



# MURFREESBORO HOUSING AUTHORITY REQUEST FOR BID

## PROFESSIONAL LANDSCAPING

### SUMMARY

*The Housing Authority will receive competitive proposals for "Professional Landscaping Services" at various properties located in Murfreesboro TN until 2PM (Central Standard Time) on October 3, 2023, at the administrative building located at 415 N. Maple St., Murfreesboro TN 37130.*

All interested Contractors are strongly encouraged to attend a Pre-proposal conference with Murfreesboro Housing Authority Director of Maintenance, Adam Lawson on September 13, 2023 at 10:00 a.m. CST at the Murfreesboro Housing Authority administrative building located at 415 N. Maple St., Murfreesboro, TN 37130. Interested Contractors will be provided the physical addresses and a site map of each location so that they can locate each property and visually inspect the same before submitting their proposal.

Attention is called to the fact that no less than the minimum salaries and wages, as set forth in the specifications must be paid on this project. The contractor must ensure that employees and applicants for employment are not discriminated against because of race, color, creed, gender, disability, or national origin. Contract services to begin 1/1/2024. The contract period will be for 1 year with an option to extend annually for 4 additional years at the sole discretion of Murfreesboro Housing Authority.

Complete proposal packets will be available online at [www.MHA-TN.ORG](http://www.MHA-TN.ORG) and at MHA's office located at 415 N. Maple St, Murfreesboro TN 37130.

All interested contractors/vendors and the individual must submit proposals no later than 2PM on Oct 3, 2023. MHA encourages minority participation and requires compliance with Section 3. MHA is an equal opportunity employer. All proposals shall be mailed or hand-delivered to our office (listed above).



## SCOPE OF SERVICES

*The contractors are hereby notified that the Murfreesboro Housing Authority (MHA) is soliciting competitive proposals for professional landscaping services at various properties; The contractor is further notified that MHA shall only be responsible to pay the contractor for the work listed herein, as part of the specifications for this RFP. The contractor shall preform the services for the (MHA) pursuant to the required specifications during the term of the agreement. The successful contractor will provide all labor, material, and insurance necessary to perform the services as described within the scope of services including any and all addendums.*

The Contractors shall develop a complete proposal for the following services:

- **A. Landscaping Services.**

The Contractor shall provide adequate staff to operate experienced landscaping operation. The landscaping services must maintain the grass, lawn, trees and shrubbery areas at the locations in a well-cut appearance, and free of weeds and tree debris. The Contractor's proposal shall be considered responsive when it includes provisions to provide the following landscaping services:

- **1. Grass Cutting**

Cut all grassy areas throughout the property including the outside perimeters and the front/back yards of each dwelling unit & fields at least weekly from March 1 through November 30 and bi weekly mowing December – February, pending conditions of grass. Cutting grass and weeds in areas inaccessible to the mower due to obstacles must be done manually or with a push mower.

- **2. Edging, weeding, ground pick-up & weed eating**

Edge and weed-eat the sidewalks, driveways, curbing, parking lots, playgrounds, around buildings and trees at least once per week. Parking areas & rock drainage ditches must be chemically treated up to 4 times per year. Grass clippings, hedge clippings and weed-eating clippings must be blown off sidewalk areas, driveways and parking lots as well as removed from the property during each cutting. Any limbs, branches, paper debris and trash cannot be mowed over as this will leave an unsightly appearance. Policing the grounds to pick up debris or trash before cutting is important.

The cutting of overhanging or overgrown vegetation away from a hard surface such as curbing, sidewalks, driveways, roadways, etc. and the maintenance of a defined manicured edge around tree rings, landscape borders, monuments, signs, or other physical elements protruding from the landscape maintenance area is included.

- **3. Trimming & Cutting**  
Trim, cut and maintain the trees, hedges, and shrubs in a neat appearance and to ensure that no overhanging or overgrowth is an impediment to the building structures or residents. The trees must be trimmed regularly and removed from around the buildings as instructed by the MHA Director of Maintenance. All bushes or shrubs must be trimmed regularly around all buildings, beds, bioswales etc. Bushes should be maintained lower than 2' below windowsills and not obstruct windows.
- **4. Tree Trimming & Cutting**  
The Contractor must complete an initial trimming or cutting of all trees less than 6 feet as identified by MHA Director of Maintenance. All tree limbs shall be kept trimmed and no tree limbs or shrubs shall be touching any buildings, structures or roofs.
- **5. Debris & Litter**  
Objects that present obstacles to mowing such as rocks, paper, glass, trash or debris deposited or blown into the sites must be removed, and not cut up by mowers and left behind. Failure to pick up debris will be documented and repeated occurrences may result in a breach of contract.
- **6. Lawn Care Program (Westbrooks Towers, Main Office, and Oakland Court I & II, only)**  
Spring pre-emergent application, Summer Post-emergent application and fertilization. Fall pre-emergent application, aeration/overseeding and fertilization.
- **7. Bed Maintenance and Mulching**  
**Oakland Court I & II** – Bi-weekly weeding and trimming and mulch in November.  
Red Cedar Mulch – to be provided by Contractor.  
**Main Office, Westbrooks Towers** – Bi-weekly weeding and trimming. Mulch beds in Spring (also in Fall if determined by Director of Maintenance). Brown Cedar Mulch – To be provided by Contractor.  
**Mercury Court** — Bi-weekly weeding and trimming. Mulch in Spring (also in Fall if determined by Director of Maintenance). Brown Cedar Mulch – To be provided by Contractor.
- **8. Bioswales (Oakland Court I & II Only)**  
To be weeded weekly. All drains to be clear of debris and trash. Mulch redone yearly – twice if needed (determined by Director of Maintenance). MHA will refund for 2<sup>nd</sup> mulch if need is determined. Service all bushes and shrubs, to be trimmed regularly.
- **9. Irrigation Maintenance (Oakland Court I & II Only)**  
72 Zone Rainbird irrigation system shall be terminated and winterized for the winter months. Backflow to be removed and stored at MHA office at 415 N. Maple St. Spring irrigation to be started. Backflow to be reinstalled with all heads checked for proper operation.

- **B. Contractors will provide insurance coverage as follows**

- 1. Comprehensive liability insurance with limits of no less than \$1,000,000 and Workers Compensation insurance to cover employees that meets the requirements of the state of Tennessee. **\*\*Contractor will make MHA an additional insured on all insurance policies submitted to the authority in support of the proposed contract. \*\***
- 2. The Contractor will supply MHA with a list of employees who will be providing mowing service. All employees must be of legal US status. If there are any changes to the list of employees, the contractor will provide a current list within 48 hours.
- 3. The Director of Maintenance must be notified any time the landscaping crew will be on-site to perform their specified duties.

## INSTRUCTIONS AND NOTICE TO PROPOSERS

- **C. General**

The instructions below provide guidance for the preparation and submission of the request for proposal. Their purpose is to establish the requirements, format and content of the proposal so that proposals are complete and contain all essential information. The following represents the extent of the instructions and conditions:

- **1. Inquiries**  
Inquiries concerning the request for proposal should be submitted in writing to the issuing office no later than September 20, 2023. Send email to Adam Lawson, Director of Maintenance at [alawson@mha-tn.org](mailto:alawson@mha-tn.org).
- **2. Submission Date**  
Proposals must be submitted in a sealed envelope. Clearly written on the outside of the sealed envelope must be the firm/company name and address, contractor's license and the words "Professional Landscaping Services" **DEADLINE: 10/3/2023 at 2:00 PM.**

A proposal may be withdrawn upon a written request dispatched by the respondent in time for delivery, in the normal course of business prior to the award. Negligence on the part of the respondent in preparing their proposal confers on the right of withdrawal or modification of their proposal after the award. **Refer to HUD 5369-B, Section 6, regarding late submission and withdrawal of bids.**

- **3. Pre-Proposal Conference**  
Interested Contractors are strongly encouraged to attend a Pre-proposal conference with Murfreesboro Housing Authority Director of Maintenance, Adam Lawson on September 13, 2023 at 10:00 a.m. CST at the Murfreesboro Housing Authority administrative building **located** at 415 N. Maple St., Murfreesboro, TN 37130.
- **4. Acknowledgement of Amendments**  
If it becomes necessary to revise any of this RFP, the Contracting Officer will provide an Addendum in writing to all proposers who requested an RFP. Before the proposals are received, it is the Proposer's sole responsibility to ensure that they have received all revisions pertaining to the RFP. Proposers should list in the RFP all addenda received.
- **5. Default by Offeror**  
In the event of default from the successful Offeror, MHA may procure the services specified herein from other sources. The Offeror agrees to reimburse MHA for any additional costs incurred because of such default.
- **6. Awards**  
MHA reserves the right to cancel this RFP or to reject, in whole or part, any and all proposals received in response to this RFP and, upon its determination that cancellation or rejection is in the best interests of MHA. The decision as to who shall receive a contract award, or whether an award shall be made because of this RFP, shall be at MHA's absolute, sole discretion.
- **7. Complete and Accurate Submission**  
An Offeror's failure to provide accurate information in response to this RFP may disqualify the Offeror from further participation in the competitive proposal process. A proposal may be corrected, modified or withdrawn; provided that the Offeror makes the correction, modification or request for withdrawal in writing and is received at the designated time and place before the stated deadline. After such a date and time, the Offeror may not change any provision of its proposal in a manner prejudicial to the interests of MHA and/or fair competition.
- **8. Retention**  
All proposals are the property of Murfreesboro Housing Authority, and shall be retained by MHA and shall not be returned to the Offeror.
- **9. Insurance**  
Within ten (10) days after the award of the contract and prior to the commencement of work, the Contractor shall furnish MHA with evidence showing that the following insurance is in force and will cover all operations of the contract as follows:
  - Comprehensive Liability insurance no less than \$1,000,000
  - Worker's Compensation insurance meeting the requirements of the State of Tennessee
  - Fleet Auto/Truck Insurance

Murfreesboro Housing Authority shall be named as additional insured on all insurance certificates submitted.

All insurance shall be carried with companies that are financially responsible. If such insurance is due to expire during the contract period, the Contractor shall not permit the coverage to lapse and shall furnish evidence of coverage to MHA.

- **10. Subcontractors**

The successful Contractor **may not** use any subcontractors to accomplish any portion of the services described within this RFP of the contract without prior written permission of MHA.

- **11. Resident Participation**

MHA encourages the hiring of residents by the Contractor for any employment opportunities available because of its contract. The Contractor will be asked to make every effort to hire residents and to post opportunities in the management office of the communities where the work is to be performed.

- **12. HUD Section 3 Requirements for all Contractors and Vendors**

Murfreesboro Housing Authority is committed to providing quality housing and economic opportunities for our residents and the neighborhoods we serve, One of the major vehicles for this is Section 3 of the HUD Act of 1968, which requires that HUD funds provide low-income individuals with a springboard for economic empowerment through direct participation in construction and other activities that are designed to physically improve and revitalize the communities in which they live. Section 3 requirements apply to all contractors and vendors who receive awards from public housing authorities.

**\*\* Section 3 documents are found on our website [www.MHA-TN.ORG](http://www.MHA-TN.ORG) under Procurement>RFP Forms>Section 3. Section 3 Business Concern Certification Form must be printed, completed and returned with Solicitation Documents \*\*.**

- **D. References**

All Offerors are to include a list of a minimum of three current references, license number and completed W-9 form.

- **1. Compliance with Laws**

The Contractor shall comply with all applicable environmental requirements in providing professional landscaping services to all properties. Contractor must be licensed to work in the City of Murfreesboro.

“Environmental Requirements” is defined as including, without limitation, statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items, or all governmental agencies, departments, commissions, boards, bureaus or instrumentality’s of the United States, the State of Tennessee and political subdivisions thereof, and all applicable judicial, administrative and regulatory degrees, judgments and orders relating to the protection of human health or the environment and applicable to lawn care services, including, without limitation, all requirements pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, release of threatened release of hazardous wastes.

- **2. Safety**  
The Contractor shall be familiar with and enforce all City of Murfreesboro, State of Tennessee and Federal OSHA regulations and requirements as applicable for services performed under this contract.
- **3. Hours of Operation**  
All work under this contract shall be performed between the hours of 8:00 AM and 5:00 PM, local time. Monday- Friday.
- **4. Terms**  
The services to be performed shall be for a contract period of 12 months with the option to extend annually for 4 additional years at the Murfreesboro Housing Authority’s discretion.
- **5. Payment**  
Payment shall be made based on the timely submission of invoices to the Director of Maintenance for review and approval. Payment shall be made within thirty (30) days from receipt of the Contractor’s pay request. All payments are subject to MHA inspection and certification procedures.

**E. Completeness**

Any Contractor who fails to submit the following required documents with their proposal, in enough detail and completeness (includes notarized) may be declared non-responsive and ineligible for consideration.

**F. Certifications and Assurances**

The Request for Proposal, as a general requirement, specifies that all work be performed in accordance with professional standards, HUD Regulations, requirements and criteria and local codes, regulations, ordinances and statutes. The RFP contains the following documents (\*items that must be submitted\*).

<b>Scope of Services</b>	<b>2 Pages</b>
<b>*Non-Collusive Affidavit</b>	<b>1 Page</b>
<b>*Eligibility Certification</b>	<b>1 Page</b>
<b>*Statement of Qualifications</b>	<b>2 Pages</b>
<b>*Instruction to Offeror: Form HUD-5369-B</b>	<b>2 Pages</b>
<b>*Certification and Representation of Offerors: HUD 5369-C</b>	<b>2 Pages</b>
<b>*General Contract Conditions: Form HUD 5370-C</b>	<b>6 Pages</b>
<b>*Equal Employment Opportunity Certification: HUD 92010</b>	<b>1 Page</b>
<b>*Small, Minority, Women-Owned Business Self Certification</b>	<b>1 Page</b>
<b>Section 3 Documents</b>	
<b>*References</b>	<b>1 Page</b>

- **G. Evaluation Process and Criteria**

All proposals will be evaluated based on the evaluation criteria outlined below. The Evaluation Committee will review all proposals according to the evaluation factors and points and determine which proposals are competitive and which are non-competitive. It is helpful to answer each factor, if possible, under a separate tab for easier reading and scoring. Proposals determined to be competitive will be further evaluated and scored. Negotiations may be held with one or more consultants resulting in one or more contracts for services.

**Contracting Officer**

***L. Thomas Rowe, CEO***

Office: 615.893.9414 X124

Direct: 615.225.9477

Email: [TROWE@MHA-TN.ORG](mailto:TROWE@MHA-TN.ORG)

**Director of Maintenance**

***Adam Lawson***

Office 615.893.9414 X 122

Direct: 615.225.9480

Email: [ALAWSON@MHA-TN.ORG](mailto:ALAWSON@MHA-TN.ORG)



## SOLICITATION #RFP-23-01 EVALUATION FACTORS

*The Housing Authority intends to make a total proposal award to the most responsible Offeror based on the following technical evaluation criteria and cost.*

- **1. Experience, Expertise and Capacity to perform (Maximum 30 points)**
  - a. Show that the Contractor has adequate staff to operate a full-fledge landscaping operation including equipment, employees and financial resources. The Contractor is experienced in all aspects of professional landscaping for Housing Authorities with properties of comparable size.
  - b. The consultant demonstrates an understanding of the scope of services as outlined on pages 2 & 3.
  
- **2. Past performance and professionalism of company (maximum 25 points)**
  - a. Describe this company's qualities: integrity, professionalism, and the character of the firm/individual.
  - b. Describe the quality level of past services with other clients and the level of past performance. How would you rate your firm on a scale from 1 to 10? Including past performance for MHA, only if applicable.
  - c. Provide three (3) references supporting the experience provided by the respondent.
  
- **3. The Company/Individual understanding the requirements of a full fledge landscaping firm (maximum 20 points)**
  - a. Demonstrate by describing your company's approach to coordinating and communicating your landscaping services if awarded a contract.
  - b. The level of relevant information provided for this factor should support the contractor's level of understanding MHA's professional requirements.
  - c. Must demonstrate ability to develop a plan & maintain irrigation system.
  
- **4. Company maintains equipment capable of producing quality and professional appearance (maximum 15 points)**
  - a. Demonstrated capacity to produce quality: edging, grass cutting, tree trimming, and hedge cutting to MHA's standard.
  - b. Describe how the contractor's work has been viewed and graded in the past.
  
- **5. Price Proposal (maximum 10 points)**
  - a. Cost of services and clarity of cost breakdown listed on the cost proposal form for determining cost.

## OFFER INSTRUCTIONS

*The Authority intends to award a contract to the Contractor who submits the most responsive and technically responsible proposal. Contractors are strongly encouraged to carefully examine all the proposal's documents and visit each site to obtain first-hand knowledge of existing conditions.*

*Any protest to award the contract must be in writing and submitted to the Contracting Officer prior to the award of a contract or the protest will not be considered. The Contracting Officer shall issue a written decision on the matter no later than ten (10) business days from receipt of the written protest.*

**Murfreesboro Housing Authority**  
**L. Thomas Rowe, Chief Executive Officer**



**Murfreesboro Housing Authority  
 Cost Proposal Form  
 Professional Landscaping Services  
 RFP-23-01**

Property Name / Address/ Cost	Description	Deductions
<b>Main Office</b> 415 N. Maple St \$_____ Annually		
<b>Patterson Community</b> Hancock St. Essex Ct. Minor St. \$_____ Annually		
<b>Westbrooks Towers II</b> 515 N. Walnut St. \$_____ Annually		
<b>Oakland Court I</b> N. Academy St. Shuttles Dr. Lokey Ave. Goldwater Alley \$_____ Annually		
<b>Oakland Court II</b> Lokey Ave. Shuttles Dr. Lokey Ave. Goldwater Alley \$_____ Annually		
<b>Stones River Dev. Corp</b> 607 N. Academy 724 N. Walnut 519 E. Castle 447 N. Front St \$_____ Annually		

**Request For Proposal  
# RFP-23-01  
For:  
Professional Landscaping Services  
Equipment Inventory**

Company Name \_\_\_\_\_

BY: \_\_\_\_\_  
Signature Date

Printed Name and Title: \_\_\_\_\_

Business Address: \_\_\_\_\_

\_\_\_\_\_

City State Zip

Business Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Federal I.D / Social Security/Tax I.D. # \_\_\_\_\_

*Provide an itemized listing of all current landscaping equipment (i.e., make, model of all lawnmowers, # of lawnmowers, # of blowers, # of edgers etc.*

Equipment Inventory	Qty

**Request For Proposal**  
**# RFP-23-01**  
**For:**  
**Professional Landscaping Services**  
**Non-Collusive Affidavit**

I, \_\_\_\_\_, certify that I am  
\_\_\_\_\_ of the company providing the bid  
for and on behalf of the said firm by the authority of its governing body and within the scope of its powers.

I further certify that no member of this company has colluded with any other person or company  
regarding the bid submitted.

BY: \_\_\_\_\_  
Signature

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

NOTARY PUBLIC  
(Seal)

My Commission Expires  
\_\_\_\_\_, 20\_\_\_\_\_.

**Request For Proposal**  
**#RFP-23-01**  
**For:**  
**PROFESSIONAL LANDSCAPING SERVICES**  
**Eligibility Certification**  
**(Principal Offeror)**

By my signature below, I certify the \_\_\_\_\_  
Company Name

To the best of my knowledge is not on any lists provided by the United States government of contractors that are debarred or ineligible to work in the United States.

BY: \_\_\_\_\_  
Signature

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

NOTARY PUBLIC  
(Seal)

My Commission Expires  
\_\_\_\_\_, 20\_\_\_\_\_.

**Request For Proposal**

**#RFP-23-01**

**For:**

**PROFESSIONAL LANDSCAPING SERVICES**

**Statement Of Qualifications**

All questions answered must be clear and comprehensive. This statement must be notarized. If necessary, add separate sheets for items marked \*. MHA acknowledges the sensitive and confidential nature of this information. With this option, the firm may seal this information in a separate envelope and include that envelope with the other information in this proposal envelope. If the bidder elects to choose this option, the separate envelope should be marked on the outside with the firm's name and identified as "Statement of Qualifications – Confidential." Except for the successful bidder, such envelopes may be returned to the bidders, unopened.

1. Name of the person completing this form:
2. Permanent business address:
3. Mailing address:
4. Federal Identification and/or Social Security Number:
5. How many years have you been engaged in the landscaping business under the present firm name?  
\_\_\_\_\_.
6. Have you ever failed to complete any work awarded to you? If so, where and why? \_\_\_\_\_  
\_\_\_\_\_
7. Have you ever defaulted on a contract? \_\_\_\_\_
8. Incorporated? \_\_\_\_\_ If yes, State and when? \_\_\_\_\_
9. Have you ever provided landscape services under any other name? Y or N. (Circle)  
If yes,, provide Name(s): \_\_\_\_\_
10. Explain your interest in this contract and what knowledge, skills, abilities and experiences qualify you for this contract:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Are there any attachments to this document? Y or N (Circle) If yes, # of pages \_\_\_\_\_

To the best of my knowledge, I certify that the information submitted on this form and any attachment thereto is true and correct.

Company Name: \_\_\_\_\_

Completed By: \_\_\_\_\_

Signature

Title

Date

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

# Instructions to Offerors Non-Construction

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



- 03291 -

## 1. Preparation of Offers

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

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

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

## 2. Submission of Offers

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

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

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

## 3. Amendments to Solicitations

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

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

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

## 4. Explanation to Prospective Offerors

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

## 5. Responsibility of Prospective Contractor

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

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

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

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

## 6. Late Submissions, Modifications, and Withdrawal of Offers

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

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

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

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

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

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



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

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

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

#### **7. Contract Award**

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

(b) The HA may

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

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

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

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

#### **8. Service of Protest**

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

#### **9. Offer Submission**

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

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

[Describe bid or proposal preparation instructions here:]

# Certifications and Representations of Offerors Non-Construction Contract

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

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

## 1. Contingent Fee Representation and Agreement

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

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

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

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

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

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

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

For the purpose of this definition, minority group members are:

(Check the block applicable to you)

- |   |   |
|---|---|
| <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:

---

# General Conditions for Non-Construction Contracts

## Section I – (With or without Maintenance Work)

### U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

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

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

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

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

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

### 1. Definitions

The following definitions are applicable to this contract:

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

### 2. Changes

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

- 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 contract.

**Equal Employment  
Opportunity Certification**  
Excerpt From 41 CFR §60-1.4(b)

**U.S. Department of Housing  
and Urban Development**  
Office of Housing  
Federal Housing Commissioner

**Department of Veterans Affairs**  
OMB Control No. 2502-0029  
(exp. 9/30/2016)

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

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

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, 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 in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: **Provided, however,** That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work:

**Provided,** That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally-assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed

Firm Name and Address	By
	Title

upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

#### **Excerpt from HUD Regulations**

200.410 Definition of term "applicant".

- (a) In multifamily housing transactions where controls over the mortgagor are exercised by the Commissioner either through the ownership of corporate stock or under the provisions of a regulatory agreement, the term "applicant" as used in this subpart shall mean the mortgagor.
- (b) In transactions other than those specified in paragraph(a) of this section, the term "applicant" as used in this subpart shall mean the builder, dealer or contractor performing the construction, repair or rehabilitation work for the mortgagor or other borrower.

200.420 Equal Opportunity Clause to be included in contracts and subcontracts.

- (a) The following equal opportunity clause shall be included in each contract and subcontract which is not exempt:

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

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of the nondiscrimination clause.

- (2) The contractor will 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 race, creed, color, or national origin.

- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided, advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

- (4) The contractor will comply with all provisions of Executive Order 10925 of March 6 1961, as amended, and of the regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

- (5) The contractor will furnish all information and reports required by Executive Order 10925 of March 6, 1961, as amended, and by the regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by HUD and the Committee for purposes of investigation to ascertain compliance with such regulations, and orders.

- (6) In the event of the contractor's non-compliance with the nondiscrimination clause of this contract or with any of the said regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 10925 of March 6, 1961, as amended, and such other sanctions may be imposed and remedies invoked provided in the said Executive Order or by regulations, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

- (7) The contractor will include the provisions of Paragraphs(1) through (7) in every subcontract or purchase order unless exempted by regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to Section 303 of Executive Order 10925 of March 6, 1961, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase orders as HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by HUD, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

- (b) Except in subcontracts for the performance of construction work at the site of construction, the clause is not required to be inserted in subcontracts below the second tier. Subcontracts may incorporate by reference to the equal opportunity clause.

200.425 Modification in and exemptions from the regulations in this subpart.

- (a) The following transactions and contracts are exempt from the regulations in this subpart:

- (1) Loans, mortgages, contracts and subcontracts not exceeding \$10,000.

- (2) Contract and subcontracts not exceeding \$100,000 for standard commercial supplies or raw material;

- (3) Contracts and subcontracts under which work is to be or has been performed outside the United States and where no recruitment of workers within the United States is involved. To the extent that work pursuant to such contracts is done within the United States, the equal opportunity clause shall be applicable;

- (4) Contracts for the sale of Government property where no appreciable amount of work is involved; and

- (5) Contracts and subcontracts for an indefinite quantity which are not to extend for more than one year if the purchaser determines that the amounts to be ordered under any such contract or subcontract are not reasonably expected to exceed \$100,000 in the case of contracts or subcontracts for standard commercial supplies and raw materials, or \$10,000 in the case of all other contracts and subcontracts.