) at any time before the execution of the contract documents by all parties.
- 3.13 FWHA reserves the right to reduce or increase estimated or actual quantities in whatever amount necessary without prejudice or liability to FWHA, if:
 - 3.14 Funding is not available,
 - 3.15 Legal restrictions are placed upon the expenditure of monies for this category of service or supplies; or,
 - 3.16 FWHA's requirements in good faith change after award of the contract.
- 3.17 FWHA reserves the right to make an award to more than one proposer based on ratings and to award with or without negotiations or a "Best and Final Offer" (BAFO).
- 3.18 FWHA reserves the right to require additional information from all proposers to determine level of responsibility. Such information shall be submitted in the form required by FWHA within two (2) days of written request.
- 3.19 FWHA reserves the right to amend the contract any time prior to contract execution.
- 3.20 FWHA reserves the right to require the Contractor to keep accurate timesheets for all employees assigned to perform any project, task, or assignment resulting from this RFP and any resulting contract.
- 3.21 FWHA reserves the right to contact any individuals, entities, or organizations that have had a business relationship with the proposer regardless of their inclusion in the reference section of the proposal submittal.
- 3.22 In the event any resulting contract is breached, prematurely terminated, or cancelled due to non-performance and/or withdrawal by the Contractor, FWHA reserves the right to seek monetary restitution (to include but not limited to withholding of monies owed) from the Contractor to cover costs for interim services and/or cover the difference of a higher cost (difference between existing Contracted rate and new Contract rate) beginning the date of Contractor's termination, breach and/or cancellation through the contract expiration date.
- 3.23 FWHA reserves the right to require the Contractor to replace any employee, subcontractor, or other individuals and/or entities, found to be unacceptable, performing work under any contract resulting from this RFP. Replacement shall occur within two (2) days of notification by FWHA.
- 3.24 FWHA must maintain appropriate records (payrolls, work orders, job descriptions, training program materials and apprentice/trainee registrations and any other data related to the employment and utilization of maintenance laborers and mechanics) which must be preserved for no less than three years or until resolution of any dispute. Employers under contract to FWHA to provide maintenance work must submit to FWHA their original employment records as described above or agree to retain the original employment records for three years or until resolution of any dispute subject to this solicitation.

4. SCOPE OF WORK:

Section 8 Project Based Vouchers provide rental subsidies to eligible extremely low and very low-income households. The amount of subsidy is based on the difference between the tenant's required contribution (30 percent of defined household income) and the contract rent for an eligible housing unit. Rents must be reasonable for the immediate market, with determination of rent reasonableness in accordance with 24 CFR 983.303.

In this RFP, the Fort Wayne Housing Authority (FWHA) seeks proposals to increase Project Based Voucher units and is prepared to partner with those looking to offer PBVs in less concentrated areas of poverty in order to affirmatively further fair housing. FWHA will offer owners of selected existing, quality, affordable housing the opportunity to receive allocations of vouchers that can be attached to their rental housing for a designated period of time through contracts with FWHA. Owners will gain the benefit of a multi-year contract ensuring a Section 8 approved rent for their properties for an extended period. Eligible projects must be located in the City of Fort Wayne or within a five (5) mile radius outside of the city limits, except for where there is another incorporated municipality, in Allen County.

4.1 Available Vouchers and Intended Uses

- 4.1.1 Availability: Voucher availability is conditional upon agreements with the Department of Housing and Urban Development. We anticipate issuing multiple voucher contracts.
- 4.1.2 Use: Vouchers for new construction and existing housing within the Fort Wayne area.

4.2 Terms of Section 8 Project Based Assistance

- 4.2.1 Key contract terms and program regulations include, but are not limited to the following:
 - 4.2.1.1 Contract Term: The Section 8 project-based vouchers will be committed for an Initial term of one (1) to fifteen (15) years subject to the availability of continued funding to the FWHA from the U.S. Department of Housing and Urban Development. Contracts will be signed between the FWHA and the owner of the development.
 - 4.2.1.2 Rents: Rents must be reasonable, i.e., comparable to the market rents for comparable apartments in that immediate market. Market rents will be approved by FWHA using Rent Comparability Studies.
 - 4.2.1.3 Tenant Selection: Tenants of assisted units will be referred **exclusively** via the PBV waiting list maintained by FWHA. Selection of tenants for these Project Based units will be based on the FWHA's Administrative Plan for the Section 8 Program consistent with the following guidelines:
 - 4.2.1.3.1 FWHA will establish a separate waiting list for PBV assistance.
 - 4.2.1.3.2 FWHA will refer families to properties based on availability of appropriately sized units.
 - 4.2.1.3.3 The owner of the units must select tenants from

applicants referred from the FWHA’s waiting list.

4.2.1.3.4 Owners must subject prospective tenants referred by the FWHA to the same selection criteria used for other tenants in their development. Owners must submit written selection criteria.

4.2.1.3.5 Owners may reject tenants referred by the FWHA; however, valid reasons based on the generally applied selection criteria must be given for such rejections.

4.2.1.3.6 Owners may refer prospective tenants to FWHA’s waiting list according to HUD regulations.

4.2.1.4 Housing Quality Standards: Selected units must meet HUD’s Housing Quality Standards.

5. **BIDDER’S RESPONSIBILITY:** Each bidder shall carefully review and comply with all instructions provided herein or provided within any named attachments or addenda.

6. **PROPOSAL FORMAT:**

6.1 Tabbed Proposal Submittal: FWHA intends to retain the successful proposer pursuant to a “Best Value” basis, not a “Low Proposal” basis (“Best Value,” in that FWHA will, as detailed within the following Section 4.0, consider factors other than just cost in making the award decision). Therefore, so that the FWHA can properly evaluate the offers received, all proposals in response to this RFP must be formatted in accordance with the sequence noted following. None of the proposed services may conflict with any requirement FWHA has published herein or has issued by addendum.

[Table 3]

RFP Section	No.	Description
6.1.1	1	Form of Proposal: This Form is attached hereto as Attachment B to this RFP document. This 1-page Form must be fully completed, executed where provided thereon and submitted under this section as a part of the proposal submittal.
6.1.2	2	Form HUD-5369-C (8/93), <i>Certifications and Representations of Offerors, Non-Construction Contract</i> : This Form is attached hereto as Attachment C to this RFP document. This 2-page Form must be fully completed, executed where provided thereon and submitted under this section as a part of the proposal submittal.
6.1.3	3	Profile of Firm Form: The Profile of Firm Form is attached hereto as Attachment D to this RFP document. This 2-page Form must be fully completed, executed, and submitted under this section as a part of the proposal submittal.
6.1.4	4	Proposed Services: As more fully detailed within Section 4.0, <i>Scope of Work</i> , of this document, the proposer shall, at a minimum, clearly detail within the information submitted under this section documentation showing:
6.1.4.1		As detailed within Section 9.1, Evaluation Factor No. 1, herein, the Proposed Costs IS NOT APPLICABLE TO THIS SUBMISSION.
6.1.4.2		As detailed within Section 9.1, Evaluation Factor No. 2, herein, the proposer's Demonstrated Understanding of FWHA's Requirements.
6.1.4.3		As detailed within Section 9.1, Evaluation Factor No. 3, herein, the proposer's Technical Approach including the performance methodology and the proposer's proposed Work Plan to provide the required services.
6.1.4.4		As detailed within Section 9.1, Evaluation Factor No. 4, herein, the proposer's Technical Capabilities (in terms of personnel, equipment and materials) and Management Plan including resumes of key staffing positions, method of assigning work and procedures for maintaining a high-quality level of service, etc.
6.1.4.5		As detailed within Section 9.1, Evaluation Factor No. 5, herein, the proposer's Demonstrated Experience in performing similar work and the proposer's Demonstrated Successful Past Performance (including meeting costs, schedules, and performance requirements) of contract work substantially similar to that required by this solicitation.

6.1.5	5	Financial Capacity/Financial Viability: The proposer entity must submit under this tab a concise description of its Financial Plan and Financial Capacity to deliver the proposed services, including a preliminary operating proforma for the requested term of the PBV contract, a preliminary construction/reconstruction budget (if applicable) and a preliminary sources and uses budget (if applicable).
6.1.6	6	Client Information: The proposer shall submit a listing of former or current clients, including the Public Housing Authorities, for whom the proposer has performed similar or like services to those proposed herein. The listing shall, at a minimum, include
6.1.6.1		The client's name;
6.1.6.2		The client's contact name;
6.1.6.3		The client's telephone number;
6.1.6.4		A brief description and scope of the service(s) and the dates the services were provided;
6.1.7	7	Section 3 Business Preference Documentation (Optional Item): For any proposer claiming a Section 3 Business Preference, he/she shall under this tab include the fully completed and executed Section 3 Business Preference Certification Form attached hereto as Attachment E and any documentation required by that form.
6.1.8	8	Other Information (Optional Item): The proposer may include hereunder any other general information that the proposer believes is appropriate to assist the FWHA in its evaluation.

7. PROPOSAL SUBMISSION: Bids are due at the time and date posted herein. FWHA reserves the right to extend the posted deadline at any time prior to the deadline.

- 7.1 Time for Receiving Proposals: Proposals received prior to the proposal submittal deadline shall be securely kept by FWHA. FWHA, whose duty it is to receive such proposals, will notate the specific time of arrival. No proposal received after the designated deadline shall be considered.

- 7.1.1 Proposers are cautioned that any proposal submittal that is received by FWHA after the exact time set as the deadline for the receiving of proposals shall not be considered. No responsibility will attach to FWHA or any official or employee thereof, for the pre-opening of, or the failure to open a proposal not properly addressed and/or identified.

- 7.1.2 One (1) Electronic and signed copy with the proposer's name and return address shall be addressed as follows:

RFP 1.27.2023: Project Based
Vouchers
Fort Wayne Housing Authority
Attn: Sarah Smith
ssmith@fwha.org
7315 Hanna Street
Fort Wayne, IN 46816

- 7.2 Withdrawal of Proposals: Proposals may be withdrawn as detailed within the attached HUD Form(s). Negligence on the part of the proposer in preparing his/her proposal confers no right of withdrawal or modification of his/her proposal after such proposal has been received and opened.
- 7.2.1 Procedure to withdraw a proposal: A request for withdrawal of a proposal due to a purported error need not be considered by FWHA unless filed in writing by the proposer within 48 hours after the proposal deadline. Any such request shall contain a full explanation of any purported error and shall, if requested by FWHA, be supported by the original calculations on which the proposal was computed, together with a certification and notarization thereon that such computation is the original and was prepared by the proposer or his/her agent, who must be identified on the notarized form. The foregoing shall not be construed that such withdrawal will be permitted, as FWHA retains the right to accept or reject any proposed withdrawal for a mistake.
- 7.3 Exceptions to Specifications:
- 7.3.1 A prospective proposer may take exception to any of the proposal documents, or any part of the information contained therein, by submitting, in writing to the named FWHA Contact Person, at least seven (7) days prior to the proposal submission deadline, a complete and specific explanation as to what he/she is taking exception. Proposed alternate documents or information must also be included. FWHA reserves the right to agree with the prospective proposer and issue a revision to the applicable RFP requirements or may reject the prospective proposer's request.
- 7.3.2 When taking exception, prospective proposers must propose services that meet the requirements of the RFP documents. Exceptions to the specification and/or approved "equal" requests may be discussed at the scheduled pre-proposal conference (if scheduled). Any verbal instructions provided by any FWHA staff shall only become official and binding when issued as an addendum or as a written answer issued by addendum pursuant to receipt of a written question by FWHA.
- 7.4 Proposed Costs:
- 7.4.1 Fee Costs: **NOT APPLICABLE**
- 7.4.2 Additional Related Work that May Be Required: Please note FWHA may retain the Contractor, if it is deemed by FWHA to be in its best interest, to perform additional services at fees proposed by the Contractor in their unit price response.
- 7.4.3 Proposal Submittal: Proposer must submit one (1) Electronic and Signed submission and must be received by the HA by no later than 12:00 p.m. on the specified date.

QUESTIONS: All questions or requests for information concerning this solicitation must be submitted in writing five (5) days prior to the closing deadline.

8. HOLD PRICES/NON-ESCALATION: NOT APPLICABLE

9. PROPOSAL EVALUATION:

9.1 Evaluation Factors: The following factors will be utilized by FWHA to evaluate each proposal submittal received; award of points for each listed factor will be based upon the documentation that the proposer submits within his/her proposal submittal:

[Table 4]

NO.	Max Point Value	Factor Type	Factor Description
1	15 Points	Subjective	The Financial Capacity/Financial Viability to deliver the proposed services, including a preliminary operating proforma for the requested term of the PBV contract, a preliminary construction/reconstruction budget (if applicable) and a preliminary sources and uses budget (if applicable).
2	10 Points	Subjective	The proposer’s DEMONSTRATED UNDERSTANDING of the REQUIREMENT;
3	30 Points	Subjective	The APPROPRIATENESS of the TECHNICAL APPROACH including performance methodology and the QUALITY of the WORK PLAN
4	20 Points	Subjective	The proposer’s TECHNICAL CAPABILITIES (in terms of personnel, equipment, and materials) and Management Plan including resumes of key staffing positions, method of assigning work and procedures for maintaining a high-quality level of service
5	20 Points	Subjective	The proposer’s DEMONSTRATED EXPERIENCE in performing similar work and the proposer’s DEMONSTRATED SUCCESSFUL PAST PERFORMANCE (including meeting costs, schedules, and performance requirements) of contract work substantially similar to that required by this solicitation as verified by reference checks or other means.
6	5 Points	Subjective	The OVERALL QUALITY AND PROFESSIONAL APPEARANCE OF THE PROPOSAL SUBMITTED, based upon the opinion of the evaluators.
100 POINTS		TOTAL POINTS (other than preference points)	

9.1.1 Preference Evaluation Factor: The following factors will be utilized to evaluate each response submittal received:

NO.	Max Point Value	Factor Type	Factor Description
7	5 Points	Objective	Section 3 Business Preference Participation: A firm must qualify for Section 3 status.
7a	5 Points	Objective	MBE Preference Participation: A firm must qualify for MBE status.
7b	5 Points	Objective	WBE Preference Participation: A firm must qualify WBE status.
15 Points		MAXIMUM PREFERENCE POINTS (additional)	

115 TOTAL POSSIBLE POINTS

- 9.1.2 Initial Evaluation-Responsiveness: Each proposal received will first be evaluated for responsiveness (i.e., meeting the minimum requirements as stated in the RFP).
- 9.1.3 Evaluation - Responsibility: FWHA shall select a minimum of a three-person panel, using the criteria established below, to evaluate each of the proposals submitted in response to this RFP to determine the proposer’s level of responsibility. FWHA will consider capabilities or advantages that are clearly described in the proposal that may be confirmed by oral presentations, site visits, demonstrations, and/or references contacted by FWHA. All proposals would be evaluated as to their overall value to FWHA.
- 9.1.4 Restrictions: All persons having familial (including in-laws) and/or employment relationships (past or current) with principals and/or employees of a proposer will be excluded from participation on FWHA’s evaluation panel. Similarly, all persons having ownership interest in and/or contract with a proposer will be excluded from participation on FWHA’s evaluation panel.
- 9.1.5 Competitive Range: Once a competitive range is established from the proposals submitted, FWHA reserves the right to require Proposers within the competitive range to make a presentation to the evaluation committee. Presentations, if requested, shall be a factor in the award recommendation.
- 9.1.6 Burden of Proof: If requested by FWHA, it shall be the responsibility of the proposer(s) to furnish FWHA with sufficient data or physical samples, within a specified time, so that FWHA may determine if the goods or services offered conform to the specifications.

9.2 Mistake in Proposal Submitted:

9.2.1 Unless otherwise prohibited within the RFP documents, a mistake in the cost unit pricing that does not affect the total cost sum submitted may, at FWHA's discretion, be corrected by submitting a corrected cost form, together with a complete explanation in writing, of how the mistake occurred, to FWHA, for his/her review. This mistake must be corrected before the issuance of any contract documents. Such correction shall not operate to give any proposer an advantage over another.

9.3 Irregular Proposal Submittal: A proposal shall be considered irregular for any one of the following reasons, any one or more of which may, at FWHA's discretion, be reason for rejection:

9.3.1 If the forms furnished by FWHA are not used or are altered or if the proposed costs are not submitted as required and where provided.

9.3.2 If all requested completed attachments do not accompany the proposal submittal.

9.3.3 If there are unauthorized additions, conditional or alternate proposals, or irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning or give the proposer submitting the same a competitive advantage over other proposers.

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

9.3.5 If the individual cost proposal items submitted by a specific proposer are unbalanced in the sense that the listed price of any cost item departs by more than 25% from FWHA's cost estimate (if a cost estimate is determined) for that item.

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

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

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

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

9.4.4 Unsatisfactory performance record as shown by past work for FWHA or with any other local, state, or federal agency, judged from the standpoint of workmanship and progress.

9.4.5 Incomplete work, which in the judgment of FWHA, might hinder or prevent prompt completion of additional work, if awarded.

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

- 9.4.7 Failure to comply with any qualification requirements of FWHA.
- 9.4.8 Failure to list, if required, all subcontractors (if subcontractors are allowed by FWHA) who will be employed by the successful proposer(s) to complete the work of the proposed contract.
- 9.4.9 As required by the RFP documents, failure of the successful proposer to be properly licensed by the City, County and/or the State of Indiana and/or to be insured by a commercial general liability policy and/or worker's compensation policy and/or business automobile liability policy, as applicable. If a proposer receives an award unless otherwise waived in the Contract, the Contractor will be required to provide an original Certificate of Insurance confirming the following minimum requirements to FWHA within 10 days of contract signature:

Professional Liability	Required Limits
FWHA and its affiliates must be named as an additional Insured and be a Certificate Holder. This is required for vendors who render observational services to FWHA such as appraisers, inspectors, attorneys, engineers, or consultants.	\$1,000,000
Business Automobile Liability	Required Limits
FWHA and its affiliates must be named as an additional insured and as the certificate holder. Must include both owned and unowned	\$500,000 combined single limit, per occurrence
Workers Compensation and Employer's Liability	Required Limits
Workers' Compensation coverage is Statutory and has no pre-set limits. Employer's Liability limit is \$500,000. A waiver of Subrogation in favor of FWHA must be included in the Workers' Compensation policy. FWHA and its affiliates must be named as a Certificate	Statutory \$500,000
Commercial General Liability	Required Limits
This is required for any vendor who will be doing hands-on work at FWHA properties. FWHA and its affiliates must be named as an Additional Insured and as the Certificate Holder.	\$1,000,000 per accident \$2,000,000 aggregate

9.4.10 Any reason to be determined in good faith, to be in the best interests of FWHA.

9.5 Award of Proposal(s): The award shall be to the top-rated responsive and responsible proposer(s) determined by the evaluation process, presentations (if requested), negotiations, Best & Final Offers (BAFO), FWHA's business needs, Proposer's ability to deliver within budget the specified items in a timely manner. Proposers shall be recommended for award if in FWHA's opinion, it is in the best interest to accept the proposal. FWHA reserves the right to award multiple contracts and will not consider "All or None" proposals or bids.

10. RIGHT TO PROTEST:

10.1 Rights: Any prospective or actual proposer, offeror, or contractor who is allegedly aggrieved in connection with the solicitation of a proposal or award of a contract, shall have the right to protest. Such right only applies to deviations from laws, rules, regulations, or procedures. Disagreements with the evaluators' judgments as to the number of points scored are not reasons for an appeal. An alleged aggrieved protestant claiming this right is hereby informed that these regulations do not provide for administrative appeal as a matter of right for that alleged aggrieved protestant.

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

10.1.2 Any actual or prospective contractor may protest the solicitation or award of a contract for material violation of FWHA's procurement policy. Any protest against a FWHA solicitation must be received before the due date for receipt of proposals and any protest against the award of a contract must be received within ten (10) calendar days after contract award or the protest will not be considered.

10.1.3 All protests must be in writing and submitted to the Procurement Manager for a written decision. The Procurement Manager shall make a recommendation to the Contracting Officer who shall issue a written decision and findings to the Contractor within thirty (30) days from receipt of the written protest. This decision is then

appealable to the Board of Commissioners within thirty (30) days of receipt of the written decision. Appeals which are not timely filed will not be considered and the decision becomes final. All appeals shall be marked and sent to the address as listed in the example below:

APPEAL OF RFP FOR RFP 1.27.2023:

Project Based Vouchers
Fort Wayne Housing Authority
7315 Hanna Street
Fort Wayne, IN 46816

11. DISPUTES UNDER THE CONTRACT:

11.1 Procedures: In addition to the procedures detailed within Form HUD-5370-C1 (10/2006), General Conditions for Non-Construction Contracts, Public Housing Programs, in the event that any matter, claim, or dispute arises between the parties, whether or not related to this RFP or any resulting contract, both parties shall be subject to nonbinding mediation if agreed to by both parties within thirty days of either party making a request in writing. The parties further agree that if the matter, claim, or dispute is not settled during mediation, it shall thereafter be submitted to binding arbitration. The parties shall make a good faith attempt to mutually agree upon an arbitrator. If the parties cannot mutually agree upon an arbitrator after reasonable efforts have been exerted, then the matter, claim or dispute shall be submitted to the American Arbitration Association for final and binding arbitration. Unless extended by the arbitrator for good cause shown, the final arbitration hearing shall begin no later than two months after selection of the arbitrator.

12. ADDITIONAL CONSIDERATIONS:

- 12.1 Escalation: This is a Firm Fixed Price Contract with no escalation provisions.
- 12.2 Required Permits and Licenses: Unless otherwise stated in the RFP documents, all Federal, State or local permits and licenses which may be required to provide the services ensuing from any award of this RFP, whether or not they are known to either the FWHA or the proposers at the time of the proposal submittal deadline or the award, shall be the sole responsibility of the successful proposer and all offers submitted by the proposer shall reflect all costs required by the successful proposer to procure and provide such necessary permits or licenses.
- 12.3 Taxes: All persons doing business with FWHA are hereby made aware that FWHA is exempt from paying Indiana State Sales and Use Taxes and Federal Excise Taxes. A letter of Tax Exemption will be provided upon request.
- 12.4 Government Standards: It is the responsibility of the prospective proposer to ensure that all items and services proposed conform to all local, state, and federal law concerning safety (OSHA) and environmental control (EPA and

- Tarrant County Regulations) and any other enacted ordinance, code, law, or regulation. The successful proposer shall be responsible for all costs incurred for compliance with any such possible ordinance, code, law, or regulation. No time extensions shall be granted, or financial consideration given to the successful proposer for time or monies lost due to violations of any such ordinance, code, law, or regulations that may occur.
- 12.5 Free on Board (FOB) and Delivery: All costs submitted by the successful proposer shall reflect the cost of delivering the proposed items and/or services to the locations specified within the RFP documents or within the Contract. All costs in the proposal submittal shall be quoted as FOB Destination, Freight Prepaid and allowed unless otherwise stated in this RFP.
- 12.5.1 The successful proposer agrees to deliver to the designated location(s) on or before the date as specified in the finalized contract. Failure to deliver on or before the specified date constitutes an event of default by the successful proposer. Upon default, the successful proposer agrees that FWHA may, at its option, rescind the finalized contract under the termination clause herein and seek compensatory damages as provided by law.
- 12.6 Work on FWHA Property: If the successful proposer's work under the contract involves operations by the successful proposer on FWHA premises, the successful proposer shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work and, shall indemnify FWHA, and their officers, agents, servants and employees against all loss which may result in any way from any act or omission of the successful proposer, its agents, employees, or subcontractors.
- 12.7 Warranty:
- 12.7.1 The services provided under the contract shall conform to all information contained within the RFP documents as well as applicable Industry Published Technical Specifications, and if one of the above-mentioned Specifications contains more stringent requirements than the other, the more stringent requirements shall apply.
- 12.7.2 The liability of the successful proposer to FWHA arising out of the furnishing of services/goods under the terms of the contract shall not exceed the correcting of the defect(s) in the services/goods provided under the contract, and upon expiration of the warranty period all such liability shall terminate except under the warranty for merchantability and the warranty of fitness for a particular purpose. However, this limitation does not preclude FWHA from seeking indirect, consequential, incidental exemplary, and liquidated damages.
- 12.8 Official, Agent and Employees of the FWHA Not Personally Liable: It is agreed by and between the parties hereto that in no event shall any official, officer, employee, or agent of the FWHA in any way be personally liable or responsible for any covenant or agreement herein contained whether

- expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this agreement.
- 12.9 Subcontractors: Unless otherwise stated within the RFP documents, the successful proposer may not use any subcontractors to accomplish any portion of the services described within the RFP documents or the contract without the prior written permission of the FWHA. Also, any substitution of subcontractors must be approved in writing by FWHA prior to their engagement.
- 12.10 Salaries and Expenses Relating to the Successful Proposer's Employees: Unless otherwise stated within the RFP documents, the successful proposer shall pay all salaries and expenses of, and all Federal, Social Security taxes, Federal and State Unemployment taxes, and any similar taxes relating to its employees used in the performance of the contract. The successful proposer further agrees to comply with all Federal, State, and local wage and hour laws and all licensing laws applicable to its employees or other personnel furnished under this agreement.
- 12.11 Independent Contractor: Unless otherwise stated within the RFP documents or the contract, the successful proposer is an independent contractor. Nothing herein shall create any association, agency, partnership, or joint venture between the parties hereto and neither shall have any authority to bind the other in any way.
- 12.12 Severability: If any provision of this agreement or any portion or provision hereof applicable to any particular situation or circumstance is held invalid, the remainder of this agreement or the remainder of such provision (as the case may be), and the application thereof to other situations or circumstances shall not be affected thereby.
- 12.13 Waiver of Breach: A waiver of either party of any terms or conditions of this agreement in any instance shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, obligation or agreement of either party.
- 12.14 Time of the Essence: Time is of the essence as to each provision in which a timeframe for performance is provided in this RFP. Failure to meet these timeframes may be considered a material breach, and FWHA may pursue compensatory and/or liquidated damages under the contract.
- 12.15 Limitation of Liability: In no event shall FWHA be liable to the successful proposer for any indirect, incidental, consequential, or exemplary damages.
- 12.16 Indemnity: The Contractor shall indemnify and hold harmless FWHA and its officers, agents, representatives, and employees from and against all claims, losses, damages, actions, causes of action and/or expenses resulting from, brought for, or on account of any personal injury or property damage received or sustained by any persons or property growing out of, occurring, or attributable to any work performed under or related to this Agreement, resulting in whole or in part from the negligent acts or omissions of the Contractor, any subcontractor, or any employee, agent or representative of the Contractor or any subcontractor, AND REGARDLESS OF WHETHER CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF FWHA. CONTRACTOR

ACKNOWLEDGES AND AGREES THAT THIS INDEMNITY CONTROLS OVER ALL OTHER PROVISIONS IN THE AGREEMENT, SURVIVES TERMINATION OF THIS AGREEMENT, AND APPLIES TO CLAIMS AND LIABILITY ARISING OUT OF THE SOLE OR CONCURRENT NEGLIGENCE OF FWHA.

- 12.17 Public/Contracting Statutes: FWHA is a governmental entity as that term is defined in the procurement statutes. FWHA and this RFP and all resulting contracts are subject to federal, state, and local laws, rules, regulations and policies relating to procurement.
- 12.18 Termination: Any contract resulting from this RFP may be terminated under the following conditions:
- 12.18.1 By mutual consent of both parties, and
 - 12.18.2 For Termination for Cause: As detailed within Form HUD-5370-C (11/2006), General Conditions for Construction Contracts, Public Housing Programs, attached hereto:
 - 12.18.2.1 FWHA may terminate any and all contracts for default at any time in whole or in part, if the contractor fails to perform any of the provisions of any contract, so fails to pursue the work as to endanger performance in accordance with the terms of the RFP or any resulting contracts, and after receipt of written notice from FWHA, fails to correct such failures within seven (7) days or such other period as FWHA may authorize or require.
 - 12.18.2.1.1 Upon receipt of a notice of termination issued from FWHA, the Contractor shall immediately cease all activities under any contract resulting from this RFP, unless expressly directed otherwise by FWHA in the notice of termination.
 - 12.18.2.1.2 FWHA may terminate any contract resulting from this RFP in whole or in part, if funding is reduced, or is not obtained and continued at levels sufficient to allow for the expenditure.
 - 12.18.3 Termination for Convenience: In the sole discretion of the Contracting Officer, FWHA may terminate any and all contracts resulting from this RFP in whole or part upon fourteen days prior notice to the Contractor when it is determined to be in the best interest of FWHA.
 - 12.18.4 The rights and remedies of FWHA provided under this section are not exclusive and are in addition to any other rights and remedies provided by law or under any contract.
 - 12.18.5 In the event the resulting contract from this RFP is terminated for any reason, or upon its expiration, FWHA shall retain ownership of all work products including deliverables, source and object code, microcode, software licenses, and documentation in whatever form that may exist. In addition to any other provision, the Contractor shall transfer title and deliver to FWHA any partially completed work products, deliverables, source and object code, or documentation that the Contractor has produced or acquired in the performance of any resulting contract.

- 12.19 Examination and Retention of Contractor's Records: FWHA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until three years after final payment under all contracts executed as a result of this RFP, 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 audits, examinations, excerpts and transcriptions.
- 12.20 Invoicing (If applicable):
- 12.20.1 Contractor(s) will only be allowed to invoice for the cost of services/goods in compliance with his/ her proposal or best and final offer as accepted by FWHA.
- 12.20.2 Invoices must contain a complete description of the work or service that was performed, the contract price for each service, the purchase order number (if applicable), date of service, and address of service location or delivery address.
- 12.20.3 Contractor(s) must submit a separate invoice for each purchase order issued by FWHA. Each service delivery must have a separate and unique purchase order number.
- 12.20.4 FWHA shall make progress payments approximately every 30 days as the work proceeds, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. FWHA may, subject to written determination and approval of the Contracting Officer, make more frequent payments to contractors which are qualified small businesses. For more detail on progress payments refer to the attached Form 5370 (11-2006).
- 12.20.5 Upon the Award of Contract, Contractor shall receive a request from FWHA to process all payments electronically to insure prompt and efficient payment of all invoices.
- 12.20.6 If offered by Contractor, FWHA seeks a discount for early payment. FWHA shall only take such a discount if earned.
- 12.21 Interlocal Participation
- 12.21.1 FWHA may from time to time enter into Interlocal Cooperation Purchasing Agreements with other governmental entities or governmental cooperatives (hereafter collectively referred to as "Entity" or "Entities") to enhance FWHA's purchasing power. At FWHA's sole discretion and option, FWHA may inform other Entities that they may acquire items listed in this RFP, if applicable. Such acquisition(s) shall be at the prices stated herein and shall be subject to Contractor's acceptance.
- 12.21.2 In no event shall FWHA be considered a dealer, remarketer, agent or other representative of Contractor or Entity. Further, FWHA shall not be considered and is not an agent; partner or representative of the Entity making purchases hereunder and shall not be obligated or liable for any such order.
- 12.21.3 Purchase orders shall be submitted to Contractor by the individual Entity.
- 12.21.4 FWHA shall not be liable or responsible for any obligation,

including but not limited to, payment and for any item or service ordered by an Entity, other than FWHA.

- 12.22 Right to Data and Patent Rights: FWHA 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 any resulting contract, including but not limited to, reports, memoranda or letters concerning the research and reporting tasks of any resulting contract. Both parties agree to comply with HUD Bulletin 909-23, which is the Notice of Assistance Regarding Patent and Copyright Infringement.
- 12.23 Lobbying Certification: By proposing to do business with FWHA or by doing business with FWHA, each proposer certifies the following:
- 12.23.1 No Federal appropriated funds have been paid or will be paid, by or on behalf of the proposer, to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
- 12.23.2 If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form "Disclosure Form to Report Lobbying", in accordance with its instructions.
- 12.23.3 The successful proposer shall require that the language of this certification be included in the award documents for all subawards at all tiers, (including but not limited to subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- 12.23.4 This clause is a material misrepresentation of fact upon which reliance will be placed when the award is made, or a contract is entered into. The signing of a contract or acceptance of award certifies compliance with this certification, which is a prerequisite for making or entering into a contract, which is imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certifications shall be subject to civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.
- 12.24 Executive Order 11246: For all construction contracts awarded in excess of \$10,000, both parties hereby agree to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by

- Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor Regulations (41 CFR Chapter 60).
- 12.25 Copeland “Anti-Kickback” Act: For all construction or repair contracts awarded, both parties hereby agree to comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).
- 12.26 Davis-Bacon Act: For all construction contracts awarded in excess of \$2,000 when required by Federal Grant Program legislation, both parties hereby agree to comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented in Department of Labor Regulations (29 CFR Part 5) and attached wage decision.
- 12.27 Sections 103 and 107 of the Contract Work Hours and Safety Standards Act: For all construction contracts awarded in excess of \$2,000 and for other contracts, which involve the employment of mechanics or laborers awarded in excess of \$2,500, both parties hereby agree to comply with the Sections 103 and 107 of the Contract Work Hours and Safety Act (40 U.S.C. 327-330) as supplemented in Department of Labor Regulations (29 CFR Part 5).
- 12.28 Clean Act Air: For all contracts in excess of \$100,000, both parties hereby agree to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean air Act (42 U.S.C. 1857 (h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) and any amendments.
- 12.29 Energy Policy and Conservation Act: Both parties hereby agree to comply with all mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94- 163, 89 STAT. 871) and any amendments.
- 12.30 Executive Order 11061: Both parties agree that they will comply with this order, which directs the Secretary of HUD to take all action, which is necessary and appropriate to prevent discrimination by agencies that utilize federal funds.
- 12.31 Public Law 88-352, Title VI of the Civil Rights Act of 1964, and its amendments: Both parties agree that no person in the United States shall, on the basis of race, color, national origin, or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives federal financial assistance. FWHA hereby extends this requirement to the Contractor and its subcontractors. Specific prohibited discriminatory actions and corrective actions are described in Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 19901 et. Seq.).

- 12.32 Public Law 90-284, Title VIII of the Civil Rights Act of 1968 and its Amendments (Fair Housing Act): Both parties agree to comply and prohibit any person from discriminating in the sale or rental of housing, the financing of housing or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person because of race, color, religion, sex or national origin. As a result, FWHA requires that the Contractor administer all programs and activities, which are related to housing and community development in such a manner as affirmatively to further fair housing.
- 12.33 Age Discrimination Act of 1975 and its amendments: Requires the Contractor to prohibit discrimination on the basis of age.
- 12.34 Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.) and its amendments: FWHA requires Contractors to comply with this law.
- 12.35 HUD Information Bulletin 909-23: Contractors shall comply with the following laws and regulations:
- 12.35.1 Notice of Assistance Regarding Patent and Copyright Infringement
 - 12.35.2 Clean Air and Water Certification
 - 12.35.3 Energy Policy and Conservation Act
- 12.36 Copyrights/Rights in Data: FWHA has unlimited rights to any data, including computer software, developed by the Contractor in the performance of the Contract specifically:
- 12.36.1 Except as provided elsewhere in this clause, FWHA shall have unlimited rights in data first produced in the performance of this Contract; form, fit, and function data delivered under this Contract; data delivered under this Contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this Contract; and all other data delivered under this Contract unless provided otherwise for limited rights data or restricted computer software.
 - 12.36.2 Contractor shall have the right to: use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this Contract, unless provided otherwise in this contract; protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in this contract; substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action in

accordance with this contract; and establish claim to copyright subsisting in data first produced in the performance of this Contract to the extent provided below.

12.36.3 For data first produced in the performance of this Contract, the contractor may establish, without prior approval of the CA, claim to copyright subsisting in scientific or technical articles based on or containing data first produced in the performance of this Contract. The Contractor grants FWHA and others acting on its behalf a paid-up, non-exclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform or display publicly by or on behalf of FWHA.

12.36.4 The Contractor shall not, without the prior written permission of the CA, incorporate in data delivered under this Contract any data not first produced in the performance of this Contract and which contains copyright notice, unless the Contractor identifies such data and grants FWHA a license of the same scope as identified in the preceding paragraph.

12.36.5 FWHA agrees not to remove any copyright notices placed on data and to include such notices in all reproductions of the data. If any data delivered under this Contract are improperly marked, FWHA may either at its discretion return the data to the Contractor or cancel or ignore the markings.

12.36.6 The Contractor is responsible for obtaining from its subcontractors all data and rights necessary to fulfill the Contractor's obligations under this Contract.

12.36.7 Notwithstanding any provisions to the contrary contained in the Contractor's standard commercial license or lease contract pertaining to any restricted computer software delivered under this Contract, and irrespective of whether any such contract has been proposed prior to the award of this Contract or of the fact that such contract may be affixed to or accompany the restricted computer software upon delivery, the Contractor agrees that FWHA shall have the rights set forth below to use, duplicate, or disclose any restricted computer software delivered under this Contract. The terms and conditions of any resulting contract, including any commercial lease or licensing contract shall be subject to the following procedures.

12.36.7.1 The restricted computer software delivered under a resulting contract may not be used, reproduced, or disclosed by FWHA except as provided below or as expressly stated otherwise in a resulting contract. The restricted computer software may be used accordingly:

12.36.7.1.1 Used or copied for use in or with the computers for which it was acquired, including use at any FWHA location to which such computer may be transferred;

12.36.7.1.2 Used or copied for use in or with backup

computer if any computer for which it was acquired is inoperative;

12.36.7.1.3 Reproduced for safekeeping (archives) or backup purposes;

12.36.7.1.4 Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restrictions set forth in a resulting contract; and

12.36.7.1.5 Used or copied for use in or transferred to a replacement computer.

12.37 Additional Information: Each provision of law and each clause, which is required by law to be inserted in this RFP or any contract, shall be deemed to have been inserted herein, and this RFP and any resulting contract shall be read and enforced as though such provision or clause had been physically inserted herein. If, through mistake or otherwise, any such provision is not inserted or is inserted incorrectly, this agreement shall forthwith be physically amended to make such insertion or correction upon the application of either party. The fore-mentioned statutes, regulations and executive orders are not intended as an indication that such statute, regulation or executive order is necessary applicable nor is an omission of such statute, regulation or executive order intended to indicate that it is not applicable.

12.38 Conflicting Conditions: In the event there is a conflict between the documents comprising this RFP and any resulting contracts, the following order of precedence shall govern: (1) the more restrictive terms of either: any and all attached HUD forms and the term/conditions in the body of any resulting contract; (2) the RFP; and (3) Contractor's Response. In the event that a conflict exists between any state statute or federal law the most restrictive terms shall apply.

12.39 Interpretations: No official oral interpretation can be made to any proposer as to the meaning of any instruction, condition, specifications, drawing (if any), or any other document issued pertaining to this RFP. Every request for an official interpretation shall be made by the prospective proposer, in writing at least five (5) days prior to the submission deadline. Official interpretations will be issued in the form of addenda, which will be posted on www.fwha.org; but it shall be the prospective proposer's responsibility to make inquiry as to addenda issued. All such addenda shall become a part of the RFP documents and the proposed contract with the successful proposer and all proposers shall be bound by such addenda, whether or not received by the prospective or successful proposer(s).

12.40 Contract Form: FWHA will not execute a contract on the successful proposer's form. Contracts will only be executed on FWHA's form. By submitting a proposal, the successful proposer agrees to this condition. However, FWHA will consider any contract clauses that the proposer wishes to include therein, but the failure of FWHA to include such clauses does not give the successful proposer the right to refuse to execute FWHA's contract form. It

is the responsibility of each prospective proposer to notify FWHA, in writing, with the proposal submittal of any contract clauses that he/she is not willing to include in the final executed contract. FWHA will consider such clauses and determine whether or not to amend the Contract.

- 12.41 Liquidated Damages: For each day that performance under a resulting contract from this RFP is delayed beyond the time specified for completion, the successful proposer shall be liable for liquidated damages in the amount of \$50.00 per day. However, the timeframe for performance may be adjusted at FWHA's discretion in writing and received by the successful proposer prior to default under any resulting contract.
- 12.41.1 Force Majeure: Neither FWHA nor Contractor shall be held responsible for delays nor default caused by fire, flood, riot, acts of God or war where such cause was beyond, respectively, FWHA or Contractor's reasonable control. Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- 12.42 Immigration Reform: By submitting a proposal Contractor certifies compliance with the Immigration Reform and Control Act of 1986 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986 who will perform any labor or services under any resulting contract.
- 12.43 Most Favored Customer: The Contractor agrees that if during the term of any resulting contract, the Contractor enters into any agreement with any other governmental customer, or any non-affiliated commercial customer by which it agrees to provide equivalent services at lower prices, or additional services at comparable prices, the resulting Contract will at FWHA's option, be amended to accord equivalent advantage to FWHA.
- 12.44 Lapse in Insurance Coverage: In the event Contractor fails to maintain insurance as required by a resulting contract, the Contractor shall immediately cure such lapse in insurance coverage at the Contractor's expense and pay FWHA in full for all costs and expenses incurred by FWHA under this Contract as a result of Contractor's failure to maintain insurance as required, including costs and reasonable attorney's fees relating to FWHA's attempts to cure such lapse in insurance coverage. Such costs and attorney fees, not to exceed fifteen hundred and 00/100 dollars (\$1,500.00), shall be automatically deducted from monies or payments owed to Contractors. Moreover, FWHA shall retain from monies or payments owed to Contractor by FWHA five percent (5%) of the value of the Contract and place this retainage into an account to cover FWHA's potential exposure to liability during the period of such lapse. This retainage shall be held by FWHA until six (6) months after the term of the resulting contract has ended or has otherwise been terminated, cancelled, or expired and shall be released if no claims are received or lawsuits filed against FWHA for any matter that should have been covered by the required insurance.

13. FEES: All fees are all-inclusive of all related costs that a proposer will incur to provide the noted goods or services in compliance with this solicitation, including, but not limited to: employee wages and benefits, clerical support, travel, and lodging,

overhead, profit, licensing, insurance, materials, supplies, tools, equipment, long distance telephone calls, document copying and motor vehicle fuel, all costs shall be fully burdened.

14. BID COSTS: FWHA shall not compensate any bidder for any costs that may be incurred in responding to this solicitation.
15. ASSIGNMENT OF PERSONNEL: FWHA retains the right to demand and receive a change in personnel assigned by the Contractor to provide services to FWHA if FWHA believes that such change is in its best interest.
16. SECTION 3: Training and Employment Opportunities for Residents in the Project Area (Section 3, HUD Act of 1968; 24 CFR 135) 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. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3.
17. GENERAL CONDITIONS:
 - 17.1 Acceptance by FWHA is required prior to payment. Acceptance will be based on adherence to the specifications, best industry practice and inspection by FWHA personnel.
 - 17.2 Contractor shall supply all material, labor, and equipment to complete the requirement of this solicitation unless otherwise specified in this solicitation.

Company Profile



Housing Authority of the City of Fort Wayne, Indiana

History

In 1937, the Indiana General Assembly adopted enabling legislation giving local government authority to participate in federal low-rent housing programs. Subsequently, on the 8th day of February 1938, the Common Council of the City of Fort Wayne, Indiana, passed a resolution creating the Housing Authority of the City of Fort Wayne, Indiana. FWHA is headed by an Executive Director (ED) and is governed by a seven-person board of commissioners and is subject to the requirements of Title 24 of the Code of Federal Regulations.

Vision

FWHA cultivates vibrant, inclusive neighborhoods throughout Fort Wayne, where all residents have safe, quality, affordable housing and a high standard of living built on economic self-sufficiency.

Mission

To revitalize the city of Fort Wayne by building and developing safe, quality, affordable housing options, while providing programs to foster community, alleviate poverty and encourage long-term economic self-sufficiency.

Contact Information

Address:	7315 Hanna Street, Fort Wayne, Indiana 46816
Phone:	260.267.9300
Fax:	260.267.9306
Website:	FWHA.org

Company Profile

Housing Programs

- **Housing Choice Voucher Program**
 - Total Housing Choice Vouchers – 3139
 - Tenant Based Vouchers – 2989
 - Homeownership Program – 9
 - Project Based Vouchers – 136
 - Non-Elderly Disabled Vouchers – 75
 - VA Supported Housing (VASH) Vouchers – 110
 - Family Unification Program – 1
 - Foster Youth to Independence – 25
 - Mainstream 5 – 125
 - Emergency Housing Vouchers (EHV) - 46
 - Rental Assistance Demonstration Program – 94
 - Number of Apartment Communities – 1
 - One Bedroom – 8
 - Two Bedroom – 20
 - Three Bedroom – 38
 - Four Bedroom – 18
 - Five Bedroom – 10
- **Public Housing Program**
 - Number of Apartment Communities – 11
 - Scattered Site Single Family Homes – 50
 - Total Public Housing Units – 660
 - Efficiency – 32
 - One Bedroom – 391
 - Two Bedroom – 78
 - Three Bedroom – 127
 - Four Bedroom – 26
 - Five Bedroom – 6
- **Tax Credit Program**
 - Number of Apartment Communities – 4
 - Total Units – 248
 - One Bedroom – 78
 - Two Bedroom – 86
 - Three Bedroom – 54
 - Four Bedroom – 18
 - Five Bedroom - 12
- **Market Rate Units (62+ Only)**
 - Total Units – 9
 - One Bedroom – 9

Company Profile

Employees

- Total Employees – 48
 - COCC
 - Executive Director – 1
 - Executive Assistant – 1
 - Chief Operating Officer - 1
 - Vice President of Finance – 1
 - Vice President of Asset Management – 1
 - Finance
 - Senior Accountant – 1
 - Accounts Payable Analyst – 1
 - Accounting Clerk – 1
 - Housing Choice Voucher Program
 - Program Manager – 1
 - Housing Navigator – 1
 - Homeownership Program Specialist -1
 - Intake Specialist – 1
 - Intake Support Specialist - 1
 - Program Specialist – 6
 - Asset Management
 - Construction and Modernization Coordinator – 1
 - Property Manager – 5
 - Asset Manager –1
 - Tax Credit Manager –1
 - Assistant Manager – 2
 - Support Specialist – 1
 - Leasing Coordinator – 1
 - Customer Service – 1
 - Lead Maintenance – 4
 - Maintenance Technician - 6
 - Enrichment and Career Services
 - Director of Programs – 1
 - Career Advisors – 3
 - Social Service Coordinator – 2

Form of Proposal

Instructions: Unless otherwise specifically required, the items listed below must be completed and included in the proposal submittal. Please complete this form by marking an "X," where provided, to verify that the referenced completed form or information has been included within the proposal submittal submitted by the proposer. Also, complete the Section 3 Statement and the Proposer's Statement as noted below:

	Tab 1	Form of Proposal (Attachment B)
	Tab 2	Form HUD-5369-C (Attachment C)
	Tab 3	Profile of Firm Form (Attachment D)
	Tab 4	Proposed Services
	Tab 5	Managerial Capacity/Financial Viability, including resumes
	Tab 6	Client Information
	Tab 7	Equal Employment Opportunity Statement
	Tab 8	Subcontractor/Joint Venture Information (Optional)
	Tab 9	Section 3 Business Preference Documentation (Optional; Attachment E)
	Tab 10	Other Information (Optional)

SECTION 3 STATEMENT

Are you claiming a Section 3 business preference? YES ___ or NO ___ If "YES," pursuant to the Section 3 portion within the Conditions and Specifications, and pursuant to the documentation justifying such submitted under Section No. 9, which priority are you claiming? _____.

PROPOSER'S STATEMENT

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

Signature

Date

Printed Name

Company

Certifications and Representations of Offerors

Non-Construction Contract

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 non-construction contracts awarded by Housing Agencies (HAs). The form is used by bidders/offers 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)

- | | |
|---|---|
| <input type="checkbox"/> Black Americans | <input type="checkbox"/> Asian Pacific Americans |
| <input type="checkbox"/> Hispanic Americans | <input type="checkbox"/> Asian Indian Americans |
| <input type="checkbox"/> Native Americans | <input type="checkbox"/> 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:

Profile of Firm Form

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

(2) Name of Firm: _____ Telephone: _____ Fax: _____

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

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

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

NAME	TITLE	% OF OWNERSHIP

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

NAME	TITLE

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

Caucasian American (Male) _____%
 Public-Held Corporation _____%
 Government Agency _____%
 Non-Profit Organization _____%

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

Resident-Owned* _____%
 African American _____%
 **Native American _____%
 Hispanic American _____%
 Asian/Pacific American _____%
 Hasidic Jew _____%
 American _____%

Woman-Owned (MBE) _____%
 Woman-Owned (Caucasian) _____%
 Disabled Veteran _____%
 Other (Specify): _____%

WMBE Certification Number: _____

Certified by (Agency): _____

(NOTE: A CERTIFICATION/NUMBER NOT REQUIRED TO PROPOSE – ENTER IF AVAILABLE)

Profile of Firm Form

- (8) Federal Tax ID No.: _____
- (9) [APPROPRIATE JURISDICTION] Business License No.: _____
- (10) State of _____ License Type and No.: _____
- (11) Worker's Compensation Insurance Carrier: _____
Policy No.: _____ Expiration Date: _____
- (12) General Liability Insurance Carrier: _____
Policy No. _____ Expiration Date: _____
- (13) Professional Liability Insurance Carrier: _____
Policy No. _____ Expiration Date: _____
- (14) Debarred Statement: Has this firm, or any principal(s) ever been debarred from providing any services by the Federal Government, any state government, the State of _____, or any local government agency within or without the State of _____? Yes No
If "Yes," please attach a full detailed explanation, including dates, circumstances, and status.
- (15) Disclosure Statement: Does this firm or any principals thereof have any current, past personal or professional relationship with any Commissioner or Officer of the HA? Yes No
If "Yes," please attach a full detailed explanation, including dates, circumstances, and status.
- (16) Non-Collusive Affidavit: The undersigned party submitting this proposal hereby certifies that such proposal is genuine and not collusive and that said proposer entity has not colluded, conspired, connived or agreed, directly or indirectly, with any proposer or person, to put in a sham proposal or to refrain from proposing, and has not in any manner, directly or indirectly sought by agreement or collusion, or communication or conference, with any person, to fix the proposal price of affiant or of any other proposer, to fix overhead, profit or cost element of said proposal price, or that of any other proposer or to secure any advantage against the HA or any person interested in the proposed contract; and that all statements in said proposal are true.
- (17) Verification Statement: The undersigned proposer hereby states that by completing and submitting this form he/she is verifying that all information provided herein is, to the best of his/her knowledge, true and accurate, and agrees that if the HA discovers that any information entered herein is false, that shall entitle the HA to not consider nor make award or to cancel any award with the undersigned party.

Signature

Date

Printed Name

Company

CERTIFICATION FOR BUSINESS CONCERNS SEEKING SECTION 3 BUSINESS PREFERENCE
IN CONTRACTING AND DEMONSTRATION OF CAPABILITY

NAME OF BUSINESS: _____

ADDRESS OF BUSINESS: _____

TYPE OF BUSINESS: Corporation Partnership Sole Proprietorship Joint Venture

Attached is the following documentation as evidence of status:

For business claiming status as a Section 3 resident-owned Enterprise:

Copy of resident lease Other evidence Copy of evidence of participation in a public assistance program

For the business entity as applicable:

- | | |
|--|---|
| <input type="checkbox"/> Copy of Articles of Incorporation | <input type="checkbox"/> Certificate of Good Standing |
| <input type="checkbox"/> Assumed Business Name Certificate | <input type="checkbox"/> Partnership Agreement |
| <input type="checkbox"/> List of owners/stockholder and % of each | <input type="checkbox"/> Corporation Annual Report |
| <input type="checkbox"/> Latest Board minutes appointing officers | <input type="checkbox"/> Additional documentation |
| <input type="checkbox"/> Organization chart with names and titles and brief functional statement | |

For business claiming Section 3 status by subcontracting 25% of the dollar awarded to qualified Section 3 business:

List of subcontracted Section 3 business and subcontract amount

For business claiming Section 3 status, claiming at least 30% of their workforce are currently Section 3 residents or were Section 3 eligible residents within 3 years of date of first employment with the business:

- | | |
|--|---|
| <input type="checkbox"/> List of all current full-time employees | <input type="checkbox"/> List of all employees claiming Section 3 status |
| <input type="checkbox"/> PHA Residential lease (less than 3 years from date of employment) | <input type="checkbox"/> Other evidence of Section 3 status (less than 3 years from date of employment) |

Evidence of ability to perform successfully under the terms and conditions of the proposed contract:

- | | |
|---|--|
| <input type="checkbox"/> Current financial statement | <input type="checkbox"/> List of owned equipment |
| <input type="checkbox"/> Statement of ability to comply | <input type="checkbox"/> List of all contracts for the past 2 years with public policy |

Corporate Seal

Authorizing Name and Signature

Notary

Title

My term expires: _____

Signature

Date

Printed Name

SUGGESTED AFFIRMATIVE ACTION PLAN FOR UTILIZATION OF PROJECT AREA BUSINESSES

Number of All Contracts Proposed: _____

Name of Company: _____

Dollar Value of All Contracts Proposed: _____

Project: _____

To the Greatest Extent Feasible, Contracts Will Be Awarded Through Negotiation or Proposal to Qualified Project Area Businesses.

Goal of These Contracts for Project Area Businesses:

PROPOSED TYPE OF CONTRACT	APPROX. COST	PROPOSED TYPE OF CONTRACT	APPROX. COST

Outline the Program to Achieve These Goals for Economically and Socially Disadvantaged:

NOTE: To Complete the Affirmative Action Plan, Follow Steps Outlines in Attached Exhibit.

(INSERT THIS DOCUMENT IN PROPOSAL DOCUMENTS AND WITH PROPOSAL) DATE: _____

Signature

Printed Name

Date

SUGGESTED AFFIRMATIVE ACTION PLAN FOR UTILIZATION OF PROJECT AREA BUSINESSES
(cont'd)

SUGGESTED SECTION 3 PRELIMINARY WORKFORCE STATEMENT UTILIZATION OF LOWER INCOME PROJECT AREA RESIDENTS AS REGULAR, PERMANENT EMPLOYEES, TRAINEES, APPRENTICES.

COMPANY NAME: _____
ADDRESS: _____
PROJECT: _____

	PRESENT PERMANENT EMPLOYEES (At Time of Contract Signing)	SECTION 3 WORKFORCE PROJECTION (Residents)	TOTAL PROJECTED WORKFORCE INCREASE
TRAINEES			
APPRENTICES			
JOURNEYPERSONS			
LABORERS			
SUPERVISORY			
SUPERINTENDENT			
PROFESSIONAL			
CLERICAL			

NOTE: RESIDENTS ARE THOSE LOWER INCOME PROJECT AREA RESIDENTS WHO HAVE BEEN QUALIFIED AS ELIGIBLE.

Signature Printed Name Date

SECTION 3 BUSINESS PREFERENCE CLAUSE

This contract is subject to the following conditions under Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3).

- 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 or 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 finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- E. The contractor will certify that any vacant employment positions, including training positions that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- F. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprise. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

PREFERENCE FOR SECTION 3 BUSINESS CONCERNS IN CONTRACTING OPPORTUNITIES

The HA has established the following priority for preference when providing contracting opportunities to Section 3 Businesses:

Priority I

Category 1a Business

Business concerns that are 51 percent or more owned by residents of the housing development or developments for which the Section 3-covered assistance is expended.

Priority II

Category 1b Business

Business concerns whose workforce includes 30 percent of residents of the housing development for which the Section 3-covered assistance is expended, or within three (3) years of the date of first employment with the business concern, were residents of the Section 3-covered housing development.

Priority III

Category 2a Business

Business concerns that are 51 percent or more owned by residents of any other housing development or developments.

Priority IV

Category 2b Business

Business concerns whose workforce includes 30 percent of residents of any other public housing development or developments, or within three (3) years of the date of first employment with the business concern, were "Section 3" residents of any other public housing development.

Priority V

Category 3 Business

Business concerns participating in HUD Youth-build programs being carried out in the metropolitan area in which the Section 3-covered assistance is expended.

Priority VI

Category 4a Business

Business concerns that are 51 percent or more owned by Section 3 residents in the metropolitan area, or whose permanent, full-time workforce includes no less than 30 percent of Section 3 residents in the metropolitan area, or within three (3) years of the date of employment with the business concern, were Section 3 residents in the metropolitan area.

Priority VII

Category 4b Business

Business concerns that subcontract in excess of 25 percent of the total amount of subcontracts to Section 3 business concerns.

Eligibility for Preference

A business concern seeking to qualify for a Section 3 contracting preference shall certify or submit evidence that the business concern is a Section business concern.

HUD directs within 24 CFR 135 that the HA may make award to qualified Section 3 business concern with the highest priority ranking and with the lowest responsive proposal if that proposal is:

- (a) within the maximum total contract price established by the HA; or
- (b) not more than "X" higher than the total proposal price of the lowest responsive proposal from any responsible proposer. "X" is determined as follows:

"X" = LESSOR OF:	
When the lowest responsive proposal is less than \$100,000	10% of that proposal, or \$9,000.00
When the lowest responsive proposal is at least:	
\$100,000.00, but less than \$200,000.00	9% of that proposal, or \$16,000.00
\$200,000.00, but less than \$300,000.00	8% of that proposal, or \$21,000.00
\$300,000.00, but less than \$400,000.00	7% of that proposal, or \$24,000.00
\$400,000.00, but less than \$500,000.00	6% of that proposal, or \$25,000.00
\$500,000.00, but less than \$1,000,000.00	5% of that proposal, or \$40,000.00
\$1,000,000.00, but less than \$2,000,000.00	4% of that proposal, or \$60,000.00
\$2,000,000.00, but less than \$4,000,000.00	3% of that proposal, or \$80,000.00
\$4,000,000.00, but less than \$7,000,000.00	2% of that proposal, or \$105,000.00
\$7,000,000.00, or more	1.5% of the lowest responsive and responsible proposal with no dollar limit

1. Preparation of Offers

the ability to obtain them;

- (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 defiling 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

- (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, offerers 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 acknowledgement 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 protester.

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:]

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. 3/31/2010)

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

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

3. Termination for Convenience and Default

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

4. Examination and Retention of Contractor's Records

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



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

5. Rights in Data (Ownership and Proprietary Interest)

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

6. Energy Efficiency

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

7. Disputes

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

8. Contract Termination; Debarment

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

9. Assignment of Contract

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

10. Certificate and Release

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

11. Organizational Conflicts of Interest

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

12. Inspection and Acceptance

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

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

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

13. Interest of Members of Congress

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

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

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

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibition.

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

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

16. Equal Employment Opportunity

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

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

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

17. Dissemination or Disclosure of Information

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

18. Contractor's Status

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

19. Other Contractors

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

20. Liens

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

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

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

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

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

22. Procurement of Recovered Materials

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

